

SA Jagters- en Wildbewaringsvereniging
SA Hunters and Game Conservation Association

Bewaring deur volhoubare benutting / Conservation through sustainable utilisation

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26 April 2019

President C Ramaphosa
Parliament
Cape Town

Honourable Mr President,

FIREARMS LEGISLATION AND OWNERSHIP IN RSA

I am the CEO of the South African Hunters and Game Conservation Association (commonly known as SA Hunters) and I send you this open letter with the knowledge and support of my Board. I cannot claim to talk on behalf of all representatives of legal firearm owners, but I know most of those representatives well enough to state that they will agree with the views I share.

Not long after your inauguration as President of South Africa you started your “tuma mina” campaign. “Tuma mina” means “send me”, and I would like to use this opportunity to request: “Mr President, may I please send you, on behalf of all legal firearm owners in RSA, to just go have a look at the lack of proper implementation and administration of the Firearms Control Act.”

You will most likely start a new term as the President of South Africa after 8 May 2019 and I wish to deliberately already now request you to do this as one of the first priorities to be attended to. For too long we have had an extremely poor experience in RSA with too many illegal firearms being misused in this country, to the detriment of too many people.

I have since 2009 at various instances attempted to get an appointment with your Minister of Police, in an attempt to propose solutions for commonly known problems experienced with the implementation of firearms control legislation. Since January 2019 alone, I submitted at least three written requests to the Office of the Minister. The best response I can claim to have received, was one acknowledgement of receipt of my request. I am not alone in this quest, I know the representatives of all other legal firearms owners are treated the same way.

With all due respect, please allow me to point out just a couple of problems experienced with the firearms control legislation in RSA. These are merely examples and not meant to be a comprehensive list of problems.

The new Firearms Control Act (No 60 of 2000 as amended) was implemented from 2006 with a requirement that all privately owned firearms are to be re-licensed over a period of four years. The inability of the Central Firearms Registry (CFR), at that time, (and still today) to process the applications and issue licenses for legally owned firearms is common knowledge.

Then, by June 2009, the intention was to terminate and cancel all “old licenses”. This would, from the CFR’s and Police’s own information, have criminalised nearly 1 million owners of legally licensed firearms, who, at that time, did not yet apply for renewal of those licenses. SA Hunters then brought a High Court Application in an attempt to protect the interest of its members (and members of the public) to have all “old licenses declared as deemed valid until the main application is heard” and an



interdict to this effect was indeed granted in the North Gauteng High Court. This interdict is still valid and the result hereof is that RSA still has two different firearm licensing regimes.

There are approximately 760 000 firearms still legally licensed in terms of the “old Act”. This is still the situation as the SAPS merely failed to respond to the founding affidavit in the “main application” brought in 2009. As a matter of fact, the SAPS has to date never yet responded to the founding affidavit in that case.

The situation with slow processing of license applications, mistakes made, and a general inability to properly administer and implement the Act just continued unabated.

In March 2015, nine years after promulgation of the Act, a Firearms Summit was called by the Portfolio Committee on Police and was held in the Parliament buildings in Cape Town. The then Deputy Minister of Police, Honourable M Soty, then stated and I quote from the Portfolio Committee Report to Parliament published on 16 July 2015: *“On 13 March 2015, the Deputy Minister undertook a monitoring/inspection visit to the CFR and found that the CFR has not been a priority for a long time. Infrastructure is falling apart; it has outdated IT systems; there is a high vacancy rate; many personnel who had been fired due to corruption were not replaced; and, there is a lack of command and control. Another major challenge is the fact that the Appeals Board is located in the same CFR building, and of course there would be blurring of mandates and collusion or rubber-stamping.*

The Deputy Minister of Police stated that the state of readiness to implement the proposed amendments to the FAC is thus non-existent.”

While this was the statement made by the Deputy Minister in March 2015, it still describes exactly the same situation today and the same words could still be said today.

The Act as promulgated from 2006 provides in section 41 that a dealer must make available and maintain a workstation to maintain electronic access to the CFR database. This electronic access for dealers to the CFR database does not exist yet, despite millions of Rands spent on IT development work for the CFR. More than 13 years after the Act was promulgated the CFR still does not have the electronic access system available to dealers, as the Act requires.

The first legally issued new firearm licenses started lapsing in 2011. Since that date, licenses were renewed as long as five years after the date on which the license lapsed. This was done despite the fact that the Act requires applications for firearms license renewals to be submitted “at least 90 days” prior to the date on which a license lapses. In 2016 the then Acting Commissioner of Police suddenly gave an instruction that no application for renewal of a license should be accepted after the license lapsed. Yet, the same instruction states that during the 90 day period before a license lapses an application for renewal of such license may be accepted.

This unilateral change in practice to the detriment of citizens resulted in at least two High Court applications being brought against the Police for unilateral interpretation of legislation.

In July 2018 Gunowners of South Africa obtained an interdict against the SAPS that states the SAPS *“..... are prohibited from implementing any plans of action or from accepting any firearms for which the license expired at its police stations or at any place for the sole reason that the license of the firearm expired and:*

That the SAPS is prohibited from demanding that such firearms be handed over to it for the sole reason that the license of such a firearm has expired”

This quote is a direct extract from the Court Order dated 27 July 2018.

The SAPS applied for leave to appeal against the interim interdict and was indeed granted leave to appeal. Yet, the SAPS merely failed to file any application for appeal against the interdict. This leaves exactly the same uncertainty on what happens to those firearms of which the licenses lapsed.

It is common knowledge that the Act needs a serious review and amendments to the Act are long overdue. Possible amendments to the Act have been discussed between the then Secretary of Police and representatives of different groups of firearm owners since 2010. In a sworn statement made in a court application in 2016, the then Minister stated under oath that an Amendment Bill would be submitted to Parliament by September 2016. The exact words available from the High Court record reads as follows: *It is my intention to present the Amendment Bill to Parliament in September 2016*". This did not happen yet.

As a matter of fact a draft Amendment Bill was leaked to the press during 2018. The content of this "bill" is described as draconian to say the least. It for instance provides that self-defense as a reason for owning a firearm would be scrapped. This in a country like South Africa with serious crime levels being rampant and on average 55 people murdered per day.

It is widely reported that at the destruction of firearms on 17 April 2019 the Honourable Minister of Police stated that one day it would be better if private citizens have no guns at all. In exactly the same statement the Minister provided the reason for his statement and also admitted that firearms stored by the Police are not safe at all. The exact words by the Minister were reported as "*.... even those guns that have been surrendered here, usually they all come as legal guns, then they get stolen and converted into illegal firearms*".

In 2009 already, there were an estimated three million firearm licenses issued to two million individuals. By now there are most likely more. Nobody really knows how many firearms are licensed to how many owners, as the CFR and the SAPS does not want this information to be made known. Let us for the moment assume there are approximately 2,5 million legally licensed firearm owners, but I must state that this is most likely a conservative number.

All of these firearm owners are voters. By law you must be at least 21 years old to own a legally licensed firearm. These 2,5 million legally licensed firearm owners represent no less than 50 seats in Parliament. Surely this represents a reasonable sample of the voters in the country that should somehow be heard. It would not be unreasonable of such a sample to expect to be given an opportunity to be heard on serious matters.

By far the majority of legally licensed firearm owners in the country are reasonable citizens who just want meaningful firearms control. They want the Act to work successfully and allow them to own and use their firearms. They pay taxes and they want to obey the laws of the country.

None of us want to see the gang war fought on the Cape flats. None of us want the kind of tragedy that happened recently in New Zealand. None of us want to see any unlicensed firearm in the hands of robbers, murderers, rapists and gangsters. We just want the ability to, as reasonable and law abiding citizens, use our legally licensed firearms to hunt and to participate in sport shooting. We want to, in a reasonable system, be allowed to relicense our firearms, expect to be issued a license within a reasonable time and comply with the legislation.

In March 2016 there were an estimated 470 000 (four hundred and seventy thousand) firearms of which the new licenses lapsed, without the owners applying for renewal of such licenses within the

time frame specified in the Act. By now it is most likely more than half a million firearms with lapsed licenses in a conservative estimate. The SAPS does not want to provide the exact number.

The owners of these firearms are represented throughout all race groups. They are not all just criminals. By far the most of them are law-abiding citizens who merely forgot to in good time renew the licenses of their firearms, just like dozens of citizens forget to in good time renew their driving licenses or the licenses of their motor vehicles.

Yet, each of these firearms with lapsed licenses are seen as an illegal firearm merely because the license lapsed and should the Police have their way, these firearms should be surrendered for destruction, even though the Minister of Police does not trust his own Police to keep these firearms safely until it should get destructed.

Should the estimated more than half a million firearms of which the licenses lapsed be illegal and the owners thereof prosecuted, it is common knowledge that it would be an impossible task as every single owner would have to be traced and charged of an offence, found guilty in court and then penalised, most likely with a jail sentence. With all due respect Honourable Mr President, we know that RSA as a country does not have the resources to add another half a million cases to policemen, magistrates, prosecutors, judges and courts that are already overburdened. This is just no practical way to solve the problem.

Similarly, an ordinary amnesty, where more than half a million firearms are to be surrendered to the Police is also not the answer, not if even the Minister of Police does not trust his own Police to take possession of these firearms and keep them safely until destroyed.

South Africa has had two previous amnesty periods where firearms were surrendered to the Police. It is once again common knowledge that a significant number of these firearms were (after they were surrendered) stolen and sold to the gangs in the Cape Flats by Policemen who were trusted to keep these firearms in safe custody.

In both instances of the previous amnesties, the explicit purpose was stated as to get illegal firearms off the streets. Yet, when asked a question in the Portfolio Committee on Police to indicate how many of the firearms surrendered during the two previous amnesties were indeed linked to any crime, the then Deputy Commissioner of Police confirmed that not a single firearm surrendered during the two were linked to any crime. While a lot is made about “normal” amnesties taking illegal firearms off the streets, “normal” amnesties however seem to have rather become the source of more illegal firearms getting to the streets.

Honourable Mr President, I could continue like this for many more pages. I do not want to waste your time. The representatives of legal firearm owners associations are willing and prepared to assist. We have a number of proposals to improve the system, to get rid of some of the problems, to amend the Act and eventually get to a meaningful functional firearms control system in RSA. Just like you, we also want a system that would not distribute more illegal firearms to gangsters.

We are even prepared to spend large amounts of time and money to make this work. But then, Mr. President, somebody needs to listen to us and talk to us. Somebody needs to trust us to the extent to sit down and do the work required to create meaningful solutions to some of the problems. Please allow us that opportunity and allow us to be part of the solution.

Should we not be able to take hands and get to a meaningful solution to these matters, I am afraid that we will see civil disobedience like this country has never seen before. Similar to the E-toll fiasco,

where citizens merely said we will not pay, we could see a situation where legal firearm owners might get to the point where they could just say we will not comply. Please help us to avoid that point.

The collective representatives of legal firearm owners have the ability to solve most of the problems experienced. By allowing us the opportunity to bring some of the solutions in a relatively easy way, we could end up at a point where we have a single firearms administration system in RSA and where the problem of firearms with lapsed licenses is solved and illegal firearms removed from the streets. To achieve this, Mr. President, somebody with the necessary authority needs to sit down and listen to us and allow us to work with him or them to solve these matters.

Mr. President, I have, with all due respect, now used my opportunity to say “mina tuma wena”. Please see this as a constructive attempt to play a role to make South Africa a better country for all its citizens.

Yours sincerely

Fred Camphor
CEO: SA Hunters