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Submission to the
Civilian Secretariat for Police Service
regarding the
DRAFT FIREARMS CONTROL AMENDMENT BILL, 2021 [B… -2021]
Johannesburg, 30 July 2021

Contents

1 Introduction

The Department of Police has invited stakeholders and interested parties to submit written submissions on the Draft Firearms Control Amendment Bill ('the draft Bill') by Monday, 2 August 2021 (extended from the initial deadline of 5 July 2021).

This submission on the draft Bill is made by the South African Institute of Race Relations NPC (IRR), a non-profit organisation formed in 1929 to oppose racial discrimination and promote

racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the peoples of South Africa.

It is the position of the IRR that the draft Bill, if enacted, will not make a substantive impact on violent crime, and has failed to make a rational case for this. The IRR would also like to point out to the committee that the process that led to the draft Bill was flawed; these procedural issues require rectification.

What is the purpose of this legislation?

The amendment seeks to add the following justification to the Firearms Control Act of 2000:

> *"to ensure restricted access to firearms by civilians to ensure public order, to secure and protect civilians, and to comply with regional and international instruments on firearms control".*

Furthermore the amendment seeks to add a section to the existing act which sets out the guiding principles, namely:

(a) to confirm firearm possession and use as not being a right but a privilege that is conditional on the overriding need to ensure public safety; and

(b) to improve public safety by —

  (i) imposing strict controls on the possession and use of firearms;

  (ii) promoting the safe and responsible storage and use of firearms;

  (iii) providing a framework for a holistic approach to the control of firearms.

2 Procedural flaws

2.1 Flawed Socio-Economic Impact Assessment System (SEIAS) process

The first major issue concerns the Socio-Economic Impact Assessment (SEIA) which accompanied the draft Bill. The purpose of a SEIA is to interrogate the prospective outcome of a piece of legislation in respect of its costs and benefits. The IRR submits that the assessment has failed to do so.

The SEIA is outdated, having been written and dated for July 2016. It was drafted for similar previous legislation that was ultimately withdrawn. However, since 2016 an additional 5 years of data on crime and firearms use in South Africa would have emerged. This has not been

considered in the SEIA. This undermines the credibility of the SEIA and fatally compromises the credibility of the draft Bill.

The SEIA makes several unsupported claims, such as that there is a linkage between the number of civilian owned firearms and the level of violent crime. Without explaining its reasoning, the assessment claims that passing the amendment would lead to a reduction in violent crime.

The claim that the Firearms Control Act (of 2000, and that was operationalised in 2004) reduced murder rates ignores the fact that South Africa's murder rate had been decreasing quickly since 1994 (for reasons well beyond the availability of firearms) and that this decline continued until 2010 when the trend reverses, despite the now increasingly strict restrictions on civilian access to firearms.

Whilst there are significant problems with the quality of data on crime and firearms in South Africa and therefore claims based on that data should be read sceptically, what data there is suggests that the number of guns in civilian ownership dropped significantly between 1999 and 2014, and yet the last four years of that period saw rising violent crime rates, a trend that had continued until recently.

Disturbingly, key documents have emerged recently, in the face of a PAIA demand. A report by the Wits School of Governance ('Analysis of the Effect of the Firearms Control Act on Crime 2000 – 2014', bearing the attribution Civilian Secretariat for Police Service) casts doubt on the efficacy of the Firearms Control Act (FCA) in reducing violent crime. This raises all manner of concerns about the thrust and expected outcome of the measures proposed. If the FCA's impact has been marginal, it casts doubt on the prospective efficacy of new legislation.

The Ministry of Police, meanwhile, produced a document entitled 'Report of the Committee on Firearms Control and Management in South Africa'. It references the Wits School of Governance report selectively, while avoiding some of its main conclusions, such as that the FCA had not had much impact on crime. Indeed, the report at times outright misrepresents the FCA. It states, for example, that 'the FCA does not have an expressed provision excluding persons with criminal convictions from possessing or owning a firearm.' In fact, Sections 9 and 103 of the existing Act set out an extensive list of offenses which render one unfit to possess a firearm.

Elsewhere, this report adopts a speculative approach which seems intended to produce a predetermined outcome.

It is also worth considering that almost all data relating to crime and firearms in South Africa is of exceptionally poor quality. This is due in part to the weaknesses of the administration of the firearms registry which is riddled with errors. It is also a result of the incredibly low level of trust amongst the South African public in the South African Police Service (SAPS). Numerous surveys of South Africans have found the police to be one of South Africa's least trusted institutions. As a result, there are high levels of under reporting of crimes. This makes it difficult to draw firm conclusions about the level and nature of crime in South Africa, for example, some killings which are classified as unsolved murders could have been committed in self-defence, and yet distrust of the justice system results in the victim of the initial assault simply fleeing the scene.

From what data is available, the more likely conclusion is that the Firearms Control Act of 2000 had little to no impact on levels of violent crime in the country, as crime is driven by factors other than the number of guns in civilian hands.

All of this, we submit, amounts to a lack of proper engagement with evidence on the part of the Bill's drafters, if not dubious intentions. We submit further that proceeding with the draft Bill would be a betrayal of the principle of evidence-based policy making and would amount to condoning evidence-free legislation. South Africa's problems – of which violent crime is one – deserve more diligent interrogation and more thoroughly conceptualised solutions, based on robust evidence.

2.2 Insufficient consultation

Consultation is a principle that underpins governance in South Africa, at least in theory. This is commendable. We caution that the SEIA betrays this. While it might be argued that consultation is happening now, the extent of the changes that the draft Bill would introduce would require as a matter of mere prudence that it should have been developed with the input of a wide range of stakeholders whose expertise would have been valuable, and whose interests stand to be affected.

In the event, the draft Bill confirms that only institutions within the state were consulted: 'Departments and institutions consulted, responded positively and were supportive of the Bill. These include: Participants of the Firearms Summit; Department of Environmental Affairs; all relevant Divisions of the South African Police Service; Independent Police Investigative Directorate (IPID); Private Security Industry Regulatory Authority (PSIRA); State Security Agency; Firearms Appeal Board; Department of Defence; National Prosecuting Authority; and

the Department of Tourism.' (**Departments/Bodies/Persons consulted**, p. 133) It is also worth noting how anomalous it is that none of the stakeholders consulted appeared to oppose the Bill or raise any serious concerns – circumstantial evidence of a large blind spot on the part of the drafters.

A recasting of existing legislation?

An important conceptual problem with this draft Bill is that its changes are so far-reaching that it amounts to a rewriting of the law, as opposed to making limited changes to it. This is demonstrated by the very length of the draft Bill (138 pages) and even more clearly in the revised preamble. The preamble as it currently stands emphasises the constitutional rights of South Africa's people and the need to foster cooperation between various stakeholders in respect of firearm management:

> WHEREAS every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources;
>
> AND WHEREAS the adequate protection of such rights is fundamental to the well-being and social and economic development of every person;
>
> AND WHEREAS the increased availability and abuse of firearms and ammunition has contributed significantly to the high levels of violent crime in our society;
>
> AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights.

The proposed amendment would change this orientation to one stressing the authority and imperatives of the state. The IRR would caution that this seems to represents a shift from a citizen- and rights-centred understanding of the governance of firearms, to a state-centred and authoritarian one:

> WHEREAS in terms of the Constitution of the Republic of South Africa, 1996, the duty to maintain public order, to protect and secure everyone in the Republic lies with the State;
>
> AND WHEREAS the State is a signatory to regional and international instruments on control of firearms, ammunition and other related matters;
>
> AND WHEREAS the State has an obligation to enact firearms legislation that complies with the applicable international and regional instruments;

> AND WHEREAS the easy availability of firearms to civilians and their uncontrolled presence constitute major threats to the security of persons and property, sustainable development and the stability of the State. (See **Substitution of Preamble to Act 60 of Act 2000**, pp. 91-91)

If this is indeed the governance approach that is envisaged, this needs to be clearly stated, and should be the basis for honest public discussion.

2.3 Irrationality

The IRR submits that the draft Bill is arbitrary and/or procedurally unfair and therefore irrational. The arguments are set out below.

One of the most constitutionally significant tenets of the rule of law is the prohibition against arbitrariness. South African jurisprudence has crystalised the concept of arbitrariness and its opposite, namely reasonableness in South African administrative law. In essence, in order for the exercise of public power not to be arbitrary, it must be reasonable. Reasonableness consists of two pillars, namely rationality and proportionality.

It is submitted that the Draft Bill is in its entirety irrational and not proportional and consequently it is arbitrary in nature. In the Affordable Medicines case, the Constitutional Court affirmed the following:[1]

> "The exercise of public power must ... comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the legislature and the executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."[2]

[1] *Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC).*

[2] *Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC) at par 49.*

The role of the rule of law (and the principle of legality) has been expanded upon in various other judgments, including the Pharmaceutical Manufacturers Association case, in which the following was held:[3]

> "It is a requirement of the rule of law that the exercise of public power by the executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action."

In addition to the above, it has also been held that the rule of law requires rules be stated in a clear and accessible manner. In this regard, the Constitutional Court held the following in the Dawood case:[4]

> "It is an important principle of the rule of law that rules be stated in a clear and accessible manner. It is because of this principle that section 36 requires that limitations of rights may be justifiable only if they are authorised by a law of general application. Moreover, if broad discretionary powers contain no express constraints, those who are affected by the exercise of the broad discretionary powers will not know what is relevant to the exercise of those powers or in what circumstances they are entitled to seek relief from an adverse decision."

As set out above, the rule of law requires that laws must be stated in a clear and accessible manner. In addition, the rule of law also prohibits the arbitrary exercise of public power. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action. The Constitutional Court has clearly not been slow to appreciate the rich possibilities of the Rule of Law as a foundational value of our constitutional order.

Turning to the matter at hand, it is self-evident that the Draft Bill fails to comply with the requirements imposed by the rule of law and the principle of legality as developed by the

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[3] *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others 2000 (2) SA 674 (CC).*

[4] *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others 2000 (2) SA 674 (CC).*

Constitutional Court in that the Draft Bill is entirely arbitrary in nature and it will not achieve the goals that it sets out to achieve.

Arbitrariness is particularly relevant for purposes of the topic under discussion in light of the fact that section 25(1) of the Constitution provides as follows:

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

It is submitted that the Draft Bill which, inter alia, will restrict and ultimately prohibit the ownership of firearms for purposes of self-defence is clearly an arbitrary deprivation of an individual's right to own a firearm.

In this context, the Constitutional Court has interpreted "arbitrary" for purposes of section 25(1) of the Constitution as follows:[5]

> "Having regard to what has gone before, it is concluded that a deprivation of property is "arbitrary" as meant by section 25 when the "law" referred to in section 25(1) does not provide sufficient reason for the particular deprivation in question or is procedurally unfair ... ".

When one has regard to the Draft Bill, various provisions are arbitrary and/or procedurally unfair. By way of example:

1. Proposed section 14 amends section 12 of the Act that deals with additional licences. The proposed section seeks to remove in subsection (1) the reference to the provisions of section 13 (that relates to a licence to possess a firearm for self-defence purposes) and the provisions of section 14 (that relates to a licence to possess restricted firearms for self-defence).

2. Proposed section 15 seeks to repeal sections 13 and 14 of the Act. Section 13 provides for a licence to possess a firearm for self-defence purposes. The consequence of the repeal of section 13 is that the Registrar may not issue a licence to any natural person who needs a firearm for self-defence.

3. The amendment to section 16A which envisions that that no more than two licences may be kept for handguns, semi-automatic rifles or pump action or semi-automatic shotguns, is entirely unsubstantiated and unsupported by any evidence. No reason is

[5] *First National Bank of SA Limited t/a Wesbank v Commissioner for the South African Revenue Services and Another; First National Bank of SA Limited t/a Wesbank v Minister of Finance 2002 (4) SA 768.*

given why the amendment limits it to two licenses, which we submit points to the arbitrary nature of the proposed Draft Bill and its provisions.

As illustrated above, certain provisions of the Draft Bill are vague and premised on procedurally unfair processes which will result in arbitrary deprivations of property (in contravention of section 25 of the Constitution).

2.4 Constitutionality

The IRR further submits that the draft Bill (and the amendments proposed therein) do not pass constitutional muster because they violate various fundamental rights contained in the Bill of Rights, which include:

- Section 11 of the Constitution, which provides that: "Everyone has the right to life"
- Section 12 of the Constitution, which provides that: "Everyone has the right to freedom and security of the person"
- Section 22 of the Constitution, which provides that: "Every citizen has the right to choose their trade, occupation or profession freely"; and
- Section 25 of the Constitution, which provides that: "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property".

It is submitted that although the South African Constitution does not provide for an explicit right to own a firearm, South African law does, of course, recognise a general right to liberty in the sense that every encroachment by the state (or by another) on one's freedom must be justified. There need not be special moral justification of the kind which permits restriction of a basic liberty. But there must be lawful authority for coercive action, and legislative restrictions on individual freedom must be duly enacted in the appropriate constitutional manner.

The burden is on the government or public authority to justify coercion. This is liberty understood in the true sense of 'freedom from control by others', especially by laws and government. As people have rights before they have a state, the state exists only to protect people's rights. If the state or any of its organs is unable to do so, the individual must have the right to do so himself.

The proposed removal of the right to be issued a firearm licence for purposes of self-defence, constitutes a clear violation of the right of life, more specifically the right to self-defence.

There is a clear correlation between the right to life and the right to self-defence. This entails that the proposed removal of a person's ability to acquire a firearm licence for purposes of self-defence constitutes a direct violation of the right to life. As recognised by the Constitutional case of S v Makwanyane and Another:[6]

> "Self-defence is recognised by all legal systems. Where a choice has to be made between the lives of two or more people, the life of the innocent is given preference over the life of the aggressor. This is consistent with section 33(1). To deny the innocent person the right to act in self-defence would deny to that individual his or her right to life ..."

Given the prevailing circumstances in South Africa, the right to self-defence is closely linked to the ability to lawfully own a firearm for self-defence. The IRR submits that the right to protect oneself should be proportional to the threat posed to one's life. And unfortunately in South Africa, the threats posed to the lives of the average South African are violent and rampant. Consequently, should the Draft Bill proceed in its current wording, South Africans' ability to defend themselves lawfully is hampered because their right to self-defence is hampered.

It is submitted that a law that limits constitutional rights must, among other things, be proportional in the circumstances because the Constitution 'does not permit a sledgehammer to be used to crack a nut'.[7] Any such law must be 'appropriately tailored and narrowly focused;' if its purpose is achievable by less restrictive means, it is disproportionate. The Draft Bill, which aims to reduce violent crimes through prohibiting firearm ownership for the purpose of self-defence is undoubtedly such a sledgehammer approach that will not address the prevailing challenges that it seeks to address.

The right to self-defence not only flows from and is implied by various rights enshrined in the Constitution, but it is demanded by justice. Our constitutional framework provides for the indirect protection of the right to self-defence through its recognition of the rights to life, freedom and security of the person, trade and occupation and property. The Draft Bill undermines the right of people to defend themselves and their property – and regrettably it does

[6] *S v Makwanyane and Another (CCT3/94) 1995 (6) BCLR 665*

[7] *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another 2014 (2) SA 168 (CC)*

so in many ways – therefore, it is undoubtedly unconstitutional cannot proceed in its current form.

3. Areas of impact

3.1 Self-defence

South Africa unfortunately is a dangerous place to live, with rates of violent crime regularly being counted amongst the highest in the world.

A United Nations study in 2019 found that South Africa ranked 10th globally in terms of its murder rate, faring even worse than countries such as Brazil, which are infamous for their high levels of violent crime. According to the same study, South Africa is so dangerous that approximately 200 000 people were murdered just in the decade between 2008 and 2018.

Furthermore, it is not just the crime of murder where South Africa is abnormally dangerous. Other crimes, such as "offences of sexual violence" as defined by the United Nations Office on Drugs and Crime (UNODC), see South Africa once again ranking amongst the highest in the world. The UNODC notes that around 205 000 cases of such crimes were reported to the police in the 4-year period of 2014-2018.

Facing up against the enormous levels of serious and violent crime, the South African Police Service (SAPS) is massively overstretched. It suffers from a lack of resources, low morale and corruption within the ranks of the service. Recent events have laid bare this unfortunate reality, as in July of 2021, the SAPS were unable to prevent widespread looting and vandalism of shopping centres and properties across Kwa-Zulu Natal and Gauteng, in some instances for several days. Over 300 people lost their lives and the economic damage runs to the tens of billions. On 29 July 2021, National Police Commissioner Khehla Sithole was reported as saying that it had come to a point where the police could no longer fulfil its mandate to prevent, combat and investigate crime.

Without the benefit of civilian firearms ownership for self-defence, and in the absence of an effective police service, many individuals and communities would have been left almost entirely without protection from looting and violence – as the violent unrest in July 2021 showed.

The amendment will remove "self-defence" as a reason for a civilian to legally purchase a firearm, this despite the fact that there has not been a significant improvement in the levels of

violent crime and threats to personal safety. Indeed, the violent crime problem in South Africa has for the last decade trended up, rather than down.

Without sufficient police capacity to effectively protect South Africans from the ravages of crime, it would be unreasonable to pass legislation which would leave civilians without any realistic means of protection from violent crime. In terms of the Constitution, disarming citizens would deprive them of the ability to assert their right to life (Section 11), the right to freedom and security of the person (12 (1)) (which includes the right to be free of all forms of violence from either public or private sources) (12 (1) c.), as well as the right to bodily and psychological integrity (12 (2)) (which includes the right to security in and control over their body) ((12 (2) b.).

3.2 Sport

Shooting is a competitive sport and has featured at every Olympics since 1896, with the exceptions of 1904 and 1928. Firearms in this context are a type of sporting equipment, analogous to balls or rackets. Restrictions on their ownership will harm the sport.

Dedicated sports shooters are the hard core of the sport. It is from them that professional and internationally competitive sports shooters are drawn. A dedicated sports shooter is defined by the Act as ‘a person who actively participates in sports-shooting and who is a member of an accredited sports-shooting organization.’ This definition ensures that only ‘serious’ shottists can obtain firearms under the status. Safeguards against abuse are therefore in place.

Under the amendments, dedicated sports shooters are to be limited to a maximum of six firearms, with restrictions within this number, such as a maximum of two handguns. (See in the draft Bill, **Amendment of section 16 of Act 60 of 2000, as amended by section 4 of Act 43 of 2003**, pp. 26-29.)

Sports shooting is complicated: there are numerous codes, categories and divisions, each of which requires its own firearm (or firearms). Ergonomic characteristics of firearms differ sharply from one another, and as with any sport, carrying back-up equipment is absolutely standard practice. Should one gun become damaged or malfunction, another should be on hand. A serious shottist could make an entirely reasonable case for owning 10 or more firearms. This is the nature of the sport, and it is for this reason that dedicated sports shooters are permitted by the existing FCA to own greater numbers of firearms than is the case for other people.

This places a particular duty of care and responsibility on their shoulders. Yet this is precisely what the FCA establishes. Dedicated status must be earned and is intended to establish a bona fide sporting involvement. It is possible that this could be abused, but this needs to be established as a real and existing problem. The draft Bill and the documents purportedly backing it fail to do so. Indeed, the SEIA does not mention sporting at all!

Even if the argument for limiting the number of firearms that any one person could own could be upheld, the amendment goes beyond this. It consciously places hurdles and barriers that can only be understood as a tactic for making the sport inaccessible to large numbers of South Africans. Parliament needs to consider whether this is an acceptable goal of legislation.

Among the new burdens the draft Bill introduces are the limits on the amount of ammunition that a shottist may hold (reducing this from 200 to 100 cartridges per firearm), prohibiting reloading of cartridges and introducing requirements for a permit to transport a firearm. (See **Amendment of section 45 of Act 60 of 2000**, p. 45; **Amendment of section 91 of Act 60 of 2000**, **as amended by section 26 of Act 28 of 2006**, pp. 55-56; **Amendment of section 93 in Act 60 of 2009, as amended by section 27 of Act 28 of 2006**, pp. 55-56) All of this ramps up the costs and logistical difficulties of sports shooting.

Most notable, though, are provisions relating to allowing others to use one's firearm. A licensed firearm holder who is 21 years old and has held the licence for three years may allow his or her gun to be used, under his or her supervision, by another person who must be over the age of 16. (**"Holder of licence may allow another person to use firearm"**, p. 37) Removing this provision will have the effect of disrupting the development of young people's shooting skills. Limiting firearm handling to those over the age of 16 will cut off much of the skills pipeline for sports shooting – indeed, for the firearm culture more broadly. Once again, it is reasonable to conclude that this is the intention.

3.3 Collecting

Firearms are a part of South Africa's heritage. This is a matter of legislation and regulation. Regulations issued in terms of the National Heritage Resources Act specifically recognise firearms as 'heritage objects', alongside particular archaeological finds, manuscripts, musical instruments, tools and machinery and objets d'art. Such items are to be protected from damage or destruction.

The draft Bill seeks to eliminate firearm collecting by removing the provisions that make it possible. (**Amendment of section 17 of Act 60 of 2000, as substituted by section 13 of Act 28 of 2006**, p 31)

The SEIA fails to engage with the reason for this at all. The police report states: 'There is a perception that there are civilians who amass lethal weapons masquerading as firearm collectors.' Not a shred of justification is provided for this; it is not even clear whose 'perception' this is. We would submit that 'perception' is a very poor substitute for evidence; and in the absence of evidence the draft Bill is introducing legislation which does not address an identifiable problem.

Collectors are subject to multiple layers of oversight and regulation, and are restricted in what they are permitted to collect – every item must be properly motivated and fit within their fields of interest. Firearm collecting is recognised internationally as an important part of maintaining societies' heritage.

South Africa's legislation on this is very clear: to be a collector one must first be accepted by a recognised collectors' association. The FCA specifies that the purpose of this is conserving items with 'historical, heritage, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value'.

Applicants are required to specify the purpose of their collection, and to demonstrate their knowledge of and interest in what they intend to collect. Collections must be built around fields of interest and themes of genuine scholarly interest.

To acquire firearms, collectors must show proper storage facilities. These typically match or exceed the facilities employed by dealers; indeed, particular types of weapons must be stored so that they cannot be loaded and fired. (This usually takes the form of putting a lock on the gun so that it cannot be loaded, or removing and locking away the firing mechanism separately from the main body of the weapon.)

Collector status allows an individual to own more firearms, both overall and within the various categories of firearms established in legislation, than is allowed to general applicants. But here again, it is a cautious, structured, progressive process.

Collectors may progress through a series of levels (technically from Category D through to A). Entry level collectors are limited to six firearms; in time, they may graduate to being allowed to expand the number of weapons held based on a track record of genuine interest, knowledge and responsibility.

If the collector's interest includes semi-automatic (restricted) firearms, then the collector can apply for the requisite classification to include these in his or her collection if a solid foundation for this has been laid. In a few cases the collector can apply for a further classification to add fully automatic (prohibited) firearms to the collection, but the approval for this is very strict, and constitutes only about 2% of the total ownership – but this category is important if we recall that fully automatic firearms appeared around the time of the Anglo-Boer War and played a vital part in firearms history.

Each level requires justification and takes several years. Every firearm that is to be added to the collection has to be the subject of a study; this must be approved by the accredited collectors' body and then be licensed by the state. The applications are something to behold, and demonstrate a greater depth of scholarship than many official policy documents.

A numerical 'limit' for a collector is an arbitrary limit and makes no sense. Some of our better-known historical firearms run to a few hundred variations to choose from, but in reality this is effectively controlled by the current requirements in legislation for the individual collector concerned being able to demonstrate the knowledge of each and every firearm, together with the requirements for safe storage, and the financial resources to acquire and maintain them.

Besides, the collecting community in South Africa is comparatively small, at a little over 2 000 people. (Those able to collect prohibited arms probably amount to no more than 50 across the country). And, in reality, the largest collection is estimated at something around 500 pieces, but with the bulk of these being more than 100 years old. By international standards this is modest, although the contribution to local and international heritage is significant.

In international terms, the value of collecting is not particularly controversial. Private gun-collecting is a recognised part of most democratic societies' heritage preservation strategies, as the bulk of historical and heritage firearms (80%) are held in private collections, not museums, as is the case worldwide. This is the case even in Australia, which is frequently cited as a successful role model for comprehensive gun control.

There is no evidence at all that banning collecting would make the country safer at all. Precisely because gun collectors are passionate about the subjects they study – guns are typically artefacts through which another field such as history or technology is explored – and because they are subject to a heightened level of scrutiny, they generally demonstrate an exemplary level of conscientiousness. Criminals seeking a firearm can and do source them from any of the myriad illegal networks within the country, where they might originate abroad or from

police or military stocks – but targeting a gun collector would be more arduous than it would be worth.

Indeed, gun collectors are probably the least 'problematic' part of the firearm-owning population. After the Paris attacks in 2015, the European Union reassessed its own firearm legislative setup. It specifically recognised the role of collecting, in terms not dissimilar from South Africa's current legislation. It is worth quoting briefly:

> Member States should be able to choose to grant authorisations to recognised museums and collectors for the acquisition and possession of firearms, essential components and ammunition classified in category A [automatic firearms, explosives etc] and others when necessary for historical, cultural, scientific, technical, educational or heritage purposes, provided that such museums and collectors demonstrate, prior to being granted such an authorisation, that they have taken the necessary measures to address any risks to public security or public order, including by way of proper storage. Any such authorisation should take into account and reflect the specific situation, including the nature of the collection and its purposes, and Member States should ensure that a system is in place for monitoring collectors and collections.

In short, this aspect of the draft Bill is poorly thought through, with no consideration for its impact on heritage or the legislation that governs it, dealing with no real problem and basing itself on a mere perception which violates the principle of evidence-based policy making.

3.4 Problems not addressed

The above has focused on outlining the deficiencies of the draft Bill. Another concern for the IRR is that it fails adequately to engage with or offer solutions for some of the real and widely acknowledged problems with firearm management as it exists today.

The foremost issue here is the state of the Central Firearms Registry. Inefficiencies within this body, which is ultimately responsible for the execution of firearm policy, are acknowledged in the Wits School of Governance report, 'Analysis of the Effect of the Firearms Control Act on Crime 2000 – 2014'. It records criticisms such as this: 'In spite of a revised IT system, the CFR was heavily criticised at the National Firearms Summit organised by Parliament's police committee and the Civilian Secretariat for Police in March, 2015.' (P. 4)

This problem is further acknowledged in the document by the Minister of Police, 'Report of the Committee on Firearms Control and Management in South Africa'. (See pp. 113-120)

Recent media reports have drawn attention to the ongoing crisis within this institution (highlighting again the imperative of up-to-date evidence, which is lacking this process). In the IRR's experience, it is also a source of dismay and frustration for stakeholders in the debate, irrespective of their position: the CFR is, after all a supremely important institution for enabling the legal distribution of firearms AND limiting their distribution.

The SEIAs, however, glosses over this. There is very little indeed about the administrative failings that have compromised the implementation of the FCA. The CFR is refereed to directly only twice in the document, which seems to present the CFR as being in place and ready to undertake the tasks that the draft Bill envisages: (p. 14)

> As the FCA is in place and is being managed by the Central Firearms Register of SAPS, implementation and compliance costs will be kept to a minimum. There is a minimal organisational and personnel implication. Additional members will be appointed to the Firearms Appeals Board to enhance the capacity of the Appeals Board to deal with appeals more swiftly.

The draft Bill foresees the CFR undertaking what will amount to the management of a massive feat of societal disarmament. There is nothing to suggest that it is capable of doing so, nor anything in the draft Bill to remedy this.

The IRR would submit that unless the CFR is capacitated, its systems linked to firearm dealers, regulation of firearms in South Africa will always be undermined. This is largely a matter of implementing what is already on the statute books. However, the draft Bill does a disservice in focussing attention elsewhere – leaving an identified problem intact.

The IRR further cautions that there have been numerous cases and allegations of corrupt personnel in the security forces passing on firearms to criminal elements. Should the draft Bill be enacted, the state will face the considerable task of having to take custody of large numbers of firearms without the capacity to do so effectively. It is a certainty that corrupt elements will filter a portion of these weapons to criminals. Paradoxically, the draft Bill might come to be known as a watershed moment in the proliferation of illegal firearms.

4. The way forward

The draft Bill is poorly conceptualised and will not likely achieve the goals that it claims to be pursuing. The immediate way forward is simple: the draft Bill in its current form must be scrapped.

The IRR would argue that before any further legislative measures are contemplated, it is imperative that the administrative weaknesses be addressed. South Africa needs a well-functioning CFR.

If there remains a view that amendments to the FCA – or for that matter completely revised legislation – are warranted, they would need to be built on the foundations of such a capacitated institution. Further, any such proposals must be based on proper research and evaluation, on a clear assessment of specific problems and specific solutions (and their efficacy or otherwise).

In addition, this would need to involve a sincere and genuine engagement with stakeholders across the spectrum. This is imperative not only to ensure better-quality thinking around the issues (for all assumptions and 'perceptions' deserve to be put to scrutiny), but is an important safeguard against abuse.

Indeed, this is what our Constitution mandates.