

FIREARMS CONTROL BRIEFING

RECORD KEEPING: A CORNERSTONE OF FIREARMS CONTROL

RECORD KEEPING: A GLOBAL NORM

It is now accepted across the world that accurate record-keeping is a cornerstone of effective firearms control. With the adoption of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (UN PoA) in 2001, consensus emerged within the international community that marking and record-keeping are basic preventive measures to stem the flow of guns from the legal to the illegal pool. The UN PoA urges member states to adopt these measures at the national level.¹

Record-keeping involves the collection and maintenance of information in order to 'facilitate the identification of any weapon, its legal status and the location of its storage, at a given stage of its life.'² Records are generally kept across the life cycle of a firearm: from the point of manufacture, at import, at commercial sale, at possession, in case of loss or theft, and finally at destruction. Accurate record-keeping is also a key element in developing appropriate and effective strategies to reduce gun violence.

This briefing examines South Africa's record-keeping regime, with a particular focus on the Central Firearms Registry (CFR), identifying the key challenges faced by the CFR in carrying out its core function, and reviewing the various turn-around strategies adopted by the Ministry of Police and related institutions in addressing these challenges.

THE CASE OF SOUTH AFRICA

In the lead up to the introduction of the Firearms Control Bill to Parliament in 2000, all available information on the nature and extent of firearm use and distribution in South Africa was collated by the Crime Information Analysis Centre. This included: the number and type of licensed guns in the hands of state institutions, private security industry and civilians; the use of guns in crime; loss and theft of firearms; and a brief overview of the extent of firearm deaths. This data played a central role in helping government develop policy that informed the need for a comprehensive and effective system of firearms control in South Africa. For example, the data showed that in 1998, 85 per cent of all robberies in South Africa were committed with a handgun, a ratio of 6:1 to other weapons (i.e. knives, blunt and sharp objects).³ Subsequently the Firearms Control Act (FCA) limits access to handguns through a number of means including limiting the number of handguns any one person can own.

It was the first time that all available data on firearm use and distribution in South Africa was collated into one source, thereby establishing a baseline. The booklet, entitled, *Firearm Use and*

¹ The Organization for Security and Co-operation in Europe. 2003. *Best Practice Guide on Marking, Record-Keeping and Traceability of Small Arms and Light Weapons*. OSCE. Vienna. p.2; also refer to GfSA Firearms Control Briefing 7 which looks at Marking and Tracing.

² The Organization for Security and Co-operation in Europe. 2003. *Best Practice Guide on Marking, Record-Keeping and Traceability of Small Arms and Light Weapons*. OSCE. Vienna. p.8.

³ Chetty, Robert. 2000. *Firearm Use and Distribution in South Africa*. The National Crime Prevention Centre. Pretoria.

Distribution in South Africa has been widely used by researchers, public health specialists, activists, civil society organisations, MPs, government officials, and the media.⁴

Adopted by Parliament in 2000, the FCA is the principal Act governing firearms control in South Africa. Its purpose is two-fold:

1. To establish a comprehensive and effective system of firearm control and management.
2. To ensure the effective monitoring and enforcement of legislation as it pertains to the control of firearms.

Chapter 17 of the FCA deals with the organisational structures responsible for implementing the law, in particular outlining the duties and function of the Registrar (that is the National Commissioner) as well as specifying the information that must be contained in the Central Firearms Register, which is the primary record-keeping mechanism. It also looks at the establishment of the Appeals Board and other Ministerial Committees.

THE CFR: THE 2010 TO 2015 TURN-AROUND STRATEGIES

Over the last five years, there have been numerous reports and to the Portfolio Committee on Police (PCoP) on the status of the 2010 and subsequent CFR turn-around strategies, including at the Firearms Summit in March 2015. Despite all these reports, there remains little clarity on whether the problems identified in 2010 have been addressed in any substantial manner.

In June 2010, the Minister of Police established a Task Team (TT) led by the Civilian Secretariat for Police to undertake an assessment of the implementation of the FCA.⁵ The TT's report identified a range of problems with regards to both the implementation of the FCA and functioning of the CFR.⁶

This briefing outlines five of the problems identified by the Task Team and shows how, almost five years after the TT's report, most, if not all, of the problems involving the CFR continue to undermine South Africa's firearms control management system.

Problem 1: Backlog in the processing of licences

The TT's report notes "major backlogs in processing...licences and this backlog is the major cause of litigation." It states that as of 30 July 2010 there was a total of 1,387,487 firearm applications for processing; 804,942 for renewals and 582,545 for new licences.

In November 2010, the Minister of Police acknowledged the "malfunctioning" of the CFR, which had resulted in a backlog of firearm licence applications. The Minister promised to turn the CFR into a "functional unit" that would deal with the backlog by July 2011. According to SAPS 2011/2012 Annual Report, the backlog relating to 1,048,341 firearm applications (includes renewals) was finalised i.e. the CFR processed over 1 million applications in 9 months⁷. As in other ill-considered 'target-setting' measures adopted by the SAPS to assess performance, the focus was on reaching the target of processing just over a million firearm applications, rather than ensuring that all firearm

⁴ Edited by Robert Chetty (based in the National Secretariat for Safety and Security at the time).

⁵ The impetus for this was the apparent backlog in the processing of both firearm licence applications and applications for renewals of a firearm licence.

⁶ The report was not made public (though parts have been published online – see <http://www.gunownerssa.org/documents/EnquiryFunctioningCFRandFCA2000.pdf>)

⁷ South African Police Service 2011-2012 Annual Report.

applicants are or remain 'fit and proper' persons to possess a gun; thereby compromising the management of the firearms control system.⁸

Problem 2: Integrity of the database system

A core function of the CFR is keeping records of who owns what firearm for which purpose. However, the TT's report notes a number of factors that undermine the integrity of the CFR's database system, namely:

- Backlogs.
- Irregularities and corruption in the issuing of firearm licences, permits and authorisations.
- The existence of two database systems – one for firearm licences, permits and authorisations issued under the old Arms and Ammunition Act (1969) and the other for licences, permits and authorisations issued under the FCA. Resources were allocated to amalgamate both systems but this has still not been completed.⁹

Further, despite significant investment in Information Technology (IT), the TT's report notes, "there is a lack of understanding by the CFR of the value derived from effective management of information." The report goes on to note the following problems:

- No single system on how to process and store information.
- Duplicate computer systems to track, plan, store, and evaluate the performance of the CFR.
- IT systems don't always speak to the requirements of the FCA or Regulations.
- IT systems are not used by staff and much of the work done by the CFR is done manually.

Problem 3: Corruption and irregular issuing of licences

The TT's report notes a number of instances involving irregularities and corruption in the issuing of firearms licences, including:

- Issuing of licences to people who should have had their licences refused (no examples were given).
- Paying of bribes to ensure that licences are issued and to avoid delays.
- Licensing prohibited firearms which are then not accurately listed on the system.

Since the 2010 report there have been a range of instances of fraud and corruption along the firearms control management system involving firearm licences, permits and authorisations. See Table 1 for a summary.¹⁰

⁸ Bruce, David. 2011. Measuring Outputs, Neglecting Outcomes. *SA Crime Quarterly*. No. 38, December 2011. Institute for Security Studies. Pretoria; and ISS presentation to the Portfolio Committee on Police, Cape Town, 14 April 2015. *Key Issues to assess the SAPS Annual Performance & Strategic Plans in 2015*.

⁹ Presentation by the National Commissioner, General Riah Phiyega to the National Firearms Summit. 24-25 March 2015. *Implementing the Firearms Control Act*. Slide 17.

¹⁰ Table 1 only gives examples directly linked to the CFR; See Firearms Control Briefing 7 of 2015 on Police and Guns for more examples.

Table 1: A summary of firearm related fraud and corruption dating from 2012 involving the Central Firearms Registry

- March 2012: *Licences issued to people with a history of violent behaviour*: the CFR reissued a total of nine firearm licences to Mikey Schultz and Nigel McGurk – despite both having confessed to the 2005 murder of mining magnate Brett Kebble (Weekend Argus, Saturday Edition, 3 March 2012).
- July 2013: *An investigation by the Hawks into one of South Africa's biggest gun shops* reports on alleged illegal transactions, corruption, fraud and the export of weapons and ammunition to Russia, Sudan and Syria by Dave Sheer Guns including allegations that 18 police officers, as well as the head of the CFR, were involved in fraudulent and corrupt activities (The Star, 4 and 9 July 2013).
- July 2013: The suspension with immediate effect on 14 July 2013 of the two most senior police officers at the CFR for their alleged involvement in bribery and corruption relating to firearm licensing.
- June 2014: Three police officers from the CFR were taken into custody for alleged involvement in issuing fraudulent gun licences including to 28s gang kingpin Ralph Stanfield. According to media reports National Police Commissioner Riah Phiyega said the arrest of three police officers "is just the tip of the iceberg in a probe into fake gun licences" (*More arrests expected in sweeping probe of fake gun licences*, Sunday Times, 29 June 2014).

In response to assertions of fraud and corruption by firearms dealers and firearms training institutions, the Minister of Police established a two-person Committee of Inquiry in May 2013 to conduct an enquiry into these allegations of questionable practices. Public submissions were solicited and the Committee's report finalised and submitted to the Minister of Police.¹¹ Three years later despite two PAIA applications by Gun Free South Africa to both the Ministry of Police and Parliament no report has been made available on the findings of the Committee.

Problem 4: Renewals under the FCA

Renewals are a cornerstone of the FCA, ensuring that firearm owners continue to comply with the requirements of the law. In addition to stipulating that competency certificates be renewed every five years, the FCA also requires the regular renewal of firearm licences, with renewal periods varying from two to ten years depending on the type of firearm owned and reason for ownership.

The TT's report notes that between 2010 and 2014, 493,445 competency certificates will come up for renewal, yet, "The FCA or Regulations do not describe the processes or procedures to be followed in respect of re-application for competency, other than to state that a competency certificate lapses after five years...The area relating to the issue of renewal of competency certificates needs to be addressed as a matter of urgency in order to ensure compliance with the provisions of the FCA." The report goes on to note that 214,548 firearm licences will have to be renewed between 2010 and 2014, and that "The process around these renewals...needs to be properly communicated to gun owners."

In a move aimed at addressing fraud and corruption in the issuing of competency certificates, the quality assurance of firearms training institutions was transferred from the Safety and Security Sector Education Training Authority (SASSETA) to the Professional Firearms Training Council (PFTC), after the former had its quality assurance role removed due to lack of performance and the latter successfully registered with the Quality Council for Trades and Occupations as a professional body. However, in March 2016, the Secretary of the PFTC, Andre van Tonder was caught on camera selling

¹¹ Advocates Hassim and Ramashia were appointed to conduct the enquiry; in August 2013, the Ministry of Police placed an advert in the weekly Mail & Guardian, calling for submissions to the Committee of Inquiry.

a training certificate. He was subsequently found guilty of engaging in fraudulent practice and de-accredited as a training provider from both the PFTC and SAPS.

Problem 5: Independence of the Appeal Board

The TT notes a perception that the Appeal Board does nothing more than rubber stamp decisions made by the CFR and that in the High Court case of *George Black vs the Minister of Safety and Security*, the judge criticised the Appeal Board in his ruling for, “not having the expert knowledge of firearms to enable it to properly rule on cases.”

The Firearms Appeal Board is a key structure in the firearms control management system, ensuring that firearm licences are granted only to people that are ‘fit and proper’. This perceived lack of independence was addressed in the 2015 Firearms Control Amendment Bill, with an amendment that requires the Appeal Board to function independently of the CFR.¹²

IMPACT OF POOR RECORD-KEEPING

The impact of this breakdown in South Africa’s firearms control management system is twofold; diversion of guns from the legal into the illegal market and an increase in gun related violence:

- Once firearms are in illegal hands they are beyond regulation; requiring costly – and often dangerous – police interventions to recover them.
- In early 2012 several of the Level 1 Trauma Hospitals in South Africa began to record an increase in patients presenting with gunshot injuries.¹³

CONCLUSION

The problems identified by the Task Team in 2010 persist more than five years later. The result is a steady leak of guns into the illegal pool of weapons and an increase in incidents of gun violence.

Since the start of the fifth Parliament, with a number of changes across policing oversight bodies, in particular in the Police Portfolio Committee, significant attention has been paid to both the implementation of the FCA and the functioning of the CFR. The introduction of an Amendment Bill that seeks to strengthen the firearms control regime in South Africa, including measures that will ensure accurate and effective record-keeping of firearms, can go a long way to addressing some of these challenges.

¹² Firearms Control Amendment Bill 2015. Clause 27 (S 131 of the FCA).

¹³ Refer to the submission made by Associate Professor Andrew Nicol, Director of the Trauma Centre, Groote Schuur Hospital on the Firearms Control Amendment Bill 2015.