

*Section Two:
Grappling with Firearms Legislation
in South Africa*

Chapter 3

*Legal Firearms in South Africa:
A Part of the Problem?*

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The decision to review the ownership and use of firearms in the legal possession of civilians and the state security forces (police and defence force) may seem to some to be targeting the responsible owners while allowing the criminals to go free. Yet, in South Africa, as in other countries with high numbers of illegal weapons in circulation, a strong case may be made for it being fruitless to try to gain the upperhand in combating illicit arms without addressing one of the primary causes of weapons moving into the illegal pool – those which were once legally owned.

The South African government, in its policies to address illicit weapons in the country, has recognised the necessity of this approach. The Minister for Safety and Security, Sydney Mufamadi, referring to control over the proliferation of guns in South Africa, stated: “[W]e require the implementation of firmer measures both as regards the fight against illegal firearms as well as the controls over licensed arms.”¹ Subsequent government committees established to work on firearms policy have approached the issue from the perspective of what can be done to prevent legally owned firearms from being used for criminal purposes. While this approach is necessary, it is also important to take into account that other negative effects of firearms, such as injuries, suicides and accidental deaths, may occur as a result of negligence.

South Africa is among a handful of countries which have recently changed, or are in the process of changing, their legislation to create better controls

over civilian-owned firearms. Canada, Great Britain, Australia and New Zealand have all conducted reviews of their former legislation. This movement has led to new policies to implement or extend registration of certain types of weapons, raised the standards of checking on licence applicants, and has led to the holding of amnesties to assist in the changes,² a trend that continues among other countries around the world. The Organisation of American States convention on illicit arms trafficking will require signatories (countries in North, Central and South America) to amend existing legislation, or create new legislation, that will improve the ability to track the import, export and transit of weapons and make arms-trafficking a felonious offence.

In many ways, however, in its efforts to review and change existing firearms policy, South Africa is faced with a unique set of challenges. These range from historical factors – a legacy of internal conflict, discriminatory policies for arms acquisition and large numbers of weapons freely distributed to chiefs and local leaders – to current high levels of crime and violence, with people choosing to purchase weapons for self-defence; from legislation that needs to be comprehensively reviewed, as well as the enforcement of regulations and compliance by the population increased, to high levels of theft of firearms from private citizens and state security stocks.

Moreover, in South Africa, regional dynamics must be taken into consideration. The end of the civil war in Mozambique led to quantities of weapons being trafficked from that country to South Africa. Lulls in fighting in Angola have resulted in similar surges of weapons, confiscated along the Namibian and Botswanan borders, entering this country. As the country that is both economically and according to population the largest, South Africa continues to be a market for weapons from the region. Consequently, any policies adopted to contain weapons in South Africa must take into account that there are liable to be unintended, as well as intended, consequences in the neighbouring countries.

The South African government is taking strides to identify the extent of the small arms problem and has made an apparent commitment to implement concrete action to address it. The purpose of this chapter is thus three-fold: to provide information on civilian-owned firearms in South Africa; to give an overview of how weapons are used in violent crime, as well as the role

they play in accidental death and suicides; and to analyse the shortcomings of the current legislation and policy governing the civilian possession of firearms, with a view to identifying the steps that can be taken to impact on efforts to reduce gun-related crime and violence in the country.

The discussion around strengthening controls over civilian-owned firearms is often contentious. Especially in a country such as South Africa, which has a history of gun ownership and currently is experiencing high crime rates and a serious fear of crime amongst citizens, firearms are bought to afford some degree of safety. In fact, South Africa already has strong legislation on firearms in place and a more comprehensive system of registration and licencing than many countries. Thus, what the country broadly needs to do is focus on making it easier for licenced owners to comply with the law, while at the same time facilitating the identification and prosecution of those who do not, a task that sounds less complicated than it will be in practice. In essence, countries have three choices as to how to regulate firearms. They may regulate the type of firearm available in the country (for example, bans on automatic weapons), they may regulate who is allowed to own firearms, or they may regulate the way in which firearms may be used.³ So far, South Africa has chosen to regulate those who are or may become dangerous users. The country has not decided to proceed with more restrictive licencing (ie, banning certain categories of weapons or restricting ownership to certain groups) which targets a class of guns that are deemed too dangerous for general use and “depends on radical changes in citizen behaviour.”⁴

The Role of Firearms in Changing Societies

Firearms and other traditional weapons have a history in South Africa and, for some groups, strong symbolic meaning. The decision of the South African government in 1996 to prohibit the display of traditional weapons (spears, pangas and the like) during public gatherings initially met with strong resistance. However, increasingly, an awareness has dawned that the criminal use of guns, and especially in violent crime, is inhibiting the development of security among citizens and resulting in a vicious circle in which people arm themselves against armed criminals. In South Africa, the ironic twist is that many of the weapons used by criminals are those which have been stolen from licenced owners.

It is against this backdrop of heightened crime, violence and fear that the current debate in South Africa on changing the firearms policy has developed. There is a sense of urgency that something must be done to get ahead of the problem, but at the same time a realisation of the need for information on which to base future policies. In order to discuss the latter in more detail, an overview of the situation in South Africa is required.

Civilian-Owned Firearms in South Africa

Civilian ownership of firearms in South Africa has suffered from historical inequalities. Until 1983, the policies of the apartheid government prohibited the granting of firearms licences to non-white citizens, and large numbers of blacks, coloureds and Asians were not granted licences until 1994. This has resulted in a disparity among the gun-owning population in South Africa which has, in turn, led to the swell in the number of black applicants for firearm licences.⁵ White South Africans, however, have been gun-owners for generations and, like Canada, Australia and the United States, this country has a history of using firearms for a variety of recreational purposes. Thus efforts to change policy in South Africa must recognise the concerns of both constituencies. For those who were not allowed to own firearms under the old order, to forfeit this right so soon after it has been granted could be seen as discriminatory – even in the form of a request by the ANC government. To those who use firearms for recreation and hunting, efforts to restrict their possession of weapons may be seen as hostile. And in South Africa there is a third, important concern. In response to consistently high levels of crime, especially violent crime, South Africans are flocking to purchase firearms for self-defence. Until the necessary security can be provided by the government, efforts to control the possession of weapons more closely may meet with strong (even armed) resistance. The Minister of Justice has alluded to this, stating that South Africans should be allowed to keep their firearms until there is a decent criminal justice system in place.⁶

Currently, there are approximately 4.18 million firearms in South Africa, licenced to 2.3 million owners. Of these licenced firearms, approximately 62% are handguns and 29% rifles. The remaining 9% are largely shotguns. South Africa requires that each firearm is licenced (discussed in detail

below) and the Central Firearms Registry has been licencing approximately 18 000 new firearms per month (table 1). Between 1993 and 1997, approximately 1.55 million firearm licences were issued (table 2).

Table 1 – Licences issued per month by the Central Firearms Registry	
LICENCES PER MONTH IN 1997	
January	25 760
February	24 272
March	27 155
April	26 832
May	28 996
June	28 983
July	38 076
August	34 526
September	117 889
October	45 172
November	47 494
December	35 884
<p>Source: SAPS Central Firearms Registry (CFR)</p> <p>Note: The high number of licences issued in September 1997 was due to extra time being devoted to clearing a backlog of cases.</p>	

To gain a clearer understanding of what these numbers mean, it is useful to look at the rate of firearms per 1 000 persons in South Africa. With a population of 40.58 million, the rate of firearms in South Africa is 104.5 per 1 000 persons. The rate of firearm owners is 57.5 per 1 000, which translates into approximately 6% of the population owning a firearm and approximately two firearms per licenced owner. It is known, however, that a proportion of people – collectors largely – own far more firearms than the national average, with approximately 12 500 people owning more than ten firearms.⁷

Table 2 – Firearm licences issued, 1993-1997

NUMBER OF LICENCES ISSUED	
1993	274 238
1994	247 627
1995	196 296
1996	351 497
1997	481 003

Source: SAPS CFR

In comparing rates of ownership internationally, South Africa has lower rates of firearm ownership than many industrialised countries and is comparable with Costa Rica, Spain and Greece. Countries such as Australia, Canada and Sweden have higher rates of firearms per 1 000 persons, as is shown in Table 3. But South Africa has significantly higher levels of handgun ownership than other countries, consequently this is an area on which further debate around controls could focus. Handguns, given the ease with which they may be carried and concealed, are used frequently in homicides. For example, an estimated 92% of firearm homicides in the United Kingdom have been carried out with a handgun – a strong argument for the subsequent ban on civilian possession of handguns. Further research is required in South Africa to determine whether additional controls should be placed on civilian ownership of these weapons.

Australia, Canada and New Zealand place restrictions on civilian ownership of all types of handguns and all have far lower levels of handgun ownership than South Africa.⁸

South Africa also has what may be one of the highest application rates for firearms in the world. Self-defence, which remains a recognised reason for a civilian to purchase a firearm in South Africa, is one of the most common reasons given for needing a firearm. Perceptions of crime – combined with an extremely high level of violent crime – only serve to feed this fear, as evidenced in a newspaper report which stated that firearm licence applications in the Mitchells Plain area (near Cape Town) increased sharply

Table 3 – Firearms per 1 000 persons, selected countries

COUNTRY	FIREARM OWNERSHIP PER 1 000 PERSONS
Argentina	41
Australia	196
Canada	241
Costa Rica	66
Finland	411
Greece	77
Jamaica	7
New Zealand	309
South Africa	84
Spain	65
Sweden	246
Trinidad and Tobago	6

Source: UN Commission on Crime Prevention and Criminal Justice, *Criminal Justice Reform and Strengthening of Legal Institutions: Measures to Regulate Firearms*, Report of the Secretary-General, 7 March 1997, p 18.

* In this report, South Africa records a rate of 84.41 firearms per person. This figure has been revised in this chapter based on more recent census and firearm figures.

following a spate of gang violence in the community. Police said that the area had received eighty firearm applications in 1997, which had increased to eighty per fortnight by January 1998.⁹ Most of the applicants were reported to be men over forty years of age buying a firearm for the first time.

Use of Firearms in Crime and Accidents

Guns are increasingly being identified with crime and violence in South Africa – and possibly with good reason. Statistics seem to indicate an overall increase in the number of firearms being used in crime without distinguishing between those which are legal or illegal. Despite this, there is a danger in drawing too strong a correlation between the number of

licenced firearms in a country and overall levels of crime or even firearm-related crime, in part due to the large estimates of illegal firearms in the country, as a result of illicit arms trafficking. The next section of this chapter attempts to illustrate the use of firearms in crime and accidents. However, it is important to note that it is still difficult in South Africa to get information on the use of firearms in accidental shootings and suicides, and in age categories for victims of homicide – all important considerations in the development of policy on firearms.

Murder

South Africa is known as one of the most violent countries in the world. Its murder rate for 1995 was the third highest among countries reporting to Interpol with 64.6 people per 100 000 being murdered a year, following Swaziland and Colombia. Its murder rate was eight times higher than that of the United States for 1995.¹⁰ There has been an apparent decrease in the number of murders reported each year between 1994 and 1997, however (table 4).

Table 4 – Reported cases of murder 1994-1997

	1994	1995	1996	1997	1998
Murder	26 832	26 637	25 782	24 588	24 875

Source: SAPS Crime Information Management Centre, Incidence of Serious Crime, January to December 1997, *Quarterly Crime Report 1/98*, SAPS, Pretoria, Annex A.

In 1994, firearms were used in 40% of all homicides in South Africa, compared to those used in 76% of all homicides in Colombia, 70% in the United States, 27% in New Zealand and 33% in Canada (table 5). Information on Swaziland, with its high level of murder, indicates that few of these are conducted with firearms, but exact numbers are unavailable.¹¹ Canada makes a strong case for its lower rate of firearm homicides (33% of all homicides) being due to its more stringent controls over civilian ownership of firearms than those of the United States. In an examination of overall murder rates, South Africa stands out as having one of the highest murder and firearm murder rates among the fifty-seven countries which reported to the United Nations survey. Comparative rates per 100 000

Table 5 – Use of firearms in homicide, 1995

COUNTRY	PERCENTAGE HOMICIDES USING FIREARMS
Australia	23.08
Brazil	88.39
Canada	30.03
Jamaica	57.69
New Zealand	16.67
South Africa	41.20
United States	69.75
Trinidad and Tobago	36.07

Source: *UN Report on Measures to Regulate Firearms, 1997.*

Table 6 – Homicide and firearm homicide rates

COUNTRY	HOMICIDES PER 100 000	FIREARM HOMICIDES PER 100 000
Australia	2.40	0.56
Brazil	29.17	25.78
Canada	1.99	0.60
Jamaica	31.60	18.23
New Zealand	1.35	0.22
South Africa	64.64	26.63
United States	8.95	6.24
Trinidad and Tobago	9.48	3.42

Source: *UN Report on Measures to Regulate Firearms, 1997.*

Note: Figures shown in this chart are drawn from various years and comparisons should be made with caution.

persons for murder and murders committed with firearms are shown in table 6. Colombia and South Africa show similar rates of murder (70,55 and 64,64, respectively), but Colombia has a much higher rate of homicide committed with a firearm. In a trend that may be seen in the future in South Africa, the number of murders committed in Colombia has decreased from 1994 to 1996 (from 26 828 to 21 806), while the percentage of murders committed with a firearm has increased each year from 68% in 1994 to 76% in 1995, rising to 87% in 1996. Murder rates in South Africa are stabilising (albeit at high levels). If analysis shows that while murders are declining firearm murders are on the increase, this only emphasises the need to change the access to and availability of weapons without further delay.

Table 7 – Handguns used in firearm homicides as a percentage of firearm homicides

COUNTRY	PERCENTAGE OF HANDGUNS USED IN FIREARM HOMICIDES
Brazil	85
Canada	54
Japan	88
South Africa	68
Spain	50
United Kingdom	92
United States	83

Source: UN survey data on firearms.

Increasingly, countries are placing restrictions on ownership of handguns because of their use in homicides. The percentage of firearm homicides in which firearms were used is shown for selected countries in 1994 in table 7. As noted, England and Wales have the highest percentage (92%) with South Africa's data indicating that 88% of firearm homicides in the country were committed with a handgun, followed by 83% for the United States and 46%

for Canada. In 1995, South Africa indicated that 7 559 (or 68%) of its 11 044 firearm homicides were committed with a handgun.

While for identifying points of control it is important to establish whether the weapons being used to commit these murders are legal or illegal, in depicting the extent of violence and crime attributable, in part, to their use, their legality becomes, at this stage, largely a moot point. What moves to the forefront of the debate is finding ways of reducing murder overall, but with a special focus on reducing the number of firearm murders.

Assault, Hijacking, Burglary and other Crimes

Although perhaps less visible, firearms are used frequently in other crimes in South Africa. These include assault, both physical and sexual, burglary, vehicle hijacking and robbery. Frustratingly for research purposes, much of this information is only collected on police dockets and is neither sent through to the statistics office nor made easily available. South Africa recently, however, released the results of a national victim survey conducted in 1997, which gives some preliminary information on firearms used in these crimes.

Overall, most crimes were more likely to be committed with a weapon than without one. These included assault (55% versus 45%) and vehicle hijacking in which a weapon was used 63% of the time. Vehicle hijacking appears to be the crime in which a firearm is most likely to be used (80%), followed by robbery with force (41%), assault (20%) and sexual offences (15%). Other weapons used in these crimes included knives (used in almost 80% of sexual offences), sticks and other objects.

This data can be compared to official police statistics for 1996, which show that in 42% of murder cases firearms were used, as well as being used in 76% of attempted murder cases. In respect of robbery with aggravating circumstances, 77% of cases reported that a firearm was used,¹² compared to a reported 41% in the victim survey.

There is considerable importance in being able to determine patterns of weapons used in crime. This allows the controls over firearm ownership to be applied in such a way that they impact on those who are most likely to use firearms illegally – and in specific circumstances. As more information

is gathered, it becomes clearer where crimes occur. In South Africa, murder and sexual assault tend to occur close to home¹³ and, where a firearm is used, it could well be one that is legally licenced.

As a final point, although tempting, it is not possible to infer that all weapons used in crime are illegally possessed. In response to ever-increasing violent crime in the Western Cape, the police have toughened up on firearm owners, noting “too many firearms [in the area] were legally owned by potential criminals and too many firearm owners were lackadaisical about safeguarding their guns.”¹⁴

Suicide and Accidental Death

Although not a criminal act, the use of firearms in suicides also needs further investigation in South Africa. In the United States, firearm suicides rank above murders committed with a firearm in firearm-related deaths.¹⁵ In a country such as Costa Rica, 25% of all suicides are committed with a firearm. Research in Canada has shown that a strong link can be made between firearm availability and suicide.¹⁶ This means that issues such as the safe storage of firearms and of ammunition become important: “The presence of firearms and accessible ammunition elevate [sic] the risk of suicide because few individuals obtain firearms specifically for the purpose of the suicide and every other method available to the individual has a lower lethality rate.”¹⁷

Accidental death is another area that deserves greater attention in the current debate on civilian-possession of firearms. This is an under-researched area internationally, but preliminary work suggests that there is a link between gun availability and accidents. “The evidence clearly indicates ... that the majority of firearm accidents are just that – hunters showing momentary lapses of judgement; children unaware that a firearm is loaded or real; and, others who accidentally discharge a firearm due to insufficient training or faulty product design.”¹⁸ Comparable information for both suicide and accidental death is not available in South Africa. Its collection, however, would provide important information about additional at-risk groups for firearm-related violence.

Children and Firearms

Another category deserving further study is the relationship between children and guns. A case study conducted by the University of Cape Town

shows some interesting preliminary information on the issue, highlighting it as an area that must be given greater consideration in the formulation of policy around firearms.

This study found that the number of firearm injuries in children under nineteen increased from 20.2 per 100 000 in 1992 to 58.1 per 100 000 in 1996,¹⁹ an increase of 35% over four years. The number of deaths from firearms also increased dramatically during the same period from 3.8 to 10.3 per 100 000 and showed that firearm murders are currently one of the top four causes of death among children and youth.²⁰ The study findings also show that adolescents were more likely to be victims than children, and young men were the most likely victims. With an important policy implication, the study showed that about 23% of all the teenage victims (fifteen to eighteen year-olds) who died from firearm-related injuries were intoxicated.²¹

A study conducted in the United States found that teenagers and young adults are highly likely to be murdered with a firearm. According to 1990 statistics from the National Centre for Health Statistics, “ 82 per cent of all murder victims aged 15 to 19 and 76 per cent of victims aged 20 to 24 were killed with guns.”²²

Oosthuysen cites figures for juvenile crime rates which show that in 1995 in Gauteng, a total of 506 juveniles was arrested for robbery with a firearm.²³ These varied findings indicate that much more needs to be known about the access children and teenagers have to weapons, how they are used and also information on teenage drinking and other forms of behaviour which impact on the likelihood of dying by the gun.

Still under debate are the reasons for the large numbers of children and adolescents killed or injured with firearms. However, the prestige associated with having a gun, the fact that weapons may be easily available, and the fact that youth may not know how to use them safely may all be factors.

Types of Weapons Used in Crime and Violence

As shown in Table 7, handguns are frequently used in firearm murders in South Africa and evidence indicates that they are also frequently used in

other crimes committed in urban areas, for example, vehicle hijackings and bank robberies. In 1994, automatic weapons, which at one time were freely distributed throughout parts of the country and used in the political massacres that took place in the early 1990s were used in approximately 6% of the firearm murders in the country.

Assault rifles, however, do feature in some criminal acts in South Africa. Most notably these are attacks on cash-in-transit vans, in which thieves use assault rifles, often AK-47s, and armour-piercing bullets to overpower security guards.²⁴ Although dramatic and deadly, these attacks account for only a small percentage of crime in the country.

At this stage, there is little national information upon which to base a conclusion on the types of weapons used for crime. The number of lost and stolen weapons in South Africa (discussed below) and the impression given by the police that most of the weapons stolen are pistols and revolvers, however, does give credence to the belief that handguns are the current weapon of choice among criminals in South Africa.

Issues around Legal Firearms in South Africa

South Africa has what is arguably some of the most comprehensive firearm legislation in the world. Written in 1969 and modified numerous times over the years, the *Arms and Ammunition Act* (Act no 75 of 1969) and its accompanying regulations is the piece of legislation which has determined the conditions for civilian-ownership of firearms in the country. It requires that all firearms (rifles, shotguns, pistols, revolvers and others) owned by civilians be licenced. These licences are issued and the records maintained by the CFR, which processes the more than 100 000 applications received each year. However, the legislation, while comprehensive in that it licences both handguns and rifles and shotguns, is permissive as to the conditions under which it permits applicants to get a firearm licence. Restrictions are placed on the civilian ownership of automatic weapons, as is fairly standard around the world, but semi-automatic firearms may be purchased and licenced under certain conditions. In addition, self-defence is a legitimate reason for any applicant to receive a firearm licence and no further proof of need (for example high-risk occupations) is required. The CFR is estimated

to approve more than 80% of the licence applications received, and those which are refused are often granted following an appeal process.²⁵

There are other loopholes in the legislation which are also exploited. Included here is a provision which allows a private security company to hold the licence for all firearms used by its employees, who may or may not have had firearms training. The lack of direct ownership by the employee of the firearm seems to result in a more casual attitude towards it being stolen or lost, as is evidenced by the high rates of lost and stolen firearms throughout the country.

Lost and Stolen Firearms

Police estimate that firearms lost and stolen from civilians, police and defence force members now make up the largest percentage of illegal weapons in the country. In the past, weapons smuggled in from neighbouring countries were estimated to be the largest contributors to the illegal market (see Chapter 1). The shift may be explained by the tightening of controls along borders which are hampering smugglers, a lack of useable weapons for smugglers to purchase in neighbouring countries and the fact that it is relatively easy to steal a firearm in South Africa.

Police estimates suggest that from 1993 to 1995 a total of 135 000 weapons were reported lost from both security personnel and civilians, an average of 45 000 per year.²⁶ In 1996, the police alone lost 2 000 firearms through theft, robbery and loss. Of 1 863 firearms lost by the police between April 1996 and February 1997, 112 had been recovered by March 1997. Most of these stolen weapons were 9mm pistols.²⁷ Table 8 shows a breakdown of firearm losses from 1994 to 1997.

From 1994 to 1995, a total of 18 760 lost or stolen weapons were recovered, although these were not necessarily the same ones lost or stolen during that year. From the increasing numbers of stolen firearms two possible interpretations may be made: either there are more weapons available for theft or people owning weapons are being targeted specifically for those weapons. In 1996 and 1997, a spate of thefts from defence force and police armouries took place in which, in one case, more than 100 firearms, including assault rifles, were stolen.²⁸ This is a trend that needs to be tracked and monitored, as these weapons can easily move into the

Table 8 – Firearms lost, stolen and recovered, 1994 to 1997

YEAR	STOLEN	LOST	RECOVERED
1994	16 075	35	7 150
1995	16 121	1 496	11 610
1996 (combines stolen and lost)	18 600	.	.
1997/1998	.	.	.

Source: G Oosthuysen and SAPS.

possession of criminal networks or suspected right-wing groups around the country.

There is also the possibility, and a strong one, that these are undercounts of the number of weapons lost by firearm owners. It is assumed that some owners do not report the lost firearm to the police, since they fear that they will be declared unfit to possess a firearm if the loss was caused by negligence. Therefore, the number of lost and stolen firearms may be substantially higher than officially reported.

A third issue also deserves attention. Although on paper, South Africa has strong legislation on firearms and strict penalties for crimes committed with firearms, in practice, the enforcement of the legislation and the detection and investigation of crimes committed with firearms are lacking. The South African Police Service (SAPS) is having to learn to work within a democratic system and undertake detection and investigations that will stand up in a court of law – not a prerequisite for police operations during its apartheid past. Therefore, the number of cases reported and the number of convictions secured may vary widely, as has been seen in other types of crime.²⁹ Another problem – one not confined to South Africa and noted, in this instance, as occurring in the United States – is that laws seen as unnecessarily harsh lead to the polices' omitting to arrest transgressors, because of a reluctance to impose mandatory sentences on people guilty of what are seen as fairly minor incidents.³⁰ As an example, the *Criminal Law Amendment Act* (Act no 105 of 1997), which came into operation on 1 April 1998, imposes a

minimum ten-year sentence on those found to be smuggling arms or ammunition, or in the illegal possession of automatic or semi-automatic weapons or more than 1 000 rounds of ammunition.³¹ While such stringent sentences may appeal to the public, the number of people prosecuted under this bill should be monitored to see if it is, in fact, having its desired impact.³²

Government and Firearms Control in South Africa

In 1995, recognising the destabilising effect rampant violent crime was having on the prospects for South Africa's fledgling democracy, the government developed the four-pillar National Crime Prevention Strategy (NCPS) which outlined what the prerequisites were for reducing and preventing crime, especially violent crime, in the country. Firearms were identified early on as one of the key components in this plan because, as in other countries, South Africa has "both a violence and a gun problem, and each makes the other more deadly."³³ The NCPS is an interdepartmental structure that works with all the departments in the criminal justice chain but, in relation to firearms, most closely with the SAPS and the Department of Safety and Security.

The resulting firearm plan, as it has been developed, is discussed in greater detail in Chapter 4 of this volume. Moreover, the NCPS firearm project has recently taken over the task of redrafting the *Arms and Ammunition Act* (Act no 75 of 1969) and so has an important role to play in shaping the future of civilian ownership of firearms in the country.

To date there have been several review committees appointed by the government to examine issues related to firearms in the country. The results of these studies have been drawn together into a draft policy document on firearms, the principles of which will underscore the new legislation expected to be presented to Parliament in late 1999.

The Arms and Ammunition Act

The South African *Arms and Ammunition Act* (Act no 75 of 1969), first drawn up three decades ago, has become so disjointed that it is difficult for

anyone who does not know it well to understand it. This, together with the fact that it no longer accurately reflects the situation in South Africa, has led the government to decide to redraft the Act. In undertaking this process, it is important that various issues set out below, beyond the obvious loopholes currently in existence, be taken into consideration:

- What is the revision of the Act trying to achieve?
- What will be the consequences (intended and unintended) of the changes being considered?
- Will the changes envisioned improve not only the domestic situation, but also have a positive effect on South Africa's neighbours?

While it may seem unusual to consider the impact that domestic legislation could have on neighbouring countries, illicit firearm traffickers, as has been shown in Chapter 2, have little regard for borders. In developing domestic legislation which should impact on the illegal firearms market in some way, the region will, as a matter of course, be affected. This is not to suggest, however, that South Africa should attempt to harmonise its legislation with the other countries in Southern Africa, as the disparities are too great.

Following is a short summary of the provisions of the current Act. Many of these are considered adequate for the new South African situation and will not be changed. However, a number of areas are worthy of review and possible amendment. These are discussed in the next section.

Ownership and Licencing

The possession of civilian-owned firearms in South Africa is governed by the *Arms and Ammunition Act* (no 75 of 1969). Given the changes in the country over the years, this legislation has been amended multiple times and it is now recognised that it must be redrafted in order to be comprehensible. The purpose of the Act is to regulate the possession and use of civilian firearms and ammunition in the country, as well as the activities of arms and ammunition dealers. South African law issues a licence to a person to possess a firearm and then each firearm owned by that person is individually licenced. Thus, an individual may have multiple firearms licensed in his/her name.

The main provisions of the current Act are as follows:

Licences to Possess Arms

- A licence may be issued to any person sixteen years of age or older who is not disqualified.³⁴
- A person not granted a licence may appeal against the decision.
- No person may be entitled to possess more than twelve arms (excluding special categories for collectors, hunters and sports shooters).
- There is no provision for the renewal of a firearm licence and a licence remains valid until the holder sells the weapon or is declared unfit to possess one.
- The licence for the firearm in possession must be produced at the request of a police officer.

People Unfit to Possess a Firearm

- A person who has threatened or expressed the intention to kill or injure himself or any other person by means of an arm.
- [A person ... whose] mental condition, inclination to violence with or without a firearm, or dependence on alcohol or narcotic drugs makes it not in his or another person's interest to possess a firearm.
- A person who is convicted of contravening the *Arms and Ammunition Act* or of a schedule 2 violation will be declared unfit.³⁵

Dealers in Arms and Ammunition

- No person may deal in arms and ammunition without a dealer's licence.
- Dealers' licences must be renewed annually.
- Dealers must keep accurate records of arms and ammunition acquired and disposed of.
- All stocks and records are subject to inspection.

Import and Export of Arms and Ammunition

- All imports and exports of arms and ammunition require permits.

Manufacture of Arms and Ammunition

- Only licenced premises may manufacture arms and ammunition.

Other Provisions

- Civilian possession of cannons, recoilless guns or mortars, rocket launchers, machine guns or machine rifles, explosives or ammunition for machine guns or rifles is prohibited.

- A person may only purchase or possess ammunition for the firearm he is licenced to own.
- The loss/theft/destruction of any firearm must be reported to the police.
- An arm carried in a public place must be [borne accordingly]:
 - “(a) in the case of a pistol or revolver, [the bearer must carry it] in his pocket in such a way that it is completely covered, or ... in a holster or similar holder ... and attached to his person, or ... in a handbag or attaché case, or in a rucksack or similar holder;
 - (b) in the case of any other arm, such arm is carried in a holder designed, manufactured or adapted for the carrying of such arm in such a way that is completely covered and in such a manner that he at all times has and can exercise effective control over such arm” (*Arms and Ammunition Act*, Section 38A).
- All firearms not carried on a person or under his direct control must be stored in a safe.
- The penalties for contravening provisions of the Act range from fines to seizure of the firearm, loss of licence and imprisonment for up to twenty-five years.³⁶

There are recognised shortcomings in the current act, some of which should be overcome by the new legislation. Those which have been identified and are probably going to be changed include limiting the number of firearms an individual may possess to less than the current twelve; ensuring that the current competency requirement be strengthened and enforced; restricting the loan of firearms; increasing oversight of dealers; revising the safe storage provision so that it is easier for those living in informal settlements to comply with the provisions and extension of the description of ‘unfitness’ to incorporate the threat of violence, especially domestic violence, with or without a firearm.

Other provisions will require more attention and effort. These include an examination into the feasibility of a tiered licencing system, which would separate firearm owners into those allowed to possess a firearm and those who would be allowed to carry a firearm (currently in South Africa all firearm owners are permitted to carry their firearms with them, subject to the provisions listed above), and a system of renewal of firearm licences.³⁷

Other areas which may or may not be under consideration are discussed below.

Developing a New Plan for the Civilian Ownership of Firearms

If it is taken as the premise that civilian ownership of firearms is one link in the chain that leads to high rates of firearm violence and illegal firearms in South Africa, it becomes clear that the legislation affecting the ownership of these firearms must be carefully considered for both intended and unintended consequences. This section uses some of the information raised by earlier sections to make suggestions on what could be considered in the formulation of new legislation, trying, as it does so, to answer the questions posed earlier.

In brief, the areas identified as prerequisites for any legislation on civilian ownership of firearms include: terms and conditions of licencing, including accepted reasons for requesting a licence and reasons for refusing to issue a licence; age restrictions; categories of firearms to be licenced; duration of a licence; obligations of owners; obligations of government; identification of a licencing authority; and penalties for contravening the law. While not all of these will be discussed here, they all remain important in developing a comprehensive policy for firearms in South Africa.

Terms and Conditions of Licencing

Under this category, consideration must be given to the principles upon which a person may be issued with a firearm licence in South Africa. The first consideration is that any new legislation will have to be such that it will be relatively easy for a responsible gun owner to be compliant with that legislation. This would entail ensuring that provisions, such as relicencing or the storage of a gun, are not so onerous that they fail to be carried out.

Currently, self-defence is a legitimate reason for a person to be issued with a firearm licence. There are vigorous debates, both within South Africa and other countries, as to whether or not using a gun against an attacker heightens or lessens the victim's chances of being injured or killed. To enter into that debate here is not the intention. In determining whether or not to

continue to permit self-defence as a category without qualification, one question should be answered. If a large number of licenced weapons are entering the illegal pool, and self-defence is the main motivation for peoples' purchasing weapons, would restricting the number of licenced weapons reduce the number becoming illegal? Unfortunately, the answer requires more research than is currently available, but it is a question that must be answered if the government is going to achieve its goal of reducing the number of weapons in society.

Related to this is the need for more accurate information to be gathered prior to the issue of a firearm. Proof of passing a firearms training course, checking of references and a criminal record review must continue to be enforced or be implemented. The best way to diminish the cases of misuse and negligence among firearm owners is to ensure that they are aware of the law and know the ways in which they must abide by the law, and for the government to ensure that firearms are not licenced to those who have abused, or are likely to abuse the law.

Age Restrictions

A case should be made for increasing the minimum age at which a firearm can be purchased from sixteen to eighteen years of age. Although information is still scant, the increase in the number of teenagers dying from firearm-related injuries should be one consideration. Another is the increasing gang violence in regions around the country and the number of teenage gang members who own firearms. The argument in favour of such an approach is that by limiting those who are likely to be high-risk users – and adolescents are considered such internationally – and by controlling access, one would be contributing towards the reduction of firearm-related violence and injury among this group.³⁸ As Zimring claims: “High-risk users [including minors] should not be allowed to own firearms, because the societal damage they cause through violence outweighs the social value of their interests in using guns legitimately.”³⁹

Categories of Weapons to be Licenced

South Africa currently prohibits civilian possession of automatic weapons. The licencing of semi-automatic weapons, including semi-automatic handguns, requires that the potential owner be able to show a special need for the firearm.⁴⁰ Given the degree to which handguns are being used in

violent crime, strong consideration should be afforded to limiting access to these firearms among the civilian population. The argument advanced by Zimring is that these are weapons that are high-risk (ie, pose a higher than average threat to the general population) and whose availability therefore should be reduced. The “idea behind [this] supply reduction is that gun-related violence will decrease significantly only if the firearms most often used in violence are not available to most people.”⁴¹

In practical terms, under revised legislation this would mean restricting the people who would be allowed to purchase a handgun to those who could prove special need (the conditions of which would have to be determined). In South Africa, this would most likely not be a popular step, as reducing access to handguns would most probably impact on the majority of licenced firearm holders. The drawbacks of this approach would be that it would necessitate a process to relicence existing firearm owners (already under consideration for new legislation) and require a reclassification of the type of people who may own a handgun for self-defence. However, if the murder statistics are correct and handguns are being used in more than 70% of firearm homicides, the numbers of lives that could potentially be saved are too great for the need for discussion and debate around this issue to be ignored.⁴²

There are other issues in the legislation which have already been noted by government and are likely to be changed in the new legislation. These include a renewal period for licences, a review of the Central Firearms Agency to streamline the licencing process so that the application is processed swiftly, but more importantly, accurately.⁴³ Others include: increasing the reasons for refusing a licence to incorporate crimes other than those currently listed (eg, domestic abuse is under consideration); and revision of the appeal process.

Which Way Forward?

South Africa faces both a challenge and an opportunity around the debate over civilian possession of firearms. The challenge lies in the high levels of crime and violence and the fear experienced by citizens that prompts many to purchase a weapon for self-defence. The opportunity lies in the apparent

political will to change the existing legislation, and the possibility for advancing control over firearms and taking steps to reduce the role that licenced firearms play in crime, violence and the illegal weapons market in South Africa.

In this regard, several key points should be highlighted. Firstly, control over civilian possession of firearms must form part of the comprehensive strategy to control the availability and presence of illegal firearms in the country. There are several reasons for this. In South Africa, especially, the numbers of legal firearms that are lost or stolen and move into the illegal pool are large enough to indicate that more stringent enforcement over regulations for the carrying and storage of firearms is required. Furthermore, if a culture of responsible gun ownership is instilled in the population (including safe storage, training and reporting of lost and stolen weapons), one could expect that intolerance for what could be identified as irresponsible use by others would grow. Finally, by increasing controls over legal firearms in the country, it would, in principle, be easier to determine what is illegal, be it possession of a restricted firearm or the misuse of a gun.

Secondly, limits must be set on who is allowed to possess a firearm, what type of firearms civilians may own and how many of each type or calibre may be owned by an individual.⁴⁴ As a starting point, those under eighteen should no longer be allowed a firearm licence, except in certain, carefully regulated circumstances. The number of weapons an individual may own should be limited (for example, one per calibre/type without special provision). And finally, the licencing of handguns should be curbed. Their use in murder and other violent crimes is a cause for serious concern and proactive steps must be taken to reduce the number of handguns in the country.

In addition to legislating for change, enforcement and the support of the public are critical to success. Education to instil an attitude of responsible firearm ownership among owners is a first step. The active prosecution of those violating the law is another. It will be through a combination of these steps, together with others, including addressing the social factors behind gun ownership and the illicit firearms market, that gun violence in the country will be diminished.

There are no easy answers to the role played by firearms in violence. However, international experience has taught several important lessons. There is a strong correlation between gun availability and gun-related violence in countries world-wide;⁴⁵ a combination of reducing the availability of guns and the lethality of firearms with the limiting of gun users is one way in which to reduce gun violence;⁴⁶ and the enforcement of legislation is critical to success. Roth identifies three enforcement objectives which are relevant to the South African situation: disrupting the illegal firearms market; reducing access to firearms by youth; and “close co-operation between the police and the community to set priorities and enforce laws, in order to reduce the fears that lead to gun ownership for self-defence.”⁴⁷

Through modifying these lessons to suit the South African experience, and incorporating them into a comprehensive plan to combat firearm violence and illegal weapons, South Africa would seem to be taking the necessary first steps in solving a problem that could grow increasingly dangerous if action is not taken quickly.

Endnotes

- 1 B Stuart, Plan for tighter gun controls, *The Citizen*, 1 August 1997.
- 2 Government of New Zealand, Firearms control increased to improve safety: Press release, as printed in *The Newsroom*, 25 August 1998.
- 3 F Zimring, as quoted in E Laurance, The new field of micro-disarmament: Addressing the proliferation and buildup of small arms and light weapons, *Brief 7*, Bonn International Centre for Conversion, Bonn, September 1996, p 27. Zimring identifies three categories: ‘Dangerous uses’, by which is maintained that the carrying and use of some types of weapons is more likely to produce violence than others; ‘Dangerous users’, certain categories of people who are more likely to misuse a firearms than others; and ‘Dangerous guns’, those firearms which are more likely to be misused than others (ie, handguns and automatic firearms).
- 4 F Zimring & G Hawkins, *Crime is not the problem: Lethal violence in America*, Oxford University Press, New York, 1997, p 201.
- 5 Oral information provided by the South African Central Firearms Registry, 1998.
- 6 Too early to scrap guns, Omar says, *Electronic Mail & Guardian*, <www.mg.co.za/mg>, (4 November 1997).
- 7 Ibid.
- 8 United Nations Economic and Social Council: Commission on Crime Prevention, *Measures to regulate firearms*, United Nations, Vienna, 1997.

- 9 Gang violence pushes up gun sales, *The Star* 29 January 1998.
- 10 A Louw & M Shaw, Dubious distinctions? Comparing crime across countries, *Nedcor ISS Crime Index* 2(3), p 7.
- 11 See T Nkiwane, M Chachiuwa & S Meek, *Weapons flows in Zimbabwe, Mozambique and Swaziland*, ISS Monograph 34, Institute for Security Studies, Halfway House, January 1999.
- 12 South African Police Service Information Management Centre, *Incidence of serious crime*, 24 November 1997.
- 13 Statistics South Africa, *National victims of crime survey*, SSA, Pretoria, 1998, various tables.
- 14 As quoted by J Schronen, War on guns and booze, *Cape Argus*, 17 July 1997.
- 15 See Canadian Department of Justice, *A review of firearm statistics and regulations in selected countries*, Department of Justice, Ottawa, 1995.
- 16 See T Gabor, The proposed Canadian legislation on firearms: More symbolism than prevention, *Canadian Journal of Criminology*, April 1995, p 203, in which he says that fifteen of sixteen case studies showed that countries with “higher firearm ownership levels had higher rates of firearm suicides than those with lower ownership levels.”
- 17 *Ibid*, p 204, quoting A Kellerman et al, Suicide in the home in relation to gun homicide, *New England Journal of Medicine* 327, p. 467-472; C Browning, Epidemiology of suicide: Firearms, *Comprehensive Psychiatry* 15, 1974, p. 549-553; and G Kleck, *Point blank: Guns and violence in America*, Aldine de Gruyter, Hawthorne, NY, 1991, p 258.
- 18 T Gabor, *The impact of the availability of firearms on violent crime, suicide and accidental death: A review of the literature with special reference to the Canadian situation*, Department of Justice, Ottawa, 1994, as quoted in Gabor, *op cit*.
- 19 A Wigton, *Firearm-related injuries in Cape Town children and youth 1992-1996*, Child Health Policy Institute, University of Cape Town, Cape Town, March 1998, p 6.
- 20 *Ibid*, p 7.
- 21 *Ibid*.
- 22 J Roth, *Firearms and violence*, National Institute of Justice Research in Brief, US Department of Justice, February 1994, p 1.
- 23 G Oosthuysen, *Small arms proliferation and control in Southern Africa*, South African Institute of International Affairs, Johannesburg, 1996, p 13.
- 24 *Ibid*, p 12. See also, E Hennop, Weapons and crime in South Africa, *Nedcor ISS Crime Index* 3(1), 1999, p 17.
- 25 See the following section on South Africa’s firearms legislation for more detail.
- 26 Stopping gun violence in South Africa, *African News*, June 1997, <www.oneworld.org/news/reports/jun97/southafrica.html>.
- 27 W Hartley, Almost 2000 police firearms lost last year, *Business Day*, 26 March 1997.
- 28 R Roussouw, Military base loses over 100 weapons, *Electronic Mail & Guardian*, Johannesburg, 10 March 1997.
- 29 M Schönteich, Lack of conviction: Prosecutions poor Pperformance, *Nedcor ISS Crime Index* 3(2), 1999, p 5.
- 30 J Wright, K Daly & P Rossi, *Under the gun: Weapons, crime and violence in America*, Aldine Publishers, New York, 1983, p 298
- 31 W Hofmeyr, Parliament and crime issues: Recent events, *Nedcor ISS Crime Index* 2(2), 1998, p 18.

- 32 The complexities of firearm ownership in South Africa make this an interesting case. Many automatic weapons were given to tribal chiefs, especially in KwaZulu-Natal, under the apartheid system, few of which were collected after the 1994 elections. It will be interesting to see if possessors of these weapons, now considered illegal, are prosecuted under this law.
- 33 Modified from a passage by F Zimring & G Hawkins, *Crime is not the problem: Lethal violence in America*, Oxford University Press, New York, 1997, p 123, with reference to the United States.
- 34 See the next section for a list of current disqualifications.
- 35 Schedule 2 crimes as listed in the Act are: high treason, sedition, terrorism, sabotage, subversion, public violence, intimidation, murder, malicious injury to property, rape, assault, robbery, theft of game, breaking or entering with intent to commit an offence, kidnapping, child stealing and culpable homicide.
- 36 In terms of the *Minimum Sentencing Law* (1997) referred to above, any crime committed with a firearm incurs a minimum five-year sentence, while arms-smuggling, or possession of automatic or semi-automatic weapons or more than 1 000 rounds of ammunition carries a first-offence penalty of fifteen years, twenty years for a second offence and twenty-five for a third.
- 37 Most of the recommendations for changes in firearms legislation and regulation in South Africa have developed over the past three years through the work of various government committees.
- 38 See F Zimring, Firearms, violence and public policy, *Scientific America*, November 1991, p 28; and Wigton, op cit, p 8.
- 39 Zimring, ibid.
- 40 It is fairly commonly accepted that this requirement is abused, people with no special considerations being able to own semi-automatic weapons.
- 41 Ibid, p 29.
- 42 Handgun control is currently under debate in a number of countries. The decision by the United Kingdom to ban civilian ownership of handguns is one extreme, while the United States has now implemented the Brady Bill which has a mandatory waiting period for the purchase of handguns, and other laws which aim to reduce the number of people who have access to handguns.
- 43 In order to receive a firearm licence, the licensing agency should ensure that the background checks are conducted and that the profile of the firearm requested match the profile of the firearm purchased. There are reported incidents of automatic firearms being licensed by the Central Firearms Registry because the application has been filled out for a bolt-action or other, non-prescribed, type of firing action.
- 44 This point excludes those individuals licensed as collectors.
- 45 Roth, op cit.
- 46 Ibid, p 6.
- 47 Ibid, p 1.