

## *Conclusion*

### *Firearm Controls in South Africa*

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**T**he process of completion of this final volume in the ISS Series, *Society under Siege*, has been hampered by the delay in the promulgation of the new firearm control policy within South Africa. Civil society and state actors in the country have hotly debated the content and structure of the new firearm control bill. Although the South African Cabinet has approved the firearm policy (as contained in Annex 4 (see below)), the new bill will only be promulgated in 2000. The new firearm policy is long overdue, more specifically as conditions in South Africa have altered significantly since the former *Arms and Ammunition Act* was promulgated in 1969. As South Africa moves toward adopting the new firearm legislation, the debate will shift to what constitutes best practices for implementation and enforcement of the legislation, as well as to a critical evaluation of the implication of this policy for civil society and the control of firearms in South Africa. The context made provision for in Volumes I and II alludes to certain principles and premises that inform the firearm policy that is advocated here and that it is hoped will underline initiatives adopted by the state. Given this debate and the degree of importance attached to the new firearm legislation, the Conclusion of Volume III now considers how this debate should be articulated as policy.

The research undertaken by the ISS, and presented in chapter 4 (above), led to the realisation that an entirely new arms control policy was required in South Africa which would address the evolution in the nature of governance in South Africa post-1969 (the year of the promulgation of the current *Arms and Ammunition Act*); the growth and change in the nature of firearms proliferation impacting on South Africa; and the current individual and societal security concerns.

The political climate existing at the time of the drafting of the present *Arms and Ammunition Act* (Act no 75 of 1969) has changed, and dramatically in

the last decade. The original legislation, therefore, fails to take into account present realities, nor does it reflect contemporary governmental policies *vis-à-vis* crime and policing. The 1969 Act, moreover, did not make it possible for all South Africans to have access to a licenced firearm and therefore it was not representative of all sectors of South African society. The increase in violent crime and the subsequent inability of the Security Services to protect its citizens resulted in many citizens arming themselves for self protection in the period beginning post-1969 and lasting to the present day; and to many criminals resorting with increasing frequency, not only to the threat to use firearms but to their actual use in committing crimes. In addition to this, not only the high levels of insecurity experienced in South Africa, as a result of the political climate during the past three decades, but also the previously mentioned factors, have resulted in the accumulation of both legal and illegal firearms in the country.

When the firearms proliferation impacting on South Africa is considered and the scope of small arms proliferation comes under discussion, what must be afforded recognition is that this growth and dissemination is generated as a result of two different classifications of arms: illegal or illicit small arms and legal firearms. Both of these contribute to the problems of proliferation.

The proliferation of legal firearms continues unabated in South Africa, the main cause being the legacy of armed political opposition and the high level of violent crime resulting in peoples' purchasing arms for self-defence purposes. Currently there are some 4,2 million firearms registered in some 2,3 million persons' names. Of these 1,2 million are rifles, 0,4 million shotguns and 2,6 million handguns. Applications for licences for possession of firearms are still being received at an average rate of 20 000 per month.<sup>1</sup>

But, while the number of licences being issued seems to point to an increase in the demand for legal firearms as a deterrent or for self-defence, this has not changed the ratio of firearm-related crimes which continue to be reported as being on the increase. What is extremely interesting is that the number of reported negligent losses and the theft of firearms continue unabated, with the exception that reported negligent losses rose substantially between 1997 and 1998 (see chapter 2, table 4 for the total number of reported cases of firearm-related crimes between 1994 and

1998). These figures contain only reported losses; they do not account for unreported losses, nor for all firearms belonging to agencies other than the police.<sup>2</sup> In a correlation between the theft of weapons and the negligent loss for 1998 (a total of 17 622 firearms), a total of 1 775 were stolen from, or lost by, the police themselves.

In part, as a result of these emerging figures, the SAPS intensified the operations of the Illegal Firearm Investigation Units (FIUs), increasing its effectiveness during 1998. The level of weapons recovery of this unit alone during 1998 shows an increase: between 1997 and 1998 a 2.6% increase in the number of firearms recovered is recorded (see chapter 2, table 5 which shows the firearms retrieved in South Africa between 1994 and 1998).

These recovery figures, nevertheless, do not represent the combined recovery of firearms in South Africa. Moreover, it must be noted that in the recovery of the FIUs it is difficult to differentiate the provenance of firearms, some having an illicit provenance across borders and some having become illicit after their theft or loss from licenced holders in South Africa. Irrespective of the recovery rate of illicit firearms, the flow of illegal arms continues into South Africa, mainly across our borders with neighbouring states (see the map of the flows of illegal firearms in South Africa (chapter 2)). It is held, however, that, as a source for the criminal element in South Africa, this is not as important as those arms stolen from private individuals, state armouries and security personnel. Statistically, South Africa has one of the highest firearm homicide rates in the world (see chapter 3, table 6 which shows homicide and firearm homicide rates in 1997).

The current individual and societal security concerns of all South Africans need to be addressed by the new arms control policy. The uncontrolled proliferation of small arms has a devastating effect on the socio-economic development, the consolidation of democratic practices and the reconstruction of civil society in South Africa. Crime, violence and lawlessness are inextricably bound to the availability of firearms. Their impact on social and individual security is of such nature that the amount of violent armed crime in South Africa has risen to world breaking records. The Commission on Crime Prevention and Criminal Justice, a United Nations official body, released a global report on civilian-owned firearms in 1997. According to this report:

- South Africa has the third highest estimated firearm homicide rate, following Brazil and the United States.
- In South Africa handguns are used in 68% of all homicides committed with a firearm.
- South Africa reported the highest number of law enforcement officers killed while on duty, 212 were reported (note: in other countries, the mean number of law enforcement officers killed on duty was seventeen); and,
- South Africa reported the highest number of lost or stolen firearms, followed by Argentina and Brazil.

If this was the official situation by 1997, it has not improved. In general, there has been a 23.8% increase in robbery with aggravating circumstances between 1997 and 1998.

Further review of chapter 2, table 4 (see above) shows the total reported cases of firearm-related crimes between 1994 and 1998, which must be contrasted with chapter 2, table 2 – Total of reported cases of violent crimes between 1994 and 1998, showing all such reported cases between 1994 and 1998 (with and without firearms). It is evident that for the categories of murder, attempted murder and robbery with aggravating circumstances, more than 50% (and at times 80%) of those violent crimes are committed with the use of a firearm.

If, due to an increased availability of firearms, both legal and illicit, the costs to human life are so high, the economic and cultural costs of such a proliferation cannot be underestimated. International investors are affected by the perception of violence which generates loss of revenue and job opportunities for South Africa; moreover, nationally armed and violent crime generate fluctuations in interest rates and instability of local markets, as well as depressing emerging business. The continued outbursts of political violence have also contributed to this. The connection of arms to violent crime affecting economic investment can also be judged by the table showing the increase in car-hijacking, hijacking of trucks with goods, cash-in-transit robberies<sup>9</sup> and bank robberies (see Chapter 2, table 3 – Crimes accounted for under robbery with aggravating circumstances between 1994 and 1998).

Culturally, the availability of firearms has also begun to imprint itself onto the way people deal with problems, and political, racial and social

intolerance ensue. These are clearly fuelled by the increased availability of firearms, demonstrated in the many cases of threats to use firearms to deal with normal human irritation, such as the aiming of firearms from vehicles during times of road irritation. The incidence of general pointing of firearms has increased 6.8% between 1997 and 1998, from 23 655 to 25 375 incidents.

Given the above motivation, there are three fundamental principles that should underline the new arms control bill. They are as follows:

- That any policy for the control of firearms in South Africa must address the problem of increased availability of small arms and the unacceptable level of arms proliferation in South Africa.
- That any policy must ensure more effective policing and enforcing of legislation to control legal firearms.
- That any policy must encourage the responsible management of firearms by licenced holders.
- That any policy must ensure that the differentiation between what is legal and what is illegal is firmly established and easily able to be controlled in South Africa.

Furthermore, the following basic premises must be taken into consideration:

- That freedom from fear of crime is fundamental to the sustainable development of the state and that illicit trafficking and misuse of firearms have a harmful effect on the security of the state, endangering the well-being of its people and their social and economic development.
- That urgent and immediate action must be taken to enhance the prevention of the illicit manufacturing and trafficking of firearms, ammunition and other related materials through tighter control over their legal transfer; the strengthening of pertinent laws and regulations; the strict enforcement of laws and regulations concerning the use and civilian possession of these; and increasing the capacity to combat illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related material at their points of manufacture, distribution, transfer and transit, as well as by enhancing accountability, transparency and the exchange of information at the national level.
- That the overall and overarching objective of having a policy on the control of legal firearms and ammunition in South Africa is to ensure

the development and maintenance of a safer society for all South Africans.

- That any policy recommendations and the ensuing Act and Regulations must be enforceable, practically implementable and affordable.
- That any drafting of a *Firearm and Ammunition Act* must be undertaken within the current South African legal framework and in the framework of the South African Constitution.
- That all recommendations should serve public interest rather than the interests of any group or individual.
- That all recommendations must confirm the principle that firearm ownership is not a right of the individual, but a privilege managed for the state by the Minister for Safety and Security.
- That the policy be accompanied by a national implementation strategy to be developed in conjunction with the drafting of the Firearms Control Bill, to ensure that the resources and processes are in place to facilitate the implementation.
- That any policy take into account the need to co-ordinate with, and become integrated into, regional and international efforts to control small arms trafficking and transnational organised crime.

Given the South African context, motivations, principles and premises of firearm controls that need to underlie policy, a number of recommendations has been made. These policy recommendations can be explained as consisting of one over-arching recommendation and three sub-sets of recommendations which inform the responsibilities of firearm owners; strengthen the potential of the state to control firearms; and enhance the capacity of the police to implement controls and protect citizens. The overarching recommendation, which serves as umbrella for the whole policy document, remains the existing *Arms and Ammunition Act* (Act no 75 of 1969), its regulations and forms. The South African government has committed itself to this entire procedure through its current drafting of a new firearm control bill, for which public consultation is currently being undertaken.

The *first sub-recommendation*, put forward here, would include those actions which enhance the responsible possession of firearms in South Africa. These would include aspects such as the introduction of a layered licencing system, regular renewal of firearm licences and conditions

regarding the quantity and type of ammunition. These recommendations are motivated by research that indicates ignorance on the part of licence holders, which results in negligent possession or use of firearms, and unsafe and irresponsible possession of them. Irresponsible modes of keeping firearms safe and carrying them, and the lack of expertise in handling them have long been responsible for providing opportunities for the theft of firearms; which results in fatal accidents; the promotion of the violent resolution to domestic conflict; and the escalating levels of violence employed by offenders when committing crimes. Research indicates, moreover, that lack of expertise and knowledge in the handling of firearms results in an inability on the part of citizens to defend both life and property when victims have been armed. In fact, it was found that victims – if armed – had more risk of having their firearm stolen from them and/or used against them at the time of an attack.

The pervasive influence of a firearm culture among the youth is also prevalent in South Africa. Their perception that firearm possession is a way of life denoting authority and maturity has led both to the threat of use and the actual use of firearms for the solving of petty social disputes characteristic of all teenagers. Of criminals arrested and in possession of illicit firearms, the majority are under twenty-one years of age. Young adults seem to be particularly prone to being the victims or perpetrators of violent, armed crime. Both victims and offenders of armed crime seem to fall overwhelmingly into the category of those over twenty and under thirty years of age. Moreover, across the board, licence holders and licence applicants do not seem to understand the laws governing firearms possession, nor the way that these laws are enforced.

With these figures in mind, what is urgently required is a new type of licencing system, which reinforces both responsible possession of a firearm and knowledge of how to handle it in a safe and controllable manner. A layered licencing system, consisting of a competency licence issued prior to acquiring a possession licence, will certify anyone over the age of eighteen as competent to possess a firearm, provided all tests and checks have been completed. Once this basic knowledge and personal check have been approved, the same person must demonstrate in-depth knowledge of the safe handling of the specific firearm he/she wishes to possess. Thus, a layered system will consist, to all intents and purposes, of a licence that

capacitates an individual and one that ties him/her to a specific firearm that he/she can handle safely and responsibly. The necessary requirements for both types of licence are of such nature as to ensure that those unfit to possess a firearm will not have access to one.

The renewal of licences at regular intervals is designed to act as a cross check on the integrity of both the central database that will be kept on licence holders at the Central Firearm Registry (CFR), and as a renewal of personal commitment by licence holders to the safe and responsible management of the firearm in their possession.

Finally, at present, ammunition is freely available in any quantity to licenced holders. This easy access to ammunition leads to the possibility of a licence holder supplying other persons in possession of illegal firearms. In addition, the type of ammunition that can be sold to civilians is not clearly defined, for example, armour-piercing ammunition can be obtained for criminal purposes under the current legislation. Nor are there any rules on safe storage for ammunition currently in operation. This is not in the interest of the safety and security of all South Africans, nor does it promote responsible management of firearms and an end to firearms proliferation. By restricting the type and amount of ammunition that any licence holder can possess at any one time, as well as its carrying and storage, this recommendation will enhance responsible ownership and use of firearms on the part of all South Africans.

The *second sub-recommendation* is that policy should ensure state accountability and control over legal firearms. There are a number of policy guidelines under this recommendation, which are as follows: those administrative functions and regulations concerning the registrar of firearms, the firearm advisory committee and the central firearm register; the relicencing of all firearms in legal, non-state possession of firearms; the classification of firearms and firearms licences; the renewal of firearms licences; the appeal board and appeal procedure; the dealers, manufacturers and gunsmiths; conditions on brokering; security companies and security officers; firearms in state possession; the import and export of firearms; the CFR database; and the roles and responsibilities of government agencies, obligations of employees and employers. These recommendations can, in turn, be subdivided into two principal categories dealing with enhancing the

effectiveness and integrity of the services and data provided and kept by the CFR; and incorporating state owned firearms into the general accountability system.

Under the first category, the main issue is that of building up a central and comprehensive database on firearms in legal non-state and legal state possession in South Africa. The CFR, as has been stated, currently employs 245 personnel and is divided into fifteen working sections. Each deals with various aspects of the process of issuing firearm licences, dealers licences, imports and exports, temporary permits, gunsmiths, manufacturers of firearms and ammunition, security companies, enquiries by investigation officers pertaining to all provinces of the Republic and circulation of stolen firearms.

The manpower constraints and the numerous working sections contribute to the CFR's inability to manage the licence approval process in a timely and thorough manner. The present structure is cumbersome, inefficient and fragmented. Moreover, the current computer system at the CFR is perverse in that not all its programmes have integrity. For example, the current programme functions are only available in Afrikaans. This places a ceiling on the type of people that can be employed in the CFR. Also, data available on the current system is outdated and there is no capacity to update the database. Access to information on the database is difficult for investigation officers in the SAPS, who find the computer system slow, difficult and time consuming. The complexities and perversion of the existing set-up are of such a nature and the requirements of this new policy so demanding that a totally new computerised system is a recommended course of action rather than attempting to upgrade and expand the services of the current deficient one.

A major upgrade to the CFR is not just an issue of improving the operations of the CFR itself to ensure proper management of future licencing and adequate controls of all firearms in state and non-state possession for the foreseeable future. It is also a matter of ensuring retroactive integrity on information related to current licence holders. The relicencing of all firearms in legal non-state possession becomes therefore a priority. Research has pointed out serious gaps in the retroactive information available under the current state of affairs. For example, more than 100 000

legal firearms existing in South Africa are registered as belonging to individuals who have passed away since the date of licencing. These weapons have not been recovered or accounted for. At the same time, the fact that licencing dates back many years means that the information being kept about licence holders has suffered dramatic changes in status, condition and address, to say the least.

Lastly, with the realisation that most of the armed crime in South Africa is committed with handguns (far more than shotguns or rifles) and the concomitant recognition that this particular type of firearm needs to be controlled more than any other; and recognising that semi-automatic firearms are strongly connected with violent crime in other categories (such as cash-in-transit heists), this policy recommendation category also attempts to clearly define the types of firearms that ought to be allowed for civilian possession and those which ought to be prohibited. For example, research has indicated that the most prevalent firearm type used in armed robberies is the handgun.<sup>4</sup> The only way in which this trend can be contained is by limiting the number of licences for handguns per person. The recommendation is that no individual may possess more than five firearms, of which only one can be a handgun. Likewise, an individual will need to have five possession licences (one per firearm). No semi-automatic or any other prohibited firearm will be licenced to a civilian. All of these new definitions on what is a firearm and what is not, as well as the identification of prohibited firearms, will mean that retroactively a process of relicencing must be undertaken, not just to ensure the integrity of the CFR database but to capture and destroy all firearms which were allowed in the past, yet should not be permitted in the future. This exercise of relicencing will also ensure that all current licence holders undergo the necessary competency testing that will apply to new licences once the transition from the old system to the new one is complete.

These recommendations pertain to improving the operation of the CFR and enhancing the total accountability of the state on all firearms. They not only include the operations of the CFR itself, but provide for input of information into the CFR from agencies, dealers, gunsmiths and manufacturers. Dealers, gunsmiths and manufacturers are an inextricable part of the process that will lead to the responsible and safe management of firearms in South Africa. They occupy a central position in this chain of events and, as such, their

responsibilities and accountability must be equal to the impact they have on firearms availability in the country. By expediting reporting times between sales; by using a centralised computer system; and by making the dealer co-responsible with the licence holder for the safe handling of a firearm, this policy will encourage only those dealers, manufacturers and gunsmiths who maintain responsible and ethical codes of conduct to stay in operation. Thus the gap between what is licit and what is illegal will be clearly identified and the one will be divided from the other.

Likewise, the second general category under these recommendations would allow for stricter controls on the actual possession and use of firearms by both security companies and state personnel. Up to now, these two categories of people handling firearms have been left largely unchallenged and relatively uncontrolled. The state of perceptual and real insecurity pervading South African society has led to a mushrooming of the activities of private security companies, some of which operate under shady circumstances. This category of recommendations then aims at closing the gaps that exist in the present legislation so that transparency, accountability, integrity and safe management of all existing firearms in legal possession (state and non-state) in the country can be accounted for.

The CFR remains, nevertheless, as the linchpin upon which both categories of recommendations turn. Therefore, it is also important to note that under the general recommendation mentioned in this group of issues, a very important one is that of handling the transition period between the old system and the new system of controls proposed here. Thus, irrespective of ways in which the existing CFR production arrangements might be optimised, the needs expressed in this policy demand a transitional period between the promulgation of the new *Arms and Ammunition Act* and its implementation. This transitional period should be utilised for the upgrading of the CFR systems as indicated above, and for the relicencing of existing firearms. A complex period, this will require particular efforts to minimise the problems associated with production in transition. This recommendation for a period of transition also demands an understanding that the upgrading of the CFR and the creation of new responsibilities at the CFR will be time and cost intensive. They will, moreover, have a profound effect on personnel and structures. As a result, there is a direct need to commence financial resource planning to ensure that the process of

transition and upgrading is managed in the least traumatic, most cost-effective manner. A national implementation and resourcing strategy is therefore recommended to accompany, and be part of, a new Arms and Ammunition Bill. When possible the Bill must also provide the impulse for a self-financing process that will enable the CFR to sustain its operations once the upgrade has been completed.

Thus, although the implications of some of the recommendations in the policy are cost and resource intensive, they are not insurmountable. Relicensing of the current licenced firearms at a minimal cost of R50 per firearm could produce R200 million to assist in the funding of the implementation process. Likewise, the maintenance of the Register and future upgrades can, as in the case of motor vehicle licences, be funded from licence fees. The National Implementation Strategy should address these implications in detail.

The *third sub-recommendation* for inclusion in a new firearm policy would involve enhancing the policing effectiveness for reducing illicit firearms and for improving capacity to protect citizens from irresponsible use of firearms. By more clearly defining the functions and responsibilities of different governmental agencies to allow them to streamline their activities when dealing with firearm related cases, the recommendations attempt to close the existing legislative gaps. Included here would be the specific recommendations about: possession and use of firearms; false information; handling firearms under the influence; duty to carry a licence; information to be given to a police officer; production of licence or permit; power to seize firearms and ammunition; forfeiture of firearms and ammunition; disposal of forfeited firearms; declaration of unfitness; the case of the death of a licensee; and firearm free areas. These recommendations are motivated by the fact that one of the more serious problems with firearms control in South Africa today is that, although fines for firearm related activities are very high, they are not often exacted. In a research sample carried out to this effect, the circumstance under which offenders were prosecuted for one type of crime – the illegal possession of a firearm – varied, but the outcome in each and every case was less severe than expected. In this sample 23.5% of those cases were found guilty; 5.9% were acquitted; 52.9% were withdrawn; and 11.8% were undetected. Nevertheless, in none of the cases (even guilty) was a prison sentence given; in only 23% of the cases was a

fine recommended; none of the fines exceeded R4 500; and none of the offenders was declared unfit to possess a firearm. This type of management of firearm related offences clearly does not act as a deterrent to continued illegal possession of a firearm.

An equally important area covered by the recommendations in this category is that of empowering the police to undertake their job in a more efficient and expeditious manner. The police need to be given the adequate freedom of action to allow them to be able to control, check and ensure that licenced firearms are responsibly managed and that illicit firearms are captured and destroyed. The recommendations also include more comprehensive approaches to security, as indicated by the creation of firearm-free areas which, when designated by the community (ie, a school, hospital, entertainment or public area) can be enforced by the police and any infringement penalised by the law.

All of these recommendations have attempted to close gaps in the current legislation and the enforcement of that legislation to allow for a smoother, unobstructed and responsible policing of firearms in South Africa. Each motivation informing the need for improved firearm controls should be coordinated with an eye to South Africa's responsibility as a regional actor and as a member of the international community for assisting in the regional and international control of illicit small arms trafficking. Once the firearm control legislation have been enacted, South Africa will take its place as a responsible member of the international community controlling small arms proliferation.

#### *Endnotes*

- 1 OAU Council of Ministers, June 1998: CM/Dec.432 (LXVIII) *Proliferation of Small Arms and Light Weapons* Doc. CM/2057 (LXVIII) Add.2.
- 2 Minister Mufamadi stated in March 1999 (in response to a question from Parliament) that in 1998 a total of 29 694 firearms have been reported stolen or lost to the South Africa Police Service, including those lost or stolen from police and defence force members.
- 3 Some of the cash-in-transit robberies are of exceptionally high economic value. In 1997, for example, in one such robbery only, 17 million rands were lost. Bank robberies sometimes reach the same level of loss (ie, 18 million rands were lost in 1997 in a similar robbery in Pretoria).
- 4 E Hennop, Firearm-related crime: Lead-up to new legislation, *Nedcor ISS Crime Index* 3(3), p 23.