

COMMENTS OF THE
SOUTH AFRICAN HUNTERS AND GAME CONSERVATION ASSOCIATION

on the proposed

DRAFT FIREARMS CONTROL AMENDMENT BILL, 2021

Published by the civilian Secretariat and for the South African Police Force

on 21 May 2021

Contents

1	Introduction.....	2
2	General Remarks.....	2
2.1	History.....	2
2.2	The 2016 Application	4
2.3	The Rescission Application	6
2.4	Summary.....	7
3	Comments on the documents that were published in support of the content of the Draft Amendment Bill	8
3.1	Introduction	8
3.2	Socio-Economic Impact Assessment System Report	11
3.3	The Report of The Committee (the “Committee Report”) on Firearms Control and Management In South Africa 2016	15
3.4	Documentation submitted: Conclusion.....	29

4	the new proposed section 2A	29
4.1	Introduction	29
4.2	Where does the term privilege governed by law come from?	30
4.3	Conclusion	34
5	Irrational.....	34
5.1	The general rationale for the Amendment Bill	34
5.2	Specific instances of irrationalities	34
6	Conclusion and final comments.....	36

1 INTRODUCTION

The South African Hunters and Game Conservation Association ("SAHGCA") submits its comments on the DRAFT FIREARMS CONTROL AMENDMENT BILL, 2021.

The comments are contained in two parts: firstly, this document contains comments on the Bill's legal, philosophical and constitutional underpinnings and, secondly, a section containing a detailed commentary on each of the proposed amendments. The detailed commentary document is submitted separately.

2 GENERAL REMARKS

2.1 History

From 1969, firearm control in South Africa took place in terms of the Arms and Ammunition Act, 1969 (Act 75 of 1969). However, changed circumstances towards

the end of the millennium necessitated further legislative interventions and a completely new act dealing with firearm control was adopted by parliament.

The Firearm Control Act, 2000 (Act 60 of 2000) (the "Act") was promulgated on 10 April 2001 in GG 22214. The Act commenced in phases and the last, and the vast majority of sections came into operation on 1 July 2004.

The Act ushered in an entirely new firearm control regime. It also ushered in a five year transition period commencing in 2004 and ending in 2009, during which 1969 licenses would have transitioned to the regime provided for in the Act.

Certain deficiencies in the Act about the transition regime of the Act became obvious. As a result, SAHGCA approached the High Court in Pretoria for relief, including a declaratory order that 1969 licences shall be deemed valid pending the application's final determination. The High Court in Pretoria granted this order on 29 June 2009.

At the request of the Minister of Police, SAHGCA and the Minister of Police had decided not to proceed with the main application but rather to engage in negotiations to solve the deficiencies in the Act. This engagement between the parties resulted in a broad-based public participation process in which several civil society organisations having an interest in firearm administration participated. The process unfolded slowly but, ultimately, resulted in a negotiated text between the Minister of Police and organisations of the firearm fraternity of a proposed amendment Bill. These amendments would have addressed many of the deficiencies identified in the Act. This amendment Bill, the Draft Firearms Control Amendment Bill, 2015, was published on 3 March 2015, calling for public comments no later than 31 March 2015. Together with the Civilian Secretariat for

Police, the Policing Portfolio Committee of parliament held a firearm summit (the "2015 Firearm Summit"). The Portfolio Committee recommended that the Civilian Secretariat for Police address all uncertainties about the Amendment Bill and consult with all relevant stakeholders. After this, the process came to an inexplicable standstill.

Firearm control administration chaotically proceeded after this and even deteriorated further. As a result, SAHGCA once again approached the High Court in Pretoria for relief in 2016.

2.2 The 2016 Application

In the course of the 2016 application, the parties exchanged extensive sets of affidavits. Among others, SAHGCA applied for an order that the Minister of Police would have been ordered to take the necessary steps to have the 2015 Draft Firearms Control Amendment Bill, tabled in parliament.

The Minister of Police opposed the granting of this relief. In his answering affidavit, which the Minister filed on 6 July 2016, the Minister of Police made the following statements which are of importance for these comments:

- *“The act is premised on the recognition that gun ownership is not a fundamental right, but a privilege governed by law.”¹*
- *“ Following the summit, I decided to put the amendment bill on hold pending the development of a more comprehensive approach to the issues raised. Accordingly, I established a task team to conduct comprehensive*

¹ Par 14, Page 5 of the answer - P 409 of the bundle.

research in order to avoid piecemeal amendments to the act. The task team commenced its work towards the end of July 2015.”²

- *“During march 2016 the task team made a large number of recommendations to me, which I am currently considering for purposes of formulating amendments to the act. It is my intention to facilitate the publication of the amendment bill in the not-too-distant future.”³*
- *“It is my intention to introduce the amendment bill in parliament by September 2016. Promulgation of the act will depend on the speed of parliamentary processes.”⁴*

SAHGCA was successful in the High Court of Pretoria, and the court granted judgment in favour of SAHGCA on the 4th of July 2017.

The Minister of Police filed a notice of appeal to the Constitutional Court of South Africa. In the course of these proceedings, a non-governmental organisation, Gun Free South Africa, applied on 9 January 2018 in the Constitutional Court for two-fold relief: firstly, to be admitted as a friend of the court, and, secondly, applied that specific statistical evidence which they averred supported their submissions that the Act was responsible for a significant decline in firearm deaths and firearm crimes, over the 11 years that it was already operative at that stage. SAHGCA did not oppose the application that Gun Free be admitted as a friend of the court but opposed the application that the statistical evidence is admitted as evidence in the appeal. SAHGCA filed expert evidence that showed conclusively that Gun Free resorted to a misleading interpretation of the statistics. Moreover, some of

² Par 97, Page 27 of the answer – P 431 of the bundle.

³ Par 98, Page 27, of the answer - P 431 of the bundle.

⁴ Par. 99, Page 27, of the answer - P. 431 of the bundle.)

the statistical publications they relied on were misrepresentations of the underlying data. The Constitutional Court admitted Gun-Free as a friend of the court but dismissed the application to have the statistical evidence admitted as evidence in the case.

The Constitutional Court delivered judgment on 7 June 2018.

2.3 The Rescission Application

As from the delivery of the constitutional court judgment, SAHGCA tried on several occasions to engage in discussions with political role-players and senior state administrators without success.

Certain specific interactions took place: -

- SAHGCA drafted the text of a proposed amendment of Section 28 read with section 24 of the Act, and a political party introduced the proposed amendment at the portfolio committee for Police. Such was the proposal's acceptability that all the opposition parties voted in favour of the amendment, and 50% of the governing party also voted in favour of the amendment. However, the chairperson of the Portfolio Committee cast his deciding vote to reject the proposed amendment.
- In October 2018, rumours surfaced of a possible Amendment Act that would have been published for comments. A copy of the rumoured Amendment Act was leaked to the public, and it contained several draconian stipulations.

While SAHGCA engaged in discussions with individuals, and while SAHGCA still tried to secure an appointment with the Minister of Police or a representative of the Minister of Police, SAHGCA received a letter from the Minister of Police during

August 2020, stating that the Minister wished to approach the court to discharge the interim order obtained in 2009. The Minister accused SAHGCA that SAHGCA neglected to prosecute the main application in 2009, and indicated for this reason, it wishes to approach the court to discharge the interim order. SAHGCA responded to this letter. SAHGCA indicated that the decision to suspend the litigation in 2009 was made after the Minister requested that the parties engage in negotiation rather than litigate at that stage. SAHGCA indicated nonetheless that it was willing to cooperate to have the order discharged on condition that discharge of the order is sensibly incorporated in an order to create some arrangement to enable license holders to which the order applied, to apply for licenses in terms of the Act. SAHGCA and the Minister were on the verge of agreeing. However, co-applicants and friends of the court, which the court admitted in 2009, intervened in the negotiation and demanded to be part of the negotiations.

While the Minister's legal team was still negotiating with the legal teams of these other parties, the 2021 Draft Firearm Control Amendment Act was published for comment. Shortly after this publication of the Amendment Act, the Minister's legal team informed SAHGCA, in a short and blunt letter, that the Minister will not proceed with the application to discharge the interim order, since the issues that were relevant would be dealt with in terms of The Draft Amendment Bill.

2.4 Summary

The above sequence of events gains significance in the light of several comments that SAHGCA makes below concerning how the Amendment Bill was published. Accordingly, we comment extensively under the following headings.

3 COMMENTS ON THE DOCUMENTS THAT WERE PUBLISHED IN SUPPORT OF THE CONTENT OF THE DRAFT AMENDMENT BILL

3.1 Introduction

The following Notice appeared in Government Gazette number 44593 on 21 May 2021:

STAATSKOERANT, 21 MEI 2021

No. 44593 149

DEPARTMENT OF POLICE

NO. 437

21 May 2021

**INVITATION FOR PUBLIC COMMENTS:
DRAFT FIREARMS CONTROL AMENDMENT BILL, 2021**

1. Notice is hereby given that the draft Firearms Control Amendment Bill, 2021 ("the draft Bill") is made available for public comments. The draft Bill, the Object Memorandum thereto, as well as the Socio-Economic Impact Assessment System (SEIAS) Report are posted on the website of the Civilian Secretariat for Police Service at: <http://www.policeseecretariat.gov.za>

Compare this publication with how the 2015 draft firearms control Amendment Bill was published:

GENERAL NOTICE

132

NOTICE 180 OF 2015

CIVILIAN SECRETARIAT FOR POLICE

DRAFT FIREARMS CONTROL AMENDMENT BILL, 2015

NOTICE CALLING FOR PUBLIC COMMENTS

The Civilian Secretariat for Police is consulting on the Draft Firearms Control Amendment Bill, 2015 with a view to submitting it to Cabinet for approval for its introduction in Parliament.

The Draft Firearms Control Amendment Bill, 2015 is hereby published for public comments. An invitation is hereby extended to any person, association, body, private or public institution wishing to comment on the Draft Firearms Control Amendment Bill, 2015 to provide written comments by not later than the 31 March 2015.

The differences are striking:

- It is immediately clear from the 2015 Notice that the Civilian Secretariat for Police published the Notice. However, it is not clear who published that 2021 Notice, and it must be inferred indirectly from the Notice that it was the Civilian Secretariat for Police.
- It is immediately clear from the 2015 Notice that the purpose of the publication was to receive comments from the public to submit the proposed draft Bill eventually to the Cabinet. However, it is not clear what the purpose of the 2021 publication is.
- Most important: The entire text of the 2015 Bill was published in the Government Gazette. By so doing, the text became fixed, and the text acquired an official status. The contrary is true of the 2021 Bill. The Notice only states that the Bill is available for download from the Secretariat

website. There is no indication of the existence of any officially authorised text; there is no indication of the processes that are in place to ensure that only officially authorised texts are loaded on the website by administrators. Therefore, there is no means for any person wanting to comment to satisfy himself that the version of the text that was loaded on the website was indeed the version authorised by the Civilian Secretariat. This aspect is crucial because of the secretive nature of “REPORT OF THE COMMITTEE ON FIREARMS CONTROL AND MANAGEMENT IN SOUTH AFRICA 2016”:

- The Minister already appointed this Committee in 2015. The Committee had already reported back in time for the Minister to introduce an Amendment Bill in Parliament before September 2016. However, the Minister never introduced the Bill.
- What is the official date of the Report?
- Who were the members of this Committee?
- Why did the Civilian Secretariat of Police refuse downright from 2016 until 2021 to publish the Report's content? Instead, the Secretariat only published the Report after members of civil society threatened The Secretariat with a court application to compel the Secretariat to publish the Report.
- Once published, it became clear that the content thereof is fundamentally flawed at best and downright misleading at worst.
- Why did the Committee finish its work in secrecy? Not a single significant member of civil society participated in the deliberations of the Committee. This happened, despite the explicit request of

the Portfolio Committee during the 2015 Firearm Summit that role players in civil society should be involved in deliberations to formulate proposals for an Amendment Bill.

3.2 Socio-Economic Impact Assessment System Report

A Socio-Economic Impact Assessment System Report accompanied the Draft Amendment Bill. The nature and purpose of such a report are described on the website of the Department of Planning, Monitoring & evaluation to be as follows:

“Socio Economic Impact Assessment System (SEIAS)

In South Africa, Cabinet decided on the need for a consistent assessment of the socio-economic impact of policy initiatives, legislation and regulations in February 2007. The approval followed a study commissioned by the Presidency and the National Treasury in response to concerns about the failure in some cases to understand the full costs of regulations and especially the impact on the economy.

To implement the Cabinet decision, from 1 October 2015 Cabinet Memoranda seeking approval for draft policies, Bills or regulations must include an impact assessment that has been signed off by the SEIAS Unit. Cabinet Memoranda have been reviewed for departments to include information generated by the SEIAS in the recommendations. In addition, the Memoranda provide for a summary of the main findings of the final impact assessment as well as annexing a full report (refer to the Presidency Guide for the Drafting of the Cabinet Memoranda). Policies and Regulations that are internally signed by Ministers should also be subjected to SEIAS.

The implementation of SEIAS is overseen by an Interdepartmental Steering Committee made up of Senior Officials of the Presidency (Cabinet Office), DPME, Economic Development Department, National Treasury, Department of Trade and Industry, Department of Environmental Affairs, Department of Labour, Department of Public Service and Administration, Department of Social Development, State Security and the Chief State Law Advisors. The Steering Committee is intended to provide guidance and support and to oversee the implementation of SEIAS. DPME will be responsible for the establishment of a SEIAS unit to ensure the implementation, quality control and capacity support for SEIAS across Government. It will be responsible for ensuring that the guidelines and templates are regularly updated and it will support the institutionalisation of the new system.”⁵

⁵ Emphasis added.

Consequently, for such a report to comply with the above prescriptions, it must firstly provide a summary of the main findings of the final impact assessment, and it must annex a full report. Secondly, it must be signed off by the SEIASS unit. Unfortunately, the current assessment report does not meet either of these requirements.

As far as the Report's content is concerned: one would have expected the Report to highlight the economic and social consequences of the amendment Bill on all parties concerned. Instead, the Report regurgitates the Committee Report's bald anti-firearm sentiments all over again. There is no attempt to refer to the adverse social and economic consequences of the Amendment Bill. The following social and economic consequences merit serious consideration: -

- The Amendment Bill creates numerous new and burdensome requirements to which dedicated hunters and sport shooters must comply to qualify to be issued with a firearm licence (Annexure "A", Page 14). The economic contribution of the hunting industry to the South African economy is well known⁶:

"An estimated 7600 trophy hunters visited South Africa in 2016. Their trips lasted, on average, 12 days, and on average, they spent R262 000 (US\$20 000) per trip. Based on these numbers we calculated that trophy hunting contributed close to R2bn (\$130 880 815.00) to the South African economy. Our calculations also show that between 70% and 80% of trophy hunters' spending takes place in the area of the hunt. This includes the accommodation, game hunted and in some cases also the trophy handling and processing.

For their part, biltong hunters spent on average R58 000 (\$4 000) per season. When multiplied with the number of frequent biltong hunters in South Africa (200 000), it totals R11.66bn. What makes the spending of

⁶ <https://www.news24.com/news24/analysis/counting-the-contribution-of-hunting-to-south-africas-economy-20181117>

hunters so important is that hunting mainly occurs in rural areas, which are in dire need of job creation and economic development.

In addition, hunting creates jobs, particularly in rural areas where employment is most needed. Research conducted in three of the top hunting provinces – the Northern Cape, Free State and Limpopo provinces – showed hunting created 31 500 jobs in the three provinces – 17 806 in Limpopo, 9 072 in the Northern Cape and 4 558 in the Free State.

Typical employment created directly includes guides, professional hunters, skimmers, trackers, catering, housekeeping, maintenance, conservation management, anti-poaching and taxidermy, to name a few.

- The above quotation highlights the contribution of the hunting industry to the economy of South Africa in a single year. Most important is the fact that the money spent by hunters is typically spent in rural areas. For instance, the article mentions that the industry created and supported 31 500 jobs - in provinces that usually are plagued with unemployment. So the question is: Why would any person like to place constraints on any industry with such an impact on the economy, and why is this critical aspect not discussed in the Socio-Economic Impact Assessment System Report?
- The Amendment Bill also abolishes the right of any individual to do reloading of ammunition (Annexure “A”, Par 4.30, Page 22). There is and has never been even the slightest indication that the reloading of ammunition can contribute in any way to the proliferation of firearms. By its very nature, reloading of ammunition is aimed at small quantities of ammunition for very specific purposes such as target shooting or hunting. In many instances, ammunition manufacturers discontinue the manufacture of ammunition for old caliber firearms, and owners of such firearms are left with no alternative but to reload their own ammunition. Many industries rely on the reloading of ammunition, such as the film industry that uses blank

ammunition in film scenes. All of these activities will now become criminalised. These aspects are not even touched on in the Socio-Economic Impact Assessment System Report. Why not?

- There is no doubt anymore that the South - African Police Force is unable to protect the citizens of South Africa.⁷ The Amendment Bill, as it stands, abolishes the right to own a firearm for purposes of self-defence (Annexure “A”, Par 4.13 Page 13). To proceed with such a blanket prohibition would be to disarm civilians in the face of high murder, rape and violent crime incidences.
- The Wits report states⁸

“Thus the FCA has had a negligible, if any, effect on firearm related crimes since 2011/12”

and

“The level of strong policing, rather than the FCA, is a necessary condition for reducing firearm related crime. The FCA is not sufficient to reduce firearm-related crime in the absence of strong policing.”

- To prohibit individuals who need to have a self-defence firearm would ensure that citizens become victims in these violent situations. The following is stated in international literature⁹:

“Second, programs to disarm civil society as a whole should be implemented (if ever) only after the Government has provided effective, credible security to the public, so that the vast majority of families which possess firearms can be confident that they will not endanger themselves by surrendering their means of self-protection. Such security includes not

⁷ See Annexure “B” to this report – to be in a statement by the Institute for Security Studies.

⁸ Page 15.

⁹ Kopel, D. B., Gallant, P., & Eisen, J. D. (2007). Human Rights and Gun Confiscation. *QLR*, 26, 385

only protection from criminals and from criminal governments, but also, in some areas, protection from predatory animals.”

- Why are these important aspects not dealt with in any way in the Socio-Economic Impact Assessment System Report? Can the only reason for the irrational obsession with firearms control be the following¹⁰:-

“In some government and NGO offices, there are people who are obsessed with guns. They appear to have no concern about the murder, torture, rape, and ethnic cleansing that result from abusive enforcement of anti-gun laws. The victims are treated like some eggs that must be broken in order to make the omelet of a society where no one except government employees has firearms.”

The Socio-Economic Impact Assessment System Report is fundamentally flawed, and, apart from that, it was not signed off by the independent SEIAS Unit.

3.3 The Report of The Committee (the “Committee Report”) on Firearms Control and Management In South Africa 2016

The Committee Report is a misleading document, and as a motivational memorandum, is a useless document.

Firstly, it misrepresents almost every central conclusion of the Wits report. Below is a short comparison, in a table format, of the statements which the committee report makes about the recommendations of the Wits Report.

¹⁰ Kopel, D. B., Gallant, P., & Eisen, J. D. (2007). Human Rights and Gun Confiscation. *QLR*, 26, 385.

NR:	Allegation in the Committee Report as to what the Wits Report states	What the Wits Report actually states
1.	<p>The instrument used in homicide is an important consideration, as certain types of instruments, particularly firearms, significantly increase the risk of a victim of assault becoming a homicide victim. Firearms (mostly handguns) are often the preferred weapon of choice in violent crime. The most recent data shows that in almost all serious and violent crimes, such as murder, attempted murder, and aggravated robbery, in over 90 per cent of cases, a handgun(pistol/revolver) is used to commit the crime (Wits School of Governance, 2015). A similar pattern is observed in crimes such as carjacking and robbery at residential premises. A noticeable difference in these violent crime categories is the increased use of high calibre weapons in the commission of cash in transit robberies (Wits School of Governance, 2015).</p>	<p>The FCA is relevant to less than 5% of all crimes reported to SAPS. This percentage refers to violent crimes that could be related to firearms, but do not necessarily entail the use of firearms. For example, in crimes of murder, firearms are used in only about a third of cases. Thus violent crime should not be equated with firearms as they are often carried out with other weapons. (P.5).</p> <p>The percentage usage of firearms in murder crimes is highest in</p>

	<p>Furthermore, with regard to contraventions of the FCA, such as the unlawful pointing or discharging of a firearm, in over 90 per cent of cases, a handgun is used; and finally the numbers for the unlawful possession of firearms show that handguns remain the weapon of choice for the commission of crime: handguns make up between 60 to 70 per cent of the weapons illegally held (Wits School of Governance, 2015).</p> <p>(P. 15).</p>	<p>Gauteng (45%) in the latest FCA period, followed closely by KZN (42%), then by Western Cape (39%) and Mpumalanga (36%). These percentages are lower in the other provinces: 27% for Limpopo, 23% for North West, 18% in Eastern Cape, 16% in Free State, and only 6% in the Northern Cape. <u>These numbers clearly show that firearms are not the weapon used in the majority of murders.</u> Instead, our analysis revealed that sharp objects were frequently used, greatly</p>
--	--	---

		outnumbering blunt and other objects. (P.14 and 15)
2.	Handguns (pistols and revolvers) are mostly used in violent crime and also feature high on the list of lost or stolen firearms, a pattern that has not altered significantly since the first base-line data was recorded in 2000 (Chetty, 2000; Wits School of Governance, 2015). (P.18) .	Thus violent crime should not be equated with firearms as they are often carried out with other weapons. (Par 2 on Page 5) . And For example, firearms are used in only about a third of murders nationally. Thus violent crime should not be equated with firearms. (Page 8) .
3.	For example, in 2000, a handgun was used in 92 per cent of murders; and it remains at this level throughout the 14 years. A similar pattern emerges for the preference for handguns in the commission of crimes such as attempted murder (94 per cent) and	In 2013/14, aggravated robberies comprised 68% of all crimes involving handguns, 58% of all crimes involving shotguns, 40% of all crimes

	<p>aggravated robbery (96 per cent), including bank robbery at 90 per cent. Similar to the Chetty findings in 2000, the Wits School of Governance Report shows that the use of assault rifles such as the AK 47 are primarily used in bank robberies or cash-in transit heists, but even then forms less than one per cent of these crimes (P 19).</p>	<p>involving high calibre <i>weapons and 60% of all crimes carried out with AK-47s.</i></p> <p>The Wits Report regards the AK 47 was unreliable, since contrary to the earlier stage in the statistical period, the later period reports very little AK 47 use:</p> <p>The Report concludes:</p> <p>However, these AK-47s percentages are unreliable</p>
4.	<p>Perhaps one of the most significant findings of this Report is the reduction in the proportion of firearm homicides relative to the overall homicide rate over the last 14 years. In 200/01, at the</p>	<p>The finding is correct, but the Wits Report concludes as follows:</p> <p>Crime rates have declined since the start</p>

	<p>start of the introduction of the FCA, 50 per cent of all homicides in South Africa were firearm-related; in 2013/14, firearm-related homicides have now been reduced to 35 per cent of all homicides (Wits School of Governance, 2015). It is worth noting that in 2011/12, the lowest firearm homicide rates were recorded at 30 per cent of all homicides (P. 19).</p>	<p>of the FCA, judging from the decline in the rates from 2004/5 to 2013/14. However, there is little evidence that the FCA has caused the decline. The level of strong and sustained policing, rather than the FCA, is a necessary condition for reducing firearm related crime. The FCA is not sufficient to reduce firearm related crime in the absence of strong policing (P. 5).</p>
5.	<p>Table P. 21. WSG – Contains 11 tables and 3 Figures. Represent 1 in isolation.</p>	<p>The numbers of firearms reported stolen or lost have decreased over time for individuals, security services, institutions and dealers. However, the numbers reported</p>

		<p>have increased substantially across Physical Government departments excluding SAPS, although there is some evidence of a decrease in 2013/14 (Table 53). Relative to the number of registered firearms to owners in 2013/14 (Table 35), the numbers reported stolen or lost in 2013/14 are highest for Security Services (837/84,521) at almost 1%, and between 0.1%-0.2% for other owners (Table 53). (P. 132)</p>
6.	<p>In South Africa, almost 70 per cent of licensed firearms are held by civilians (excluding private security guards) (Wits School of Governance, 2015).(P 34)</p>	<p>Could not trace this statement in the Wits report. The closest remark to this in the Wits report is contained in par 4.2 Page 114</p>

		<p>where it is stated that as at end October 2014 (That is 6 years ago), 68% of firearms are registered are registered to private individuals but that percentage was a consistently declined from 78% as from ten years earlier.</p>
6.	<p>In South Africa handguns (pistols and revolvers) are most often used in violent crime such as murder, attempted murder, robbery with aggravating circumstances and car hijacking (Wits School of Governance, 2015).(P. 35).</p>	<p>Thus violent crime should not be equated with firearms as they are often carried out with other weapons. (P.5).</p>
7.	<p>In order to conform to the new legislation, most private security companies have acquired a substantial number of firearms. The number of approved applications by CFR for the period 1999 to 20 October 2014 was approximately 61 253 while refused</p>	<p>This statement could not be traced in the Wits report.</p>

	<p>applications were around 6 000 (Wits School of Governance, 2015). (P 55 and 56).</p>	
8.	<p>The graph below indicates that the majority of licensed firearm owners are between the ages of 40 and 70 years of age Recommendation: Given these demographics, there must be a coordinated policy approach among government institutions in dealing with firearms in deceased estates. (Source: Wits School of Governance). (P. 82).</p>	<p>The particular graph referred to in the text could not be traced in the Wits Report. the Wits report does report as follows with regard to the age distribution of firearms license holders:</p> <p>The average age of registered firearm owners is 54.1 years (SD=13.7 years).</p> <p>However these summary statistics are unrepresentatively high owing to the number of licenced owners of 80-104 years old who are likely to be deceased but still registered on</p>

		<p>the CFR. Thus the slightly lower median age of 53 years is more representative, indicating that half of all licenced firearm owners are 53 years old or younger, and the other half 53 or older. The median ages of registered firearm owners in the provinces is similar ranging from 52 years (Gauteng and KZN) to 55 years (Eastern Cape). However, all these estimates are likely to be biased by ownership associated with deceased estates. Although the CFR receives information on deceased firearm owners from The Department of Home</p>
--	--	---

		Affairs, the updating of deceased firearm owners on the registry is work in progress.
9.	There is no limit as to the number of firearms and/or firearms licences that a person can be issued with under these sections. Furthermore, since the introduction of the FCA in 2000 there has been an increase in the application for and approval of rifles, both in the dedicated and the occasional hunting category, with almost 350 000 new firearms approved during this period under review (1999 to 2014) for owner categories under section 15, s16, and s16A (153 519 and 193 276 respectively) (Wits School of Governance, 2015). (P. 95) .	There is no indication where this statistic appears in the Wits report neither could it readily be traced.
10.	As of October 2014, there are 4.4 million registered firearms, of which 68 per cent are registered to private individuals (totalling almost 3 million firearms); and 49 per cent of these firearms are handguns, that is pistols	In October, 2014 there were almost 4.4 million registered firearms in South Africa (Table 34 and Table 35).

	<p>or revolvers (Wits School of Governance Report, 2015) (P.121).</p>	<p>Of these firearms, approximately 3 million (68%) are registered to 1.75 million private individuals, <i>compared to 15 years ago when there were more than 4.5 million registered firearms of which 78% were registered to private individuals</i> (Chetty, 2000). P. 113.</p>
--	--	--

Secondly, it purports to rely on research other than the Wits report. For example, the following references appear: “(Gamba, 2000)”, “(Chetty, 2000)” and “(Altbeker et al, 2000)”. The referencing style strongly suggests that there will be a bibliography at the end of the Report. However, there is no such a bibliography, and there is consequently no way to trace the research and comment on that. Furthermore, all these references refer to the year 2000, which is four years before the full implementation of the Act. Therefore, these references can only have minimal value to motivate the amendment of the current Act.

Thirdly the Committee Report relies on research by two researchers, viz “(Abrahams et al., 2013)” and “(Matzopoulos et al, 2014)”. This research is the same as that used by Gun Free South Africa, referred to in the introductory part of this document. The content of these two research papers was already

conclusively refuted by SAHGCA. Yet, for some reason or another, both GUN FREE¹¹ and the Secretariat keep relying on this research. What makes this continued reliance unforgivable is the following remark contained in the Wits report:

“Conclusion: We discount the findings of the MRC researchers (Abrahams et al., 2013; Matzopolous et al., 2014) who claim that the stricter gun control of the FCA has caused the declines in numbers of homicides and the decreasing usage of firearms in homicides over the period of their studies (nine years and five years respectively)”.

If one ignores the deceptive and flawed “research” to which the committee report refers, what remains in the Committee Report to substantiate any argument that an amendment of the Act, to the extent provided for in the Amendment Bill, is needed? Instead, all that remains in the Committee report is a wide swath of emotional and unsubstantiated allegations, such as:

“As part of a holistic approach to addressing the problem of the proliferation of firearms in South Africa...”¹²

and

“The uncontrolled proliferation of firearms and the use and misuse of firearms make many South Africans feel unsafe in their homes, on the streets and in other public amenities in the country ”

The term “proliferation” appears 29 times in the Committee Report. The Report does not even come close to make out a case that there is “uncontrolled

¹¹ The only entity which SAHGCA could establish is in favour of the Amendment Bill.

¹² Page 5.

proliferation of firearms” in South Africa. Which uncontrolled proliferation of firearms? Once again, the content of the Wits report can give guidance¹³:

“In October, 2014 there were almost 4.4 million registered firearms in South Africa (Table 34 and Table 35). Of these firearms, approximately 3 million (68%) are registered to 1.75 million private individuals, compared to 15 years ago when there were more than 4.5 million registered firearms of which 78% were registered to private individuals (Chetty, 2000).”

It is clear from the above quotation that over a decade, fewer firearms licenses were issued, and even less to private individuals. What is the situation concerning lost and stolen firearms? The Wits report also gives guidance in this regard. The report states: ¹⁴

“The numbers of firearms reported stolen or lost have decreased over time for individuals, security services, institutions and dealers. However, the numbers reported have increased substantially across Physical Government departments excluding SAPS”¹⁵

By way of simple logic, then: if fewer firearm licenses are granted to the public and if even fewer licenses are registered in individuals' names, and there is a consistent decline in the loss and theft of firearms, where does this proliferation come from?

If there is such a proliferation (which is not clear), it can only come from firearms leaking from the Government Departments and the South African Police Force. That this is indeed the case is documented extensively, amongst others in two books, viz Pauw, J. (2017). *President's keepers*. Cape Town: Tafelberg and Mark Shaw (2021) *Give Us More Guns - How South Africa's gangs were armed* Jonathan Ball Publishers Johannesburg. Both of these books uncover, in detail,

¹³ Page 19.

¹⁴ Page 132.

¹⁵ Emphasis added.

how high-level politicians and civil servants have been active in corruption and the trafficking of firearms from police facilities to gangs.

It is illogical, irrational, and despicable that the South African Police Service would keep tightening firearm control with draconian measures which they impose on the citizens of South Africa, while the citizens of South Africa are not responsible for firearm proliferation. SAHGCA has called in the past, in the litigation highlighted above, and from other forums, that the Minister of Police shall clarify the State's involvement in the proliferation of firearms. Unfortunately, the calls are simply ignored.

3.4 Documentation submitted: Conclusion

The concise overview above of the documentation that the Secretariat alleges support the need for their stipulations contained in the amendment Bill illustrates that the evidential material tendered does not exist and that the entire basis for this amendment bill is irrational. This Report will return to this aspect later in this comments document.

4 THE NEW PROPOSED SECTION 2A

4.1 Introduction

Section 2A into the Act proposes: -

*"2A. The underlying principles of this Act are to—
(a) confirm firearm possession and use as not being a right but a privilege that is conditional on the overriding need to ensure public safety"*

Section 2 of the Act stipulates the Act's purpose, and it lays down the parameters to any court of law as to how the Act should be interpreted. It is consequently a section that is of fundamental importance.

SAHGCA could not trace any legal literature or jurisprudence which indicate that the concept of “a privilege” as opposed to a “right” exists anywhere in legal systems in the world.

4.2 Where does the term privilege governed by law come from?

As explained above, SAHGCA filed a constitutional challenge to specific sections of the Act in 2016. The Minister opposed the application. In the opposing affidavit, the following statement appears in paragraph 14 of the answering affidavit (which was signed in 2016 by the then Minister of the Police Force):

“The Act is premised on the recognition that gun ownership is not a fundamental right, but a privilege governed by law.”

The Association answered to this allegation as follows:

“The Respondent also does not explain what it means by If it is the intention of the Respondent to argue that the stipulations in the act and regulations promulgated in terms of the act, are merely “privileges” and that no rights can emanate from the Act and Regulations, then such allegation is denied.

This aspect was not part of the dispute between the parties at that stage and did not receive attention in argument before the court. The court was also not called upon to rule on this aspect. At that stage already, though, the remark was puzzling:

- It was, of course, beyond any doubt that the law has always governed “rights”. There is a long historical development as to which kind of rights are protected in what way, and the scope of protection expanded over many years. A clear historical development can be detected.
- It was also clear at that stage that the law also governed human relationships other than “rights”, such as “legitimate expectations”. Thus,

once again, a clear line of the historical development of the doctrine of legitimate expectations existed.

- It should be noted that all the above developments took place against the backdrop of a complex number of factors, amongst others the convictions of society.
- The question that arose, therefore, was the following: Was this statement by the Minister an attempt to create a different category, or at the very least to try to start a legal discourse, with the final intention to gain recognition for the proposition that specific human interactions are nothing more than “privileges”, therefore not “rights” and would therefore not qualify to be protected in terms of Chapter 2 of the Constitution.
- At the time of the preparation for the constitutional challenge, the legal team of the Association did not explore this topic further since it was not part of the dispute between the parties.

Why this emphasis on a “privilege”? There is absolutely no debate that even “rights” being recognised in Chapter 2 of the Constitution are “conditional on” the fact that there shall not be overriding societal interests present. If so, such rights can be curtailed and even severely curtailed (Section 36 of the Constitution). So why is it necessary to take even a step further and to downgrade such a right (however curtailed such a right might be) to a “privilege”? Can it perhaps be that, whoever is behind this Draft Amendment Bill (see later), foresees a further trajectory of developments in the law and particularly possible amendments to the Firearm Control Act by which a legal regime is created in which firearms owners will be entirely at the mercy of Firearm Administration by the State, outside the context of the protection of the courts?

Where does this phrase come from initially?

- On 1 st February 2015, a certain Cate Buchanan wrote an opinion piece in City Press. After discussing specific firearm control reform measures in especially Brazil and Australia, she states:

” A leading evaluation of these reforms has concluded the policy changes now save up to \$500 million (R5.8 billion) per year in violence-related costs and have saved about 200 lives to date. These changes indicate a seismic shift in a culture that once believed unfettered gun possession was a right”.

- Cate Buchanan’s CV could be obtained from a Webpage (<https://www.c-r.org/who-we-are/people/cate-buchanan-0>):

“Cate Buchanan is a mediation and inclusive process design specialist who works for the UN Special Envoy’s Office-Yemen as a Senior Adviser and in consultancy and retainer roles for the UN Mediation Support Unit (UN MSU), Centre for Humanitarian Dialogue, Dialogue Advisory Group, Conciliation Resources, and UNFPA Myanmar on conflict-related sexual violence. In 2018-mid 2019 she was on the MSU Standby Team of Experts. Over 2019-20 she also worked in advisory roles for the UN MSU, Dialogue Advisory Group, Norwegian Centre for Conflict Resolution, International IDEA, and the UK, and Norwegian Governments. Cate has worked in Myanmar as an adviser to Nyein (Shalom) Foundation and the armed groups it works with supporting their national dialogues and negotiation approaches, and secretariat development. From 2001-2013 Cate worked for the HD Centre as a Programme Manager and Senior Adviser. In 2004/05 she was based in Brazil on secondment to Viva Rio as a human security adviser. Cate spearheaded the Surviving Gun Violence Project and was Chief Editor of Gun Violence, Disability and Recovery (2014). Cate is the Specialist Editor of Conciliation Resources Accord 29 Pioneering peace pathways – making connections to end violent conflict.”

- The following reference that SAHGCA could trace: Gun Free South Africa stated the following in a Firearm Control Briefing, on 2 February 2015 (that is, one day after the appearance of the abovementioned opinion piece in City Press: -

“South African law is similar to most other countries that regulate the possession of gun ownership, in that gun ownership is not a right but a privilege offered through the law which sets criteria for ownership.”

It seems, therefore, that the term “privilege governed by law” is driven by NGO’s and individuals who belong to an international anti-firearm fraternity, a fraternity of whom it was stated:

“ They appear to have no concern about the murder, torture, rape, and ethnic cleansing that result from abusive enforcement of anti-gun laws. The victims are treated like some eggs that must be broken in order to make the omelet of a society where no one except government employees has firearms.”

The only possible explanation for the invention and promotion of this term is that this is an attempt to remove the possession and use of a firearm altogether from constitutional protections. In this way, simply by reclassifying an interest that citizens may have in certain conduct or property as not being rights, the Government of the day may attempt to regulate such interests of citizens outside the scope of protection the law and the Constitution and oversight by the courts. This is a serious attempt to circumvent the Constitution of the country.

Completely irrational and disproportionate senseless firearm regulation (such as the proposed 2021 Amendment Bill) would then not be reviewable by a court of law. Once this principle is established in the Firearm Control Act, the extension of the principle to reclassify interests and rights as privileges to other areas of interest of citizens is only a stone throw away, potentially putting South Africa in a downward spiral of constitutional decay.

4.3 Conclusion

The SAHGCA is, for the above reasons, vehemently opposed to the inclusion of the term “*not being a right but a privilege*” into the Act.

5 IRRATIONAL

5.1 The general rationale for the Amendment Bill

Following the above, the motivational memoranda do not establish the need for an amendment to the Act of the nature proposed in the Amendment Bill. The following is stated in this regard by way of summary:

- The Memoranda state that the proliferation of firearms is one of the primary reasons why this Amendment Bill is necessary. There is no evidence that there is a proliferation of firearms in South Africa.
- There are strong indications that the source of illegal firearms in South Africa is firearms that leak from government departments such as the South African Police Service and the South African Defence Force. Therefore, it is irrational and even downright dishonest to keep on tightening firearm control applicable to private individuals, whereas the private individual firearm owner is not the source of any problem regarding illegal firearms in South Africa.
- The Secretariat relies on misleading and discredited research to try to justify the content of the Amendment Bill.

5.2 Specific instances of irrationalities

The Amendment Bill is replete with stipulations that just do not make sense. Annexure “A” refers to all of such instances, and it will make no sense to repeat it in this document. However, it is apposite to refer to some of those:

-
- The viability of a database to try to “fingerprint” firearms (P. 3 of Annexure “A”). Such a system is impossible and unachievable.
 - It is creating a system that would result in this substantial increase in the administrative burden of the relicensing of firearms and competency certificates (Par 29 of Annexure “A”). It is, at this stage, beyond any contention that the Central Firearm Registry is unable to cope with the administrative burden of the relicensing of firearms and competency certificates. Therefore, it does not make sense to increase that burden further.
 - The type of arguments typically used against firearms for self-defence purposes. One such example is the statement in the committee report stating as follows¹⁶:

“.....that owners of handguns (pistols/revolvers) are significantly more often victims of contact crimes (murder, assaults, robbery)..”

As a reason why firearms for self-defence purposes should not be licensed, this type of argument is illogical and utter nonsense. It is already a requirement for an individual that before a firearm license for self defence shall be issued to him, he shall indicate that he has a particular need for self-defence. In other words, such a person will have to indicate some factors that place them in a vulnerable position. For example, a person who is doing shopkeeping in a remote area with large sums of cash on the premises could have the need for self-defence mechanisms for which a firearm is necessary. As a result, such a person will remain a target for a

¹⁶ P. 37.

crime irrespective of whether he has a firearm or not. The mere fact that he has a firearm at his disposal to defend himself is in no way proof that it is the firearm that attracted or caused the crime. This motivation is akin to the following argument: *“There is a police presence at a large number of crime scenes; Thus, in order to reduce the number of crime scenes in the country, the police should be prohibited to attend to crime scenes.”* This type of statement is, of course, illogical and irrational - it is just downright nonsense.

- Severe restrictions are placed on hunting and sport shooting activities, and the collecting of firearms is prohibited. Why? There is not one iota of evidence that these categories of firearms have ever in the past contributed even slightly to the proliferation of firearms.

6 CONCLUSION AND FINAL COMMENTS

The SAHGCA states unequivocally:-

- That the proposed Amendment Bill falls short of the requirement of constitutionality as is pointed out above.
- Calls on the Secretariat to withdraw the proposed Amendment Bill and commence afresh with honest transparent and serious negotiations with organisations within the entire firearm fraternity to formulate an Amendment Bill that will enjoy broad support and ensure cooperation between firearm owners and the South African Police Service.
- Warns that should the Secretariat ignore the above requests, it is foreseeable that the Minister of Police and members of the firearm fraternity

will be locked in litigation for many years to come. It will be unnecessary and unfortunate.