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Presentation to the Parliamentary Portfolio Committee on Safety and Security on the Firearms Control Amendment Bill

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Introduction

The Institute for Security Studies (ISS) would like to commend the Minister of Safety and Security and the South African Police Services (SAPS) in their efforts to strengthen firearms control in South Africa by means of the drafting of the Firearms Control Amendment Bill (2006) as introduced in the National Assembly as a Section 75 Bill, and published in Government Gazette No. 28843 of 19 May 2006. In addition, the ISS would like to thank the Parliamentary Portfolio Committee on Safety and Security for continuing what has become a tradition of public consultation on firearm control issues in post-apartheid South Africa.

The availability and abuse of firearms continues to contribute to the high levels of violent crime in South Africa. We are of the opinion that many of the suggested amendments to the Firearms Control Act, 2000 (Act No. 60 of 2000) will contribute to the enhancement of firearms control in South Africa and will hopefully, therefore, significantly reduce the high levels of violent crime. At the same time, the ISS is concerned about the possible negative implications and impact of some of the provisions of this Bill.

Recently gun violence has received particular public attention given that more than 50 police personnel have killed as a result of firearms this year. This is not a new development. Over the past decade over a thousand police personnel have died or have been injured due to bullets. In fact, in South Africa it is more likely for police personnel to be shot than soldiers from the South African National Defence Force.

Nevertheless, despite this high level of gun violence, South Africa's National Injury Mortality Surveillance System, which is administered by the University of South Africa has recently reported that deaths as a result of firearms have nearly halved in three of South Africa's major cities (Cape Town, Durban and Johannesburg) since 2001, while non-firearm fatalities have remained relatively constant. This reduction in gun deaths can be largely attributed to the implementation of the Firearm Control Act, which came into effect five years ago, and police operations aimed at confiscating illegal firearms.



The ISS has limited its comments on the Bill to those sections that relate to: the renewal of competency certificates; brokering services; linkages between firearms legislation and the National Conventional Arms Control Act (2002); the use of a licensed firearm by a non-license holder (Section 22); inquiry procedures; and search and seizure.

Renewal of Competency Certificates

It is the view of the ISS that the provision for the renewal of competency certificates on a five year basis represents a strengthening of firearms control in South Africa. However, for the sake of enhancing firearms control and competency, it would be preferable if firearms license holders are required to undergo mandatory re-training in terms of firearms-handling (including eye-sight testing) and knowledge of the firearms legislation as part of the renewal of a competency certificate process. Regular mandatory re-training will promote more effective competency of firearm licence holders as it will educate them in amendments to relevant legislation, ensure that they are still fit to carry and use a firearm, as well as make them aware of changes in firearms safety technology.

It will also ensure that those firearms license holders that are no longer competent to use a firearm legally have their licenses revoked.

Brokering

Arms brokers play a major role in supplying weapons to African conflict-zones, and in the recent past, South African citizens and foreign nations doing business in South Africa have been implicated in arms trafficking to conflict zones. A number of UN reports into violations of UN arms embargoes in Africa have highlighted the role of arms brokers who operate from South Africa. Establishing better regulations is in line with the 2001 United Nations Programme of Action (UNPoA) on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Section II, Paragraph 14 of the UNPoA commits states:

To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control.

The Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Other Related Materials also commits SADC Member States to standards relating to the coordination of procedures for the import, export and transit of firearms shipments; the regulation of firearms brokering; and a review of national firearms legislation. Thus, it commits Member States to incorporate into their national laws as a matter of priority, “provisions that regulate firearm brokering in the territories of State Parties” [Article 5 (3m)].

Definitions of who is an arms broker and what constitutes brokering activities vary. Some definitions define brokering broadly to encompass associated activities, such as financing, technical, advertising, insurance and transportation services, while others take a more narrow approach, referring solely to the activity of mediating the conclusion of arms contracts.



The ISS is supportive of the definition of brokering in the Bill, as long as it includes activities associated with facilitating firearm (and other arms) deals between suppliers and recipients where the brokers (both natural persons and legal entities) do not take ownership or possession of the arms. However, the Bill should include extra-territorial controls, as it may still be possible for a South African broker operating in from a foreign country to arms firearms to other countries without requiring a license from the South African government.

The ISS recommends that Bill make provision for the following: that punitive action is taken against arms brokers (both individuals and organisations) based in South Africa or of South African origin that fail to register with the secretariat of National Conventional Arms Control Committee.

Linkages with the National Conventional Arms Control Act

From the perspective of the ISS, a lack of clear linkages between the Firearms Control Act and the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002) was hindering the effective implementation of firearms control in South Africa. Hence the ISS welcomes the amendments to Section 96 (as appears in the Firearms Control Amendment Bill).

Use of a licensed firearm by a non-license holder (Section 22)

Section 22 of the Bill states:

“Despite anything to the contrary in this Act but subject to section 120(5), any person who is at least 21 years of age and the holder of a licence to possess a firearm or a competency certificate in respect of a muzzle loading firearm issued in terms of this Act may allow any other person to use that firearm or muzzle loading firearm while under his or her immediate supervision where it is safe to use the firearm or muzzle loading firearm and for a lawful purpose.”

The ISS has three concerns in relation to Section 22.

First, this section does not stipulate a minimum age of the person to whom a licensed firearm holder may lend his/her firearm (while under his/her supervision). In essence, in terms of this section, a four-year old child will be legally entitled to use a firearm under the supervision of a license holder.

If a person is only deemed mature and responsible enough to learn to drive a motor vehicle from the age of 17, would it not be prudent to insert a similar minimum age in terms of firearms use?

Second, this section is silent on the issue of responsibility in the event of misuse of the firearm by the non-licence holder and negligence on the part of the licence holder (other than making reference to Section 120(5) of the Firearms Control Act). Who will be responsible if the non-licence holder violates any of the provisions and/or regulations of the Act? What are the implications if the licence holder is negligent in terms of their supervision of the non-licence holder?

Third, in essence, it appears that this amendment will allow a person who has been deemed unfit to use a firearm (with the exception of mentally ill persons) to discharge a firearm in so far as it is under the supervision of the licence holder. The ISS strongly recommends that section 22 be amended to stipulate that only a person above the age of 18, and who has not been deemed unfit to use a firearm be covered by this section.



Unforeseen consequences of changing definitions

By amending the definitions of ‘occasional hunter’ and ‘occasional sports person’, situations may arise where firearm licence applicants may cite sport shooting or hunting as the reason for requiring a firearm. In many cases there is no distinction between firearms used for hunting and those used for self-defence. Changing the definition may cause applicants to state that they require a firearm for hunting or sport shooting rather than for self-defence. An incentive for this type of application is that under the current act, hunting licenses are renewable on a ten-year basis, while licenses for self-defence purposes are required to be renewed every five years.

Powers to search and seizure

The amendment of Section 111 of the principal Act enhances the powers of police officials considerably in terms of search and seizure. However, this amendment may lead to police officials inadvertently undermining firearms control. For instance, if a sealed container from ARMSCOR is awaiting shipment at a harbour or airport, any police official may break the official seals to inspect the contents. This would contradict the policies and procedures required by the NCACC and Customs and Excise. The Act makes no mention of how searched containers should be resealed or handled if a search takes place, and this omission may make the State vulnerable to civil proceedings, and contradicts existing weapons transfer control procedures.

Inclusion of the definition of ‘dispossessed’

It is important that a definition of ‘dispossessed’ is provided in the Act in order to exclude any possible misinterpretation of the word.

