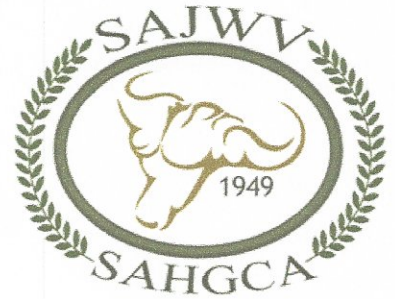


# SA Jagters- en Wildbewaringsvereniging SA Hunters and Game Conservation Association

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*Suid-Afrika se Grootste Bewaringsorganisasie - gefokus op Bewaring deur Volhoubare Benutting*  
*South Africa's Largest Conservation Organisation - focussed on Conservation Through Sustainable Use*

8 February 2013

Ms Babalwa Mbengo  
Secretary of the Portfolio Committee on Police  
P O Box 15  
Cape Town  
8000  
By email: [bmbengo@parliament.gov.za](mailto:bmbengo@parliament.gov.za)

Dear Ms Mbengo,

## **Dangerous Weapons Bill 2012**

### **1. Preamble**

The South African Hunters and Game Conservation Association [SA Hunters] represent more than 33 000 members throughout South Africa who are hunters and sport shooters. SA Hunters is therefore obliged to, in the interest of its members to raise concerns on legislative issues that may affect the use of firearms members acquired lawfully and intend to use within the stipulations of the law. SA Hunters is committed to support legal and responsible use of firearms. The Association has a comprehensive disciplinary code to guide members towards adherence. More information about the Association can be found on its web site at [www.sahunters.co.za](http://www.sahunters.co.za)

### **2. Principle issues of concern**

As the Bill stands now, SA Hunters has the following principle issues;

2.1 The inclusion of the term "Firearm" in this Bill

2.2 The ambiguity in the definitions.

2.3 The discretion allowed to those and with specific reference to the South African Police, entitled with the application of the law.

### 3. The inclusion of the term “Firearm” in this Bill

The purpose of this Bill is *“To provide for certain prohibitions and restrictions in respect of the possession of a dangerous weapon, firearm or replica or imitation firearm;”*

Existing legislation namely and amongst other, already provides the control of firearms;

- The Criminal Procedure Act
- The Control of Access to Public Buildings and Vehicles Act
- The Public Gatherings Act
- The Firearms Control Act

With the above legislation in existence, the question arises why additional legislation would be required which may further complicate law enforcement when more than one piece of legislation dealing with firearms in the same context is already in existence.

When this Bill was first drafted and published for comment in the Government Gazette dated September 2, 2011 clearly stated the objective to be; *“Following the decision of the Constitutional Court in the matter of S v Thunzi and S v Mlonzi (Case CCT/81/09), the Minister of Police intends to introduce a draft Dangerous Weapons Bill, 2011, to Parliament, in order to repeal and substitute the Dangerous Weapons Act in operation in the areas of the erstwhile Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei, and to provide for matters connected therewith.”*

This Association [SA HUNTERS] duly and diligently participated in the public participation process and commented as and when necessary.

From the above the purpose of the Bill was not intended to deal with firearms as such and correctly so because the above mentioned legislation then already existed.

The Bill as it now exists has therefore changed significantly in its purpose with far reaching and impeding implications on the firearm fraternity and more specifically hunters and sport shooters. This fraternity did not have the opportunity to inform the Minister of Police of the implications and risks which will exist for both the Minister, members of the South African Police and the firearm owners in the above mentioned categories. This could lead to unnecessary conflict and strife between the Government and the to be affected sectors and consume resources that otherwise could be used in areas where other critical issues prevail. Against the backdrop of a society currently plagued by violent crime where often illegal firearms

are involved and imposing a significant burden on the South African Police, the creation of a problem area in a sector which otherwise bears no or limited threat, without obtaining the input of those affected, would be more than unwise.

The exclusion of firearms in the definition of dangerous weapons is indicative of the difficulty which arose because the term "Firearm" is included in the Bill. By including the term, it causes a complication which borders on bad legislation.

SA HUNTERS opposes the inclusion of the term "Firearm" in the Bill in the strongest terms and therefore request for it to be excluded and for the Bill to remain within the original objectives to deal with dangerous weapons and a replica or imitation of a firearm.

#### **4. The Ambiguity in the definitions.**

The definition of a dangerous weapon as contained in the Bill stating "*dangerous weapon means any object, other than a firearm, designed as a weapon and capable of producing death or seriously bodily harm*" would require from any person who would be placed in a position to apply the law to;

- be able to judge whether or not the object under consideration was subjected to a process where it was designed,
- be able to judge, even when the object under consideration was designed, is capable to produce death or seriously bodily harm as size matters,
- whether the object under consideration is a weapon or not.

It is common knowledge for people being killed by objects which falls outside the definition of a dangerous weapon because these are neither designed nor weapons but in the hands of a perpetrator becomes a deadly weapon. Such objects would then defeat the object of Article 2 of the Bill when used to harm a person.

Since the objective of the Bill is to control weapons which are dangerous, a definition should be sought that will remove the ambiguities mentioned above. This can be achieved by defining a dangerous weapon as;

"dangerous weapon" means an object adapted for use to become a weapon and capable of producing death or seriously bodily harm

5. The discretion allowed to those and with specific reference to the South African Police, entitled with the application of the law.

Following the principle of justice whereby a person is not guilty until proved guilty by a court of law, Article 2 (b) allows any law enforcer to pass judgement by equalising intent with a deed in the absence of adequate proof. This permits and introduces subjectivity into whether or not a person has committed a crime which in turn will be totally dependent on the skills and competence of the individual law enforcer.

From the criteria provided in Article 2 (2), only Article 2 (2) (d) could be used without reasonable doubt. The remainder is subject to interpretation and could result in the criminalisation of the innocent.

Should the term "Firearm" remain in the Bill, Article 2 will, when applied, cause chaos and would be almost impossible amongst hunters and sport shooters to remain within the law.

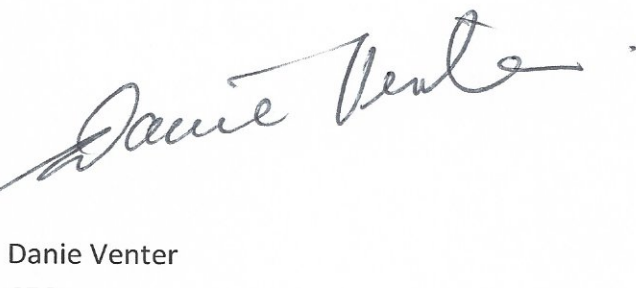
## 6. Conclusion

It is the humble opinion of this Association, given the prevailing circumstances in South Africa, for South African Police not to have the capacity to effectively apply this legislation should it be implemented. This statement can be substantiated by referring to a recent incident where the bodyguards of Mr Julius Malema contravened existing legislation with unambiguous stipulations in a high pressure situation in the presence of the South African Police. It will be very unfair to burden the South African Police with the responsibility to enforce the stipulations of this Bill should it be approved.

As a closing comment, should this Bill become a law, it is imperative for the regulations to be finalised before its implementation.

SA HUNTERS is willing and will be honoured to verbally substantiate the contents of this submission to the Committee.

Thanking you sincerely,



Danie Venter  
CEO