



Media Statement

Gun Free South Africa welcomes ruling upholding gun licence renewals, urges state enforcement and public compliance with gun law to stop gun violence

Pretoria, 4 July 2017: Gun Free South Africa welcomes today's North Gauteng High Court's ruling which recognises that regular gun licence renewals are an integral part of an effective gun control system while stipulating that South Africa's gun law needs to be properly enforced.

In her ruling, Judge Tolmay upheld the purpose of the Firearms Control Act (2000), describing guns as "hazardous objects" that need to be "strictly controlled", and affirming the importance of gun licences having a "limited lifespan". However, she criticised the Act for not listing the procedure that gun owners whose licences have expired must undertake to bring themselves "back within the parameters of the law", noting that since about 2010 there is evidence that the Act has been poorly enforced. In the "absence of proper procedures" regarding the renewal of gun licences, the Judge ruled that sections 24 and 28 of the Act are unconstitutional, giving Parliament 18 months to amend the Act and include this "glaringly absent" detail.

Although Gun Free South Africa agrees that there are serious gaps in the enforcement of the Firearms Control Act, declaring these two sections of the Act unconstitutional does not follow and is not supported by the argument advanced in the judgement that effective implementation of a strong gun law is in the interest of our society.

Explains Adèle Kirsten, Gun Free South Africa's Director, "Just because the law is not being effectively implemented does not warrant the ruling that sections 24 and 28 are unconstitutional; rather the remedy would require the SAPS to get its house in order immediately and for the Act to be amended to provide procedural clarity. An opportunity for the latter will be provided hopefully this year when the 2017 Firearms Control Amendment Bill is brought to Parliament."

The challenge against sections 24 and 28 of the Firearms Control Act was lodged by the SA Hunters and Game Conservation Association following a February 2016 police directive that aimed at standardising the gun licence renewals process, as prior to this date some police stations accepted late applications while others did not. The directive ordered SAPS to fully comply with the Act, and to no longer accept late gun licence renewal applications.

Gun Free South Africa was admitted as *amicus curiae* (friend of the court) in which capacity it provided evidence showing that sections 24 and 28 bring South Africa's gun control regime within an international legal and political gun control framework.

Nearly all countries worldwide limit the duration of gun licences and require licensees to renew their licences on a regular basis. In one global analysis of gun laws, 41 out of 42 countries surveyed require regular gun licence renewal, with renewal periods ranging from 12 months to 10 years; only one country, Finland grants licences for an indefinite period.

Says Kirsten, "In her ruling Judge Tolmay recognises that for the Firearms Control Act to achieve its purpose, including, 'to prevent crime involving the use of firearms' it needs to be implemented; the

two legs of effective implementation are enforcement by authorities on one side and compliance by citizens on the other.”

Furthermore, the judgement upholds government’s responsibility for public safety by recognising that a system of regular gun licence renewals gives the state a system of checks and balances to ensure that a gun owner remains ‘fit and proper’ to own a gun. Says Kirsten, “The principle underlying firearm licence renewal is recognition that an individual’s circumstances may change.” For instance, changes in employment status including retrenchment, drug and alcohol dependence, and displaying signs of violent behaviour, including domestic violence incidents would all make a gun owner unfit to continue having a gun licence. This aspect of the law cannot be compromised.

It also recognises that gun owners have an obligation to comply with the law. For instance, figures from the police reveal an overall compliance rate of 67% with section 24 of the Act (of the 191,488 firearm licences liable for renewal in SAPS’ 2015-16 financial year, 128,419 applications were received). Says Kirsten, “The Firearms Control Act recognises that gun ownership is not a right, but an earned privilege which requires that gun owners act responsibly and in accordance with the law. At the same time, the state has a responsibility to enforce the Firearms Control Act in accordance with the Promotion of Administrative Justice Act, which requires state bodies like the police to perform public functions fairly and transparently. Research shows that people are more inclined to comply with the law if they see it as being procedurally just and fair.”

Kirsten goes on to note that the renewals provision in the FCA “is a dramatic departure from the Arms and Ammunition Act of 1969, which effectively provided a licence for life.” As such, “there has been significant resistance to this provision from the firearms fraternity, ranging from non-compliance to legal action, including this most recent challenge.”

She concludes that “today’s ruling does not in any way dispute the legitimacy of a firearm licence renewals system, but rather regards it as a necessity for the proper and effective control of firearms in South Africa.”

NOTE TO EDITOR:

Judge Tolmay’s ruling in the North Gauteng High Court follows an application by the SA Hunters and Game Conservation Association to have sections 24 and 28 of the Firearms Control Act (2000) declared unconstitutional.

- Section 24 deals with gun licence renewals, it requires that anyone wanting to renew a gun licence must apply at least 90 days before the licence expires.
- Section 28 deals with the termination of gun licences: under subsection 1a a licence terminates when the renewal period has expired unless the licence has been renewed; subsection 2b gives the Registrar (who is the national police commissioner) the right to cancel a licence if the licence holder has contravened or failed to comply with the Act (e.g. by failing to renew his gun licence in time); and subsections 4 and 5 state that when a gun licence is cancelled the gun must be disposed of through a dealer within 60 days, otherwise it must be forfeited to the state.

South Africa’s experience of implementing the Firearms Control Act shows that a system of regular licence renewals helps save lives because it:

- Ensures that gun owners remain familiar with changes in the law;
- Gives a licensed gun owner the opportunity to assess if he still needs a gun, for example, he may decide he no longer wants a gun if he has young children in the home. Relicensing requires each gun owner to demonstrate genuine need for continued ownership of a gun;

- Is a mechanism by which the on-going fitness of gun owners can be assessed by the state, which in turn is an incentive for gun owners to comply with licensing requirements;
- Requires a gun owner to reaffirm his responsibility for the gun registered in his name, which reduces the risk of legal guns leaking into the illegal pool of weapons; and
- Ensures records on gun ownership are accurate, which in turn helps law enforcement officials to trace guns, investigate crime and support criminal prosecutions.

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