

## Chapter 4

# *Illegal Firearms in South Africa: Proliferation and Problems of Control*

*Clare Hansmann and Etienne Hennop*

### *Introduction*

A major contributory factor to the increase in gun-related crimes in South Africa is the wide availability of firearms with which these crimes can be committed. As long as criminals have easy access to firearms and the community's faith in the police and justice systems remains weak, citizens will continue to arm themselves in self-defence. Ways need to be developed to stop the availability of firearms both to criminals and law-abiding citizens so that the incidence of violent crimes is minimised. But this can only be achieved with better legislation for the control of firearms and ammunition. Moreover, the drafters of the new *Firearms Control Bill* must take into account that this Bill must be accepted by the people it will control; it must be understood and enforceable by the police and the justice system; but, most importantly, it must not infringe on the constitutional and human rights of citizens.

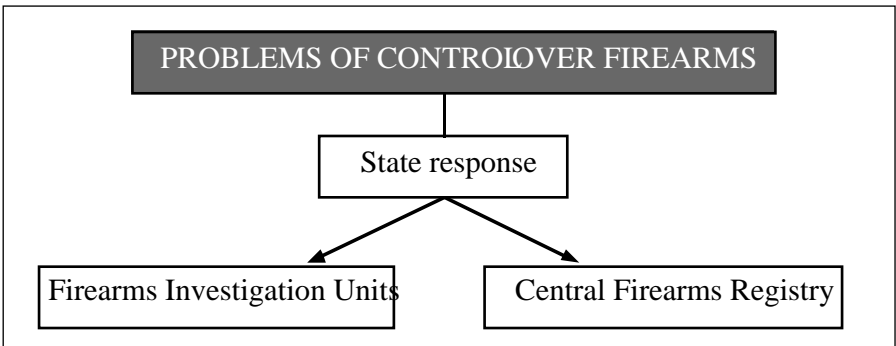
Illegal firearms are clearly a problem in South Africa. In order to control firearms, their flow, both from internal and external sources, needs to be addressed. There are many sources of illegal weapons, all of which have to be controlled in order to inhibit the further spread of illegal firearms. Broadly speaking, the weapons originate from three sources: stolen or lost government-owned weapons; stolen or lost privately owned weapons; and crossborder trafficking. Tightening up controls over the sources of weapons from within South Africa would involve making it more difficult for criminals to steal firearms from licence holders. Penalties against people who negligently lose their own weapons, or who lose weapons that are not correctly supervised or stored, could go some way in achieving such control. Training firearm licence holders about the responsibilities of possessing a firearm and the legal parameters of possession would also

assist in this regard. The government, as the other significant contributor to the illegal pool of firearms, through thefts from government armouries and officials, should also establish systems of accountability through the registration and audit of government-owned firearms.

Ensuring that licence holders comply with the licence conditions is a useful mechanism for preventing the unnecessary addition of weapons to the illegal market. However, this will only prove useful if an accurate and reliable register is kept of licence holders and their weapons. In South Africa, the Central Firearm Registry (CFR) is the agency responsible for keeping a record of each civilian who privately owns a firearm.

The ISS has undertaken research into the accuracy of the CFR in order to assess whether this body is able to fulfil its mandate within the current legal framework and with the existing resources allocated to it. While improving the accuracy of the registration and tracking processes of firearms through licences will partially ensure better control over weapons, the government needs to start to reduce existing, as well as future pools of illegal weapons. This is the responsibility of the Illegal Firearm Investigation Units (FIUs) of the South African Police Service (SAPS). For this reason, these units were involved in workshops to devise improved controls over firearms, and to provide a critique of the current firearm legislation. The main finding of the workshops was that new legislation to control firearms was required.

This chapter provides an overview of what the new legislation would need to address and considers where the specific responsibilities for this could be located. It outlines research undertaken on the CFR and with the FIUs. Both



organisations fall under the SAPS: the CFR is responsible for legal firearm controls and the FIUs for illegal weapons.

## *Enforcement of Firearm Controls*

The debate on the control of firearms, both privately and government-owned, in South Africa is heating up, since the new policy document on firearms control was approved by cabinet on 15 September 1999. Private owners feel that the government will *control* the legal firearm owner and that the new laws will have no effect on criminal thugs armed with illegal firearms.

New legislation is needed to ensure that control is gained over legal firearms in South Africa and that responsibility is assumed for them. This will minimise the transition of legal firearms from licit to illicit. Yet, at the same time, any new legislation must be enforceable both by the SAPS, and by a justice system which is feared by the criminal and respected by law-abiding citizens of the country. Moreover, any new legislation on the control of firearms in private possession must be accessible to the ordinary South African citizen and must be affordable for and enforceable by law enforcement agencies. There is a vital need for all roleplayers to be in place and to understand their role in the firearm control process to ensure that the legislation for better control over legal firearms works and is accepted by the communities it is supposed to serve. Owners of arms, both private individuals and government officials, must understand their responsibilities in using them and preventing them from being lost, stolen or used irresponsibly.

There are a number of structures currently responsible for the enforcement of firearm legislation. The current legislation regulating the use and possession of firearms in South Africa is the *Arms and Ammunitions Act* (no 75 of 1969). The main structures that are responsible for the enforcement and control of this legislation are the SAPS and the Department of Justice, which apply and interpret the legislation for court proceedings. Of the two main components of the SAPS responsible for applying the legislation, the CFR issues firearm licences, import and export permits, dealers' licences, collectors' permits, permits for *bona fide* hunters and sportsmen, and others. The current responsibilities of the FIUs are as follows:

- to investigate and determine the origin of illegal firearms, explosives and other related articles – this includes determining the origin of firearms lost or stolen from private owners of which the serial numbers were removed or are untraceable;
- to trace all illegal firearms;
- to identify the roleplayers in the illegal firearms trade, like syndicates, gangs or groups gathering or stockpiling firearms for illegal purposes;
- to monitor the activities of any such groups;
- to determine if any firearms that have been seized, have been involved in any other criminal activities; and
- to investigate the illegal possession of firearms and/or ammunition.

However, the existing structure for the control of firearms is up for review. During a parliamentary media briefing in Cape Town on 28 June 1999, the minister of Safety and Security, Steve Tshwete, announced that a deputy national commissioner would take control of all operational activities related to the eradication of illegal firearms. The minister further stated that this official would ensure that sufficient resources are in place on an ongoing basis to focus on the availability, movement and circulation of firearms inside South Africa, as well as in its neighbouring countries.

This new structure will be known as the *Executive Head: Special projects* and the following national components will be integrated into this component:

- the Central Firearm Registry;
- the SAPS project team responsible for firearm projects of the National Crime Prevention Strategy (NCPS);
- the Firearm Investigation desk (a representative from this body).

This component will be responsible for the following functions:

- administering the licencing of firearms in terms of the relevant legislation;
- managing interdepartmental projects and initiatives related to firearms; and
- rendering executive direction and control with regard to operational policies and procedures related to the eradication of illegal firearms and the control of legal firearms.

It is both highly acceptable and timely that police officials are being motivated to fight firearm-related crime and are being promised new and

additional resources. But, all sectors in the criminal justice system must function together if positive results are to be achieved. This must be a team effort incorporating all involved: the police, the justice department and the public. If any new legislation is to be successful, as has been stated repeatedly and cannot be sufficiently emphasised, the public must believe in it and support it.

In December 1998 and January 1999, workshops were conducted by the ISS at five central points:

- Midrand (Gauteng, Mpumalanga and North-West);
- Bloemfontein (Free State and Northern Province);
- Durban (KwaZulu-Natal);
- Port Elizabeth (Eastern Cape); and
- Cape Town (Western Cape).

At the end of each workshop, participants were asked to complete an opinion survey, which considered a number of policy issues related to firearm controls.

The FIUs proposed that the following aspects should be addressed in the new legislation:

- The definition of a firearm: the courts are reluctant to proceed with a case if it is found that a firearm is not capable of firing a round of ammunition. This results in convictions not being obtained, as there are differences in the way the courts interpret the definition and how it is interpreted in the law.
- The relationship between the courts and investigators is not satisfactory: this is attributed to the different priorities of the SAPS and the criminal justice system.
- All the units showed an interest in controversial article 8(1), believing that it has to be scrapped entirely from the *Arms and Ammunition Act* (no 75 of 1969). This article was later amended to curb the lending out of firearms by legal owners to non-licence holders.
- The need was expressed for firearm licence applicants to be tested on their knowledge of firearms and the relevant Act before granting such licences.
- From an investigation perspective, the FIUs confirmed that their work was hindered by the lack of accurate information in the CFR.

- From an efficiency perspective, the FIUs felt that the accuracy of information about missing firearms was questionable, due to licence holders failing to report this information to the SAPS.
- The need was identified for all firearms in legal possession to be relicenced to update the CFR database. This included South African National Defence Force (SANDF) firearms for purposes of investigation, as the SANDF does not report all thefts of firearms to the SAPS, but investigates them internally.
- It was proposed that the age limit for a firearm holder should be increased from 16 to 18 years: at some workshops, the age limit of 21 years was suggested. Attention was drawn to the fact that the youth (16-21 year-olds, in particular) are becoming increasingly involved in violent crimes, and some see the possession of a firearm as a status symbol.
- Overwhelming support was given for the proposal that all armed security personnel should be required to complete a competency test before being allowed to use a firearm for security purposes. This means that security staff must be licenced firearm holders in order to perform armed security functions.
- It was generally felt that ammunition must be controlled and that controls could be better managed and co-ordinated than at present. It was recommended that a computerised database should be established, on which all dealers logged both the ammunition in stock and that which was sold.
- There were proposals that a firearm injury database should be established and that hospitals, doctors and clinics should be required to inform the SAPS of any firearm-related injuries they attended to.
- The suggestion that any firearm carried in public must be fully concealed, was overwhelmingly supported by the FIUs.
- It was proposed that no new evidence should be allowed to be submitted into the appeal application of a person whose firearm application had been denied.
- Support was given for stricter control over shooting ranges. Currently, municipal guidelines are used for the establishment, operation and use of shooting ranges. With the possibility of competency criteria being introduced, the demand on these facilities will be increased and should be carefully regulated.

A brief quantitative survey was conducted among FIU officials who participated in the workshops. The aim of the survey was to ensure that the

opinions expressed, were not biased. The sample size was 57 respondents from the FIUs, which represents approximately 12% of the entire personnel. As a result of this representative sample, it is felt that the opinions expressed by the sample can be extrapolated to represent those of all the FIUs. Moreover, most of the unit commanders were present at these workshops, and had held discussions with their units prior to the workshops. The opinion survey supported the qualitative findings of the workshop that

**Table 1 – Mean score demonstrating agreement with the statement on firearm controls**

	MEAN SCORE
Firearm licence criteria should be stricter	4.7
A person with a record of violent behaviour should not be allowed to obtain a firearm	4.6
Legislation should prohibit the lending of firearms	4.5
SAPS should continue to be responsible for the issuing of firearm licences	4.5
A mandatory competency test should be a requirement for obtaining a firearm licence	4.5
The age limit for obtaining a firearm licence should be increased	4.5
A person with a record of substance abuse should not be allowed to obtain a firearm	4.4
There should be a lower limit to the number of firearms an ordinary person may own	4.0
All confiscated weapons should be destroyed	3.7
To apply for a firearm licence a person must have two referees who recommend the applicant	3.7
Regular licence renewals will help control firearms	3.6
A person with a drinking and driving conviction should not be allowed to obtain a firearm	2.9

Mean score value

1                      2                      3                      4                      5

Strongly disagree    Disagree            Average              Agree                Strongly agree

legislation should be stricter. Overall, 96.4% felt that the current firearm legislation could be improved.

Respondents were asked to mark the extent to which they agreed with a number of statements about firearm controls. The answers ranged between 1 and 5, where 1 was *strongly disagree* and 5 was *strongly agree*, and this is presented as the average (mean) score.

On the whole, respondents agreed with all the statements. The highest agreement was given to the proposal that firearm licencing criteria should be stricter. This is evident from the mean scores being higher than the average (3) level of agreement.

As the primary enforcers of the *Arms and Ammunition Act* (no 75 of 1969), the opinions expressed by the investigators of the FIUs clearly show that there is support for tightening the current licence conditions. Overall, the findings of the workshop and the survey indicated that new legislation is required to ensure better results in the fight against illegal firearms. There is clearly a need for the creation of a new structure in the SAPS to address the firearm problem. The South African government has shown the proper commitment to the problem in its declaration that the control of firearms is its number one priority for 1999/2000.

### ***The Accuracy of the CFR***

The CFR is less than 30% accurate. This means that the police have a three in ten chance of tracking a legal firearm licence holder, a fact that severely hampers effective police action and investigation.

The CFR is the department in the SAPS that approves and regulates all licences, permits and authorisations pertaining to the use and transport of firearms in South Africa. It is a vital link in ensuring the control and management of firearms, as its database contains a record of all firearm licence holders in the country. This record includes personal particulars about the licence holder and contact information (such as the residential address of the licence holder) and key information about the firearm (such as the make of the firearm, the serial number and the history of the firearm). During police

action and investigation, the CFR is a critical resource for tracing particular firearms and linking individuals to crimes committed with such firearms.

In January 1998, there were 245 staff members working at the CFR, leaving 105 positions vacant. There are 15 sections that handle applications from the different provinces, security companies and dealers, as well as imports and exports of firearms. In 1998, an average of 70 licence applications were received per month per person employed at the CFR. Of these applications, 59 licences were approved per person employed. Not all firearm licence applications received by the CFR are approved. In 1998, 205 897 licence applications were received and 173 744 were approved (a rejection rate of 26%). Applicants can appeal against the decision of the CFR. In 1998, 32% of individuals whose licence applications were refused, appealed successfully against these decisions.

**Table 2 – Number of firearm licence applications received, approved and refused by the CFR**

YEAR	APPLICATIONS RECEIVED	LICENCES APPROVED	LICENCES REFUSED
1994	241 733	218 456	19 464
1995	166 212	142 691	18 538
1996	206 738	185 375	13 695
1997	214 816	184 190	22 103
1998	205 897	173 744	22 582

There are currently 3 527 035 firearm owners registered with the CFR. However, this is a conservative estimate of the number of licenced firearms in circulation, given that 655 425 owners have more than one registered firearm. The conservative estimate of the number of licenced firearms in South Africa is 4.2 million. Table 3 outlines the number of firearms registered in each of the provinces between 1994-1998.

Obviously, both legal and illegal firearms contribute to the problems caused by firearms, but figures on illegal firearms are virtually impossible to establish. If, by conservative estimates, there is one illegal firearm for every

**Table 3 – Statistics of firearm licences approved per province by the CFR**

	KwaZulu- Natal	Gauteng	Northern Cape	North- West	Western Cape	Eastern Cape	Northern Province	Mpuma- langa	Free State	Total
1994	30 746	83 363	6 040	14 646	30 854	12 588	8 890	15 442	15 887	220 450
1995	18 018	53 502	4 058	9 931	21 406	8 361	7 033	10 635	9 747	144 686
1996	24 016	62 291	4 407	13 010	22 743	26 017	8 682	12 676	11 533	187 371
1997	24 982	70 228	4 749	13 398	19 717	15 580	9 643	13 699	12 194	186 187
1998	24 351	61 263	4 455	12 871	18 254	13 874	10 152	14 663	13 861	175 742

legal firearm in South Africa, the extent of the problem is enormous. Increasingly, both the police and civil society have called into question the accuracy of the information contained in the database of the CFR. The information has become unreliable over time as a result of a number of factors:

- The main reason for the lack of accuracy in the CFR is negligence on the part of licence holders to notify the authorities regarding changes in their particulars, both personal and concerning their firearms. This could be the result of a lack of awareness among licence holders that they are legally required to inform the CFR of changes in such particulars.
- The computer system used by the CFR is outdated and requires urgent capital investment to ensure that it functions optimally. The system was organically developed and does not serve the current needs of users. In addition, it is inefficient and slow. The menu-driven software is written in Afrikaans and only certain sections are available in English. This provides an obstacle to the employment of people who do not speak Afrikaans. It also limits the use of the CFR by police officers during investigations.
- The staff at the CFR are not appropriately trained in the operation of the computer system. This leads to greater inefficiencies, as well as frustration at not being able to complete the tasks at hand.
- With the reintegration of the former homelands in 1994, the information of private firearm licence holders in the homelands was merged with information already captured in the CFR. In many cases, records were lost or incorrectly captured during this process.

During June and July 1999, the ISS undertook an audit of 2 458 licence holders across the nine provinces in order to ascertain the accuracy of the CFR. The methodology employed for this purpose was to request the CFR to provide random contact information for licence holders at 61 predetermined sample points across the nine provinces from 1982 to 1999, and to ensure that two-thirds of the sample had obtained their licences after 1993. For each sample point and each year, the CFR randomly selected the names of between 10 and 15 licence holders whose registrations were the most recent for that year. From this larger sample, the ISS selected between 210 and 320 respondents in each province.

Staff of the FIUs of the SAPS administered the survey and were required to visit addresses given for particular licence holders. The survey was designed to determine the accuracy of the information in the CFR by asking a range of questions about their CFR record, such as whether names, addresses and identity numbers were correct, and whether the licenced firearm was still in the possession of the registered licence holder.

Of the 2 458 surveys given to the FIUs to administer, only 1 138 (46% of the sample) were verified. The remaining 1 320 surveys could not be completed due to factors beyond the control of the survey teams. Reasons included the following:

- 35% were not returned by the FIUs;
- 17% of the licence holders were not at home at the time of the interview (for instance, at work, school, shops, holiday); and
- 1% of the respondents refused to participate in the survey.

The initial sample size took into account the possibility of large numbers of surveys not being completed and the final sample can thus be regarded as valid. Table 4 below shows the results of those surveys where police officials were able to determine the whereabouts of the licence holder. Only 28% of the sample were currently living at the address reflected on the CFR database. This means that, if the police want to trace an owner of a legal firearm, they only have a 28% chance of success. Of the remaining sample, 55% of the licence holders do not live at the address indicated on the CFR database, 15% of the addresses of licence holders do not exist and, finally, in 2% of the cases, the licence holder was deceased and information had not been cancelled on the database.

**Table 4 – Accuracy of residential addresses of licence holders**

	COUNT	PERCENTAGE
Licence holder does not live at this address	628	55.2
Licence holder found at address	324	28.4
Address does not exist	166	14.6
Licence holder deceased	20	1.8
<b>TOTAL</b>	<b>1 138</b>	<b>100.0</b>

An investigation of the reliability of the information for the 28% of licence holders who were successfully traced by police officials indicated even more problems with the CFR database. The table below outlines the level of accuracy among these licence holders whose physical addresses were correct.

**Table 5 – Level of accuracy of personal information recorded on CFR database**

PERCENTAGE OF RESPONDENTS WHO ANSWERED ‘YES’ (n = 323)	
Correct name	96.9
Correct address	90.1
Correct identity number	80.4

Overall, there was an unacceptably high level of unreliable information on record for those people who were traced. It was found that, in 97% and 90% of the cases, respectively, the name and address were correct. In 80% of cases, the identity number was correct.

In addition to this, only 84% of those licence holders who were traced actually had all the registered firearm(s) in their possession. The sample of 313 licence holders who were found at the correct address had licences for 796 firearms – an average of 2.5 firearms per person. Of these firearms, 91% were held by their registered firearm licence holders. There were 74

firearms held by 28 firearm licence holders that were not with the licence holder. It is significant that, of the respondents who were not in possession of their firearms, 19% had had the firearm stolen, 10% had sold it and 5% had lost it. In all these cases, the CFR should have been notified.

<b>Table 6 – Reason why licence holder was not in possession of the firearm</b>	
<b>PERCENTAGE (n=74)</b>	
Other reason – not specified in survey	36.5
In safe storage	23.0
Firearm stolen	18.9
Sold firearm	9.5
Lost firearm	5.4
At gunsmith	5.4
Lent firearm to someone	1.4
<b>TOTAL</b>	<b>100.0</b>

The government needs to ensure that the CFR is able to fulfil its firearm control function, since it is integral to the management of the firearm problem. The various reasons for the CFR’s inaccuracy are attributed to different causal factors. The main area of concern is the lack of responsibility on the part of firearm licence holders regarding the requirement to notify the CFR of changes in personal particulars. The Department of Safety and Security has to ensure that firearm licence holders are aware of this responsibility when they register for and obtain a firearm licence. The fact that 15% of firearm licence holders’ addresses could not be traced, indicates an inadequacy in the current process of licence registration, pointing to negligence in the verification of licence holders’ details, such as their physical addresses.

In addition, 2% of the sample from the CFR were deceased. An executor of an estate is responsible for notifying the CFR of the death of a licence holder. Either this information is not being effectively transferred or it is not supplied to the CFR. The government has given the assurance that it will put

a new and better system at the CFR in place that will improve the data captured on the system.

### ***How Does the Government Plan to Address the Problem of Firearms?***

The extent of the proliferation of illegal firearms in South Africa remains a cause for grave concern in both government circles and among the general public. However, information about increases in firearm-related violent crime, as well as shortcomings in the CFR provide a chilling indication of the quantities of illegal weapons that may be in circulation. These call for the urgent attention of policy makers and police practitioners alike.

The South African government has identified firearms as a priority in the NCPS, and efforts such as the joint operations with Mozambique, improved border control and the infiltration and breaking up of organised crime rings have gone some way in reducing the number of illegal weapons entering the country. The SAPS has developed a broad strategy to deal with the firearms problem in South Africa. This strategy was developed after the eradication of illegal firearms and the control of legal firearms were declared as policing priorities for 1999/2000. The SAPS has identified firearms as the common denominator in most serious violent crimes, as well as in organised crime in South Africa. Its firearm strategy outlines five main areas of focus:

- control inflow of firearms into South Africa;
- deter the theft and loss of legal firearms – make owners responsible;
- trace illegal firearms;
- identify and link firearms to crimes; and
- ensure proper case preparation for courts.

As mentioned above, the new component, known as the Executive Head Special Projects, that will be incorporated into national components in the SAPS, will be responsible for enforcing the new firearm control component that will be established at the SAPS Headquarters to manage and take control of all operational activities related to the eradication of illegal firearms. It is hoped that this new component will enhance the effectiveness of the police in its fight against crime, as well as in its control over firearms in South Africa.