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The Committee Secretary
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Dear Mr. Mbengo

CONCERNS REGARDING THE DANGEROUS WEAPONS BILL OF 2012

I am writing this letter, as a private citizen, to express my deeply felt concern about the impending Dangerous Weapons Bill of 2012 (the Bill). I would like to raise a number of concerns I have with the Bill. I am also asking parliament in my capacity as a citizen of South Africa, **not** to introduce this Bill to law in its current form.

Simply put, I do not think the Bill is workable, practical or reasonable.

Philosophically, the Bill appears to be demonizing the tools of crime, weapons, and not the actual crimes and criminals. It does this by **failing to distinguish appropriately between legitimate and illegitimate carry of weapons**. The Bill also ignores well documented historic failures of prohibitory laws with the negative secondary societal consequences directly resulting from such interventions. It may even open the door to abusive 'pre-crime' policing.

The Bill appears to be based on the notion that private individuals should be relying solely on the State for security of person and property. It appears to me to be neglecting legitimate uses of weapons for private/self-defense by civilians.

I am greatly concerned that **the Bill may covertly infringe on the rights of citizens to carry weapons and firearms for self-defense**. If that is the case, parliament runs a very real risk that more disarmed civilians will be placed at a further disadvantage and left defenseless to be victimized. Further victimization of the population will have very real costs. At worst, we might even see an upsurge in violent crime. That surely is not the idea of the Bill.

We are all well aware that criminals, very often, do not concern themselves with firearm and weapon prohibitions. My concern is that criminals may become even more emboldened with the knowledge that many law-abiding people (the potential targets of crime) would become more unarmed and defenseless under this legislation.

Conviction rates in South Africa are low. According to the *South African Law Commission* conviction rates after two years are comparatively low in South Africa. Conviction rates are presented as follows: murder, 11 percent; rape, 7 percent; and robbery, 3 percent. (<http://www.justice.gov.za/salrc/rpapers/rp18.pdf>). This seems to be suggesting that law-abiding South Africans are at risk of crime, and the policing efforts are struggling. Citizens often need to rely on themselves for self-defense as many of the recent news reports clearly illustrate. Additionally, researchers such as Dr. John Lott¹ at the University of Chicago in

¹ See: Lott, J.R. (2010). *More Guns, Less Crime: Understanding Crime and Gun Control Laws*. Third Edition. London: University of Chicago Press.

the United States did convincing research that is suggesting a deterrence effect and a reduction in violent crimes associated with having suitable armed law-abiding civilians. **Thus, the situation of legitimate, legal carry of private defense weapons must thus be addressed and directly clarified before even considering the legislation.**

I will outline further specific concerns in the following sections.

Concern 1: 'Reasonable Suspicion' of a Future Intention

The Bill says that any person in possession of a "firearm" or "dangerous weapon" under circumstances that raise a "reasonable suspicion" that these weapons will be used for unlawful purpose is guilty of a (criminal) offense. The Bill further clarifies five factors that must be taken into account to determine "reasonable suspicion."

Thinking through the implications of these clauses in the Bill, it is very likely that our police and prosecutors, will be required to judge the **intentions** of future, unrealized, behavior. This could certainly amount to a type of 'pre-crime' law enforcement or 'thought policing.' This is already is problematic in my opinion, importantly: **won't state be punishing someone for a crime they had not committed in reality?** Does that not go against our constitution?

There is no way that the State, or any man, could prove with 100 percent certainty what someone would be doing in future. This owes to the fact that the future is always uncertain. Unless prosecutors can see into the future, there is in reality no way to prove someone would have acted as expected before intervening with an arrest.

When people do act in an antisocial way e.g. by threatening and intimidating others with weapons, robbing, and murdering, aren't those actions are already deemed crimes punishable by law? If such a law is deemed necessary, **should the legislative focus then not rather focus to punish a conspiracy to commit a crime, for which there is suitable evidence**, other than focusing on the possession of weapons.

Presumption of Innocence

What I am failing to grasp is how this Bill could be enforced effectively without enabling many wrongful arrests and potential abuses of constitutional rights. Furthermore, it is my understanding that **as South Africans we are innocent until proven guilty**. Will this Bill not be placing our 'bedrock' constitutional right at risk? The Bill may even fall under constitutional court challenges that could cost the taxpayer dearly.

Certainly the actions of a proportionately small number of criminals in our society should not be used to infringe the rights and liberties of all South Africans.

If the accused is presumed innocent, under our constitution, and criminal conviction requires evidence "beyond a reasonable doubt" how many criminal cases will have to be thrown out because of a lack of sufficient evidence? How exactly would the prosecutor gather evidence on a nonexistent crime? Won't this amount to a wasteful effort in law-enforcement?

Concern 2: Ignorance of Legitimate Uses of Dangerous Weapons and Firearms

Our lawmakers seem to be ignoring the fact that not all South Africans carry weapons for crime. Many people have to carry weapons for the legitimate purpose of private defense, for work, and other legitimate reasons.

Like I said before, I believe this issue needs to be clarified. For example, the carry of licensed self-defense firearms is specifically allowed under the Firearms Control Act of 2000. Not everyone can afford to carry firearms legally in South Africa. Therefore, people that value the moral right of self defense often carry other types of weapons. The sole action of carrying such weapons should not be deemed illegitimate. The Bill does not seem clarify how existing legislation, and natural rights allowing for self-defense weapons, will be affected under the Bill.

I find the Bill problematic, I believe it may **covertly** infringe on the right of law-abiding people to carry weapons for self-defense. While the preamble of the Bill does recognize the 'right of security of persons' and the 'right to be free from all forms of violence' it seems to be neglecting consideration, or mention, of the innate human and legal right of private/ self-defense.

The innate idea seems to be that the Police will protect us, but that is not realistic. There are about 324 civilians for each police officer. Police officer mostly arrive after the fact and they cannot be everywhere at once. In a practical sense, overt or covert, restrictions on weapons in the hands of the law-abiding will logically make self-defense more difficult.

The Bill could implicitly demonize the carry of lawful firearms and weapons in the hands of the law-abiding. It is reasonable to think that many South Africans will after the enforcement of the Bill no longer be confident to carry self-defense weapons. This will implicitly be restricting a citizen's ability to execute legitimate private defense. Is it not logical to expect violent crime levels to increase as a result?

Concern 3: Effect on Law Enforcement and Opportunity for Corruption and Abuse

It is my opinion that the police will have to act on 'judgement calls' based on very little evidence. Our police officers will be first in line to determine if 'reasonable suspicion' applies to a person and a situation. We have to give thought to the way this Bill is to be enforced, as well as the possibility corruption, wrongful arrests, and abuses of lawful weapons owners.

As I believe I showed before, this Bill may create difficult legal difficulties for the state, prosecutors, and the police. Many of our law enforcement officers are dutiful, hard working, and commendable, public safety officers. However, incidences of corruption under law enforcement officers are often seen in the media.

It would be a sound principle to limit the opportunity for corruption to happen. With the Bill it might be very likely that some questionable members of the police could perhaps unjustly arrest people legitimately carrying weapons. Is the fabrication of a 'reasonable suspicion' not a very real danger? 'Reasonable suspicion' seem to will depend a great deal on the interpretation of the first arresting police officers. Increasing wrongful arrests will be costly to the police in resources and public image. This possibility must definitely be considered.

Recommendations and Suggestions

In conclusion before making this Bill law, I believe our legislators have to consider a number of important points:

1. They must provide clarity on the legitimate carry of weapons in public and how this Bill will affect those rights.
2. Covert infringements on the right of legal and legitimate carry of weapons and self defense must be considered and explicitly avoided.
3. The costs, practicality and constitutional affect of the enforcement of the "reasonable suspicion" must be considered.
4. The effect of prohibitory weapons legislation with the associated negative social affect need to be considered.
5. The nature of what constitutes a crime under this legislation need to be clarified and addressed.
6. The potential for wrongful arrest, wrongful prosecution, and corruption must be considered and addressed.

Thank you for taking the time to consider these issues. Best wishes with the process.

Yours faithfully



G van Onselen (Mr.)