

## **GETTING A GRIP ON GUNS:**

### **Rolling out the Firearms Control Act**

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The use of guns in crime remains high in South Africa. The annual report of the National Injury Mortality Surveillance System (NIMSS) for 2000 found that death caused by firearms is higher in South Africa than death occurring through road traffic accidents or any other external cause of non-natural death. The government maintains that controlling firearms remains a priority and is focusing on the implementation of the Firearms Control Act. But is regulating the civilian ownership of guns the right way to make South Africa less vulnerable to guns and gun crime?

The Firearms Control Act of 2000 was drafted to replace the out-of-date and much modified 1969 Arms and Ammunition Act. The new legislation is slowly being rolled out, with some articles already in force, and others pending the official date of commencement by proclamation.

Inevitably, the new legislation has drawn fire from interest groups on both sides of the firearm debate in South Africa. Groups advocating a comprehensive clampdown on licensed guns in South Africa believe the legislation has not gone far enough. On the other hand groups identified with the interests of sports shooting and hunting have stated that the legislation is focusing on responsible gun users and avoids taking action to stop the illicit gun market in the country.

Irrespective of which side of the debate one takes, the approach of the government to the adoption of the Firearms Control Act is a pragmatic response to a complex situation. Research carried out in anticipation of the drafting of the legislation pointed to some areas where the 1969 Act was clearly inadequate. The new Act attempts to address these and, in addition, attempts to clarify the legal and illegal uses and ownership of firearms; a step that should be welcomed by all.

#### **South African firearm statistics**

Unfortunately, South African firearm statistics are some of the grimmest on record. The NIMSS report, which is based on data collected from 15 mortuaries in five provinces, recorded 18 876 fatal firearm injuries in 2000, estimated to account for 24-29% of all non-natural deaths in South Africa during that 12 month period. By comparison, 23% of deaths were due to all motor vehicle collision categories combined.

For more than 44% of the firearm fatalities the manner of death was homicide, followed by accident (35%) and suicide (9%). Men were most likely to be the victim of homicide (49%) while women were most likely to be killed in accidents (44%). More than half of all homicides recorded (4 372) were inflicted by guns, followed by 2 547 committed with sharp instruments (e.g. knives).

Although the figures are lower, firearms are also used in suicides by both men (37%) and women (25%). The leading form of suicide for men is hanging (42%) and for women, poisoning (32%). According to the NIMSS report, suicide rates are increasing nationally, and it can be expected that the use of firearms in suicide will also increase.

The use of firearms in crime also continues to increase. One of the arguments among those opposed to the new Act is that the weapons used in crime are illegally held and that government should therefore not be focusing on legal gun owners. However, research published in the Nedbank-ISS Crime Index 5(5), 2001, the most recent available, shows that in an analysis of police dockets, 665 weapons per 100 000 owned were lost in 1998, from a total licensed firearm pool of 4.5 million, including 3.5 million licensed to individuals. One may assume that many of these weapons, especially those lost through theft or robbery, enter the illegal market.

#### **Public opinion on guns**

Research carried out by the ISS in various communities in South Africa and nationally by the Human Sciences Research Council (HSRC), has found that public opinion is in favour of stricter controls on firearms, and is often for a complete ban on gun ownership.

The HSRC study found that almost 60% of South Africans believe that civilian ownership of guns should be banned. Those most in favour of a ban were black respondents (61%), while 38% of whites supported such a ban.

Surveys conducted among communities in Gauteng, Eastern Cape and KwaZulu-Natal have shown similar results. In three areas, Lekoa-Vaal, Tsolo-Qumbu and KwaMashu, survey respondents reported that firearm possession was increasing. This was largely because guns were more accessible to those who wanted them, but also because people were arming themselves out of fear of rising crime and violence. Across all three communities, there was clear support for stricter control over firearms and for communities to be free of guns.

#### **What the new Act does**

The Firearms Control Act is part of a co-ordinated government response to dealing with firearms in South Africa. The purpose of the Act is to:

- Prevent the proliferation of illegally possessed firearms.
- Prevent crime involving the use of firearms by improving control over legally possessed firearms and providing for the removal of illegally possessed firearms from society.
- Control the supply, possession, safer storage, transfer and use of firearms.
- Detect and punish negligent or criminal use of firearms.

Establish an effective system of firearms control and management.

The Act regulates the possession, use and transfer of firearms for individuals and business but excludes weapons owned by the state (e.g. police and military weapons).

The Act prohibits possession of some types of weapons, and defines when, and under what conditions, firearms may be owned.

Briefly, the Act:

- Prohibits fully automatic firearms (e.g. assault rifles, such as the AK-47).
- Prohibits firearms that have been modified, such as semi-automatic weapons that have been changed to fully automatic or where the length of the barrel of a gun has been shortened (e.g. sawn-off shotguns).
- Restricts the number of weapons an individual may possess to one weapon for self-defence and a total of four firearms for self-defence and occasional hunting and sports shooting.
- Requires each firearm to be licensed individually.
- Requires competency certificates, proving knowledge of the Act, practical tests and training (see box below).

The competency certificate must show the following:

- ♦ The make of weapon in question.
- ♦ That the person applying:
  - Is over 21 years of age.
  - Is a South African citizen or permanent resident.
  - Is of 'stable mental condition' and not inclined to violence.
  - Is not addicted to drugs or alcohol.
  - Does not have a criminal record, inside or outside South Africa.
  - Has not been convicted of a list of crimes, including violence or sexual abuse, or physical or sexual abuse within domestic relationships.

- Establishes a five-year renewal system for competency certificates.
- Establishes a renewal system for all new and existing firearm licenses, with a five-year renewal period for weapons acquired for self-defence, and ten years for firearms licensed for hunting or sports shooting.

Once the 2000 Act is in force, existing licence holders will have a grace period of five years during which the existing licence will remain valid. However, in that time people owning more than one weapon for self-defence, any prohibited weapons, or a total of more than four weapons, will be required to dispose of the additional or prohibited weapons.

PROVISION	1969 ACT	2000 ACT
Minimum age requirement	16 years	21 years
Number of firearms allowed per person by category: <ul style="list-style-type: none"> <li>• Self-defence</li> <li>• Occasional hunting/sports shooting</li> <li>• Professional hunting/sports shooting</li> </ul>	Unlimited	<ul style="list-style-type: none"> <li>• Self-defence: 1 handgun (not fully automatic) or 1 shotgun (not fully or semi-automatic)</li> <li>• Occasional hunting/sports shooting: total of 4 firearms, with only 1 handgun</li> <li>• Professional hunting/sports shooting: unlimited but requires sworn statement from accredited hunting/sports shooting organisation</li> </ul>
Competency certificate	Not required	Required <ul style="list-style-type: none"> <li>• 5-year renewal for self-defence</li> <li>• 10 years for other categories of licence</li> </ul>
Knowledge test of Act	Not required	Required
Training and practical test	Not required	Required
Safe-storage for firearm and ammunition	Yes	Yes
Lending firearms	With permission of licence holder for up to 14 days or under supervision of license holder	Under immediate supervision of licence holder
Declaration of person unfit to possess firearms (after a licence has been issued)	<ul style="list-style-type: none"> <li>• Expressed intent to kill or injure self</li> <li>• Mental condition, addiction to drugs or alcohol</li> <li>• Conviction of firearm-related offences</li> </ul>	<ul style="list-style-type: none"> <li>• Protection order issued against licence holder under Domestic Violence Act</li> <li>• Expressed intent to kill or injure self or any other person with gun or other dangerous weapon</li> <li>• Mental condition, addiction to drugs or alcohol</li> <li>• Failure to keep firearms safely</li> </ul>
Renewal period for licence	None	<ul style="list-style-type: none"> <li>• 5 years for self-defence</li> <li>• 10 years for other categories of licence</li> </ul>

#### Next steps

At the time of writing only certain provisions of the 2000 Act have entered into force. Those relate to:

- The definition of firearms.
- The purpose of the Act.
- Taking of body prints (e.g. finger or palm prints) and samples for investigation.
- Penalties for failing to comply with the Act.
- The establishment of firearm-free zones.

Currently, the regulations contained in the Act are being finalised, as are some of the structural changes that will allow full implementation of the Act. At this stage there is no public information available on the proposed date for the promulgation of the Act, amid growing concern over the delay in implementation.

In terms of the Act all licensing, appeal, import and export information is kept in the Central Firearms Register, maintained by the South African Police Service. The introduction of the new legislation is requiring a overhaul of the existing computer system. In addition, the new Act establishes Designated Firearms Officers (DFOs), who will be responsible for, among other things, checking applications for licenses and verifying competency certificates. These officials are currently being trained in the application of the Act as a precursor to its full implementation.

## Conclusion

The Firearms Control Act is designed to make the process of owning a firearm in South Africa legally and responsibly more clear to both the user and the police. At the same time the law attempts to reduce the likelihood of weapons moving from the legal trade into the illicit market. The responsibilities of licensed owners are far more clearly spelled out in terms of safe storage and responsible use of weapons, and there are stricter regulations governing the import, export and in-transit transfer of firearms in South Africa.

The Act will be a challenge to implement as it establishes new restrictions on ownership, introduces limits on the numbers of weapons that may be owned, and requires renewal of licenses and competency certificates. This is part of the reason why the government has taken a pragmatic approach to its implementation, rolling out the new Act more slowly than some desired.

As with all legislation, the success of the Act will rely on how it is applied, and both government and civil society have a role in monitoring the implementation of the Act. In addition, government must continue to pursue the reduction of illicit firearms in South Africa, acting forcefully to remove these weapons and penalise those found using them. Other areas that need attention are the loss of state-owned firearms from the police and SANDF, and the continuing efforts to improve policing and public security so that the factors that drive people to possess weapons for self-defence are reduced. It is only through a comprehensive approach to a complex problem that the responsible use and control of guns in South Africa will be realised.

## Source documents

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