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FIREARMS CONTROL AMENDMENT BILL

Introduction

- 1) Corruption Watch is an independent civil society organisation that was launched in January 2012. We encourage the public to blow the whistle on corruption and we use these reports to engage in various anti-corruption interventions such as research, policy advocacy, public mobilisation campaigns, strategic litigation, public education, media and select investigations.
- 2) As an organisation rooted in principles of social justice, we advocate for a corruption-free society, consistent with the rule of law, constitutional democracy, and the protection of human rights, including the right to safety and security. We therefore also advocate for a violence-free society. Currently, this is far from the South African reality. South Africa is considered as [one of the most violent](#) countries in the world, with recent events relating to political, social and community unrest in KwaZulu-Natal and Gauteng, as well as the taxi violence experienced in the Western Cape, indicative of the problem at hand. In our view, this is a result of deepening and widespread inequality, an inefficient and corrupt police service, and limited control over the availability of firearms.
- 3) The [Memorandum on Objects of the Firearms Control Bill](#) recognises this context of South African society. One of the notable aims of this legislation is to strengthen laws on firearms control and effectively enforce them in order to reduce violent crimes and deaths from firearms. A second aim is to improve controls over firearms in the possession of members of the South African Police Service (SAPS) and Official Institutions. Based on our principles, we support these aims.

Addressing police corruption and misconduct

- 4) Before commenting on the specific clauses of the Firearms Control Amendment Bill 2020 ("the Bill"), we believe that legislative amendments in relation to the control of firearms alone will not be effective in reducing violent crime, if we continue to have a weak, infiltrated, and ineffective policing service.

- 5) Since 2018, the majority of whistle-blower reports that Corruption Watch has received relate to the policing sector. We have received information about alleged bribery in relation to obtaining firearm licenses, and the sale by police of confiscated firearms, to gang leaders and criminal syndicates. In addition, our interactions with community members located in Diepsloot, KwaMashu and on the Cape Flats have all flagged policing as a problem area, with allegations of police failing to act despite having knowledge of crime and perpetrators, requiring bribes to execute their duties, or police operating in corrupt relationships with criminals, including gangs. In these communities, rampant levels of corruption contribute to a violent and unsafe society.
- 6) If the safety of the public is paramount, then this amendment Bill must be accompanied by decisive, ethical, and bona fide cleaning up of the police services. The government must deal with the perception and evidence of police untrustworthiness and ineffectiveness, in order to diminish the perceived need for privately owned guns, and prevent the unlawful sale of guns to criminals.
- 7) Corruption Watch welcomes the opportunity to comment on the Firearms Amendment Bill, with our submission focused on four themes:
 - a) The repeal of firearm ownership for the purpose of self-defence,
 - b) Principle of accountability in relation to firearm ownership,
 - c) Accountability of police and official institutions, and
 - d) Appointment of the Firearms Appeal Board.

Corruption Watch's comment on the Bill

The repeal of firearm ownership for the purpose of self-defence

- 8) The lack of public trust in the police service to effectively fight crime has generated a perception that it is necessary to possess a personal firearm for protection. In an ideally safe society, this perception would not exist, and no one would need firearms. However, a rational approach must be taken towards this issue. Though the Bill seeks to introduce an amendment which would prevent the possession of firearms for self-defence, the perception that guns are needed for this purpose must first be addressed. The people of South Africa must feel safe and protected, and that their right to safety and security, enshrined particularly in Section 12 of the Constitution¹, is adequately upheld by policing services.
- 9) Should government insist upon section 15 of the Bill, repealing sections 13 and 14 of the Firearms Control Act, Corruption Watch calls on the government and legislature, as a matter of priority, to

¹ The Right to Freedom and Security of the Person

ensure that policing services function effectively and incorruptly. Interventions must be introduced to strengthen policing and improve social development, in order for South Africa to become a safer society, and eliminate the perception of the need for firearms for self-defence.

Accountability in relation to firearm ownership

10) Corruption Watch advocates for accountability in all forms possible, and therefore any measure that would improve accountability for firearm and ammunition possession or ownership is highly welcomed. Enforcing accountability would allow tracing of responsibility for firearms, ensuring that consequences can be imposed where those responsible have failed. Numerous firearms have been misappropriated through corrupt means, theft or loss, and used by criminals, contributing to high levels of violent crime. Due to the way in which these weapons are then de-identified, by shaving off serial numbers for example, tracing control of the firearm and therefore responsibility for it is difficult. In addition, the more firearms owned by the public, the larger the pool of people potentially responsible for them, making it more difficult to trace accountability.

11) Therefore, Corruption Watch is in support of clauses in the Bill that improve the accountability and tracing of ownership of firearms and ammunition. They include:

- a) The introduction of ballistic sampling and an Automated Ballistics Identification System (sections 1a, 25 of the Bill);
- b) Ensuring that those responsible for firearms on behalf of a juristic person are in leadership in that organisation (section 8 of the Bill);
- c) Tightening the application process and requiring verification of applications for firearms for the purposes of 'dedicated' hunting and sports-shooting (sections 9, 16, 17 of the Bill);
- d) Reducing the instances in which members of the public may own or possess firearms or ammunition, and limiting private ownership for business, sports, or hunting purposes (sections 15, 19 of the Bill); and
- e) Requiring records of firearms licensed for security service providers to be kept (section 66 of the Bill).

Accountability of police and official institutions

12) Corruption Watch notes with concern that an unacceptable number of firearms are being lost or stolen each year. We therefore support any measures that the Bill would introduce to improve accountability that the SAPS and Official Institutions (as defined in the Bill) for firearms in their possession.

- 13) According to the SAPS [Annual Report 2019/2020](#), despite intending to reduce the number of SAPS guns reported lost or stolen by 5%, the number increased from 607 in 2018/19 to 672 in the 2019/20 financial year. That equates to a loss of approximately 1.8 guns per day. The police service has steadily worsened in terms of recovering lost, stolen and illegal firearms, from recovering 17 260 in 2016/17 to just 4 204 in 2019/20, citing filed-off serial numbers as a reason for their difficulties. The SAPS are clearly struggling to maintain effective oversight over firearms in their possession.
- 14) The SAPS have been entrusted with the possession of firearms for the purpose of realising people's right to safety and security. Firearms are dangerous pieces of equipment and should be respected as such, treated with the utmost care and looked after at all times. The fact that SAPS are losing or being robbed of significant numbers of firearms, and worsening in their ability to recover them, means that the amendments placing increased obligations and accountability over the SAPS and other official institutions are well-received. These include:
- a) The insertion of a definition for the SAPS, allowing for clauses specific to them (section 1q of the Bill);
 - b) Imposing an obligation on Official Institutions to submit a quarterly report on lost or stolen firearms to the Registrar, including reporting on any action that has been taken against employees implicated, and measures in place to prevent loss or theft (section 57 of the Bill);
 - c) Imposing an obligation on the Heads of Official Institutions to submit firearms for ballistic sampling, and to report on such to the Registrar and Minister of Police (section 58 of the Bill);
 - d) The responsibility of the Office of the Central Firearms Register as a Division of the SAPS (section 64a);
 - e) The requirement of the Registrar to submit a quarterly report to the Minister and Parliament, on the theft or loss of firearms from the SAPS and other Official Institutions, the outcomes of investigations into incidents of loss or theft, and any consequences against any implicated employees (section 64d);
 - f) The introduction of a Designated Firearms Officer at each police station, to process applications, ensure compliance by the SAPS, perform inspections, and oversee destruction of firearms (section 64e); and
 - g) The obligation on Commanders in the SAPS to ensure that firearms are kept safely, initiate investigations against Members who have been negligent with firearms, report theft or losses, institute measures to recover costs, and report bi-monthly on these duties to the Registrar.
- 15) These measures create a chain of accountability, by placing responsibility on certain individuals within the SAPS, meaning that if there are any questions or concerns around firearms within the SAPS, there

is a clear point of contact. In addition, reporting obligations will allow a chain of accountability, with each structure holding those below it accountable for responsibility of firearms.

16) Corruption Watch proposes two further amendments to the Bill, in order to improve accountability for firearms in the possession of the SAPS or Official Institutions:

- a) The Act provides that failing to comply with, or contravening any of its provisions is an offence. This includes failure to reasonably prevent loss or theft. Considering the importance of the role of members of SAPS and Official Institutions in upholding safety and security, the unsatisfactory rate at which firearms, in the SAPS' possession in particular, are lost or stolen, and the fact that the Bill already singles out SAPS as a focus area, more can be done to ensure responsible possession of firearms. We propose a specific offence for the negligent loss or theft of firearms by those members. Such an offence should be harsher on members of SAPS or Official Institutions, compared to members of the public, in order to improve trustworthiness over firearm possession and deter irresponsible and negligent behaviour, ultimately aiming to reduce rates of loss and theft.
- b) Though the Registrar, Minister, and Parliament must have oversight, it is also essential, in a participatory democracy, for the public to be able to exercise oversight as well. Therefore, we recommend that all reports on firearm loss and theft must be made available in a manner accessible to the public, and published on Parliament's website, as well as the website of Official Institutions.

Firearms Appeal Board

17) Strong and ethical leadership is essential to the work of the Firearms Appeal Board as it is responsible for reviewing appeals made against the Registrar, with regards to applications for firearms, or non-eligibility/confiscation of firearms. The Board is therefore potentially vulnerable to corruption or capture, as Boards of other institutions have been, which could affect its ability to independently and impartially oversee appeals. Should all the amendments to the Bill be approved, then firearms will become even more coveted. Thus, a Board that is steadfast and unbiased will be fundamental to ensure that appeals are processed correctly, and that reporting on systemic issues with appeals is accurate. Therefore, amendments to improve the calibre of board members are welcomed. These include:

- a) Improved criteria for membership of the Board, including that they must not have been criminally convicted for a dishonest offence, and that the Chairperson must have practiced law for 10 years (section 68 of the Bill); and

- b) That the Board must be independent from the Office of the Central Firearms Register (section 72 of the Bill).

18) However, the criteria should be further strengthened by including the following:

- a) The process to appoint the Board must include public participation. In line with existing practices for other Board appointment processes, this could be in the form of publishing the CVs on Parliament's website, and soliciting public comment on candidates;
- b) The criteria for board membership must include that candidates must have relevant skills, knowledge or experience relevant to the functioning of the board – such as in safety and security, policing, firearm sales or manufacture etc.;
- c) Board members must have demonstrable integrity and commitment to principles of transparency, accountability and anti-corruption.

Conclusion

19) Corruption Watch welcomes the proposed amendments according to the themes we have identified, as they could contribute to an area where current legislation seems insufficient in promoting the effective, safe and responsible control of firearms. It is an area where if regulation is lax, or laws are not enforced, there could be – and already are – disastrous consequences. Better, more effective legislation controlling firearms and reducing instances where they may be lost or stolen, could reduce the possibility of illicit and violent use of firearms. We note, however, that the proposed limitations could cause firearms to become a more lucrative possession, opening up further vulnerabilities to corruption. It is imperative that a clear path of accountability, and strict measures to implement reporting, tracing and accountability, must be definitively implemented, so that opportunities for corruption might be mitigated. Still, measures to improve firearm controls will be ineffective in curtailing violence in society, if the SAPS and government do not demonstrate a commitment to anti-corruption, to restoring public trust in the institution, and dealing decisively with crime in South Africa.

Submitted by Corruption Watch

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