

**Physical:**

Block C, Brooklyn Court, Veale Street,  
New Muckleneuck, Tshwane (Pretoria)

**Postal:**

PO Box 1787, Brooklyn Square 0075  
Tshwane (Pretoria), South Africa  
Tel: +27 12 346 9500/02  
Fax: +27 12 460 0998  
E-mail: [iss@issafrica.org](mailto:iss@issafrica.org)



29 March 2006

Director P. van Vuuren  
Legal Services: SAPS  
Private Bag X302  
Pretoria  
0001

**Re: Submission relating to the Firearms Control Amendment Bill, 2006**

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). We feel that many of the suggested amendments to the Firearms Control Act (2000) will contribute to the enhancement of firearms control in South Africa. However, the ISS is concerned about the implications and impact of some of the provisions of this Bill.

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); and the use of a licensed firearm by a non-license holder (Section 22).

Renewal of Competency Certificates

It is the view of the ISS that 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 re-training in terms of firearms-handing (including eye-sight testing) and knowledge of the firearms legislation on a regular basis.

Brokering

Arms brokers play a major role in supplying weapons to African conflict-zones. A succession of UN reports into violations of UN arms embargoes have also highlighted the role of these middle-men who often buy weapons cheaply and organise their transfer to or within 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 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)].

In addition, it should be noted that the issue of regulating brokers and brokering activities remains a top priority at the international level. During its 59th session (2004), the UN General Assembly passed resolution 59/86, which included a request for the Secretary-General to continue the current ‘broad-based consultations’ on brokering.

While ISS is supportive of the definition proposed, if its meaning is to ensure that all activities associated with facilitating firearm (and other arms) deals between suppliers and recipients for material gain without necessarily taking ownership or possession of the arms are covered, and that it applies to both natural persons and legal entities. However, the amendment should clearly state that this provision includes extra-territorial controls, as it may still be possible for a South African broker operating in a foreign country to transfer firearms to other countries without requiring a license from the South African government. The ISS recommends that brokering natural persons, companies and transportation agents based in South Africa or of South African origin that fail to register but continue to operate should be prosecuted under South African law.

#### Linkages with the National Conventional Arms Control Act

From the perspective of the ISS, a lack of clear linkages between firearms legislation and the National Conventional Arms Control Act was hindering the effective implementation of firearms control in South Africa. Hence the ISS welcomes the amendments to Section 45.

#### 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 license to possess a firearm [**issued in terms of this Act**] may allow any other person to use that firearm while under his or her immediate supervision where it is safe to use the 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 16, 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 who has not been deemed unfit to use a firearm be covered by this section.

The ISS would be willing to further expand on the comments provided in this document at a public hearing should the Minister of Safety and Security deem such an event necessary.

If you have any questions regarding this document, please do not hesitate to contact Guy Lamb (email: [glamb@issafrica.org](mailto:glamb@issafrica.org)), Noel Stott ([nstott@issafrica.org](mailto:nstott@issafrica.org)) or Ben Coetzee ([bcoetzee@issafrica.org](mailto:bcoetzee@issafrica.org)) at the ISS.

Yours sincerely,

Guy Lamb  
Programme Head  
Arms Management Programme

