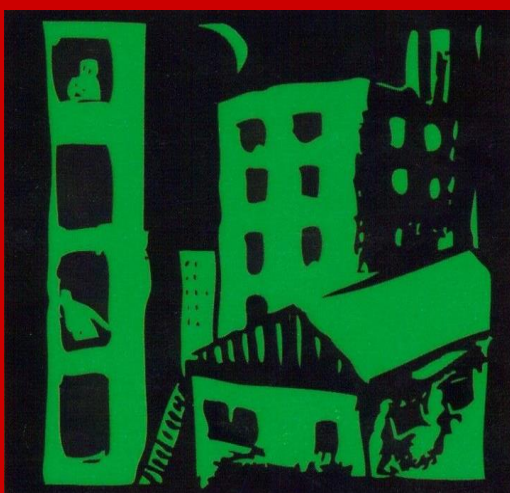


LAW
DEMOCRACY
& DEVELOPMENT



VOLUME 27 (2023)

DOI: <http://dx.doi.org/10.17159/2077-4907/2023/idd.v27.5>

ISSN: 2077-4907
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**Disarming the
dispirited South
African: A critical
analysis of the
proposed ban on
firearms for self-
defence**

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ABSTRACT

In South Africa, owning a firearm is a privilege and not a right. This privilege is regulated by the Firearms Control Act 60 of 2000. In May 2021, the Minister of Police published the Firearms Control Amendment Bill (FCAB), 2021, which contains a section prohibiting individuals from obtaining a firearm for self-defence purposes. This article challenges this view and argues that firearm owners should not be banned from protecting their right to life with a firearm. It looks at the reasons why the Bill was published as well as its purposes. The enactment of

such a Bill would have severe consequences for individuals who want to protect their constitutional rights in a country with one of the highest crime rates in the world. Consequently, the article also examines the impact the proposed prohibition would have on self-defence by means of a firearm. Furthermore, the South African Police Service (SAPS) is reluctant to address its own challenges, which have contributed significantly to the proliferation of unlicensed firearms. The supply of firearms by SAPS to criminals will be examined and recommendations made for addressing the dilemma faced by SAPS. SAPS should rectify and professionalise its firearm regime instead of disarming South Africans, who are desperately in need of a peaceful society. Finally, proposals are made as to how firearm control could be improved.

Keywords: Firearm control; self-defence; South Africa; corruption; gangs; firearms; SAPS; police officials; gun violence.

1 INTRODUCTION

On 26 July 2020, three armed robbers stormed into Querencia Ministries Church in Pretoria. They fired random shots, and one of them put a firearm against the head of the pastor. The pastor suffered a few non-lethal blows against the head. One of the congregants, Pieter van der Westhuizen, brother of former Springbok rugby-player Joost, took out his own firearm and killed two of the robbers.¹ The third robber escaped. No one else was harmed. Van der Westhuizen's lawyer said that his client, who is also a former police officer, used his licensed firearm to protect not only himself but the entire congregation against the unlawful attack.² Van der Westhuizen was subsequently not charged by the National Prosecuting Authority for the deaths of the two robbers since his conduct, known as self-defence, excludes unlawfulness, a requisite element for the crime of murder.³ In South Africa, self-defence is also known as private defence.⁴

Burchell points out that "as a general rule, the law does not permit persons to resort to force or violence to protect their interests, expecting that they will invoke the protection of the law and the agencies of law enforcement for this purpose".⁵ However, as seen in the church shooting case, the police can simply not protect citizens all the time. In fact, in terms of the upholding-of-justice theory, "people acting in private defence perform

¹ Grobler R "Church shooting: Pieter van der Westhuizen returned fire to protect others, says lawyer" (2020) *News24* available at <https://www.news24.com/news24/southafrica/news/church-shooting-pieter-van-der-westhuizen-returned-fire-to-protect-others-says-lawyer-20200727> (accessed 18 April 2022).

² Grobler (2020).

³ Grobler (2020).

⁴ Self-defence and private defence are different concepts. Where self-defence refers to defending oneself against an unlawful attack, private defence includes defending other persons who might be involved in the attack as well as the protection of property. See Snyman CR *Snyman's criminal law* 7th ed Johannesburg: LexisNexis (2020) at 85. This article predominantly uses the term "self-defence" as it will focus on the protection of oneself against unlawful attacks.

⁵ Burchell J *Principles of criminal law* 5th ed Cape Town: Juta (2016) at 121.

acts whereby they assist in upholding the legal order”.⁶ Many citizens find peace in the fact that they can legally protect themselves against violent criminals by means of a licensed firearm. More than 1.8 million South Africans are currently in the possession of a valid firearm licence.⁷ The need for a strict firearm regime is therefore imperative.⁸ The Firearms Control Act (FCA)⁹ regulates the licensing of firearms for self-defence purposes.

However, on 21 May 2021, the Firearms Control Amendment Bill (FCAB)¹⁰ was published in the Government Gazette for public comment. The FCAB shocked many firearm owners by including several amendments banning the use of firearms for self-defence.¹¹ The Minister of Police, General Bheki Cele, said the amendments were necessary and that arming citizens would not reduce the high crime rate.¹² He explained that the “proposed change in law also has the potential to mean the difference between life and death for hundreds of women, who are in the clutches of their abusers, inside their own homes”.¹³ When public participation ended in August 2021, more than 118,000 public comments had been received. The overwhelming majority of comments opposed the amendments in the FCAB.¹⁴ Consequently, Parliament’s Portfolio Committee on Police decided to postpone the FCAB in November 2021 to provide the opportunity for stakeholder engagement.¹⁵ The Bill is, however, still on the table.

⁶ Snyman (2020) at 85.

⁷ Kirsten A & Gould C “Will fewer firearms make South Africa safer?” (2015) *Institute for Security Studies Today* available at <https://issafrica.org/iss-today/will-fewer-firearms-make-south-africa-safer> (accessed 18 April 2022). In 2004, more than 3.7 million firearms were licensed to institutions and individuals in the country. See Gould C et al. “Country study: South Africa” in Gould C & Lamb G (eds) *Hide and seek: Taking account of small arms in southern Africa* Pretoria: Institute for Security Studies (2004) at 133.

⁸ See Matzopoulos R et al. “A retrospective time trend study of firearm and non-firearm homicide in Cape Town from 1994 to 2013” (2018) 108(3) *South African Medical Journal* 197 at 201.

⁹ Firearms Control Act 60 of 2000.

¹⁰ Firearms Control Amendment Bill, FCAB, and “the Bill” will be used interchangeably.

¹¹ Shoba S “Firearms Control Amendment Bill: The dark side of the war of words over proposed gun regulations” (2021) *Daily Maverick* available at <https://www.dailymaverick.co.za/article/2021-06-12-firearms-control-amendment-bill-the-dark-side-of-the-war-of-words-over-proposed-gun-regulations/> (accessed 23 September 2022).

¹² Phakathi B “Cele defends stricter gun controls amid growing theft of arms from police” (2021) *Business Live* available at <https://www.businesslive.co.za/bd/national/2021-09-30-cele-defends-stricter-gun-controls-amid-growing-theft-of-arms-from-police/> (accessed 18 April 2022).

¹³ Phakathi (2021).

¹⁴ DefenceWeb “Government decides to hold back Firearms Control Amendment Bill” (2021) available at <https://www.defenceweb.co.za/security/civil-security/government-decides-to-hold-back-firearms-control-amendment-bill/> (accessed 18 April 2022).

¹⁵ IOL “Postponement of the Firearms Control Amendment Bill widely welcomed” (2021) available at <https://www.iol.co.za/capeargus/news/postponement-of-the-firearms-control-amendment-bill-widely-welcomed-ad1569ac-e3f7-446d-ad84-ae87bb452ddd> (accessed 18 April 2022).

The purpose of this article is to determine the feasibility and constitutional validity of the proposed ban on firearms for self-defence purposes. Accordingly, the relevant sections of the FCAB as well as the proposed amendments to it will be analysed. This is followed by determining the effect the ban will have on self-defence and the constitutional validity of the ban in relation to the rights of those who are attacked. The article will then examine the shortcomings of the South African Police Service (SAPS) in regulating firearms, with the examination including an analysis of the guns-to-gangs phenomenon. The article ends with conclusions and recommendations aimed at strengthening firearm control for the benefit of the SAPS, licensed firearm owners, and society at large.

2 THE CURRENT AND PROPOSED LEGAL FRAMEWORK

The main aim of the FCA is found in the wording of its title: “firearms control”. It intends to prevent the abuse of firearms and the irresponsible ownership of firearms.¹⁶ Snyman notes that “the unlawful possession of firearms is one of the greatest evils besetting South African society and ... the legislature’s intention was clearly to spread the net against unlawful possession of firearms as widely as possible”.¹⁷ Most importantly for this article, the FCA accords every citizen the privilege of protecting his or her life and property as well as the lives and property of others. The Constitutional Court held in *Minister of Safety and Security of the Republic of South Africa v South African Hunters and Game Conservation Association*¹⁸ that “[g]un ownership is not a fundamental right under our Bill of Rights. It is a privilege regulated by law, under the Firearms Control Act.”¹⁹ The FCAB, however, summarily removes this privilege.

The FCAB includes a section dealing specifically with the events leading up to the drafting of the Bill.²⁰ The Minister of Police appointed the Firearms Committee to review existing firearm legislation. It concluded that gun violence contributed significantly to the number of murders in South Africa.²¹ As a result, the FCAB states that “in order to address the reduction of gun deaths and gun violence, firearm licences for self-defence purposes will not be permitted”.²² This is provided without discussing how citizens should defend themselves when attacked, and no mention is made of the right to life and security of the person.

¹⁶ See Msaule PR “The duty to produce one’s firearm for inspection in terms of the Firearms Control Act: The right to silence under siege?” (2018) 21(61) *Potchefstroom Electronic Law Journal* 1 at 2; Preamble FCA. The FCA replaced the Arms and Ammunition Act 75 of 1969. See Burchell (2016) at 21.

¹⁷ Snyman (2020) at 379. See also *S v Mnisi and Another* 1996 (1) SACR 496 (T) at 502B.

¹⁸ *Minister of Safety and Security v South African Hunters and Game Conservation Association* 2018 (2) SACR 164 (CC).

¹⁹ *Minister of Safety and Security v South African Hunters and Game Conservation Association* para 1. See also *S v AR and Others* 2020 (1) SACR 580 (WCC) at para 9; Carnelley M “Firearms” (2018) 31(3) *South African Journal of Criminal Justice* 483 at 489.

²⁰ See Memorandum on the Objects of The Firearms Control Amendment Bill, 2020 of the FCAB.

²¹ Memorandum on the Objects of the FCAB at 98.

²² Memorandum on the Objects of the FCAB at 99.

The Preamble of the FCA provides that:

“[e]very person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources;

AND WHEREAS the adequate protection of such rights is fundamental to the well-being and social and economic development of every person;

AND WHEREAS the increased availability and abuse of firearms and ammunition has contributed significantly to the high crime levels of violent crime in our society;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights.”²³

The Preamble of the FCAB provides that:

“[i]n terms of the Constitution of the Republic of South Africa, 1996, the duty to maintain public order, to protect and secure everyone in the Republic lies with the State;

AND WHEREAS the State is a signatory to regional and international instruments on control of firearms, ammunition and other related matters;

AND WHEREAS the State has an obligation to enact firearms legislation that complies with the applicable international and regional instruments;

AND WHEREAS the easy availability of firearms to civilians and their uncontrolled presence constitute major threats to the security of persons and property, sustainable development and the stability of the State.”²⁴

The preambles are strikingly different. Whereas the FCA focuses on self-defence and firearms control, the FCAB concentrates on regional and international firearm regulations as well as the possible dangers related to firearms control and state security. There is a shift from protecting and realising the privileges of lawfully armed citizens to acknowledging the duty of the state to protect its citizens and identifying the problems related to illegally obtained firearms. This is due largely to the fact that the SAPS has tried for decades to eliminate the proliferation of illegal firearms in South Africa but had limited success.²⁵ Consequently, the publication of the Bill is an attempt by the SAPS to gain full control of firearms in South Africa.

On a cursory reading, the purposes of both the FCA and the FCAB are to promote legitimate firearm control. However, on a closer reading, it is noticeable that the FCAB Preamble dubiously omits human rights such as the right to life,²⁶ the right to security of

²³ Preamble of the FCA.

²⁴ Section 83 of the FCAB (Substitution of Preamble to Act 60 of Act 2000).

²⁵ Lamb G “Fighting fire with an inferno: The South African Police Service and the ‘war’ on violent crime” (2015) 12(22) *International Journal on Human Rights* 83 at 95.

²⁶ Section 11 of the Constitution of the Republic of South Africa, 1996.

the person,²⁷ and freedom from all forms of violence.²⁸ While this omission does not absolve the Bill from having to comply with these rights, it clearly reveals the attitude of the legislature towards the rights of those who wish to own a firearm for self-defence purposes.

The right to life and the right to human dignity are the two most important rights in the Bill of Rights.²⁹ After expressing the importance of these rights in *S v Makwanyane*,³⁰ the Constitutional Court held that, “by committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does”.³¹ However, the deletion of these rights in the FCAB seems to indicate an intention on the part of the state to take full responsibility for the protection of its citizens from armed violence and to remove the right of self-defence through the use of firearms from citizens (as protected by these rights). This is neither practical nor feasible in a country like South Africa where the crime rate is alarmingly high and housebreaking is the most common crime.³² An interpretation of the FCAB Preamble finds that the right to life is not recognised, since the effect of the FCAB would be that citizens could not defend themselves with their own licensed firearms: this duty belongs directly to the SAPS.³³ Self-defence by means of a licensed firearm, including protecting the right to life of the person being attacked, is therefore jeopardised by the FCAB.

The right to life is further curtailed in clause 2.2 of the FCAB, which replaces section 2(a) of the FCA dealing with the purpose of the FCA. Section 2(a) provides that one of the purposes of the FCA is to “enhance the constitutional rights to life and bodily integrity”.³⁴ Clause 2 of the FCAB proposes an amendment to this section and reads: “[T]he purpose is to restrict access to firearms by civilians and to comply with regional and international instruments of firearms control.”³⁵ The constitutional rights to life and bodily integrity of South African citizens are overlooked entirely by the FCAB and replaced by regional and global policy directives.

²⁷ Section 12(1) of the Constitution of the Republic of South Africa, 1996.

²⁸ Section 12(1)(c) of the Constitution of the Republic of South Africa, 1996.

²⁹ *S v Makwanyane* 1995 (3) SA 391 at para 144. See also Currie I & De Waal J *The Bill of Rights handbook* 6th ed Cape Town: Juta (2018) at 258.

³⁰ *Makwanyane* (1995).

³¹ *Makwanyane* (1995) at para 144. The Court in *Makwanyane* further held that “This concept of human life is at the centre of our constitutional values. The Constitution seeks to establish a society where the individual value of each member of the community is recognised and treasured. The right to life is central to such a society.” See *Makwanyane* (1995) at para 326.

³² See Stats SA “Housebreaking still number one crime in South Africa” (2020) available at <https://www.statssa.gov.za/?p=13811> (accessed 2 May 2022).

³³ This would be relevant specifically to new firearm licence applicants.

³⁴ Section 2(a) of the FCA.

³⁵ Schedule 1A: Clause 2 of the FCAB.

It is important, furthermore, to analyse how the FCA and the FCAB regulate the use of firearms for self-defence purposes.³⁶ Section 13 of the FCA affirms the status quo, which is the following:

- “(1) A firearm in respect of which a licence may be issued in terms of this section is any –
 - (a) shotgun which is not fully or semi-automatic; or
 - (b) handgun which is not fully automatic.
- (2) The Registrar may issue a licence under this section to any natural person who –
 - (a) needs a firearm for self-defence; and
 - (b) cannot reasonably satisfy that need by means other than the possession of a firearm.
- (3) No person may hold more than one licence issued in terms of this section
- (4) A firearm in respect of which a licence has been issued in terms of this section may be used where it is safe to use the firearm and for a lawful purpose.”³⁷

Importantly, under the FCA, firearm licences are valid for five years and are renewable.³⁸ Section 13 is concise and provides for the use of firearms for individuals who want to protect themselves from unlawful attacks.³⁹ The law is applied strictly by limiting this privilege only to those who can prove reasonably that they cannot protect themselves without obtaining a firearm. The application for a firearm licence, which includes the initial application for a competency certificate⁴⁰ and the eventual firearm licence,⁴¹ is thorough and aimed at ensuring that a licence is issued to a responsible gun owner. Applicants prove that they are responsible gun owners by successfully completing a firearm proficiency test at a gun range and submitting three affidavits written by family and friends explaining why the applicant is fit to use a firearm.

The FCAB repeals the whole of section 13. While firearm licences for hunting are still allowed (a matter falling outside the ambit of this article), licences for self-defence purposes are scrapped completely. The next part of the article examines how the proposed repeal of firearms for self-defence purposes could affect the individual in protecting him- or herself self against unlawful attacks.

³⁶ The sections of the FCA dealing with the application for obtaining a competency certificate as well as a licence to possess a firearm will not be discussed here. See sections 6–12 of the FCA.

³⁷ Section 13 of the FCA.

³⁸ Schedule 1 of the FCA.

³⁹ See also section 3 of the FCA, which provides: “(1) No person may possess a firearm unless he or she holds for that firearm – (a) a licence, permit or authorisation issued in terms of this Act; or (b) a licence, permit authorisation or registration certificate contemplated in item 1, 2, 3, 4, 4A or 5 of Schedule 1. (2) no person may possess a muzzle-loading firearm unless he or she has been issued with the relevant competency certificate.” See generally also Snyman (2020) at 377–382.

⁴⁰ Sections 9–10 of the FCA.

⁴¹ Sections 11–30 of the FCA.

3 THE POSSIBLE EFFECTS ON SELF-DEFENCE

Many South Africans form part of daily crime statistics, which include serious contact crimes such as murder and rape.⁴² South Africa has one of the highest murder rates in the world.⁴³ In 2021, 19,972 people were murdered; in the same year, 2,911 were murdered in Cape Town, making it the city with the most recorded murders worldwide.⁴⁴ It is therefore clear why South Africans arm themselves. The possible enactment of the FCAB would prevent firearm owners from using a firearm for self-defence purposes.⁴⁵ This puts citizens who want to protect themselves against criminals carrying firearms in a defenceless position. Although it is true that a citizen could protect him- or herself self by other means, such as by using a knife, axe or other lethal object, a firearm provides the most effective means to reduce his or her fear and regain some defence against the ever-present threats to self and society.⁴⁶ The right to life is a fundamental human right provided for in our Constitution, and every person must be permitted to defend that right.⁴⁷ The FCAB restricts and violates this right, as well as several other rights mentioned above .

The use of firearms for self-defence purposes is an important matter globally. Some countries allow the use of firearms, while others prohibit gun ownership. For the purposes of this article, the United States of America (US) and Switzerland provide two markedly different case studies of countries that permit firearms for self-defence purposes. The Constitution of the Republic of South Africa, 1996, allows for the consideration of foreign law when interpreting our law.⁴⁸ It is thus worthwhile to compare the progressive the approach to firearms in the US and Switzerland with the conservative approach followed by South Africa and determine which has been more successful.

⁴² Altbeker A *country at war with itself: South Africa's crises of crimes* Johannesburg and Cape Town: Jonathan Ball (2007) at 1.

⁴³ See McCain N "An exceptionally toxic mix': Why SA's murder rate is shockingly high" (2022) *News24* available at <https://www.news24.com/news24/southafrica/news/an-exceptionally-toxic-mix-why-sas-murder-rate-is-shockingly-high-20220718> (accessed 23 September 2022); Thomson JDS "A murderous legacy: Coloured homicide trends in South Africa" (2004) 7(7) *South African Crime Quarterly* 9 at 9.

⁴⁴ *BusinessTech* "Cape Town, Joburg, Durban and Gqeberha among the most violent cities in the world" (2022) available at <https://businesstech.co.za/news/trending/569222/cape-town-joburg-durban-and-gqeberha-among-the-most-violent-cities-in-the-world/> (accessed 11 June 2022).

⁴⁵ Van Niekerk M "Gun Control Bill: The practicalities of civilian disarmament" available at <https://www.news24.com/news24/columnists/guestcolumn/opinion-marco-van-niekerk-gun-control-bill-the-practicalities-of-civilian-disarmament-20211013> (accessed 20 April 2022).

⁴⁶ May D & Jarjoura G *Illegal guns in wrong hands: Patterns of gun acquisition and use among serious juvenile delinquents* Lanham: University Press of America (2006) at 87.

⁴⁷ Section 11 of the Constitution of the Republic of South Africa, 1996.

⁴⁸ Section 39(1)(c) of the Constitution of the Republic of South Africa, 1996.

Self-defence by means of a firearm has been debated in the US Supreme Court. The case of *District of Columbia v Heller* deals with the importance of possession of a firearm for self-defence purposes.⁴⁹ The District of Columbia banned handgun possession by making it a criminal offence, and no person could carry an unlicensed handgun.⁵⁰ Heller, the respondent, applied to register a gun for self-defence but this was refused by the District.⁵¹ Thereafter, the respondent contended that the Second Amendment to the US Constitution allows for the possession of a firearm at home, assuming that the firearm is licensed.⁵² The District Court dismissed the case but the Circuit Court reversed its decision, stating that the Second Amendment ensures that the individual has the right to possession of a firearm in situations calling for self-defence and that requiring a gun to be non-functional at home violates the right to self-defence.⁵³ This case illustrates the importance of using a firearm to defend oneself, the very thing which the FCAB attempts to abolish.

Despite being one of the countries with the highest rates of gun ownership among citizens, Switzerland has one of the world's lowest murder rates.⁵⁴ It even had a murder rate of zero in 2016.⁵⁵ As Lott notes, "In 1995, Switzerland's murder rate was 40 per cent lower than Germany's despite having a three-times higher gun ownership rate."⁵⁶ The Swiss government emphasises the importance of firearm training, making use of target shooting competitions for children, and views gun ownership as a patriotic duty in order to protect the country and its citizens.⁵⁷ The lower level of government keeps track of gun distribution and has strict procedures and record-keeping in regard to gun ownership within the country.⁵⁸ Thanks to this strict regulatory framework and the conscious effort to keep records of all gun owners, citizens know that if there is misuse of guns registered in their names, severe consequences will follow. South African can learn a few lessons from how the Swiss regulate their firearms.

3.1 Self-defence in South Africa

⁴⁹ *District of Columbia v Heller* 554 US 570.

⁵⁰ *District of Columbia* at p 54.

⁵¹ *District of Columbia* at pp 56-64.

⁵² *District of Columbia* at 54-56. The Second Amendment provides that "[a] well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed". See Second Amendment to the US Constitution.

⁵³ *District of Columbia* at 56-64.

⁵⁴ Brueck H & Haroun A "Switzerland has a stunningly high rate of gun ownership – here's why it doesn't have mass shootings" (2022) *Business Insider* available at <https://www.businessinsider.com/switzerland-gun-laws-rates-of-gun-deaths-2018-2?IR=T> (accessed 3 May 2022).

⁵⁵ Brueck (2022).

⁵⁶ Lott JR *More guns less crime: Understanding crime and gun control laws* Chicago: The University of Chicago Press (1998) at 113.

⁵⁷ Brueck (2022).

⁵⁸ See Brueck (2022).

Self-defence is a common-law defence in South Africa. Self-defence emphasises that individuals “have been unable to rely upon the agencies of the state (the police and the courts) to protect their legal interests, and have been compelled to take the law into their own hands”.⁵⁹ The judgment in *S v Engelbrecht*⁶⁰ stated that a person acts in self-defence, and the act is therefore lawful, if she uses the defence to repel an unlawful attack which has commenced or is imminently threatening upon her or somebody else’s life, provided that the defence is necessary to protect the interest threatened, it is directed against the attacker, and the defence is reasonably proportionate to the attack.⁶¹ Therefore, in order to raise the matter of self-defence, there are several requirements which need to be satisfied by the accused.

3.2 Requirements for self-defence

South African courts recognise that when a person kills another in self-defence, it is justifiable and will not constitute murder.⁶² In *S v Walters*, the court held that:

“[t]he law solves problems such as these through the doctrine of proportionality, balancing the rights of the aggressor against the rights of the victim, and favouring the life or lives of innocents over the life or lives of the guilty.”⁶³

Several requirements must be satisfied by the accused for self-defence to be raised successfully. There are requirements related to the attack as well as requirements concerning the conduct of the accused in defence.

3.2.1 *The requirements of the attack*

First, the attack must be unlawful.⁶⁴ Even if the attacker is in a right state of mind and has no criminal capacity, this does not normalise such an attack.⁶⁵ If a person defends him- or herself against such an attack by using a firearm, it may be deemed lawful.⁶⁶ An attack may include a physical attack, emotional abuse, degradation of life, or threats to commit such an attack.⁶⁷

⁵⁹ Burchell (2016) at 121.

⁶⁰ *S v Engelbrecht* 2005 (2) SACR (W).

⁶¹ *Engelbrecht* (2005) at para 228. See also Snyman (2020) at 85.

⁶² Burchell (2016) at 121.

⁶³ *Ex Parte Minister of Safety and Security and Others: In Re S v Walters and Another* 2002 (7) BCLR 663 at para 53.

⁶⁴ Snyman (2020) at 86. See also *S v Goliath* 1972 3 SA 1 (A) at 10; *S v Kibi* 1978 4 SA 173 (E) at 180; *S v Papu* 2015 2 SACR 313 (ECB) at para 10.

⁶⁵ Burchell (2016) at 237.

⁶⁶ See *Ernest v S* (2020) JOL 49139 (KZP) at para 31, where the state was unable to prove that the appellant acted unlawfully when he killed an attacker who approached him in the road, even after firing two warning shots.

⁶⁷ *Engelbrecht* (2005) at para 344.

Secondly, the attack must be imminent but not yet completed,⁶⁸ leaving the defender no other option but to act in self-defence.⁶⁹ For an attack with a firearm to be imminent, the accused must believe that an attack is about to happen. In *S v Mokgiba*, the appellant was of reasonable belief that the intruder entered his private dwelling not because he wanted to visit but because of other intrusive reasons in which he sought to violate the life and bodily integrity of the appellant and his wife.⁷⁰ The appellant was therefore entitled to use all his strength to divert such danger, and there was no duty on him to wait for such an attack to have commenced.⁷¹

Thirdly, the attack must be directed towards an interest which in terms of law needs to be protected.⁷² In terms of the Constitution, the state must respect, promote, protect and fulfil the rights in the Bill of Rights.⁷³ These include the right to equality, the right to human dignity, the right to life and the right to freedom and security.⁷⁴ A person who protects himself against an attack which is in violation of any of these rights must be protected by the law. Such an attack is a grave invasion of personal security.⁷⁵ The use of a firearm provides optimal protection in cases where these fundamental human rights may be violated by the attacker.

3.2.2 *The requirements of defence*

Once the requirements of the attack are met, the requirements of defence must be satisfied by the accused. First, the defence of the accused must be directed against the attacker.⁷⁶ The attack cannot be directed at a third party who is not violating the rights of the accused.⁷⁷

Secondly, the defensive act must be necessary or essential.⁷⁸ In other words, the defence itself must be necessary to protect the legal interest of the accused. In *R v Zikalala*, the accused stabbed and killed the deceased in a crowded beer hall. He claimed that the

⁶⁸ Snyman (2020) at 88.

⁶⁹ *Ex Parte Minister of Justice: In re S v Van Wyk* 1967 (1) SA 488 (A) at para 497. See also *Cloete v S* (2012) JOL 28830 (ECG) at para 9, where the court explained that “[s]elf-defence is justified against an attack already commenced or immediately imminent, for it would be absurd to maintain that one must wait until the blow has fallen before acting in defence”.

⁷⁰ *S v Mokgiba* 1999 (1) SACR 534 (O).

⁷¹ *Mokgiba* (1999) at para 550. See also generally *S v Mogohlwane* 1982 (2) SA 587 (T).

⁷² Snyman (2020) at 87–88.

⁷³ Section 7(2) of the Constitution of the Republic of South Africa, 1996.

⁷⁴ Section 9(1), s 10, section 11, and section 12 of the Constitution of the Republic of South Africa, 1996. See also *S v Jackson* 1963 (2) SA 626 (A) at 629C; *R v Mathlau* 1958 (1) SA 350 (AD) at 351.

⁷⁵ Ally D & Viljoen F “Homicide in defence of property in an age of constitutionalism” (2003) 16(2) *South African Journal of Criminal Justice* 121 at 132.

⁷⁶ Burchell (2016) at 130.

⁷⁷ Burchell (2016) at 130.

⁷⁸ Snyman (2020) at 88.f

deceased wanted to stab him, and he had nowhere to flee because it was crowded.⁷⁹ The court said that in such an instance a person is entitled to defend himself because if a person turns his back in such occasions, he would put his life in danger.⁸⁰ Courts are also mindful that individuals who are confronted with unlawful attacks have little time to make informed decisions. In *Union Government (Minister of Railways and Harbours) v Buur*, the court held that “[m]en faced in moments of crisis with a choice of alternatives are not to be judged as if they had had both time and opportunity to weigh the pro and cons”.⁸¹ The defensive act should be the only way to avoid harm to one’s legal interests.⁸² This is decided based on the facts of each case before the court.⁸³

Thirdly, there must be a reasonable relationship between the attack and the defensive act.⁸⁴ In terms of *S v Steyn*, the court held that a reasonable relationship between the attack and the defensive act did exist.⁸⁵ The appellant shot and killed her ex-husband, who had abused her for several years.⁸⁶ Her ex-husband was intoxicated and moody. He tried to abuse her, and she escaped his abuse and locked herself up in the bedroom.⁸⁷ He insisted that she stay in the room and gave her nothing to eat.⁸⁸ She, however, needed to eat to take her prescribed medication and, therefore decided to head to the kitchen with a firearm to protect herself.⁸⁹ The deceased noticed her walking to the kitchen and ran towards her with a knife with the purpose of killing her.⁹⁰ The appellant fatally shot him in the chest once and subsequently hid in the bedroom.⁹¹ The appellant was charged with murder. The accused raised self-defence. The court *a quo* stated that the appellant could have prevented all this if she had waited in the room and phoned for assistance.⁹² It was held that she had acted negligently, and the court *a quo* convicted her of culpable homicide.⁹³

⁷⁹ See *R v Zikalala* 1953 (2) SA 568 (A); *R v Patel* 1959 3 SA 121 (A).

⁸⁰ See *Zikalala and S v Botha* 2019 (1) SACR 127 (SCA) at para 39.

⁸¹ *Union Government (Minister of Railways and Harbours) v Buur* 1914 AD 273 at 286. See also *Ernest v S* at para 19.

⁸² *Van Wyk* (1967) at 497.

⁸³ *Van Wyk* (1967) at 497. See also *Snyders v Louw* (2008) JOL 22625 (C) at para 10.

⁸⁴ *Snyman* (2020) at 90. See also generally *S v Trainor* (2003) 1 All SA 435.

⁸⁵ *S v Steyn* 2010 (1) SACR 411 SCA at para 24. See also generally Goosen S “Battered women and the requirement of imminence in self-defence” (2013) 16(1) *Potchefstroom Electronic Law Journal*.

⁸⁶ *Steyn* (2010) at para 1.

⁸⁷ *Steyn* (2010) at para 8.

⁸⁸ *Steyn* (2010) at para 8.

⁸⁹ *Steyn* (2010) at para 9.

⁹⁰ *Steyn* (2010) at para 10.

⁹¹ *Steyn* (2010) at para 10.

⁹² *Steyn* (2010) at para 12.

⁹³ *Steyn* (2010) at para 17.

On appeal, the Supreme Court of Appeal (SCA) enquired whether there was a reasonable relationship between the attack and the defensive act.⁹⁴ The Court stated that there was such a relationship because a flight to the bedroom would not have afforded her a safer option to escape and in the circumstances, the law does not expect her to do so.⁹⁵ The defensive act of the appellant, therefore, had to be determined in terms of her being a woman who had suffered at the hands of an abusive husband. For this reason, the SCA found the use of lethal force had been reasonable in the circumstances.⁹⁶

In total, the six requirements examined above need to be satisfied by the accused in order to raise self-defence. Gun owners are aware that they may be charged with culpable homicide and even murder if they shoot another person in self-defence. However, the defence of self-defence makes it possible for South Africans to protect their right to life and other rights when they are faced with imminent danger. By looking at the social conditions of South African society, the importance of self-defence, and the prevalence of gruesome acts of violence, the authors believe that the banning of firearms would prejudice those who wish to protect their rights. The use of a firearm is the most effective method to protect these rights and should be valued.

3.2.3 *The use of firearms in self-defence*

There is limited jurisprudence dealing with the reasons why South Africans consider using firearms in self-defence. In *S v Siphethu*, the accused was in the possession of an unlicensed firearm, pleaded guilty and received nine months' imprisonment.⁹⁷ The accused argued that he found a shotgun in a bush and kept the gun to protect himself against unlawful attacks which were rife in the area where he lived.⁹⁸ The judge, referring to the alarming number of crimes in our society, posited that "more and more people feel the need in these troubled times to defend themselves against it, especially when the police cannot realistically be expected to provide them all with adequate protection".⁹⁹

Even though there is resistance from the South African government, the need to be in possession of a firearm remains imperative for those who want to protect themselves. Homeowners would be vulnerable if robbers were to enter their homes with firearms while homeowners are subjected to firearm laws preventing them from owning a firearm to protect their constitutional rights. The right to life and the right to bodily

⁹⁴ *Steyn* (2010) at para 19.

⁹⁵ *Steyn* (2010) at para 21. For a comprehensive discussion of the murder of intimate partners, see Abrahams N et al. "Intimate partner femicide in South Africa in 1999 and 2009" (2013) 10 *PLOS Medicine*.

⁹⁶ *Steyn* (2010) at paras 24–25.

⁹⁷ *S v Siphethu* 1992 (1) SACR 453 (N) at 454C.

⁹⁸ *Siphethu* (1992) at 454A.

⁹⁹ *Siphethu* (1992) at 454F. See also *S v Sotsu and Another* 2001 (1) SACR 428 (Tk) at para 13; *Mpukuzela v S* (1998) JOL 2240 (Tk) at 12; *S v Dube* (1994) 4 All SA 704 (N) at 713.

integrity are of paramount importance.¹⁰⁰ These rights are inherently bestowed upon every human being under the Bill of Rights. In situations where a person is at gunpoint, we argue that such individuals should not be prevented by the state from exercising their inherent right to protect themselves within the confines of responsible gun ownership, considering that knowledge of the requirements for self-defence is part of the proficiency test that all firearm licence applicants must take.

It is an individual's inherent right in terms of all law, both natural law and civil law, to resort to self-defence.¹⁰¹ There is a universal right to defend oneself, but at the same time there is no right to gun ownership in South Africa.¹⁰² This supports the arguments of the organisation Gun Free South Africa (GFSA) that if every person were in possession of a gun, it would create unforeseen calamities within our society.¹⁰³ However, the emergency-crime response time of the SAPS is not comparable to that of other countries.¹⁰⁴ It is impossible for the SAPS to be present at every crime due to the high crime rate, as noted in *S v Siphethu*.¹⁰⁵ The SAPS is understaffed and under pressure. This limits its ability to serve and protect at all times.¹⁰⁶ As a result, South Africans will be more vulnerable if the FCAB is enacted.

Whilst the FCAB does not permit firearms for self-defence, it does allow for the distribution of firearms for hunters and sports shooters. Surely, if firearms can be allowed for purposes of hunting and sports activities, the contention for banning firearms should fail. The life of every human being, the protection of his or her property and the protection of the life of another person are far more significant and constitutionally valid than merely owning a firearm for leisure. It is hoped that the Constitutional Court will consider this matter in the future.

4 ADDRESSING THE ROOT OF THE PROBLEM: THE ROLE OF THE SAPS

Section 205(3) of the Constitution provides that “[t]he objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the

¹⁰⁰ Section 11 and section 12 of the Constitution of the Republic of South Africa, 1996.

¹⁰¹ Burchell (2016) at 121.

¹⁰² Frey B “United Nations Human Rights Council: Prevention of human rights violations committed with small arms and light weapons” (2006) available at <https://digitallibrary.un.org/record/580800?ln=en> (accessed 29 April 2022).

¹⁰³ Servamus “Gun Free South Africa welcomes draft Firearms Control Amendment Bill” (2021) available at <https://journals.co.za/doi/epdf/10.10520/ejc-servamus-v114-n7-a20> (accessed 21 April 2022). See also generally Kirsten A *A nation without guns? The story of gun free South Africa* Scottsville: University of Kwazulu-Natal Press (2008).

¹⁰⁴ Ludidi V “Experts differ on whether citizens should arm themselves or not” (2022) available at <https://www.iol.co.za/weekend-argus/news/experts-differ-on-whether-citizens-should-arm-themselves-or-not-b4040945-be97-4896-97ca-37647f68fee7> (accessed 20 April 2022).

¹⁰⁵ See *Siphethu* (1992) at 454F. See also Burchell (2016) at 121.

¹⁰⁶ Van Niekerk (2021).

law". The SAPS is responsible, moreover, for the control of firearms. As discussed earlier, it facilitates licensing of firearms. Importantly, Lamb point outs the following:

Firearms have consistently been a top priority for the SAPS since the mid-1990s, and firearms control is currently emphasised in the SAPS 2014–19 Strategic Plan. A Firearm Strategy was devised in the late 1990s, which amongst other objectives, sought to: reduce the number of firearms within South Africa; “protect South African citizens from crimes associated with both illegal and legal firearms”; and give SAPS appropriate powers to investigate, confiscate and makes arrests in relation to firearm crime.¹⁰⁷ Alarmingly, the SAPS 2020–2025 Strategic Plan fails to include any substantial discussion about how they will combat unlicensed firearms.¹⁰⁸ Licensed, unlicensed and stolen firearms tend to end up on our streets and are used in violent crimes. Many of these firearms, once safely locked up under the control of SAPS, mysteriously find their way into the hands of criminals. It is “anathema to our Constitutional order when members of SAPS become involved in organized crime syndicates”.¹⁰⁹

This is exactly what happened in *Raves v Director of Public Prosecutions, Western Cape and Another*. Two senior police officials, colonels Christiaan Prinsloo and David Naidoo, were stationed at the Firearms, Liquor and Second Hand Goods Division (FLASH).¹¹⁰ This unit is generally responsible for the disposal of illegal weapons and firearms. These firearms are kept at FLASH before they are melted down. All such firearms are allocated a unique serial number under a system known as “IBIS”.¹¹¹ In 2006, Prinsloo and Naidoo exploited a gap in the IBIS system and established a lucrative business as a result.¹¹² They met with an associate named Irshaad Laher, who established a supply chain between FLASH and various notorious street gangs in Cape Town.¹¹³ Consequently, hundreds of gang members committed violent crimes in their communities with firearms in effect supplied by the SAPS.¹¹⁴

Prinsloo was arrested in 2015 and charged with several offences, among others racketeering, under the FCA, the Prevention of Organised Crime Act¹¹⁵, the Prevention

¹⁰⁷ Lamb (2015) at 86–87.

¹⁰⁸ See South African Police Service “South African Police Service Strategic Plan 2020–2025” (2018) at https://www.saps.gov.za/about/stratframework/strategic_plan/2020_2021/saps_strategic_plan_2020_to2025.pdf (accessed 4 June 2022).

¹⁰⁹ *Raves v Director of Public Prosecutions, Western Cape and Another* 2021 (2) SACR 140 (WCC) at para 3.

¹¹⁰ *Raves* (2021) at paras 4 & 5.

¹¹¹ *Raves* (2021) at para 5.

¹¹² *Raves* (2021) at para 6.

¹¹³ *Raves* (2021) at para 6.

¹¹⁴ *Raves* (2021) at para 6. For a comprehensive study of how Cape Town’s gangs were supported by Prinsloo and his co-accused, see generally Shaw M *Give us more guns: How South Africa’s gangs were armed* Johannesburg: Jonathan Ball Publishers (2021).

¹¹⁵ Prevention of Organised Crime Act 121 of 1998.

and Combating of Corrupt Activities Act¹¹⁶ and various common law offences.¹¹⁷ A total of 2,400 firearms were stolen and Prinsloo made over R2 million through his involvement.¹¹⁸ When he was arrested, he was found in the possession of 10,000 rounds of ammunition and 400 firearm magazines.¹¹⁹ An anonymous member of a gang called “The Mongrels” told a journalist that Prinsloo provided them with more than 200 firearms, which they bought for R4,500 each.¹²⁰ The gang member further explained that “most of the guns are Z88’s and Parabellum’s (both semi-automatic handguns). These are the most popular guns used by most gangs across the Western Cape.”¹²¹ Naidoo and Laher were also subsequently arrested. Prinsloo concluded a plea deal with the state in terms of section 105A of the Criminal Procedure Act¹²² and later became a state witness in the case against Alan Raves, who was also implicated in the crimes.¹²³ The case against Raves and Laher is ongoing.

On 18 September 2020, Lieutenant-Colonel Charl Kinnear, a section commander at the Western Cape Anti-Gang Unit, was shot and killed outside his home in Cape Town. Kinnear was investigating a prominent guns-to-gangs syndicate involving several underworld figures including Nafiz Modack, who was subsequently arrested and charged for involvement in Kinnear’s murder.¹²⁴ “According to an affidavit drawn up by Kinnear, these individuals were colluding with certain officers at police stations as well as their colleagues at the CFR to obtain firearm licences unlawfully and irregularly.”¹²⁵ Johann Burger, a policing expert at the Institute of Security Studies, argues that “the arrest of Modack and his fellow accused was indicative of the ease with which criminals had access to dishonest SAPS members, even among the most senior ranks”.¹²⁶ The case against Modack and his fellow accused is ongoing.

¹¹⁶ Prevention and Combating of Corrupt Activities Act 12 of 2004.

¹¹⁷ *Raves* (2021) at para 7.

¹¹⁸ News24 “Ex-cop gets 18 years for stealing, reselling guns to Cape gangsters” (2016) available at <https://www.news24.com/News24/ex-cop-gets-18-years-for-stealing-reselling-guns-to-cape-gangsters-20160621> (accessed 4 June 2022).

¹¹⁹ News24 (2016).

¹²⁰ Baadjies M “Dirty cop sold us 200 guns” (2015) *IOL* available at <https://www.iol.co.za/news/dirty-cop-sold-us-200-guns-1885760> (accessed 4 June 2022). See also Petrus T & Kinnes I “New social bandits? A comparative analysis of gangsterism in the Western and Eastern Cape provinces of South Africa” (2018) 19(2) *Criminology and Criminal Justice* 179 at 185.

¹²¹ Baadjies (2015).

¹²² Criminal Procedure Act 51 of 1977.

¹²³ *Raves* (2021) at para 9.

¹²⁴ Irish-Qhobosheane J “Gun licenses for sale: South Africa's failing firearms control” (2020) *Global Initiative Against Transnational Organized Crime* at <https://globalinitiative.net/analysis/south-africas-firearms-control/> (accessed 4 June 2022).

¹²⁵ Irish-Qhobosheane (2020) at 1.

¹²⁶ Cruywagen V “SAPS drag in alleged underworld figure and 10 cops after illegal gun licence racket exposed” (2020) *Daily Maverick* available at <https://www.dailymaverick.co.za/article/2020-06-18->

These cases have exposed significant corruption with the SAPS, which has contributed greatly to the proliferation of firearms among criminals. “Corruption in the police service has become a culture – police culture.”¹²⁷ It is submitted that the SAPS must completely reform how it deals with the confiscation of stolen, unlicensed and illegal firearms which are confiscated, as well as firearms that are returned to police stations by unlicensed and licensed firearm holders.

There have, however, been some positive developments. During 2019 and 2021, the SAPS instituted a firearm amnesty period during which all firearm owners were able to return their unwanted or unlicensed firearms to SAPS without fear of being prosecuted for such firearms.¹²⁸ After the amnesty period ended, 24,901 firearms were destroyed in June 2021.¹²⁹ The destruction of these firearms was preceded by years of litigation between firearm organisations and the Minister of Police and the National Commissioner of Police.¹³⁰ In short, under the repealed Arms and Ammunition Act firearm licences were granted for life.¹³¹ The FCA is much stricter and provides for the expiry of firearm licences for handguns within five years after the licence was granted.¹³² Firearm owners have a duty to renew their licence 90 days before the expiry of that licence.¹³³ Firearm owners whose licences had expired were therefore concerned that they would be charged with the possession of an unlicensed firearm in case of non-renewal. Firearm owners complained of several delays in the renewal of firearm

saps-drag-in-alleged-underworld-figure-and-10-cops-after-illegal-gun-licence-racket-exposed/ (accessed 5 June 2022).

¹²⁷ Faull A *Behind the badge: The untold stories of South Africa’s police service members* Cape Town: Zebra Press (2010) 209.

¹²⁸ See *Minister of Police and Others v Fidelity Security Services (Pty) Limited* (CCT 195/21) [2022] ZACC 16 at para 11; *Gun Owners of South Africa (GOSA) v National Commissioner of Police and Another* (46684/2018) [2018] ZAGPPHC 797 at para 20. Generally see *National Commissioner of Police and Another v Gun Owners of South Africa* 2021 (1) SACR 44 (SCA).

¹²⁹ South African Police Service “SAPS destroys 24 901 firearms, including amnesty firearms” (2021) available at <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=33607> (accessed 4 June 2022). In April 2022, the chairperson of the Western Cape Provincial Legislature Standing Committee on Community Safety, Reagen Allen, questioned the provincial police commissioner about the establishment of the Western Cape’s own destruction centre. See Tshuma N “Progress into the Western Cape acquiring its own firearm destruction site questioned” (2022) *IOL News* available online at <https://www.iol.co.za/capeargus/news/progress-into-the-western-cape-acquiring-its-own-firearm-destruction-site-questioned-70957264-b090-49f0-a714-9ab7cd1d0c10> (accessed 4 June 2022).

¹³⁰ See, for example, *Minister of Police and Others v Fidelity Security Services (Pty) Limited* (CCT 195/21) [2022] ZACC 16; *Gun Owners of South Africa (GOSA) v National Commissioner of Police and Another* (46684/2018) [2018] ZAGPPHC 797; *National Commissioner of Police and Another v Gun Owners of South Africa* 2021 (1) SACR 44 (SCA) and *Minister of Safety and Security v South African Hunters and Game Conservation Association*.

¹³¹ See *Minister of Safety and Security v South African Hunters and Game Conservation Association* at para 9.

¹³² Section 27 of the FCA.

¹³³ Section 24(1) of the FCA.

licences which contributed to the tension between firearm owners and the SAPS. The SAPS eventually decided to announce a nationwide amnesty pursuant to section 139 of the FCA.

In May 2022, the Constitutional Court decided that firearm owners have the right to renew their licenses even if these have expired.¹³⁴ The Constitutional Court further explained the importance of the right of ownership of firearms, stating that “the expiry of a licence is not itself tantamount to forfeiture for the purposes of destruction”.¹³⁵ The SAPS must therefore be respectful of the right of ownership of firearm owners in terms of section 25 of the Constitution. The purpose of the FCAB to restrict firearm owners from using their firearms for self-defence is far from passing constitutional muster. This section concludes by reiterating that the SAPS has been responsible for providing firearms to criminals and should take responsibility for this calamity rather than punish responsible gun owners who wish to protect their constitutional rights.

5 CONCLUSIONS AND RECOMMENDATIONS

Gun violence is rife in South Africa. The presumption is that the “easy availability of firearms is a major factor contributing to violence and aggression”.¹³⁶ It therefore comes as no surprise that the South African government is taking progressive measures to combat gun violence. Indeed, a reduction in “firearm homicides can be achieved by restriction of firearm availability through implementation of more stringent firearms legislation”.¹³⁷ The FCAB, however, is not the solution to the problem.

This article juxtaposed the purposes of the FCAB with those of the FCA, and concludes that the FCAB, if enacted, will violate the constitutional rights of gun owners. Most gun ownership is for legal purposes and to protect the right to life of the licence holder.¹³⁸ Every citizen who obtains a firearm licence is subjected to a rigorous application procedure and is aware of the responsibility bestowed upon him or her as a firearm owner. Also, licensed firearms owners’ right to ownership of their firearms in terms of section 25 of the Constitution is protected, as has been confirmed by the Constitutional Court.¹³⁹ The authors understand the concerns of the government in relation to gun violence in general, but the root of the problem is not being addressed by the state. This article identified the root causes of the proliferation of gun violence in South Africa –

¹³⁴ *Minister of Police and Others v Fidelity Security Services (Pty) Limited* (CCT 195/21) [2022] ZACC 16 at para 44.

¹³⁵ *Fidelity Security Services* (2022) at para 41.

¹³⁶ Jagwanth S & Thipanyane TS “Gun control in South Africa: A critical review” (1993) 6 *South African Journal of Criminal Justice* 21 at 22.

¹³⁷ Kapusta ND et al. “Firearm legislation reform in the European Union: Impact on firearm availability, firearm suicide and homicide rates in Austria” (2007) 191 *British Journal of Psychiatry* 253 at 256.

¹³⁸ See Kleck G “The relationship between gun ownership levels and rates of violence in the United States” in Nisbet L (ed) *The gun control debate* Buffalo: Prometheus Books (1990) at 127.

¹³⁹ See generally *Fidelity Security Services* (2022).

corrupt police officials within the SAPS. Importantly, the SAPS needs to take full responsibility for the lack of firearm control in South Africa.

The authors propose three recommendations to combat gun violence in South Africa. First, the regulation of firearms should be strengthened by incorporating additional measures to ensure that firearm licences are granted only to responsible gun owners. Former licence holders should be implored to hand over their illegal firearms to the SAPS if they are unwilling to obtain a licence for their firearms. These unlicensed firearm owners should be convicted and fined heavily for their violation and lack of support for the provisions of the FCA. A firearm holder who recklessly points a firearm and participates in general reckless behaviour should be prohibited from owning a firearm or suspended from owning a firearm for 5–10 years. The right to own a firearm pursuant to section 25 of the Constitution should be limited in such instances.

Secondly, the problem of the SAPS providing firearms to criminals require serious reform. In a recent 2021 case, 158 firearms were stolen from the Norwood police station in Durban, which indicates that the SAPS has not been able to address the problem.¹⁴⁰ A stringent regulatory framework is required to curb the provision of firearms to criminals. It is recommended that all SAPS officials involved in the control of firearm assets be subjected to regular psychometric tests. Such tests will determine whether these officials are conducting their duties with honour and discipline. It is also recommended that the legislature increase the penalties for SAPS officials involved in guns-to-gangs activities. At the same time, it is also important for the legislature to consider increasing the salaries of police officials in the future and to create a reward system within the SAPS to reward police officials who expose unlawful conduct by fellow members.

Thirdly, it is recommended that the SAPS establish a dedicated and independent team to address failures within the current firearms regime. Between April and September 2003, SAPS launched “Operation Sethunya”, which focused on stemming the proliferation of firearms in South Africa.¹⁴¹ It was met with praise, and a similar venture should be initiated to indicate the willingness and the dedication of the SAPS in combatting gun violence in South Africa. On 7 June 2022, General Fannie Masemola, the SAPS national commissioner, pointed out that the state intends to destroy all firearms that were forfeited to the state or voluntarily submitted over the last year.¹⁴² This is an encouraging development and should be adopted more frequently to prevent possible collusion between the SAPS and criminals. It is strongly recommended that the

¹⁴⁰ See Rall S “Norwood SAPS station commander steps down after 158 firearms stolen from evidence room” (2022) *IOL* available at <https://www.iol.co.za/news/south-africa/gauteng/norwood-saps-station-commander-steps-down-after-158-firearms-stolen-from-evidence-room-dcd64b0a-b0b6-44dc-ae81-a03ba72aa085> (accessed 26 June 2022).

¹⁴¹ See Meek S & Scott N “Proactive policing can solve the illicit firearms problem” (2004) 10 *South African Crime Quarterly* 27 at 27.

¹⁴² General Notice 2139 in Government Gazette 46509 of 7 June 2022.

government abandon the FCAB, thereby protecting and respecting the rights of licensed firearm holders.

AUTHORS' CONTRIBUTIONS

Both authors conceptualised and developed the study. Nortje W was responsible for the drafting of parts 2 and 4 of the article. Hull S was responsible for the drafting of part 3. Both authors contributed equally to the editing and finalisation of the paper.

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