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**Firearm Control in South Africa:
The implications of not allowing a citizen to possess a firearm, for the purposes of self-
defence.**

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This mini dissertation is submitted in partial fulfilment of the requirements for the
degree of Master of Laws in Criminal Justice.


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DECLARATION

I, Lereshin Naicker (student number: 215 048 275) declare that:

- A. The research reported in this dissertation, except where otherwise indicated, is my original research.
- B. This dissertation has not been submitted for any degree or examination at any other university.
- C. This dissertation does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.
- D. This dissertation contains my own work except where specifically acknowledged.

Signed: 

Date: 06/12/2019

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Note:

It must be noted that it is only a draft copy of the Firearm Control Amendment Bill that is being used for the purposes of this study. A final amendment Bill does not exist at present. Various news outlets ran with the story in 2018 that the state was suggesting an amendment to the FCA and the draft copy of the Bill was available online on various news websites and on our Parliaments website.¹ This led to an outcry amongst firearm owners who did not want to lose their firearms. In October 2019 (a month before the submission of this dissertation), the South African Police Service (SAPS) were requested to redo its plan for amnesty and asked to redraft the draft copy Firearm Control Amendment Bill. The request was made by police portfolio committee chairperson, Tina Joemat-Pettersson, who further stated there should be another firearms summit, this time with public participation.² In accordance with the mandate of the draft copy of the Firearms Control Amendment Bill, SAPS were continuing to propose that self-defence be removed as a reason for possessing a firearm. After this was rejected by the police portfolio committee chairperson in October 2019, the draft copy of the Bill has since been removed from Parliaments official website. An alternate link has been provided in footnote 10 of this study. The study is still of relevance and importance because overall it does assess if the state really should prevent citizens from owning a firearm for the purposes of self-defence, considering the high violent crime rate prevalent in South Africa. It also takes into account other factors which lead to the high proliferation rate of illegal firearms in South Africa. Further, it is not a guarantee that it will not be suggested again in the next draft copy of the amendment bill that citizens be prevented from owning a firearm for the purposes of self-defence. This study will then provide a compelling argument as to why it is not a viable option to prevent citizens from owning a firearm for the purposes of self-defence (irrespective of it being suggested in the next draft of the Bill or not).

¹ The Bill was originally available at <https://www.parliament.gov.za/storage/app/media/Docs/bill/c6cc5d52-a742-4db5-ac88-a6d90adeaa60.pdf>, and was accessed on 25 January 2019, but has now been removed. The alternate link to the Bill is now <https://www.ctsasa.co.za/wp-content/uploads/2018/10/Annexure-A.-Firearm-Control-Amendment-Bill-3.pdf>.

² Copy of the relevant article is available at (<https://citizen.co.za/news/south-africa/government/2178128/one-million-gun-owners-shot-in-the-foot-by-cops/>)

Abstract:

Violent crime in South Africa is at an all-time high. In South Africa, scholarly studies suggest that a firearm is mainly used in the commission of violent crimes. Police interventions and legislation aimed at curbing this pandemic, are argued to be ineffective and do not deal with the increasing proliferation rate of both legal and illegal firearms in South Africa. Due to the high violent crime rate, citizens begin to feel their lives are in danger and acquire a firearm for the purposes of self-defence. The possession of a firearm for the purposes of self-defence then becomes a contributory factor that increases the proliferation rate of illegal firearms in the country. Criminals rob firearm owners of their firearm and then use these firearms in the commission of future violent crimes. In order to address this contributory factor and the overall proliferation of firearms within the country, the state wished to enact The Firearms Control Draft Amendment Bill 2017. One of the major highlights from the Bill is the state's intention to repeal Section 13 and Section 14 of the FCA. These two Sections allowed a law-abiding citizen to possess a firearm for the purposes of self-defence. In accordance with the purposes of the Bill, the states thinking was that by preventing citizens from owning firearms for self-defence, criminals will no longer be able to steal these firearms from citizens and use them in the commission of other violent crimes. The rationale was that there will be a decrease in the proliferation rate of firearms and the rate of violent crimes in the country. What the state failed to consider was that there were also other factors which contributed to the high proliferation rate of firearms in South Africa, and that these factors should be addressed first before enacting the Bill and preventing a citizen from owning a firearm for the purposes of self-defence. By rather suggesting that the Bill be enacted and that citizens no longer be allowed to own a firearm for the purposes of self-defence, certain rights that a citizen has would be infringed. This includes their right to life and the right to freedom and security of the person (specifically bodily integrity and the right to be free from all forms of violence). The Section 36 Analysis done in this study will show that the limitation on these rights is not reasonable or justifiable and that less restrictive means exist ,which should be utilized.

Abbreviations

DFO- Designated Firearms Officer

FCA- The Firearm Control Act

PSI- Private Security Industry

SANDEF- South African National Defence Force

SAPS- The South African Police Service

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CHAPTER 1

Introduction to the topic

1.1 Background/introduction

In South Africa, scholarly studies³ suggest that a firearm is mainly used in the commission of violent crimes.⁴ According to Lamb, ‘the widespread availability of firearms, particularly illegal firearms, in the mid-1990s was identified by the police as the leading factor for violent crime in South Africa.’⁵ Crime statistics⁶ indicate that these violent crimes are still being committed at present with firearms, by people who both legally or illegally possess those firearms.⁷ Notwithstanding these findings, firearms have also been used for the purposes of self-defence, and the possession for this purpose, is regulated by the Firearms Control Act 60 of 2000 (FCA).

This is in line with Section 2 of the FCA which provides that firearms may be issued to enhance the right to life⁸ and bodily integrity⁹. Police interventions and legislation¹⁰ aimed at curbing the high proliferation rate of illegal firearms and violent crimes are argued to be ineffective.¹¹ Consequently, the state wished to enact the Firearms Control Draft Amendment Bill 2017¹² (the proposed Bill) to address the high proliferation rate of illegal firearms in South Africa. The states rationale was that the amended Act will help reduce the rate of violent crime in South

³ L Bopane ‘An analysis of the measures used to control firearms in South Africa: looking back and looking forward’ (2015) *Acta Criminologica: Southern African Journal of Criminology*, M Keegan ‘The Proliferation of Firearms in South Africa, 1994-2004.’ Gun Free South Africa.

⁴ L Bopane ‘An analysis of the measures used to control firearms in South Africa: looking back and looking forward’ (2015) *Acta Criminologica: Southern African Journal of Criminology* 2.

⁵ G Lamb ‘Murder and the SAPS’ policing of illegal firearms in South Africa’ (2018) Volume 30 Issue 1, *Acta Criminologica: Southern African Journal of Criminology* 36.

⁶ According to the SAPS annual report (2017/2018), a total of 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases were reported in South Africa. One in three murders are committed with a firearm being used as the murder weapon.

⁷ L Bopane *An Analysis of The Firearms Control Measures Used by The South African Police Service* (published DLitt et Phil thesis, UNISA, 2015) 32.

⁸ Section 11 of the Constitution of the Republic of South Africa, 1996.

⁹ Section 12 (2) of the Constitution of the Republic of South Africa, 1996.

¹⁰ The Firearms Control Act 60 of 2000.

¹¹ Bopane *Looking Forward* op cit note 1 at 4.

¹² The Firearms Control Draft Amendment Bill 2017, hereinafter ‘the proposed Bill’. The proposed Bill was available at <https://www.parliament.gov.za/storage/app/media/Docs/bill/c6cc5d52-a742-4db5-ac88-a6d90adeaa60.pdf> and was accessed on 25 January 2019. Alternate link is now <https://www.ctsasa.co.za/wp-content/uploads/2018/10/Annexure-A.-Firearm-Control-Amendment-Bill-3.pdf>, accessed on 8 February 2019.

Africa as there is a correlation between the high crime rate in the country and the high proliferation rate of both legal and illegal firearms.¹³

Two fundamental rights contained in the Bill of Rights¹⁴ are the right to life¹⁵ and the right to freedom and security of the person¹⁶. Every person in South Africa now has a fundamental human right to safety. There are two main factors¹⁷ that infringe upon a citizen's right to safety. The state has a duty to invest in endeavours to enhance safety and prevent these two factors from jeopardizing the safety of its inhabitants. Violent crimes¹⁸ continue to be on the rise in South Africa. According to the SAPS annual report (2017/2018)¹⁹, a total of 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases were reported in South Africa. What can be inferred from these statistics is that citizens are being murdered and robbed daily which is an infringement on their right to safety. Citizens have felt that the state has not done enough to protect them from being victims of violent crimes.²⁰

In a crime ridden country like South Africa, where our citizens see themselves as having power or control over the dangers and fears they face; 'a firearm provides a means to reduce fear and regain some defence against ever-present threats to safety'.²¹ More citizens feel a need to own a firearm for protection as it is one of the most effective weapons to use to defend yourself in a life threatening situation.²² The adverse effect of this is that criminals rob firearm owners of their firearm and then use these firearms in the commission of future violent crimes.²³ This then contributes to the proliferation of illegal firearms within the country.

The high proliferation rate of illegal firearms in South Africa has fed the growth of violent crimes such as murder and armed robberies.²⁴ According to Keegan, 'It has also advanced the

¹³ Ibid 103. (background and purpose of amendment).

¹⁴ Chapter two of the Constitution of the Republic of South Africa, 1996.

¹⁵ Section 11 of the Constitution of the Republic of South Africa, 1996.

¹⁶ Section 12 of the Constitution of the Republic of South Africa, 1996.

¹⁷ (1) The high rate of violent crime and (2) the high proliferation rate of illegal firearms within the country. In subsequent chapters in the study, it will be shown that there is a direct link between the high violent crime rate and the proliferation rate of firearms within the Republic... See diagram 1.1 for illustration.

¹⁸ Murder, attempted murder, aggravated robbery, hijackings.

¹⁹ 2017 report at https://www.gov.za/sites/default/files/gcis_document/201810/saps-annual-report.pdf.

²⁰ Bopane op cit note 4 at 58.

²¹ D.C May & G.R Jarjoura *Illegal guns in wrong hands: Patterns of gun acquisition and use among serious juvenile delinquents* 1 ed (2006) 87.

²² Bopane op cit note 4 at 58.

²³ Ibid at 32.

²⁴ Keegan op cit note 1 at 7.

growth of partner and acquaintance violence, which currently accounts for over half of all South African murders.²⁵

What can be deduced is that we begin to get caught in a vicious cycle. As citizens acquire a firearm for the purposes of self-defence, the proliferation rate of illegal firearms within the country tends to increase which in turn also increases the rate of violent crimes within the Republic.

The following diagram is an illustration of the cycle:

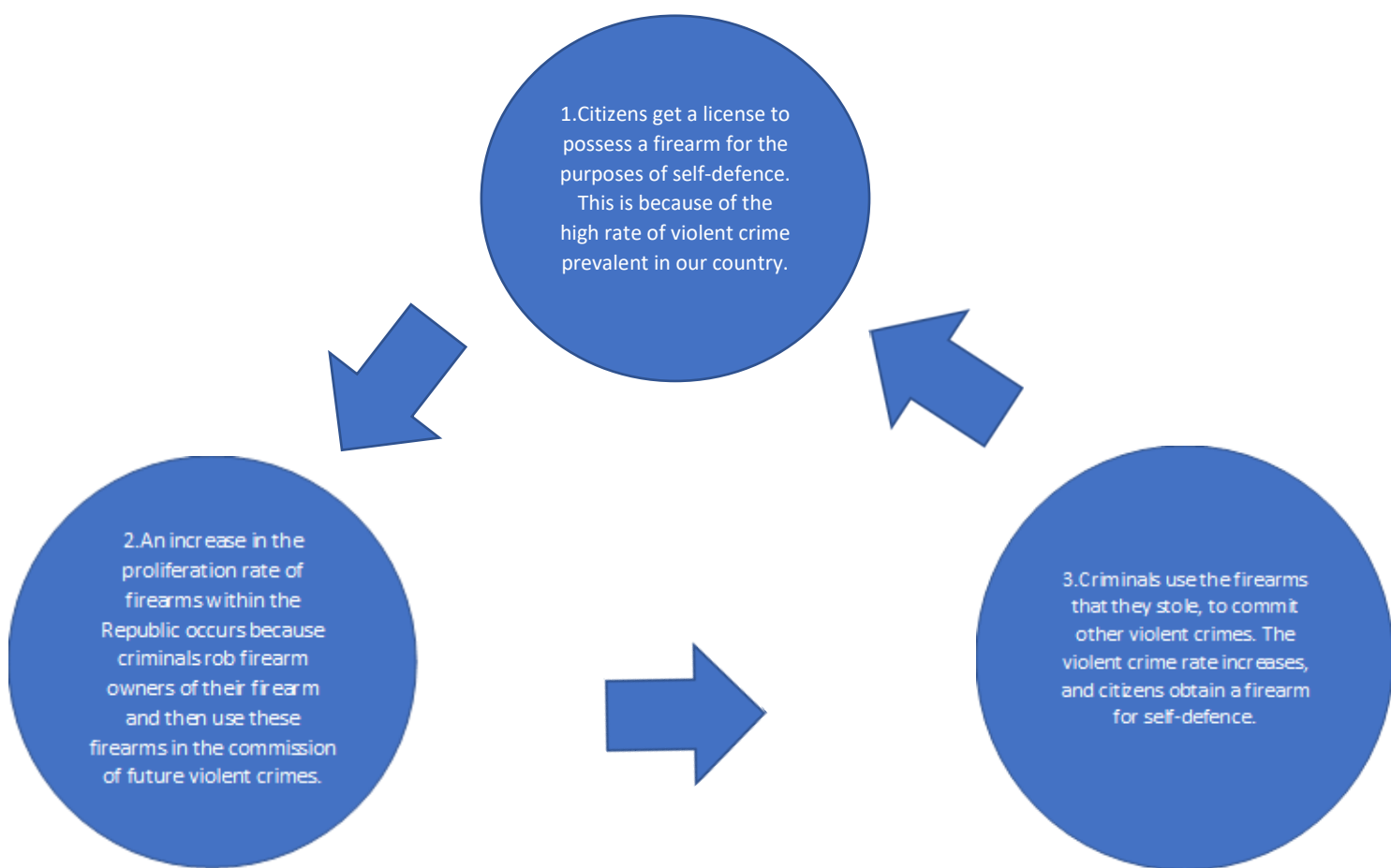


Diagram 1.1

²⁵ Ibid.

The proliferation of firearms within the country had always been an issue that needed to be addressed by the state which is why the FCA was promulgated. According to Section 2 of the FCA, the purpose of this Act is to:

‘(a) *Enhance the constitutional rights to life and bodily integrity*²⁶;

(b) *Prevent the proliferation of illegally possessed firearms*²⁷ and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;

(c) *Enable the State to remove illegally possessed firearms from society*²⁸, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms;

(d) Establish a comprehensive and effective system of firearm control and management; and

(e) Ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.’

Given the fact that the number of murders, attempted murders and aggravated robbery cases have increased each year²⁹, it is a logical inference that the state and the FCA has clearly failed in its endeavours to curb the proliferation rate of firearms in South Africa and reduce the rate of violent crimes. Citizens continue to acquire a firearm for the purposes of self-defence. The possession of a firearm for the purposes of self-defence then becomes a contributory factor that increases the proliferation rate of illegal firearms in the country.³⁰ Criminals rob firearm owners of their firearm and then use these firearms in the commission of future violent crimes.³¹

In order to address this contributory factor and the overall proliferation of firearms within the country, the state wished to enact the proposed Bill. In early 2015, after a Summit on Firearms that was held in the Portfolio Committee of Police, it was discovered that there was still a high proliferation rate of firearms in South Africa.³² To address this matter, the Minister of Police appointed a Firearms Committee to review the current FCA for the control of legal firearms. The committee established in its research that a large number of deaths within the country were as a result of gun-violence and that evidence suggests that if there is strengthening of national

²⁶ Emphasis added.

²⁷ Emphasis added.

²⁸ Emphasis added.

²⁹ In 2008 there were 18 084 murders, 18 140 attempted murders and 120 920 robberies with aggravating circumstances reported. In 2018, 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases reported. The trend indicates an increase over the 10-year period.

³⁰ The Firearms Control Draft Amendment Bill 2017, Background And Purpose 103.

³¹ Bopane op cit note 4 at 32.

³² The Firearms Control Draft Amendment Bill 2017, Background and Purpose 103.

gun laws, coupled with effective enforcement of these gun laws, then there will be a reduction of gun related deaths and violent crimes.³³ The committee's recommendations have been incorporated into the proposed Bill.

An important recommendation made by the committee is that laws pertaining to firearms need to be enforced. If the current FCA is sufficient and has just not been properly enforced, then it would explain why there is still a continuous high proliferation rate of firearms and violent crimes committed with the use of a firearm. There would be no purpose in introducing new or amended legislation if the current legislation was not even enforced correctly.

One of the major highlights from the proposed Bill was the state's intention to repeal Section 13 and Section 14 of the FCA.³⁴ These two Sections allow a law-abiding citizen to possess a firearm for the purposes of self-defence. In accordance with the purposes of the proposed Bill, the states thinking was that by preventing citizens from owning firearms for self-defence, criminals will no longer be able to steal these firearms from citizens and use them in the commission of other violent crimes.³⁵ The rationale was that there will be a decrease in the proliferation rate of both legal and illegal firearms in South Africa and the rate of violent crimes.³⁶ Repealing Sections 13 and 14 of the FCA may not necessarily bring down the proliferation rate of firearms. There could be other factors that contribute to the high proliferation rate of both legal and illegal firearms.

According to Minaar, a major factor which contributes to the high proliferation rate of illegal firearms in South Africa is poor borderline control and ineffective policing at ports of entry within the country.³⁷ What was discovered in Minaar's study is that the main problem was related to the shortage in human resources.³⁸ There was also the low (in general terms) levels of expertise of Border Police personnel.³⁹ What is suggested is that the FCA had the provisions in place to deal with firearms coming into the country through our ports of entry, but the FCA was ineffectively enforced. This would render an amendment futile because there may actually not be anything wrong with the FCA – just poor enforcement thereof. Other potential factors that increase the proliferation rate of illegal firearms in South Africa will be discussed in

³³ Ibid.

³⁴ The Firearms Control Draft Amendment Bill 2017, Clause 13.

³⁵ The Firearms Control Draft Amendment Bill 2017, Background and Purpose 103 and Clause 13.

³⁶ Ibid.

³⁷ A Minaar 'The "New" Firearms Control Act 60 Of 2000 and The Policing of Firearms at Air and Sea Ports-of-Entry' (2007) 20(4) *Acta Criminologica* 20.

³⁸ Ibid at 21.

³⁹ Ibid.

subsequent chapters of this study. These factors include the theft and loss of firearms from government depots such as the South African Police Service (SAPS) and the South African National Defence Force (SANDF). It will also be argued that ineffective FCA provisions, along with poor enforcement of the FCA also leads to an increase in the high proliferation rate of illegal firearms in South Africa.

There are potential adverse effects that the state needs to consider when suggesting the amendment of the FCA. Citizens may now have to rely on SAPS for immediate assistance. A perusal of the crime statistics⁴⁰ will indicate that the SAPS are not able to reduce the level of violent crime in our country, so it is no surprise that citizens may not have complete faith in SAPS to protect them. How will citizens now protect themselves from those criminals that still currently possess illegal firearms?

Citizens may themselves now seek illegal firearms to protect themselves from criminals who still possess firearms and pose a danger to the population at large. Through a Section 36⁴¹ analysis, the potential impact of the amendment will be considered and discussed further in Chapter 3 of this study. The Section 36⁴² analysis will determine if the right to life and freedom and security of a person will be violated if citizens are no longer allowed to possess a firearm for the purposes of self-defence.

1.2 STATEMENT OF PURPOSE:

The purpose of this study is to analyse the rationale by the state to amend the FCA (with a view to suggest whether or not the amendment provides a useful remedy to the problem⁴³). In order to provide an analysis of the rationale, it will first need to be determined if the current FCA has been effective in the policing of firearm control and whether the FCA has been effectively enforced. This will allow for the assessment of the state's suggestion to amend⁴⁴ the FCA and repeal Section 13 and Section 14. These Sections grant a law-abiding citizen the privilege to possess a firearm for the purpose of self-defence. It will also need to be established whether it is a viable option (given the high rates of violent crime in South Africa) to stop extending the privilege to citizens to possess a firearm for the purposes of self-defence. Further, the purpose

⁴⁰ In 2008 there were 18 084 murders, 18 140 attempted murders and 120 920 robberies with aggravating circumstances reported. In 2018, 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases reported. The trend indicates an increase over the 10-year period.

⁴¹ Limitation Clause- Section 36 of the Constitution of the Republic of South Africa, 1996.

⁴² Limitation Clause- Section 36 of the Constitution of the Republic of South Africa, 1996.

⁴³ As discussed earlier, the proliferation rate of firearms within the Republic and high violent crime rate.

⁴⁴ Due to the FCA not succeeding in dealing with its intended purposes of reducing the proliferation rate of firearms within the Republic and decreasing the rate of violent crime.

of this study is also to determine if the limitation imposed on the right to freedom and security of a person and the right to life is a justifiable limitation.⁴⁵

1.3 THE AIMS OF THIS STUDY ARE TO DETERMINE:

- Whether the current FCA is being effectively enforced and if the FCA is effective in the policing of firearm control.
- The reason for the proposed amendment to the FCA.
- If repealing Sections 13 and 14 of the Act is a viable option given the high crime rates in South Africa and inability of SAPS to keep up with the high crime rate.
- The potential impact of the proposed amendments (Section 36 analysis).
- The Southern African Development Community's best practices on firearm control.

1.4 RATIONALE FOR STUDY:

This study is being conducted in order to assess whether there was a need for stricter gun control in South Africa or if we should completely stop allowing citizens to own a firearm for the purposes of self-defence. The state was of the view that the high proliferation rate of firearms in South Africa would worsen if current legislation was not amended.⁴⁶ The state has argued that the high rate of violent crime and the proliferation rate of illegal firearms in South Africa is at an all-time high because the current FCA does not effectively deal with these issues.⁴⁷ This study is aimed at determining whether there is a factual basis for this contention or whether there has just been poor enforcement of the current legislation that will render any proposed amendments futile. The study has further been chosen since the state has proposed that citizens may no longer possess a firearm for the purposes of self-defence. This is currently a privilege that is extended to citizens in terms of the FCA. Removing this privilege may cause a violation to a citizen's right to freedom and security of a person. In order to determine if this is a justifiable limitation of the right to freedom and security of a person, an analysis of rationale for wanting to amend the FCA will first need to be done to contextualize the limitation and a Section 36⁴⁸ analysis will also need to be done hence the need for this research to be undertaken.

⁴⁵ It will be argued that not allowing a citizen to possess a firearm for the purposes of self-defence will be a violation of their right to freedom and security. They will no longer be able to use a firearm to defend themselves which adversely affects their right to life.

⁴⁶ The Firearms Control Amendment Bill 2017, Background and Purpose 103.

⁴⁷ Ibid.

⁴⁸ Limitation Clause- Section 36 of the Constitution of the Republic of South Africa, 1996.

1.5 LITERATURE REVIEW

The purpose of this study is to analyse the rationale for the proposed amendment of the FCA (with a view to suggesting whether or not the amendment provides a useful remedy to the problem⁴⁹.) In order to provide an analysis of the rationale, it will first need to be determined if the current FCA has been effective in the policing of firearm control and whether the FCA has been effectively enforced. This will then allow for the assessment of the proposition by the state, to amend the current FCA (due to the Act not succeeding in dealing with its intended purposes), and repeal Section 13 and Section 14, which grants a law abiding citizen the privilege to possess a firearm for the purpose of self-defence. In order to have a holistic and critical understanding of the subject matter, various academic sources will be referred to, and discussed, in this study. What follows is a discussion of a few of the main sources, and their involvement in the present study.

The FCA will be the primary source of legislation used for the purposes of this study. The FCA outlines the essential procedural steps that need to be adhered to for the granting of a firearm license. The Act provides that ‘ownership of a firearm is conditional on the successful completion of a competency test and several other factors, including background checking of the applicant, inspection of an owner's premises, and licensing of the weapon by the police.’⁵⁰ The main purpose behind introducing the FCA was to address the high proliferation rate of firearms in South Africa.⁵¹ An assessment of the FCA will allow for a conclusion as to whether the Act had effective measures and provisions in place to address the issues of high firearm proliferation rates and whether there has been effective policing in firearm control.

The FCA and associated academic literature will allow us to determine if the FCA itself was effectively enforced. One of the leading pieces of academic literature for this aspect of the study is by Bopane.⁵² The purpose of this authors study was to ‘investigate who should have firearms, whether they are currently effectively regulated, the sources of illicit firearms and firearms proliferation, as well as measures to improve generic firearm regulation and the effective policing thereof.’⁵³

⁴⁹ As discussed earlier, the proliferation rate of firearms within the Republic and high violent crime rate.

⁵⁰ Section 6(2) of the Firearms Control Act 60 of 2000: Subject to Section 7, no license may be issued to a person who is not in possession of the relevant competency certificate.

⁵¹ Section 2 of the Firearms Control Act 60 of 2000.

⁵² Bopane op cit note 4.

⁵³ Ibid at 2.

Bopane's study⁵⁴ shows who in fact should possess a firearm (law abiding citizens who are competent and are not high risk-individuals). The authors study revealed that the majority of people who legally possess a firearm did so for the purposes of self-defence due to the high crime rate prevalent in our country.⁵⁵ This has a knock-on-effect in the sense that it increases the proliferation rate of firearms within the country. As more citizens acquire firearms for the purposes of self-defence, they also subject themselves to risk as criminals will steal their firearms from them and use them in the commission of other violent crimes.⁵⁶ It is then no surprise that the authors study thus revealed that firearms are actually the most used weapons in the commission of violent crimes in South Africa.⁵⁷

In order to address this knock-on-effect, the state wished to enact the proposed Bill. In accordance with the purposes of the proposed Bill, the states thinking was that by preventing citizens from owning firearms for self-defence, criminals will no longer be able to steal these firearms from citizens and use them in the commission of other violent crimes.⁵⁸ This will reduce the proliferation rate of illegal firearms in the country and will also reduce the rate of violent crimes in the country.

However, according to Minaar⁵⁹, another factor which contributes to the high proliferation rate of illegal firearms within the country is poor borderline control and ineffective policing at ports of entry in South Africa. What was discovered in Minaar's study is that the main problem was related to the shortage in human resources.

Durban harbour and OR Tambo were used as the ports of entry for assessment. It was discovered that firearm detection equipment was not used optimally, and usage figures were low⁶⁰. The reasons for this was because the police budget at the time made no allowance for the installation of this equipment during the normal flow-control process and that the use of optic fibre cameras was time exhaustive⁶¹. It was possible to check the registration number of every

⁵⁴ L Bopane *The Impact Of The Firearm Control Act 60/2000 In Restricting Gun Ownership For At Risk Individuals In The Pretoria North Firearm Registration Centre Policing Area* (Magister Technologiae In Policing, University of South Africa, 2008).

⁵⁵ Bopane op cit note 4 at 58.

⁵⁶ The Firearms Control Amendment Bill 2017, Background And Purpose 103 and Clause 13.

⁵⁷ Bopane op cit note 4 at 16.

⁵⁸ The Firearms Control Amendment Bill 2017, Background And Purpose 103.

⁵⁹ Minaar op cit note 33.

⁶⁰ Minaar op cit note 33 at 21.

⁶¹ Ibid.

vehicle passing through a port-of-entry, but it was not physically possible or feasible to search every vehicle or all passenger luggage with an optic fibre camera.⁶²

Moreover, at the time a major impediment to the use of equipment by the SAPS was the actual lack and availability of information on the import and export of commercial firearms (and even less on military arms).⁶³ This problem was compounded by the fact that the process of collecting, collating and delivering the existing information occurred on different SAPS databases.⁶⁴

This impacted negatively on effective utilisation at ground level because information was not always readily available.⁶⁵ This again raises the question as to whether the current FCA is indeed sufficient and whether it has just not been properly enforced, which resulted in the continuous high proliferation rate of illegal firearms and violent crimes with the use of a firearm in South Africa. There would be no purpose in introducing new legislation if the current legislation was not even enforced correctly.

Keegan⁶⁶ is also of the view that the high proliferation rate of both legal and illegal firearms in South Africa is due to the high rate of violent crime within the country. This is the same sentiment that was shared by Bopane⁶⁷ in his study. Even if we repealed Section 13 and 14 of the FCA and attempted to limit the number of civilians who may possess firearms, an influx of illegal firearms into the country will still be a concern. Illegal firearms in South Africa has increased the rate of violent crime, in particular armed robberies and car and truck hijackings.⁶⁸ In the 2017/2018 financial year, a total of 20 336 murders were reported.⁶⁹ In addition, one in three murders are committed with a firearm being used as the murder weapon.⁷⁰

What has become evident from an analysis of the sources is that Bopane and Keegan both contend that the high proliferation rate of firearms in South Africa is due to the high rate of

⁶² Ibid.

⁶³ Ibid at 22.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid at 3.

⁶⁷ Keegan op cit note 1.

⁶⁸ Bopane op cit note 4.

⁶⁹ Keegan op cite note 1 at 7.

⁷⁰ SAPS crime stats for 2017/2018, Available at <https://www.saps.gov.za/services/crimestats.php>. (Accessed on 25 February 2019).

⁷¹ *Report of The Portfolio Committee on Police on The National Firearms Summit Held on 24 and 25 March (2015)* at 2682, Available at https://www.parliament.gov.za/storage/app/media/Docs/atc/609604_1.pdf, (Accessed on 5 August 2019).

violent crime within the country. Bopane's study⁷¹ shows that most people who legally possess a firearm did so for the purposes of self-defence due to the high crime rate prevalent in our country.

As more citizens acquire firearms for the purposes of self-defence, they also subject themselves to risk as criminals will steal their firearms from them and use them in the commission of other violent crimes.⁷² The authors study thus revealed that firearms are the most used weapons in the commission of violent crimes in South Africa. Keegan's study⁷³ is of the same stance. It can be deduced that if we reduced the rate of violent crime, we would also reduce the proliferation rate of both legal and illegal firearms in South Africa. A practical way to reduce that high crime rate would be to have an effective police service and to ensure the FCA is being effectively enforced.

If the Act was effectively enforced, then the ports of entry would be better policed and stricter border control would occur. Bopane and Keegan's study failed to consider that the high proliferation rate of illegal firearms in South Africa could also possibly be due to the ports of entry issue addressed by Minaar. Due to the high number of illegal weapons passing our ports of entry, the proliferation rate of illegal firearms in the country increases. This will support Bopane's and Keegan's view that a high proliferation rate correlates with a high violent crime rate, however, it is not only because citizens are acquiring firearms for self-defence. It is also because of the lack of policing at our ports of entry. This will be discussed further in Chapter 2 of this study.

The state was of the view that a high proliferation rate of firearms in the country will worsen if current legislation was not amended. Keegan's argument is that illegal guns will remain in circulation due to the high-volume present in the country, and that continue to find their way into the country.⁷⁴ What can then be deduced is that there may not actually be a need for an amendment, but rather more effective enforcement of current legislation and stricter policing at ports of entry in South Africa.

Immediately, from an analysis of the current sources, it can be deduced that there is currently a high proliferation rate of both legal and illegal firearms in South Africa due not only to the high rate of violent crimes, but also because our ports of entry having poor policing and check

⁷¹ Bopane op cit note 4 at 3.

⁷² The Firearms Control Amendment Bill 2017, Background And Purpose 103 and Clause 13.

⁷³ Keegan op cit note 1.

⁷⁴ Keegan op cit note 1 at 7.

control. If we already have such a high proliferation rate of illegal guns in South Africa and criminals still have these guns, then what will our law-abiding citizens use to protect themselves from these armed criminals when the state enacts the Amendment Bill and prevents these citizens from owning a firearm for self-defence? What will then stop these law-abiding citizens themselves from getting an illegal firearm for self-defence purposes ? This will inevitably lead to an increase in the proliferation rate of illegal firearms in the country... And this is just one of the potential major adverse effects of enacting the Amendment Bill...Other effects will be investigated further in the study via means of a Section 36 Analysis.⁷⁵

1.6 RESEARCH QUESTION/S

The state is of the view that the current FCA needs to be amended or the high proliferation rate of firearms in the country will worsen and lead to an increase in the rate of violent crimes committed. In order to provide an analysis of this rationale, the following questions will need to be addressed:

- Why was there a proposed amendment to the current Firearms Control Act?
- Has the Firearms Control Act 60 of 2000 been effectively enforced?
- Specifically, why was it suggested that Sections 13 and 14 of the Firearms Control Act need to be repealed?
- Would the proposed amendment to the current Firearms Control Act have limited the right to freedom and security of a person and the right to life? (Section 36 Analysis)
- What would the potential impact on existing and prospective firearm owners have been if the proposed amendment was enacted? (Section 36 Analysis)

1.7 RESEARCH METHODOLOGY

The research method to be pursued in this dissertation will be that of desktop research based on primary and secondary sources. Legal journals, judgments, legislation, unpublished and published theses and internet sources will be reviewed and analysed with a view to answering the research questions. No empirical research will be done hence no ethical issues are foreseen for this study.

⁷⁵ Limitation Clause- Section 36 of the Constitution of the Republic of South Africa, 1996.

1.8 THEORETICAL/CONCEPTUAL FRAMEWORK

The nature of this study requires the study to be undertaken through a lens of doctrinal research and blackletter law. The study will involve an analysis of the rationale for amending the FCA. ‘Doctrinal research involves analysis of case law and legislation, ordering and systematising legal propositions and the study of legal institutions through legal reasoning or rational deduction.’⁷⁶ Since the study will be analysing legislation and systemising legal proposition from other authors in the area of firearm control, this study has a doctrinal framework.

‘The most traditional approach in a study is that of the “black letter” framework, which takes its name from the tendency of legalistic approaches to concentrate solely on the “letter of the law”.’⁷⁷ With black letter analysis, the focus is on primary sources which are namely case law, legislation and to an extent academic commentary. Since the FCA (legislation), journal articles (academic commentary) and Section 36 of the Constitution will be analysed for the purposes of this study, the blackletter framework becomes apparent. The FCA will be analysed to determine exactly what the letter of the law is when it comes to the ownership of firearms for the purposes of self-defence.

⁷⁶ Unknown Author 'Writing a law dissertation,' Available at <https://www.lawteacher.net/law-help/dissertation/writing-law-dissertation-methodology.ph>, (Accessed on 14 May 2019)

⁷⁷ Ibid.

CHAPTER 2

The Firearms Control Act

2.1 The Main Purpose of The Act:

In South Africa, many law-abiding citizens have an inherent fear of crime and violence and subsequently go through a mental process whereby they deplore crime, criminals and the like, and end up purchasing firearms for protection.⁷⁸ The South African government, through its Constitution⁷⁹, upholds the rights of South Africans and all those who live in it. As noted by Bopane:

‘Two of the most fundamental rights are the right to life⁸⁰ and the right to freedom and security of the person⁸¹, which further includes the right to be free from all forms of violence.⁸² The FCA was thus enacted to enhance the constitutional rights to life⁸³ and bodily integrity⁸⁴, improve control over legally possessed firearms to prevent crime involving the use of firearms, establish a comprehensive and effective system of firearm control and management, and ensure efficient monitoring and enforcement of legislation pertaining to the control of firearms.’⁸⁵

In South Africa, the privilege to possess a firearm is not guaranteed by law. In terms of Section 6(2)⁸⁶ of the FCA, only firearm applicants who are in possession of a Competency Certificate and have no criminal record may apply for a firearm licence. ‘An applicant will need to provide genuine reasons to possess a firearm for purposes such as hunting, target shooting, collection and self-defence.’⁸⁷ This is a valuable provision in the FCA because prior to the FCA, most small security companies did not bother checking if potential staff had any criminal record or were competent in the handling of firearms.⁸⁸

⁷⁸ May & Jarjoura op cit note 18.

⁷⁹ The Constitution of the Republic of South Africa, 1996.

⁸⁰ Section 11 of the Constitution of the Republic of South Africa, 1996.

⁸¹ Section 12 of the Constitution of the Republic of South Africa, 1996.

⁸² Section 12 (1)(c) of the Constitution of the Republic of South Africa, 1996.

⁸³ Section 11 of the Constitution of the Republic of South Africa, 1996.

⁸⁴ Section 12 (2) of the Constitution of the Republic of South Africa, 1996.

⁸⁵ Bopane op cit note 4 at 38.

⁸⁶ Section 6(2) of the Firearms Control Act 60 of 2000: Subject to Section 7, no license may be issued to a person who is not in possession of the relevant competency certificate.

⁸⁷ Ibid.

⁸⁸ A Minaar ‘The impact of firearms’ controls on the South African private security industry’ (2008) Volume 21 issue 3, *Acta Criminologica: Southern African Journal of Criminology*, 109.

According to Bopane, there are three categories of people who possess firearms in South Africa.⁸⁹ ‘There are individuals who possess duly registered firearms, individuals who are illegally in possession of firearms and there are the armed forces that are issued with firearms by the state.’⁹⁰

The policing of firearms is meant to ensure the safety of all citizens in the country and to address all factors that threaten the safety of the community. In order for there to be effective policing of firearms, the FCA is used as the primary source of reference, but the Act was not met with much enthusiasm by many firearm owners, firearm dealers and firearm manufacturers when it was promulgated.⁹¹ Pro-gun groups and anti-gun groups were vocal about their opposition to this Act, albeit opposing it from two disparate positions.⁹² The pro-gun groups viewed the FCA during its consultation phase as a veiled attempt by the ANC-led government to move South Africa towards a civilian gun free society.⁹³ Gun Free South Africa opposed the Act as they felt the Act would not effectively manage firearm control in South Africa.⁹⁴ The main purpose of the FCA however is essentially to reduce the high proliferation rate of firearms within the country and to bring about effective management of firearm control.⁹⁵

The South African Constitution provides for the right of self-defence but does not clearly spell out how one may do so.⁹⁶ It is of interest that neither the pro-gun nor the anti-gun lobbies either pushed or opposed the constitutional understanding of self-defence to include a constitutional right to bear and use arms.⁹⁷

2.2 Reason for the proposed amendment:

2.2.1 The Proliferation of Firearms in South Africa

In South Africa, crime is currently at an all-time high, especially interpersonal violent crimes like murder, attempted murder, armed robberies, carjacking and culpable homicide.⁹⁸

⁸⁹ Bopane op cit note 4 at 11.

⁹⁰ Ibid.

⁹¹ Bopane *Looking Forward* op cit note 1 at 118.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Overview of Section 2 of the Firearms Control Act 60 of 2000.

⁹⁶ A Minaar ‘The struggle to legislate for stricter gun control measures and the South African Firearms Control Act 60 of 2000’ (2006) Volume 1 Issue 19, *Acta Criminologica: Southern African Journal of Criminology* 46.

⁹⁷ Ibid.

⁹⁸ Bopane op cit note 4 at 12.

According to the SAPS annual report (2017/2018)⁹⁹, a total of 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases were reported in South Africa. This amounted to roughly 56 murders per day.¹⁰⁰ South African citizens are being murdered and robbed daily which is an infringement on their right to safety. ‘Gun-related murders are the leading cause of violent death, placing the country second in the world after the United States of America.’¹⁰¹ In addition, one in three murders are committed with a firearm being used as the murder weapon.¹⁰²

For citizens, a firearm provides a means to reduce fear and regain some defence against ever-present threats to safety.¹⁰³ Citizens thus begin to feel a need to own a firearm for protection.¹⁰⁴ The adverse effect of this is that criminals rob firearm owners of their firearm and then use these firearms in the commission of future violent crimes.¹⁰⁵ This then inevitably contributes to the proliferation of illegal firearms in the country.

According to Scott, ‘the proliferation of small arms is generally associated with conflict and post conflict situations, as well as crimes like robberies, burglaries, hijacking, drug trafficking, gang related violence, money laundering and stock theft.’¹⁰⁶ The high proliferation rate of firearms in South Africa has thus fed the growth of violent crimes such as armed robberies and murder.¹⁰⁷ Although South Africa’s homicide rates have declined consistently since democracy, they remain among the highest in the world.¹⁰⁸ Our homicide rates are four times higher than the global average at more than 30 per 100 000 people.¹⁰⁹

The theft and loss of firearms from government departments such as the SAPS, SANDF, Private Security Industry (PSI) and private individuals, is the main source of the illegal pool of

⁹⁹SAPS annual report for 2017 available https://www.gov.za/sites/default/files/gcis_document/201810/saps-annual-report.pdf

¹⁰⁰ Kempen A ‘Crime Statistics 2017/2018 - finding the truth in the complicated business of crime stats and the public’s perceptions about crime’ (2018) Volume 111 Number 11, *Servamus Community-based Safety and Security Magazine* 23.

¹⁰¹ L Snodgrass ‘Illegal guns fuel violent crime, wreak deadly havoc in South Africa’ *Mail and Guardian* online 14 October 2015, Available at <https://mg.co.za/article/2015-10-14-illegal-guns-fuel-violent-crime-wreak-deadly-havoc-in-south-africa>, (Accessed on 12 August 2019.)

¹⁰² *Report of The Portfolio Committee* op cit note 66.

¹⁰³ May & Jarjoura op cit note 18.

¹⁰⁴ Bopane op cit note 4 at 58.

¹⁰⁵ *Ibid* at 32.

¹⁰⁶ N Scott ‘Implementing the Southern Africa Firearms Protocol’ (2003) ISS paper 83. *Pretoria Institute for Security Studies* 7.

¹⁰⁷ Keegan op cit note 1 at 7.

¹⁰⁸ Snodgrass op cit note 97.

¹⁰⁹ *Ibid*.

firearms in South Africa.¹¹⁰ In 2012, the then Minister of Police, Mr. Nathi Mthethwa, cautioned the police to strengthen firearms control measures to curb loss of firearms within their own ranks.¹¹¹ The Minister noted that the loss of firearms within the SAPS was a worrying factor because these firearms then become illegal firearms and contribute to the increase of violent crime. The Minister noted that it will be sufficient enough for criminals to commit violent criminal acts if just one firearm was lost or stolen from within the SAPS, and that criminals just need that one firearm and not an avalanche of weapons to rob and kill citizens.¹¹²

Each year, more firearms are lost or stolen than recovered. According to the SAPS annual report for the 2017/2018 financial year, 'a total of 800 SAPS-owned firearms and 186 firearms, owned by other departments, were reported as stolen or lost in the reporting period.'¹¹³ It has been indicated that the most prevailing incidents of negligence include incidents where firearms were lost or stolen because 'members were drunk or because there were burglaries at members unlocked residence.'¹¹⁴

Between 2016 and 2019, theft and loss of weapons in the SANDF totals 58, and worryingly includes assault rifles and machineguns. The unrecovered arms subsequently end up in the wrong hands. Defence and Military Veterans Minister, Nosiviwe Mapisa-Nqakula, revealed that weapons stolen from the SANDF have been used in cash in transit heists more frequently.¹¹⁵ It becomes a challenge for authorities to improve control over illegal firearms due to the huge number of legal firearms which enter the illegal pool through smuggling, loss and thefts.¹¹⁶

The proliferation of civilian firearms in South Africa is not likely to decrease in the foreseeable future. It has been indicated that in the 2017/18 financial year, 148 214 requests were made for a new firearm licence, and these firearms 'continue to become arsenals for criminals who obtain them from legal owners through loss, negligence or robberies.'¹¹⁷ The annual report acknowledged the fact that there is a correlation between firearm ownership and firearm-related injuries and mortalities.¹¹⁸ According to Bopane, 'this correlation causes policing challenges

¹¹⁰ L Tracey 'Implementing the South African firearms control: A complete failure or work in progress?' (2011) *Pretoria Institute for Security Studies* 1.

¹¹¹ Bopane op cit note 4 at 14.

¹¹² Ibid.

¹¹³ SAPS annual report 2017 op cit note 95.

¹¹⁴ Bopane op cit note 4 at 14.

¹¹⁵ SAPS annual report 2017 op cit note 95.

¹¹⁶ C Gould & G Lamb 'Hide and seek: Taking account of small arms in Southern Africa.' (2004) *Pretoria Institute for Security Studies* 133.

¹¹⁷ SAPS annual report 2017 op cit note 95.

¹¹⁸ Ibid.

and exposes the communities to firearm related crimes such as aggravated robberies, assaults, attempted murder, homicides and murders.¹¹⁹ It is important to strengthen firearm legislation and restrict access to firearms, as essential steps in violence reduction in South Africa.¹²⁰ The state thus sought to amend the current FCA in order to address the proliferation of firearms within the country.

2.2.2 The Efficacy of The Firearms Control Act

The main purpose of the FCA is to ‘enhance the constitutional rights to life and bodily integrity; prevent the proliferation of illegally possessed firearms by providing for the removal of those firearms from society by improving control over legally possessed firearms and to prevent crime involving the use of firearms.’¹²¹

The SAPS developed a five-pillar firearm strategy as a framework for the implementation of the FCA.¹²²

- ‘• Pillar 1 of the strategy was meant to develop processes for the smooth flow of firearm applications process;
- Pillar 2 aimed to develop capacity in the form of human and physical resources to administrate the process;
- Pillar 3 aimed to reduce and eradicate the illegal pool and the criminal use of firearms;
- Pillar 4 promoted the prevention of crime and violence through awareness and social crime prevention partnerships; and
- Pillar 5 was aimed at setting up regional firearm interventions.’

In his study¹²³ in 2014, Bopane conducted interviews with various relevant stake holders to determine if the FCA had been effectively enforced and implemented in accordance with the five-pillar strategy.

The participants were drawn from the Central Firearm Register where the policies around the control of firearms are developed, the SAPS Gauteng Provincial Office, which is responsible for implementation of these policies, as well as operational SAPS members. In addition to the police officials, the remainder of the participants came from hunting associations, shooting

¹¹⁹ Bopane op cit note 4 at 20.

¹²⁰ Bopane *Looking Forward* op cit note 1 at 118.

¹²¹ P Goliath ‘Firearms control in South Africa.’ (2004) *Pretoria Institute for Security Studies* 20.

¹²² Gould & Lamb op cit note 12 at 147.

¹²³ Bopane op cit note 4.

sport associations, firearm dealers, a research specialist on firearm control in Africa and members of the public, who are the end-users of firearms.¹²⁴

Regarding the issue of regulating firearm control in South Africa, two thirds of police participants indicated that the FCA was ineffective.¹²⁵ The participants noted that access to firearms was easy and that the appeal board was lenient. Further, it was noted that a poor filing system exists and the firearms database was outdated.¹²⁶ There was also poor process control systems which were pervasive and there was a lack of training for police officers.¹²⁷ The majority of the non-police participants disagreed and stated that the FCA had been effective in regulating firearm control in South Africa.¹²⁸ Matzopoulos agreed with the non-police participants' perception and cited findings from his research¹²⁹ that there is a 'statistically significant year-on-year decrease of 13.6 percent per annum in the number of people shot and killed by firearms during the study period.'¹³⁰ He deduced from his research data that this downward trend can only plausibly be attributed to the effect of the FCA.

Regarding whether the SAPS effectively enforces the FCA, just more than half of the police participants answered in the affirmative. Participants wanted stricter control measures in place as they felt that firearm owners are not sufficiently visited to ensure that the safes where the firearms are kept are up to standard.¹³¹ They further noted that the conditions that must be met to obtain the competency certificate have to be consistently adhered to.¹³² The non-police participants shared the same sentiments as the police participants.

It was of concern to all participants that there were also officials who act as catalysts for the poor implementation of the FCA.¹³³ According to Bopane, 'both groups of participants agreed that some police officials are not doing too well in the enforcement of the FCA and they pointed to the unfocused manner in which police roadblocks, which are supposed to be an effective tool in curbing and disrupting movements of the firearms, are conducted.'¹³⁴ Further, it was

¹²⁴ Bopane *Looking Forward* op cit note 1 at 121.

¹²⁵ Ibid at 122.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ R Matzopoulos 'Firearm and non-firearm homicide in South African cities: A retrospective population-based study'(2014)Gun free South Africa article available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953758>

¹³⁰ Ibid.

¹³¹ Bopane *Looking Forward* op cit note 1 at 122.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

noted that border control should be stepped up to minimise the influx of firearms into the country; and that firearm-specific roadblocks should be conducted .

One of the main factors which contribute to the high proliferation rate of firearms in South Africa is poor borderline control and ineffective policing at ports of entry within the country.¹³⁵ What was discovered in Minaar's study is that the main problem was related to the shortage in human resources.¹³⁶ Allied to this was the low (in general terms) levels of expertise of Border Police personnel.¹³⁷ What is suggested is that the FCA had the provisions in place to deal with firearms coming into the Republic through our ports of entry, but FCA was ineffectively enforced.

For the purposes of Minaar's study¹³⁸, Durban harbour and OR Tambo were used as the ports of entry for assessment. It was discovered that firearm detection equipment was not used optimally, and usage figures were low¹³⁹. The reasons for this was because the police budget at the time made no allowance for the installation of this equipment during the normal flow-control process and that the use of optic fibre cameras was time intensive¹⁴⁰. While it is possible to check the registration number of every vehicle passing through a port-of-entry, it was not physically possible or feasible to search every vehicle or all passenger luggage with an optic fibre camera.¹⁴¹

Moreover, at the time a major impediment to the use of equipment by SAPS was the actual lack of information on the import and export of commercial.¹⁴² This problem was compounded by the fact that the process of collecting, collating and delivering the existing information occurred on different SAPS databases, with the fragmentation continuing in the dissemination of such information to the different ports-of-entry.¹⁴³ This impacted negatively on effective utilisation at ground level.¹⁴⁴

From Minaar's study, it can be deduced that the FCA does have the necessary provisions in place to deal with firearm control at ports of entry, but there is a lack of resources and police

¹³⁵ Minaar op cit note 33 at 20.

¹³⁶ Ibid at 21.

¹³⁷ Ibid.

¹³⁸ Minaar op cit note 33.

¹³⁹ Ibid at 21.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid at 22.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁴ Ibid at 3.

personnel to effectively carry out their duties. Firearm detection equipment was available but was not used optimally. It was also not possible to search every vehicle with an optic camera as there was not enough police personnel. The FCA and the SAPS had the provisions and measures in place to deal with firearm control at ports of entry, but there was not enough budget or personnel to carry out this mandate.

In South Africa, pistols and revolvers are smuggled through the sea and air borders from countries like the United States, China, and Eastern Europe.¹⁴⁵ According to Gamba:

‘The main source of illegal firearms in the country prior to 1994 was derived from outside the South African borders, with supply mostly destined for political and liberation movements.¹⁴⁶ After the 1994 elections, the socio-political and economic situation in South Africa gave rise to criminals who were familiar with firearms contacts outside the country, as well as the old routes used during the liberation struggle to continue with firearm smuggling for criminal use.’¹⁴⁷

The overall question remains as to whether the FCA has been effective in dealing with the high proliferation rate of firearms within South Africa. The high proliferation rate of illegal firearms within the country has fed the growth of violent crimes such as armed robberies, murder and car and truck hijackings.¹⁴⁸ It has also advanced the growth of partner and acquaintance violence, which currently accounts for over half of all South African murders.¹⁴⁹

Given the fact that the number of murders, attempted murders and aggravated robbery cases have increased each year¹⁵⁰, it is a logical inference that the state and the FCA has clearly failed in its endeavours to curb the proliferation rate of firearms within the country and reduce the rate of violent crimes. Citizens continue to acquire a firearm for the purposes of self-defence thereby increasing the proliferation rate of legal firearms in the country. The possession of a firearm for the purposes of self-defence then becomes a contributory factor that increases the proliferation rate of illegal firearms in the country because criminals then rob firearm owners of their firearm and use these firearms in the commission of future violent crimes.¹⁵¹ Due to the remaining high proliferation rate of firearms within South Africa, the state wanted to enact

¹⁴⁵ V Gamba ‘Society under siege: Managing Arms in South Africa.’ (2000) Pretoria Institute for Security Studies 7.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid at 17.

¹⁴⁸ Keegan op cit note 1 at 7.

¹⁴⁹ Ibid.

¹⁵⁰ In 2008 there were 18 084 murders, 18 140 attempted murders and 120 920 robberies with aggravating circumstances reported. In 2018, 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases reported. The trend indicates an increase over the 10-year period.

¹⁵¹ Bopane op cit note 4 at 32.

the proposed Bill as they felt that the FCA had not fulfilled its mandate of curbing the proliferation of firearms in the country.

CHAPTER 3

The Amendment Bill

3.1 The National Firearm Summit 2015

On the 24th and 25th of March 2015, The Portfolio Committee on Police, in conjunction with the Civilian Secretariat for Police, hosted the National Firearm Summit. The Summit was hosted so that the relevant stakeholders and ordinary South Africans could have the opportunity ‘to embark on a dialogue on the kind of society they wish to live in and enjoy, within the context of firearm control.’¹⁵² The Summit was hosted with a mutual understanding amongst the relevant stakeholders that regulating gun control is not solely the responsibility of the State.

All stakeholders have a role to play in ensuring that effective measures are put in place to regulate the ownership and distribution of firearms and to prevent and reduce the impact of gun violence on society.¹⁵³ At the Summit, twelve presentations were delivered. These presentations were done by government leaders, civil society experts and academics. These presentations were done ‘to guide the two-day structured discussions around the emerging themes surrounding gun control in South Africa.’¹⁵⁴ Some of the key points from these stakeholders are discussed below.

3.2 Key findings from the National Firearm Summit 2015

The Civilian Secretariat for Police, Ms R Fourie, noted that the level of violence in South Africa is far too high.¹⁵⁵ She stated that ‘although there has been a general reduction in violent crime, figures for murder show an increase from 16 259 in 2012/13 to 17 068 in 2013/14, which means that the average number of murders per day has increased from 45 to 47.’¹⁵⁶ This figure is five times higher than global average of six (6) murders per day.’¹⁵⁷ In the 2017/2018 financial year, a total of 20 336 murders were reported.¹⁵⁸ This amounted to roughly 56 murders per day.¹⁵⁹ In addition, one in three murders are committed with a firearm being used as the murder weapon.¹⁶⁰

¹⁵² *Report of The Portfolio Committee* op cit note 66 at 2679.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid* at 2682.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ SAPS Crime stats for 2017/2018 available at <https://www.saps.gov.za/services/crimestats.php>.

¹⁵⁹ Kempen op cit note 96.

¹⁶⁰ *Report of The Portfolio Committee* op cit note 66.

Ms Kirsten of Gun Free South Africa informed the Summit that ‘firearm control is primarily focused not on people, but on the weapons to reduce gun violence and the number of people affected by gun violence.’¹⁶¹ She subsequently highlighted three intervention strategies to reduce the impact of gun violence¹⁶²:

1) *‘Reducing Diversion’*: In Kirsten’s view, ‘every illegal firearm begins as a legal weapon.’¹⁶³ Most firearms in South Africa, that are recovered in crime, appear to have been legally owned in the past by state officials or civilians.’¹⁶⁴ This is the same finding in other countries as well.¹⁶⁵ She noted that South Africa has a high proliferation rate of firearms and that the diversion of firearms from their legal owners, often through loss and theft, contributes significantly to the illegal pool of firearms, and is a global phenomenon.¹⁶⁶ She contended that ‘in South Africa, one of the largest sources of illegal firearms is loss and theft from civilian owners’.¹⁶⁷ ‘Measures to reduce the leakage of legal to illegal firearms would include good record keeping and good marking and tracing of firearms.’¹⁶⁸

2) *Mopping up illegal pool*: Specialised interventions and police actions play a fundamental role in mopping up the illegal pool of firearms, however, Kirsten’s view is that the best interventions are firearm amnesties. ‘A link exists between the legal and illegal markets hence firearm amnesties have been viewed by most governments as tools to control the legal and illegal pool of guns, and have been used around the world for this purpose.’¹⁶⁹ Kirsten’s argument is that an amnesty may help to reduce or dispose of illegal firearms and superfluous guns, such as old stock held by the military or the police.¹⁷⁰

3) *Closing leaking tap*: According to Kirsten, ‘it is important to know where and how guns move from a legal to the illegal pool, in order to identify methods to stop the leakage. Most leakages occur across borders, as a result of corruption within the chain, or as a result of loss or theft.’¹⁷¹ Stricter border control measure need to be put in place.

¹⁶¹ *Report of The Portfolio Committee* op cit note 66 at 2685.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

A noteworthy point was made by Advocate Hood, who stated that ‘some of the FCA Regulations are not yet fully promulgated, which means that the Regulations cannot impact effectively on firearms-related crime.’¹⁷² The basics must be in place first, before changes are made. Following the Summit, and after hearing these key-points, the Minister of Police appointed a firearm committee to review existing legislation for the control of firearms.¹⁷³ This was also part of the Ministers plan to deal with the problem of proliferation of firearms in South Africa.¹⁷⁴ The committee established in its research that a large number of deaths within the country were as a result of gun violence and that evidence suggests that if there is strengthening of national gun laws, coupled with effective enforcement of these gun laws, then there will be a reduction of gun related deaths and violent crimes.¹⁷⁵ The committee’s recommendations have been incorporated into the proposed Bill.

An important recommendation made by the committee is that laws pertaining to firearms need to be enforced. If the current FCA is sufficient and has just not been properly enforced, then it would explain why there is still a continuous high proliferation rate of firearms and violent crimes with the use of a firearm. There would be no purpose in introducing or amending legislation if the current legislation was not enforced correctly.

One of the major highlights from the proposed Bill is the state’s intention to repeal Section 13 and Section 14 of the FCA.¹⁷⁶ These two Sections allow a law-abiding citizen to possess a firearm for the purposes of self-defence. In accordance with the purposes of the proposed Bill, the states thinking was that by preventing citizens from owning firearms for self-defence, criminals would no longer be able to steal these firearms from citizens and use them in the commission of violent crimes.¹⁷⁷ The rationale was that there will be a decrease in the proliferation rate of firearms and the rate of violent crimes in the country.

In terms of the proposed Bill, Section 13 and 14 of the principal Act was repealed and replaced with Section 11A. Section 11A essentially provided that the Registrar may not issue a license that authorises the possession of a firearm unless the Registrar is satisfied that the applicant has a valid reason for possessing a firearm.¹⁷⁸ Section 11A (2)(b) of the proposed Bill stated that an applicant will not constitute as having a valid reason for possessing a firearm if it is for the

¹⁷² *Report of The Portfolio Committee* op cit note 66 at 2687.

¹⁷³ The Firearms Control Draft Amendment Bill 2017 ,Background and Purpose at 103.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ The Firearms Control Draft Amendment Bill 2017, Clause 13.

¹⁷⁷ The Firearms Control Draft Amendment Bill 2017, Background and Purpose 103 and Clause 13.

¹⁷⁸ Section 11A The Firearms Control Draft Amendment Bill 2017.

purposes of self-defence or protection of any other person. This essentially means that a firearm license will no longer be issued for the purposes of self-defence.

Section 2(a) of the FCA states that the Act was promulgated to enhance the constitutional rights to life and bodily integrity. One may interpret this Section to mean that the Act was promulgated to enhance the right to life and bodily integrity by including certain provision in the Act to help reduce the high proliferation rate of illegal firearms in the country which will then reduce the high violent crime rate. This may then result in less citizens being murdered or robbed with the use of a firearm.

Another interpretation that can be deduced from this Section is that possessing a firearm for the purposes of self-defence allows a citizen in certain circumstance to protect their own life. This is done by defending yourself with the use of your firearm, from any lethal attack. This enhances a citizen's constitutional right to life since they may use their firearm to protect their own lives when it is justifiable to do so. It will be argued that by preventing citizens who wish to own a firearm for the purposes of self-defence, the proposed Bill may infringe on that person's right to life and their right to bodily integrity. In order to determine if this a justifiable infringement, the Limitation Clause, in terms of Section 36 of the Constitution¹⁷⁹, will be used.

3.3 Section 36 Analysis

Constitutional rights and freedoms are not absolute in South Africa.¹⁸⁰ The constitutional rights and freedoms have 'boundaries set by the rights of others, and by important social concerns, such as public order, safety, health and democratic values.'¹⁸¹ In the South African Constitution, there is a general limitation section¹⁸² which sets out specific criteria for the justification of restrictions of the rights in the Bill of Rights.

'The Constitution provides for the limitation of fundamental rights by way of a general limitation section. It is general because it applies to all the rights in the Bill of Rights and provides that all the rights may be limited according to the same set of criteria.'¹⁸³

Essentially, the word 'limitation' is a synonym for the word 'infringement'.¹⁸⁴ 'A law that limits a right thereby infringes the right, however, the infringement will not be unconstitutional

¹⁷⁹ Section 36 of the Constitution of the Republic of South Africa, 1996.

¹⁸⁰ I Currie & J De Waal *The Bill of Rights Handbook* 6 ed (2016) 150.

¹⁸¹ Ibid.

¹⁸² Section 36 of the Constitution of the Republic of South Africa, 1996.

¹⁸³ Currie & De Waal op cit note 176 at 152.

¹⁸⁴ Ibid at 151.

if it takes place for a reason that is accepted as a justification for infringing rights in an open and democratic society based on human dignity, equality and freedom.’¹⁸⁵ Where an infringement can be justified in accordance with the criteria in terms of Section 36, it will be constitutionally valid. There must be strong reasoning for limiting a right.¹⁸⁶

The South African Constitution permits the limitation of rights, by law, but requires the limitation to be justifiable. ‘This means that the limitation must serve a purpose that most people would regard as compellingly important.’¹⁸⁷ The Court in *S v Manamela* held that:

‘However important the purpose of the limitation, restrictions on a right will not be justifiable unless there is good reason for thinking that the restriction would achieve the purpose it is designed to achieve, and that there is no other ‘realistically available’ way in which the purpose can be achieved without restricting the right.’¹⁸⁸

By preventing citizens from owning a firearm for the purposes of self-defence, the proposed Bill may infringe upon a person right to life¹⁸⁹ and the right to freedom and security of the person¹⁹⁰ (specifically bodily integrity¹⁹¹ and the right to be free from all forms of violence¹⁹²). A Section 36 Analysis will be done in order to determine if this is a justifiable limitation on these rights. Each element of Section 36 will be applied and discussed hereunder.

Section 36 of the Constitution states that:

36.

‘(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;

¹⁸⁵ Section 36(1) of the Constitution of the Republic of South Africa, 1996.

¹⁸⁶ Currie & De Waal op cit note 176 at 151.

¹⁸⁷ Ibid.

¹⁸⁸ *S v Manamela* 2000 (3) SA 1 (CC) at par 32.

¹⁸⁹ Section 11 of the Constitution of the Republic of South Africa, 1996.

¹⁹⁰ Section 12 of the Constitution of the Republic of South Africa, 1996.

¹⁹¹ Section 12 (2) (b) of the Constitution of the Republic of South Africa, 1996.

¹⁹² Section 12 (1)(c) of the Constitution of the Republic of South Africa, 1996.

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.’

3.3.1 Section 36(1)

Only a ‘law of general application’ can validly limit a right in the Bill of Rights. This is the minimum requirement for the limitation of a right.¹⁹³ ‘Laws of general application are all forms of legislation (delegated and original), the common law and customary law.’¹⁹⁴ The law must be general in its application. This essentially entails that, at a minimum, the law must apply impersonally and must apply equally to all.’¹⁹⁵ The law must not be arbitrary in its application. Since the proposed Bill is a piece of proposed legislation, the proposed Bill can limit the rights in the Bill of Rights. The proposed Bill would have been applicable to all citizens who possess or wished to possess a firearm and was not unequal or arbitrary in its application as no particular people or groups were being specifically targeted.

In terms of Section 36 of the Constitution, the proposed Bill ‘must be reasonable in the sense that it should not invade rights any further than it needs to in order to achieve its purpose.’¹⁹⁶ In order to satisfy the limitation test, it must be shown that the proposed Bill ‘serves a constitutionally acceptable purpose and that there is sufficient proportionality between the harm done’¹⁹⁷ by the proposed Bill (the infringement of the right to life and bodily integrity) and the benefits it is designed to achieve (reduce the overall proliferation rate of firearms within the country and the rate of violent crimes committed with the use of a firearm).

3.3.2 Section 36(1)(a): The nature of the right

‘The proportionality enquiry required by Section 36, involves weighing up the harm done by a law against the benefits that the law seeks to achieve.’¹⁹⁸ Some rights weigh more heavily than others. It will therefore be more difficult to justify the infringement of such rights than other, less weighty rights.’¹⁹⁹

The proposed Bill sought to repeal Sections 13 and 14 of the FCA. These two Sections allow a law-abiding citizen to possess a firearm for the purposes of self-defence. Sections 13 and 14

¹⁹³ Currie & De Waal op cit note 176 at 155.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid at 156.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid at 164.

¹⁹⁹ Ibid.

of the FCA were to be replaced by Section 11A of the proposed Bill. Section 11A (2)(b) of the proposed Bill states that an applicant will not constitute as having a valid reason for possessing a firearm if it is for the purposes of self-defence or protection of any other person. By preventing citizens from owning a firearm for the purposes of self-defence, the proposed Bill infringes a person's right to bodily integrity,²⁰⁰ their right to be free from all forms of violence²⁰¹ and their right to life²⁰².

The right to bodily integrity (Section 12(2)(b) of the Constitution) must²⁰³ be read with Section 12(1)(c) of the Constitution, which states that every individual has the right to be free from violence. Bodily integrity is put in jeopardy by violence. There is therefore no need to consider whether some or other forms of violent assault constitute a violation of the right to bodily integrity.²⁰⁴ When a citizen would be placed in a situation where their life is in danger and a violent or lethal attack is imminent, a citizen will no longer be able to use their firearm to defend themselves, if the proposed Bill was enacted. This then places a citizen in a position where they cannot be free from violence or the lethal attack, unless an avenue of escape is available or the citizen has other means to protect themselves in the situation, such as using pepper spray. Pepper spray is not going to be as effective as using a firearm, unless the offender is within sufficient proximity to you. A firearm gives you better range and can be used early enough to avoid an attack. If a criminal is walking up to you with a firearm, you can immediately draw your firearm and defend yourself before you are attacked. With pepper spray or a tazer, you would have to wait until the criminal is close enough, by which time it may be too late, and you may either get robbed or killed.

In *S v Makwanyane*, the court held that:

'The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in the Bill of Rights.'²⁰⁵

The right to life in the South African Constitution is textually unqualified.²⁰⁶ The right to life may only be limited in terms of the limitation clause.²⁰⁷ 'Given the importance of the right and the total and irremediable negation of it caused by an infringement, the justification for a

²⁰⁰ Section 12(2) of the Constitution of the Republic of South Africa, 1996.

²⁰¹ Section 12(1)(c) of the Constitution of the Republic of South Africa, 1996.

²⁰² Section 11 of the Constitution of the Republic of South Africa, 1996.

²⁰³ Emphasis added

²⁰⁴ Currie & De Waal op cit note 176 at 164.

²⁰⁵ *S v Makwanyane* 1995 (3) SA 391 (CC).

²⁰⁶ Currie & De Waal op cit note 176 at 259.

²⁰⁷ Ibid.

limitation would have to be exceptionally compelling.’²⁰⁸ The clearest case of a permissible limitation is the law permitting killing someone to save one’s own life or someone else’s life.²⁰⁹ In *Makwanyane*²¹⁰, it was held that ‘the law may legitimately permit killing in self-defence.’

By not allowing a citizen to possess a firearm for the purposes of self-defence, the argument that is put forward is that the state may be potentially infringing upon a person’s right to life who wanted to possess or did possess a firearm, for the purposes of self-defence. If a person was being robbed and was placed in a life-threatening situation, a person would no longer be able to rely upon their firearm to defend themselves and protect their life as they would no longer be allowed to possess a firearm for the purposes of self-defence. They would have to use something that is less effective in the circumstances such as pepper spray or a tazer. Section 2 of the FCA clearly states that one of the purposes of the FCA is to ‘enhance the constitutional right to life.’²¹¹ This would be in line with possessing a firearm for the purpose of self-defence, as a firearm allows you in certain circumstance to protect your own life, by defending yourself from any lethal attack.

3.3.3 Section 36(1)(b): The importance of the purpose of the limitation

‘Reasonableness requires the limitation of a right to serve some purpose.’²¹² The purpose of preventing a citizen from owning a firearm for the purposes of self-defence, in accordance with the purposes of the proposed Bill, is that by preventing citizens from owning firearms for self-defence, criminals will no longer be able to steal these firearms from citizens and use them in the commission of violent crimes.²¹³ The rationale is that there will be a decrease in the proliferation rate of firearms within the Republic and the number of violent crimes such as murder.²¹⁴

‘Gun-related murders are the leading cause of violent death, placing the country second in the world after the US.’²¹⁵ Although there has been a general reduction in violent crime, figures for murder show an increase from 16 259 in 2012/13 to 17 068 in 2013/14, which means that the

²⁰⁸ Currie & De Waal op cit note 176 at 260.

²⁰⁹ Ibid.

²¹⁰ *S v Makwanyane* supra 201 at par 138.

²¹¹ Section 2(a) of the Firearms Control Act 60 of 2000.

²¹² Currie & De Waal op cit note 176 at 166.

²¹³ The Firearms Control Amendment Bill 2017, Background and Purpose 103 and Clause 13.

²¹⁴ Ibid.

²¹⁵ Snodgrass op cit note 97.

average number of murders per day has increased from 45 to 47.²¹⁶ This figure is five times higher than global average of six (6) murders per day.²¹⁷ In the 2017/2018 financial year²¹⁸, a total of 20 336 murders were reported. In addition, one in three murders are committed with the aid of a firearm, being used as the murder weapon.²¹⁹ Considering that the figure for murders per day in South Africa is five times higher than the global average and that 33% of murders are committed with the aid of a firearm, it is deduced that the importance of the purpose of the limitation is sufficiently grave.

3.3.4 Section 36(1)(c) : The nature and extent of the limitation

This factor will require an assessment of the way in which the limitation affects the rights concerned. It will need to be considered whether the limitation is a serious or relatively minor infringement of the rights concerned. According to Currie and De Waal:

‘To determine whether the limitation does more damage to the rights than is reasonable for achieving its purpose first requires an assessment of how extensive the infringement is.’²²⁰ This assessment is a necessary part of the proportionality enquiry because proportionality means that the infringement of rights should not be more extensive than is warranted by the purpose that the limitation seeks to achieve.²²¹

The proportionality enquiry will require an assessment as to whether there is proportionality between the harm done by repealing Section 13 and 14 of the and the purpose the proposed Bill seeks to achieve. If the harm is disproportionate to the benefits, the limitation is not justifiable.

The harm done by repealing Sections 13 and 14 of the FCA is that it will prevent a citizen from continuing to own a firearm for the purposes of self-defence and may potentially thereby infringe upon their right to life, their right to bodily integrity and to be free from all forms of violence. The envisaged benefit from this harm is that it will lead to a decrease in the proliferation rate of firearms within the Republic and the amount of violent crimes. The states rationale for wanting to enact the proposed Bill was that by preventing citizens from owning

²¹⁶ *Report of The Portfolio Committee* op cit note 66.

²¹⁷ *Ibid.*

²¹⁸ SAPS Crime stats for 2017/2018 available at <https://www.saps.gov.za/services/crimestats.php>.

²¹⁹ See note 58.

²²⁰ Currie & De Waal op cit note 176 at 168.

²²¹ *Ibid.*

firearms for self-defence, criminals would no longer be able to steal these firearms from citizens and use them in the commission of violent crimes.²²²

Whilst criminals will no longer be able to steal these firearms from citizens and use them in the commission of other violent crimes, it does not necessarily mean that there will be a reduction in the number of violent crimes committed with the use of a firearm. What still needs to be considered is the fact that once citizens have had their firearms taken away, and no new firearm licenses are issued, criminals will still remain in possession of their own illegal firearms and will continue to use them to commit violent crimes such as armed robberies and murder. The only difference is that a criminal will now no longer be able to rob a person of their firearm anymore since the person will not be in possession of a firearm for the purposes of self-defence. This then leaves people, who once owned a firearm for the purposes of self-defence, in a position of vulnerability. When they are faced with any lethal attack or violent situation, they will no longer have their firearm to rely upon.

Furthermore, criminals stealing firearms from registered firearm owners is not the only reason why there is a high proliferation of firearms within South Africa. There are other factors that lead to the increased proliferation of firearms (as discussed in chapter two). The theft and loss of firearms from government departments such as the SAPS, SANDF, PSI and private individuals, is the main source of the illegal pool of firearms in South Africa.²²³ According to the SAPS annual report for the 2017/2018 financial year, ‘a total of 800 SAPS-owned firearms and 186 firearms, owned by other departments, were reported as stolen or lost in the reporting period.’²²⁴ It has been indicated that the most prevalent incidents of negligence include incidents where firearms were lost or stolen because ‘members were drunk or because there were burglaries at members’ unlocked residences.’²²⁵

Another factor which contributes to the high proliferation rate of firearms within the Republic is poor national border control and ineffective policing at ports of entry.²²⁶ These factors will still lead to an issue of firearm proliferation in South Africa and will need to be also be addressed. By preventing a person from owning a firearm for the purposes of self-defence, only

²²² The Firearms Control Draft Amendment Bill 2017, Background and Purpose 103 and Clause 13.

²²³ Tracey op cit note 106.

²²⁴ SAPS annual report 2017 op cit note 95.

²²⁵ Bopane op cit note 4 at 14.

²²⁶ Minaar op cit note 33 at 20.

a small part of the proliferation problem will be addressed, and from a proportionality aspect, the harm caused is thus not proportionate to the benefit that is sought.

3.3.5 Section 36(1)(d): The relation between the limitation and its purpose

For there to be a legitimate limitation of a right, a law that infringes the right must be reasonable and justifiable.²²⁷ The argument put forward by Currie and De Waal is that ‘there must be proportionality between the harm done by the infringement and the beneficial purpose that the law is meant to achieve. Logically, this requires there to be a causal connection between the law and its purpose: the law must tend to serve the purpose that it is designed to serve.’²²⁸ In circumstances where the law does not serve the purpose it is designed to serve, ‘it cannot be a reasonable limitation of the right. If the law only marginally contributes to achieving its purpose, it cannot be an adequate justification for an infringement of fundamental rights.’²²⁹

As discussed above, repealing Section 13 and 14 of the FCA only marginally contributes to achieving the purpose of reducing the proliferation of firearms in South Africa and reducing the amount of violent crime. The harm done is disproportionate to the benefits and there is thus no relation between the limitation and its purpose. There is no adequate justification for the infringement of the rights concerned.

3.3.6 Section 36(1)(e): less restrictive means to achieve the purpose

‘In order to be deemed legitimate, a limitation of a fundamental right must achieve benefits that are in proportion to the costs of the limitation.’²³⁰ If there are alternate means that could be employed to achieve the same ends that will either not restrict rights at all or will not restrict them to the same extent, then the limitation will not be proportionate.²³¹

As noted earlier, criminals stealing firearms from registered firearm owners is not the only reason why there is a high proliferation of firearms in South Africa. There are other factors that lead to the increased proliferation of firearms. Instead of preventing people from owning a firearm for the purposes of self-defence, in the hope of reducing the proliferation of firearms within South Africa and reducing the frequency of violent crime, the state should rather use less restrictive means and deal with the other major factors that fuel the proliferation of

²²⁷ Currie & De Waal op cit note 176 at 169.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid at 170.

²³¹ Ibid.

firearms. 'If a less restrictive (but equally effective) alternative method exists to achieve the purpose of the limitation, then that less restrictive method must be preferred.'²³²

The theft and loss of firearms from government and private individuals is the main source of the illegal pool of firearms in South Africa.²³³ The state should impose stricter penalties on the SAPS and SANDF personnel who lose their firearms. This will be a deterrent for those members who are negligent with their service pistols and will ensure that these members keep their service pistols safe.

As discussed above, the National Firearm Summit in 2015, Ms Kirsten, from Gun Free South Africa, also highlighted three intervention strategies to reduce the impact of gun violence and the overall proliferation of firearms within South Africa. To summarise, the first strategy is reducing diversion.²³⁴ In Kirstens view, 'every illegal firearm begins as a legal weapon.'²³⁵ She noted that South Africa has a high proliferation rate of firearms and that the diversion of firearms from their legal owners, often through loss and theft, contributes significantly to the illegal pool of firearms, and is a global phenomenon.²³⁶ 'Measures to reduce the leakage of legal to illegal firearms would include good record keeping and good marking and tracing of firearms.'²³⁷ This will be a less restrictive mean than rather preventing people from owning a firearm for the purposes of self-defence.

The second strategy is mopping up the illegal pool of firearms.²³⁸ This is achieved through specialised interventions as well as police actions, however, Kristen's view is that the best interventions are firearm amnesties.²³⁹ Kirstens argument is that an amnesty may help to reduce or dispose of illegal firearms and superfluous guns, such as old stock held by the military or the police.²⁴⁰ The amnesty will also be a less restrictive means.

The third strategy is closing the leaking tap.²⁴¹ 'It is important to know where and how guns move from a legal to the illegal pool in order to identify methods to stop the leakage. Most leakages occur across borders, as a result of corruption within the chain, or as a result of loss

²³² Ibid.

²³³ Tracey op cit note 106.

²³⁴ *Report of The Portfolio Committee* op cit note 66 at 2685.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

or theft.’²⁴² Stricter border control measure need to be put in place and is also a less restrictive means than repealing Section 13 and 14 of the FCA. The limitation is thus not proportionate and justifiable as less restrictive means are available to reduce the proliferation of firearms within South Africa which will then lead to a reduction in the amount of violent crime the country faces on a daily basis.

²⁴² Ibid.

CHAPTER 4

Alternative approaches used by relevant SADC states for the control of the proliferation of firearms

4.1 Introduction

This chapter will focus on a brief overview of approaches used by three SADC states to control and reduce firearm proliferation. ‘The geographical layout of most SADC countries results in the very easy cross border influx of firearms between adjacent countries.’²⁴³ South Africa happens to be one of these countries that falls victim to the cross-border influx of firearms within the SADC.²⁴⁴

Three SADC states that share borders with South Africa will be discussed, as these states also share a common firearm- related challenge,²⁴⁵ which is likely to call for a common intervention.²⁴⁶ These three states are Botswana, Lesotho and Mozambique. ‘The socio-economic challenges facing these three SADC states, in which these states do not have the capacity to carry out adequate policing, also contribute to rising crime and the illegal weapons proliferation.’²⁴⁷

Respectively, these states then adopted specific approaches to curb the proliferation rate of firearms within their borders. These approaches may then be considered to be used within a South African context, rather than opting for the implementation of the proposed Bill. Solutions need to be sought within an African context rather than an international perspective as South Africa itself is still a developing SADC state that also faces similar socio-economic challenges which leads to a high crime and firearm proliferation rate.

4.2 Botswana

Botswana shares boundaries with Namibia, South Africa, Zimbabwe and Zambia. Firearms in Botswana are regulated by the Botswana Arms and Ammunition Act of 1979 and The Botswana Arms and Ammunition Amendment Act of 1990. According to Bopane, ‘Botswana experiences less violent crime than other SADC countries but is still conscious of the fact that

²⁴³ Bopane op cit note 4 at 54.

²⁴⁴ Ibid at 71.

²⁴⁵ The challenge being illegal firearm proliferation which also led to very easy cross border influx of firearms between adjacent SADC countries.

²⁴⁶ Bopane op cit note 4 at 74.

²⁴⁷ Ibid at 70.

unregulated and uncontrolled firearms contribute to high levels of social instability in the form of violent conflict.’²⁴⁸

In Botswana, there are 400 firearm licences that are issued each year.²⁴⁹ These licenses comprise of 200 rifle and 200 shotgun licences and all firearm applicants, including hunters, are subjected to strict gun control, and have to contest for the licenses.²⁵⁰ In order to address the proliferation of firearms in Botswana, the country designed a long term vision named ‘The Botswana Vision 2016.’ The aim of this vision is to ‘eliminate serious and violent crimes and the illegal possession of firearms to create a safe and secure environment.’²⁵¹ A key recommendation was ‘the installation of screening equipment at ports of entry to improve control over firearms entering the country.’²⁵² The intervention, according to the Botswana Government, was a success and led to a reduction in the smuggling of firearms into Botswana.’²⁵³

There is currently no threshold with the number of firearms that are issued in South Africa each year. South Africa should thus consider following a similar approach to Botswana. The number of firearms in the country can be reduced if the government implements a system whereby only a limited number of firearm licences are approved each year and the license should only be given to applicants who can demonstrate compelling reasons²⁵⁴ for the need of a firearm.

As previously discussed in Chapter 2, South Africa should also invest in better equipment at ports of entry to improve control over firearms entering the country. According to Minaar, a major factor that contributes to the high proliferation rate of firearms in South Africa is poor borderline control and ineffective policing at ports of entry in the country.²⁵⁵ This finding was supported by Ms Kirsten of Gun Free South Africa who stated during her address to the National Firearm Summit in 2015 that most illegal firearms come into the country from across borders, as a result of corruption within the chain, or as a result of loss or theft.²⁵⁶

²⁴⁸ Ibid at 75.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Gould & Lamb op cit note 12 at 137.

²⁵³ Bopane op cit note 4 at 77.

²⁵⁴ Compelling reasons should include requiring a firearm for the purposes of self-defence if you live in a significantly crime ridden area where there is no police station within close proximity or if you require a firearm for business purposes, due to the handling of large volumes of cash on a daily basis.

²⁵⁵ Minaar op cit note 33 at 20.

²⁵⁶ *Report of the Portfolio Committee* op cit note 66 at 2685.

4.3 Lesotho

Lesotho's embattled economy impacts negatively on gun control due to some elements of dependency on South African industries and mines.²⁵⁷ Firearms in Lesotho are regulated under the Internal Security (Arms and Ammunition) Act no. 17 of 1966. According to Bopane:

'the Act makes provision for the involvement of the community when a firearm application is being considered. The application process requires that the firearm applicant obtain a confirmation letter from the village chief or headman that supports the application for a firearm.²⁵⁸ The applicant must then submit an application to the police at district level, accompanied by a recommendation from the local chief and then the district commander will make the recommendation to the commissioner of police, who then makes a decision on the application.'²⁵⁹

In Lesotho, firearm licenses are subjected to a 5-year renewal interval 'to enable law enforcement agencies to monitor a firearm owners' compliance with legislation.'²⁶⁰ Failure to comply with the firearms renewal provision led to the Lesotho government establishing a counter-crime unit in March 1999, to locate unlicensed firearms.²⁶¹ 'The Lesotho government reported that the intervention was a success and many un-renewed firearms were discovered, which by implication became illegal when they were not renewed.'²⁶²

In South Africa, the renewal interval for a firearm license is 5 years. Unlike Lesotho, South Africa does not specifically have a counter-crime unit that functions to only locate unlicensed firearms. If South Africa establishes a unit such as the one in Lesotho, there may be a reduction in the number of illegal firearms within the country. This may also decrease the proliferation of firearms in the country since the unit will confiscate those unlicensed firearms and those firearms will not find its way onto the black market. The unlicensed firearm will thus not be used by criminals in the commission of any violent crimes.

4.4 Mozambique

Firearms in Mozambique are regulated by the 'Arms and Ammunition Act Decree No 8/2007'. 'The Mozambique Firearms Act allows individuals to own semi-automatic pistols of less than 7,65mm calibre and a revolver of less than 9mm calibre.'²⁶³ The application process for a firearm license requires an applicant to make a formal application to the assistant Police

²⁵⁷ Bopane op cit note 4 at 78.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Gould & Lamb op cit note 12 at 65.

²⁶² Bopane op cit note 4 at 79.

²⁶³ Ibid at 98.

Commissioner who will then process the application and forward it to the Minister of Police for confirmation.²⁶⁴

Other requirements include proof on Mozambican citizenship, ‘a motivational letter setting out the reason why a firearm licence is required, as well as a recommendation by the employer as proof of employment, since unemployed individuals do not qualify for firearm licences.’²⁶⁵ According to Bopane, ‘refused applications are announced via the mass media to discourage the community from acquiring firearm licences and approved ones are renewed every two years.’²⁶⁶

A notable control measure that is built into the Mozambique Firearms Act is the control over security companies’ firearms. Changes made to the Mozambique Firearms Act established provisions for all weapons used by private security guards to be controlled by the hiring company, and that the company is subjected to a monthly inspection of its stockpiles, by at least two police officials.²⁶⁷ South Africa can adopt the same control measure and instead of only carrying out the inspection on security companies, the inspection should also be carried out within the SAPS and SADF.²⁶⁸ According to the SAPS annual report for the 2017/2018 financial year, ‘a total of 800 SAPS-owned firearms and 186 firearms, owned by other departments, were reported as stolen or lost in the reporting period.’²⁶⁹

Currently, inspections are carried out at present within the SAPS, however, it is only done quarterly and is not mandatory.²⁷⁰ The DFO comes and inspects each police station in each province and does a stock check on the number of firearms that are in possession by the respective policeman at the said police station. This is just practice but is not an actual rule or law that can be found in any legislation. It is rather more of an unwritten internal procedure that is followed. It should be codified into the relevant legislation and become obligatory in terms of the respective statute. By carrying out these mandatory inspections more frequently, the state can keep track of the number of firearms in circulation within the SAPS, the SANDF and security companies.²⁷¹ Stricter inspections may also cause the relevant firearm owners not to be negligent with their firearms when they are off duty. As discussed in chapter 2, it has

²⁶⁴ Bopane op cit note 4 at 81.

²⁶⁵ Ibid at 82.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁹ SAPS annual report 2017 op cit note 95.

²⁷⁰ Information obtained from a visit to the Isipingo Police Station in Durban where I spoke to Captain Naicker. He provided this information to me verbally and confirmed that there is no legislation that provides that these inspections must be carried out mandatorily.

It must be noted that this inspection is not prescribed by law and cannot be found in any legislation.

been indicated that the most prevailing incidents of negligence include incidents where firearms were lost or stolen because policemen were drunk or because there were burglaries at their unlocked residence.²⁷²

4.5 The approaches serving as less restrictive means

The specific practices, which are outlined above, for the control of firearm proliferation, can be used by South Africa and the practices can be established within our own firearm control framework. These practices would also have served as less restrictive means to reduce firearm proliferation within the country and is a more suitable approach rather than having to implement the proposed Bill and prevent all citizens from owning a firearm for the purposes of self-defence. Stricter control measures need to be in place in order to reduce the proliferation rate of firearms in the country. As pointed out in the previous chapter, simply having enacted the proposed Bill and preventing citizens from owning a firearm for the purposes of self-defence would not necessarily have resulted in a reduction of firearms in South Africa. Less restrictive means of achieving such a reduction are available and there are other factors that need to be addressed such as proper border control as well as managing the number of weapons that are lost or stolen from the SAPS each year.

²⁷² Bopane op cit note 4 at 14.

CHAPTER 5

Conclusion:

5.1.1 The FCA and other factors which affect the proliferation rate of illegal firearms in South Africa

Currently, the privilege to possess a firearm is not guaranteed by law in South Africa. In terms of Section 6(2)²⁷³ of the FCA, ‘only firearm applicants who are in possession of a Competency Certificate may apply for a firearm licence.’ An applicant will need to provide genuine reasons to possess a firearm for purposes such as ‘hunting, target shooting, collection and self-defence.’²⁷⁴

The policing of firearms is meant to ensure the safety of all residents in the country and to address all factors that threaten the safety of the community. For there to be effective policing of firearms, the FCA is used as the primary source of reference. The main purpose of the FCA is to ‘enhance the constitutional rights to life and bodily integrity; prevent the proliferation of illegally possessed firearms by providing for the removal of those firearms from society by improving control over legally possessed firearms and to prevent crime involving the use of firearms.’²⁷⁵

Given the fact that the number of murders, attempted murders and aggravated robbery cases have increased each year²⁷⁶, it is a logical inference that the state and the FCA has clearly failed in its endeavours to curb the proliferation rate of illegal firearms in South Africa and reduce the rate of violent crimes. This high proliferation rate of illegally possessed firearms in South Africa then continues to feed the growth of violent crimes such as armed robberies, murder and car and truck hijackings.²⁷⁷ Citizens begin to feel threatened with the thought of their life potentially being in danger and thereby acquire a firearm for the purposes of self-defence. The possession of a firearm for the purposes of self-defence then becomes a contributory factor that increases the proliferation rate of illegal firearms within South Africa. Criminals rob firearm

²⁷³ Section 6(2) of the Firearms Control Act 60 of 2000: Subject to Section 7, no license may be issued to a person who is not in possession of the relevant competency certificate.

²⁷⁴ Ibid.

²⁷⁵ Goliath op cit note 17.

²⁷⁶ In 2008 there were 18 084 murders, 18 140 attempted murders and 120 920 robberies with aggravating circumstances reported. In 2018, 20 336 murders, 18 233 attempted murders and 138 364 aggravated robbery cases reported. The trend indicates an increase over the 10-year period.

²⁷⁷ Keegan op cit note 1 at 7.

owners of their firearm and then use these firearms in the commission of future violent crimes.²⁷⁸

Due to the high proliferation rate of illegal firearms in South Africa, the state wanted to enact the proposed Bill. The state's rationale was that the amended Act will help reduce the rate of violent crime within the Republic as there is a correlation between the high crime rate in the country and the high proliferation rate of firearms.²⁷⁹ What the state failed to consider was that there were also other factors which contributed to the high proliferation rate of firearms in South Africa, and that these factors should be addressed first before enacting the proposed Bill and preventing a citizen from owning a firearm for the purposes of self-defence.

5.1.2 The other factors

Factors such as the FCA provisions being ineffective and poor enforcement of the FCA also lead to an increase in the high proliferation rate of illegal firearms in South Africa. If the FCA had proper control measures and was being effectively enforced, then it may be argued that there would have potentially been a decrease in the proliferation rate of illegal firearms in South Africa. In chapter two of this study, a discussion on Bopane's 2014 interviews with various relevant stakeholders to determine if the FCA had been effectively enforced was discussed. Two thirds of police participants indicated that the FCA was ineffective.²⁸⁰ The participants noted that access to firearms was easy, the appeal board was lenient, a poor filing system exists, and that the firearms database was outdated.²⁸¹

Regarding whether the SAPS effectively enforces the FCA, just more than half of the police participants answered in the affirmative. Participants wanted stricter control measures in place as they felt that firearm owners are not sufficiently visited to ensure that the safes where the firearms are kept are up to standard.²⁸² They further noted that the conditions that must be met to obtain the competency certificate have to be consistently adhered to.²⁸³ Further, it was noted that 'border control should be stepped up to minimise the influx of firearms into the country; and that firearm-specific roadblocks should be conducted.'²⁸⁴

²⁷⁸ Bopane op cit note 4 at 32.

²⁷⁹ The Firearms Control Draft Amendment Bill 2017 103. (background and purpose of amendment).

²⁸⁰ Ibid at 122.

²⁸¹ Ibid.

²⁸² Bopane *Looking Forward* op cit note 1 at 122.

²⁸³ Ibid.

²⁸⁴ Ibid.

Further, as highlighted in chapter 2 and according to Minaar, one of the main factors which contribute to the high proliferation rate of firearms in the country is poor borderline control and ineffective policing at ports of entry.²⁸⁵ Another factor that leads to the high proliferation rate of illegal firearms in South Africa is the theft and loss of firearms from government departments such as the SAPS, the SANDF, the PSI and private individuals.²⁸⁶ According to the SAPS annual report for the 2017/2018 financial year, ‘a total of 800 SAPS-owned firearms and 186 firearms, owned by other departments, were reported as stolen or lost in the reporting period.’²⁸⁷ Between 2016 and 2019, theft and loss of weapons in the SANDF totals 58.

The aforementioned factors which contribute to the high proliferation rate of illegal firearms in South Africa should be addressed first before the state enacts the proposed Bill and prevents citizens from owning a firearm for the purposes of self-defence. By addressing these factors first, there is the potential for the high proliferation rate of illegal firearms in South Africa to decrease. There needs to be stricter control measures in the FCA, better enforcement of the FCA, stricter and better border control and the state should impose stricter penalties on the SAPS and SANDF personnel who lose their firearms. This will be a deterrent for those members who are negligent with their service pistols and will ensure that these members keep their service pistols safe.

5.2 Consequences of enacting the proposed Bill with reference to the Section 36 Analysis

By rather suggesting that the proposed Bill be enacted and that citizens no longer be allowed to own a firearm for the purposes of self-defence, certain rights that the citizen has would have been infringed. This includes their right to life²⁸⁸ and the right to freedom and security of the person²⁸⁹ (specifically bodily integrity²⁹⁰ and the right to be free from all forms of violence²⁹¹). The Section 36 Analysis done in chapter 3 shows that the limitation on these rights is not reasonable or justifiable.

‘The proportionality enquiry required by Section 36, involves weighing up the harm done by a law against the benefits that the law seeks to achieve.’²⁹² The proposed Bill repeals Sections 13 and 14 of the FCA. These two Sections allowed a law-abiding citizen to possess a firearm

²⁸⁵ Minaar op cit note 33 at 20.

²⁸⁶ Tracey op cit note 106.

²⁸⁷ SAPS annual report 2017 op cit note 95.

²⁸⁸ Section 11 of the Constitution of the Republic of South Africa, 1996.

²⁸⁹ Section 12 of the Constitution of the Republic of South Africa, 1996.

²⁹⁰ Section 12 (2) (b) of the Constitution of the Republic of South Africa, 1996.

²⁹¹ Section 12 (1)(c) of the Constitution of the Republic of South Africa, 1996.

²⁹² Currie & De Waal op cit note 176 at 164.

for the purposes of self-defence. By not allowing a citizen to possess a firearm for the purposes of self-defence, the state is not allowing a citizen to be free from violence in certain circumstances. Further, if a person is being robbed and is now placed in a life-threatening situation, a person will no longer be able to rely upon their firearm to defend themselves and protect their life.

The Section 36 analysis revealed that the harm done by potentially repealing Section 13 and 14 of the FCA is disproportionate to the benefits that are sought. The harm done by repealing Sections 13 and 14 of the FCA is that it will prevent a citizen from owning a firearm for the purposes of self-defence and will thereby infringe upon their right to life, their right to bodily integrity and to be free from all forms of violence. The envisaged benefit from this harm is that it will lead to a decrease in the proliferation rate of both legal and illegal firearms in South Africa. This will then also lead to a decrease in the amount of violent crime in South Africa. Whilst criminals will no longer be able to steal these firearms from citizens and use them in the commission of other violent crimes, it does not necessarily mean that there will be a reduction in the amount of violent crimes committed with the use of a firearm. The other factors such as ineffective provisions in the FCA, poor border control and the theft and loss of firearms from government departments are still what needs to be addressed first.

There is no point in preventing a citizen from owning a firearm for the purposes of self-defence whilst there are these other factors that also contribute to the high proliferation rate. These factors should be addressed first so that we can then determine if there is a decrease with the proliferation rate of illegal firearms in South African, and thereafter other measures (less restrictive means) can still be used to decrease the proliferation rate rather than stopping a citizen from owning a firearm for the purposes of self-defence. By preventing a person from owning a firearm for the purposes of self-defence, only a small part of the proliferation problem would be addressed, and from a proportionality aspect, the harm caused is thus not proportionate to the benefit that was sought.

5.3 Less Restrictive means and alternative approaches to curb the proliferation of firearms in South Africa

There are less restrictive means that can be used to reduce the high proliferation rate of illegal firearms in South Africa. At the National Firearm Summit in 2015, Ms Kirsten, from Gun Free South Africa, highlighted three intervention strategies to reduce the impact of gun violence and

the overall proliferation of firearms within South Africa. These three strategies are reducing diversion, mopping up the illegal pool of firearms and closing the leaking tap.²⁹³

With regards to the strategy of reducing diversion, Kirstens view is that ‘every illegal firearm begins as a legal weapon and that measures to reduce the leakage of legal to illegal firearms would include good record keeping and good marking and tracing of firearms.’²⁹⁴ This will be a less restrictive mean than rather preventing people from owning a firearm for the purposes of self-defence. The second strategy of mopping up the illegal pool of firearms is achieved through specialised interventions as well as police actions, however, Kristen’s view is that the best interventions are firearm amnesties.²⁹⁵ Kirstens argument is that an amnesty may help to reduce or dispose of illegal firearms and superfluous guns, such as old stock held by the military or the police.²⁹⁶ The amnesty will also be a less restrictive means. Most leakages occur across borders, as a result of corruption within the chain, or as a result of loss or theft.²⁹⁷ Stricter border control measure need to be put in place to give effect to the third strategy of closing the leaking tap, and is also a less restrictive means than repealing Section 13 and 14 of the FCA.

South Africa can also follow approaches to firearm control that are adopted by other similar SADC states. There is no threshold with the number of firearms that are issued in South Africa each year. South Africa should follow a similar approach to Botswana by implementing a system whereby only a limited number of firearm licences are approved each year and the license should only be given to applicants who can demonstrate compelling reasons²⁹⁸ for the need of a firearm. This will reduce the number of firearms that are in circulation in the country and may then also reduce the proliferation of illegal firearms as there will not be many firearms available that can be lost by citizens or stolen by criminals.

Further, a counter-crime unit that functions to only locate unlicensed firearms, like the unit in Lesotho, will decrease the proliferation of firearms in the country since the unit will confiscate those unlicensed firearms and those firearms will not find its way onto the black market. The Lesotho government reported that the intervention is a success and many un-renewed firearms

²⁹³ *Report of The Portfolio Committee* op cit note 66 at 2685.

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ Compelling reasons should include requiring a firearm for the purposes of self-defence if you live in a significantly crime ridden area where there is no police station within close proximity or if you require a firearm for business purposes, due to the handling of large volumes of cash on a daily basis.

are discovered, which by implication became illegal when they were not renewed.²⁹⁹ The unlicensed firearm will thus not be used by criminals in the commission of any future violent crimes.

A notable control measure that is built into the Mozambique Firearms Act is the control over security companies' firearms. Changes made to the Mozambique Firearms Act established provisions for 'all weapons used by private security guards to be controlled by the hiring company, and that the company is subjected to a monthly inspection of its stockpiles, by at least two police officials.'³⁰⁰ South Africa can adopt the same control measure and instead of only carrying out the inspection on security companies, the inspection should also be carried out within the SAPS and SADF since the theft and loss of firearms from government departments is one of the main sources of the illegal pool of firearms in South Africa.³⁰¹

By carrying out these mandatory inspections, the state can keep track of the number of firearms in circulation within the SAPS, the SANDF and security companies. Stricter inspections may also cause the relevant firearm owners not to be negligent with their firearms when they are off duty. The most prevailing incidents of negligence include incidents where firearms were lost or stolen because policemen were drunk or because there were burglaries at their unlocked residence.³⁰² These alternate options and less restrictive means could be utilized first instead of suggesting repealing section 13 and 14 of the FCA which would have prevented a citizen from owning a firearm for the purposes of self-defence.

²⁹⁹ Bopane op cit note 4 at 79.

³⁰⁰ Ibid.

³⁰¹ Tracey op cit note 106.

³⁰² Bopane op cit note 4 at 14.

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Mr Lereshin Naicker (215048275)
School Of Law
Pietermaritzburg

Dear Mr Lereshin Naicker,

Protocol reference number: 00005070

Project title: Firearm Control in South Africa: The implications of not allowing a citizen to possess a firearm, for the purposes of self-defence.

Exemption from Ethics Review

In response to your application received on 12 December 2019, your school has indicated that the protocol has been granted **EXEMPTION FROM ETHICS REVIEW**.

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

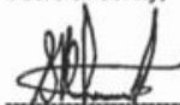
In case you have further queries, please quote the above reference number.

PLEASE NOTE:

Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,



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