

Proposed Firearms Control Amendment Bill in South Africa: Is It A Solution Or An Opening of Pandora's Box?

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Abstract: Violent crimes such as murder, rape and robbery are skyrocketing in South Africa, and this is quite alarming because many citizens are living in fear of being attacked by criminals. Law enforcement agencies are not well resourced or capacitated to be able to adequately protect the civilians. July unrest that erupted in 2021 in some parts of KZN, Gauteng and Mpumalanga province were the worst riots ever experienced by the country after the demise of the apartheid regime. These riots led to the destruction of property, looting and many people died in the process. Many civilians live in fear on daily basis, but the government had the audacity to promulgate the Firearms Control Amendment Bill in May 2022. The problem with the Bill is that it prohibits civilians from owning a firearm for the purpose of private defense and leave them at the mercy of police who are proving to be failing to protect citizens. The South African Human Rights Commission (SAHRC) made a thorough investigation of the riots and found that even though they coincided with the arrest of the former president Jacob Zuma but had no link. SAHRC reported that police were ill prepared, and this might be attributable to lack of training, lack of equipment and resources to effectively respond. This led to theft, arson and damage to property. The state acknowledged that the stolen licensed guns end up in the hands of street gangs that use them to further their criminal activities. South Africa was once ravaged by political violence before 1994, hence many guns are still in the hands of criminals. Government had tried on several occasions to recover unlicensed firearms by giving amnesty to those who are in possession of such guns. Some guns were surrendered to the government and others were not. Recovered guns were marked for destruction but through the corruption of some police officials many of those guns found their way back to the criminals. In view of all this, common sense dictates that civilians and the entire residents of the country cannot enjoy safety of feel safe if they will solely rely on the police for their protection. This paper seeks to oppose the proposed path because it would worsen the situation, thereby making it difficult for sustainable development to thrive in the country. Sustainable development can only thrive in a safe and peaceful environment that respect human rights for all.

Keywords: Firearms Control Amendment Bill, private defense, violent crimes

Introduction

Research indicates that many violent crimes such as murder, rape, house breaking, and armed robbery are committed by individuals who use firearms to perpetuate such crimes (Bopane, 2015, Keegan 2004). South Africa has an ugly history of political violence between the ANC and IFP that eventually subsided in the early 1990s and this left many illegal firearms in the hands of citizens. This was identified by Lamb as the leading factor for the continuation of violent crimes in South Africa (Lamb, 2018, 2). In the year 2017/2018 the South African Police Service (SAPS) issued its annual report which indicated that 20 336 people were murdered in that year, and 18 233 attempted murders (Naicker, 2019, 01). However, research also indicates that firearms were not only used to perpetuate violent crimes but were also used for private defence and the possession of a firearm for the purpose of private or self defence is regulated by the Firearms Control Act 60 of 2000. The latter mentioned Act had five main objectives, namely:

- (a) To enhance the constitutional right to life and bodily integrity,
- (b) To prevent the proliferation of illegally possessed firearms from society,
- (c) To enable the state to remove illegally possessed firearms from society,
- (d) To establish a comprehensive and effective system of firearm control and management, and
- (e) To ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.

In view of the high number of people who possess illegal firearms and the prevalence of violent crimes in the country that keeps on escalating on a yearly basis, it can be logically concluded that the Firearms Control Act failed to achieve its objectives. Moreover, the police interventions to reduce violent crimes have proven ineffective (Bopane, 2015, 04). This is enough justification for citizens to continue acquiring firearms for the purpose of self-defense. However, the problem is that criminals and gangs rob gun owners who possess guns legally and use those guns to further criminal activities (Bopane, 2015 32). To address this problem, the legislature has proposed an amendment to the firearms Control Act and introduced a provision that would take away the privilege of owning a firearm for the purposes of private defence. The theoretical framework in this topic is the Public Policy and Regulatory Theory. Public Policy and Regulatory Theory examines how laws and regulations are formulated, implemented, and enforced. It considers the roles of various stakeholders, including government agencies, interest groups, and the public. The implementation of this theory will assess the policymaking process behind the Proposed Firearms Control Amendment Bill, including the influence of various stakeholders such as law enforcement, gun rights advocates, and public health organizations. Evaluate the potential effectiveness of the bill's regulatory mechanisms in achieving its intended outcomes of reducing gun violence and enhancing public safety.

Reasons for the Proposed Amendment

For many citizens, the possession of a firearm provides a reasonable means of reducing fear of violent crimes that might be instigated against them and makes them to be able to exercise their right of self defence against threats to their safety (May & Jarjoura 2006, 87). The continuous threat to safety makes citizens feel the necessity of owning a gun for the purposes of private defence. The problem is that licensed firearms find their way to the hands of criminals who end up using such guns to further criminal activities. This happens when criminals rob gun owners who own their guns legally, including the police and use those guns to commit crime. The theft of guns is obviously not limited to individuals but also to government departments such as SAPS, SANDF and Private Security Industry (PSI) (Tracey 2011, 01). The Firearms Control Act focus on the rights of citizens to exercise self defense whenever it is necessary to do so. This is clearly reflected in the preamble which stipulates that “every person has a right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources.” One of the major objectives of the FCA is clearly articulated by section 2 (a) which makes it clear that the aim is to “enhance the constitutional rights to life and bodily integrity.” The FCA also intend to ensure that the right to life and bodily integrity of a person is adequately protected by allowing citizens to own firearms for purposes of self-defense. Many South Africans own guns that are utilized to defend themselves. The abundance of guns in the community 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” (Scott 2003, 07). The proposed Bill views the easy availability of firearms to the citizenry as a threat to state security and sustainable development (preamble). So, it takes away the privilege of owning a gun for purposes of self-defense from civilians. What this means? It means that the government wants to take all guns from civilians and criminals and thereby making everyone to solely depend on government for protection from violent crimes. The reality of the situation is that the government has tried several times to collect guns from the citizens by giving amnesty to those who own illegal guns if they are prepared to surrender such firearms to the police. Some people headed to that government call to surrender their illegal firearms, but some didn't.

The Impact of the Proposed Amendment

On Self-Defense

The South African legal framework does not guarantee the privilege to possess a firearm. According to the provisions of section 6 (2) of the Firearms Control Act (FCA) 60 of 2000, to qualify to possess a gun, the applicant must have no criminal record and must be in possession of a competency certificate. Moreover, an applicant ought to provide genuine reasons as to why he or she is a suitable person to possess a firearm for the purpose of self-defence, hunting, target shooting and collection. This is a significant improvement from the previous Act because before the enactment of the FCA many security companies didn't bother to check whether their employees had a criminal record or competent to handle a firearm (Minaar, 2008, 109). The policing of firearms is meant for ensuring the safety of all citizens and to address matters that threatens the safety of the community. It is an undisputable fact that South Africa is one of the countries with the highest number of violent crimes (Altbeker 2007, 01). 19 972 people were killed in South Africa in 2021 and in the same year 2 911 were killed in the city of Cape Town. This makes it a city with the most recorded violent crimes globally (McCain 2022, Thompson 2004, 9 and Business tech 2022). Now it makes a lot of sense as to why South African needs to arm themselves. On the contrary, the proposed Firearm Control Amendment Bill (FCAB) intends to forbid firearm owners from using it for self-defense purposes (Van Niekerk, 2021). Common sense dictates that as far

as a person is allowed to protect himself or herself using any lethal weapon such as an axe, knife, and spear but a firearm is the most effective weapon. To prevent firearm owners from using gun for private defense purposes would expose them to criminals and would be practically defenseless (Nortje & Hull 2023, 130; May & Jarjoura 2006, 87). It is our humble submission that preventing firearm owners from using them for private defense would be against the provision of section 11 of the Constitution which protects the right of every citizen to life and the Constitutional Court made it very clear in the case of *S v Makwanyane* that the right to life and dignity constitutes the most important rights in the Constitution. The proposed FCAB limits and violate the latter mentioned rights. South Africa can learn something about management of guns from Switzerland. This is because Switzerland is regarded as one of the countries that has the highest number of gun ownership amongst its citizens, but it has the lowest number of violent crimes such as murder and rape (Brueck & Haroun 2022). This shows clearly that it is not about the number of guns owned by citizens but is about proper management of gun distribution that makes a difference. The rate of violent crimes in Switzerland were 40 percent lower than Germany even though the gun ownership by citizens is three times higher if compared to Germany (Lott 1998, 113).

Self defense is a common law defense in South Africa and emphasizes that individuals “have been unable to rely upon the agencies of the state (the police and the courts) to protect their legal interests and have been compelled to take the law into their own hands” (Butchell 2016, 121). The reality is that it is premature to take away the possibility of owning a firearm from citizens because the state agencies are struggling to protect the citizens in an adequate manner.

July 2021 unrest

The public riots that took place in the year 2021 were referred to by many people as the July unrest. It started in the province of KwaZulu-Natal, Gauteng and some parts of Mpumalanga province. Many people associated the latter mentioned unrest with the arrest of former president Jacob Zuma. The South African Human Rights Commission (SAHRC) made an investigation about the unrest and made its report about its findings. The SAHRC found that the incidents coincided with the events leading to the arrest of former president but there was no tangible evidence connecting the arrest and the riots. The SAHRC also noted the visible cracks on our intelligence agency, south African police service and even private security industry. Many shops were looted in broad day light, and this had the detrimental consequences on the economy of the country because many businesses were destroyed, and many people lost their jobs and more than 200 people died in the process. If the South African Police Service (SAPS) failed to defend few shopping malls in 2021, common sense dictates that they are not yet ready and the proposed legislation that would take away the right to own a firearm from citizens for the purposes of private defense is ill conceived and is not in line with the reality of the situation on the ground.

House Breaking levels and Corruption

House breaking levels are high in South Africa, and this makes it one of the most prevalent crimes in the country. In the community of KwaDlangezwa (KZN next to the University of Zululand), house breaking is so common that even the police are failing dismally to address the problem. Some residents don't even bother to report the matter anymore because they know that it won't bring about any positive difference. The matter is exacerbated by the corruption amongst some police officials who sells guns back to criminal gangs. The government tried several times to recover the unlicensed firearms from the communities by giving people amnesty. This meant that a person cannot be prosecuted for bringing an unsilenced firearm and some people responded positively to that government call, but others didn't. amongst those guns that were handed to the police for destruction, were stolen by some corrupt police officers when they saw it as a lucrative market if they sell to gangs. If the government has not yet sorted the latter mentioned challenges, it would be premature to propose a legislation that would take away the right to own a firearm for purposes of private defense.

Conclusion

As already argued earlier, the government of South Africa is of the view that there are many guns in the hands of citizens, and this is the cause of many violent crimes that keep on skyrocketing in the country. So, the government proposed an amendment to the Firearms Control Act of 2000 which is currently providing the permission to possess the firearm for the purposes of private or self-defense. The permission to own the firearm is given based on the condition that an applicant has no criminal record and that he is proven to be competent on how to use or handle a firearm. The Act provide all necessary mechanisms that are there to ensure that a gun is not issued to an irresponsible citizen who has shown some signs of violence towards other fellow human beings. Above all, the Act makes competency to handle a firearm to be one of the prerequisites that must be complied with before a firearm is issued. Some of the guns that were issued legally end up finding their way to the hands of criminals because of theft and robbery.

To enhance the safety for all citizens, government has proposed an amendment to the current Act that regulate the issuing of firearms to the citizens for the purposes of private defense. The proposed legislation intends to take away the privilege of owning a firearm for private defense and only allow the police, army and private security industry to own firearms. It is argued that this is not in line with the socio-economic realities on the ground. The reality of the situation is that South Africa is one of the dangerous countries in the world because of the prevalence of crime. Taking away the right to possess a firearm would be practically a sure preparation for a disaster and be an anathema to sustainable development. The government has proven to be not well equipped in many ways to handle crime and by executing its duty of ensuring a safe society for all.

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Case Law

S v Makwanyane

Legislation

Constitution of the Republic of South Africa 1996

Firearms Control Act

Firearms Control Amendment Bill