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**SUBMISSION TO THE
DEPARTMENT OF POLICE
ON THE
FIREARMS CONTROL AMENDMENT BILL, 2021**

Attn: Mr Ntwana; Ms Lornah Legomo
comments.fcabill@csp.gov.za; lornah.legomo@csp.gov.za

BOARD OF ADVISORS Former Judge Rex van Schalkwyk (Chairman) | Adv Norman M Davis SC
Adv Margaretha Engelbrecht SC | Adv Langa Bodlani | Adv Frans Rautenbach
Prof Robert Vivian | Prof Richard A Epstein | Prof Koos Malan | Judge Prof Douglas H Ginsburg
Eustace Davie | Temba A Nolutshungu | Leon Louw | Martin van Staden

Johannesburg PO Box 4056 | Cramerview 2060 | **Tel** 011 884 0270 | **Email** martinvanstaden@fmfsa.org
NPO No 020-056-NPO | PBO & Section 18A(1)(a) No 930-017-343

www.RuleofLaw.org.za

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Executive summary

The Free Market Foundation regards the ability of law-abiding persons to defend themselves, their loved ones, and their assets with sufficient force to ward off any physical harm as a fundamental human right.

This right transcends positive law, and therefore need not be taken up explicitly in the Constitution. No law may interfere with a right so basic to human survival. Regardless, the Constitution does provide both indirect (through section 39(3)) and implicit recognition and protection for this right, through its recognition of the rights to equality, human dignity, life, freedom and security of the person, and property. To the extent that the Firearms Control Amendment Bill undermines the right of people to defend themselves and their property – and regrettably it does so in many ways – therefore, it is regarded as unconstitutional and must be abandoned forthwith.

Additionally, the Free Market Foundation is deeply concerned about the woeful inadequacy of the study that is meant to be the empirical and evidentiary basis of the proposed bill – its socio-economic impact assessment. The assessment fails to comply with every important requirement that characterises a rigorous and satisfactory impact study. Most concerning of all, the Department of Police seems to have commissioned, and then ignored, a prior, more rigorous and sound study that in fact concluded further firearm control measures would not lead to a reduction in violent crime.

The Free Market Foundation therefore recommends that the Firearms Control Amendment Bill be withdrawn.

Prepared by:

Martin van Staden

Gideon Joubert

Free Market Foundation and Rule of Law Project

The Free Market Foundation (FMF)¹ is an independent public benefit organisation founded in 1975 to promote and foster an open society, the Rule of Law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations, and sponsorships.

Most of the work of the FMF is devoted to promoting economic freedom as the empirically best policy for bringing about economic growth, wealth creation, employment, poverty reduction, and greater human welfare.

The FMF's Rule of Law Project² is dedicated to promoting a climate of appreciation throughout South Africa, among the public and government, for the Rule of Law; continually improving the quality of South African law; identifying problematic provisions in existing and proposed laws, and, where feasible, advocating rectification.

1. Introduction

The Civilian Secretariat of Police (CSP) published proposed amendments to the Firearms Control Act of 2000 (FCA) for public comment on 21 May 2021. It also published the document upon which the proposed amendments are based – the Socio-Economic Impact Assessment (SEIA).

The Firearms Control Amendment Bill (the bill) shifts the legal firearm regime from one of recognition of self-defence as a fundamental human right to the obviously invalid notion that “firearm possession and use [is not] a right but a privilege” that depends on State favour. In confirming this myth, the bill goes on to severely restrict the ability of law-abiding South Africans to acquire and use firearms for a variety of reasons, most concerningly private or self-defence.

Additionally, the bill effectively changes the definition of muzzle loaders to regard them as firearms *per se*, meaning they must be licenced and will contribute to the limitation firearm owners labour under on the number of firearms they may possess. The bill also effectively outlaws the collection of (deactivated) firearms by removing that as an exemption from prohibited devices and ammunition. The collection of firearms is also removed as a justifiable reason for acquiring a licence. It is additionally made more burdensome to justify the reason for acquiring a firearm licence in general, and more of a burden is placed upon the police service in the administration of competency certificates.

Perhaps the most notable introduction made by the bill into South African firearm law is the removal of self-defence as a valid reason to seek to acquire a firearm licence. The bill also sets out to bring the sport-shooting and private hunting industries to a standstill with its proposed limitations on the number of firearms and its overcomplication of the application procedure.

¹ www.freemarketfoundation.com.

² www.ruleoflaw.org.za.

The bill also places burdens upon the private security industry, *inter alia* making it more difficult to acquire special firearms suited to the purposes of the profession. The entry of new security firms into the market is also made more difficult by making it necessary for a security services contract to already be in place before a licence may be issued.

The bill significantly reduces the validity periods of firearm licences, adding an additional burden upon the police service as well as firearm owners to renew licences more frequently. In addition, the bill outlaws the reloading of firearm ammunition for personal use, a common practice that has made ammunition affordable to poorer lawful firearm owners.

This is merely a sampling of what the bill proposes. Many other provisions in addition to these are noted, and opposed, by the FMF.

Considering the important role of the SEIA as the foundation of the bill, it additionally vital that a thorough appraisal is performed of its contents. SEIAs must meet certain minimum standards to be considered honest, accurate, and ultimately useful, with specific reference to the following:

- The SEIA must contain an accurate problem statement(s) that the assessed intervention (the bill) seeks to address.
- The SEIA must treat the relevant data and figures accurately.
- The SEIA must honestly and in good faith consider perspectives advocating against the assessed intervention.
- The SEIA must consider alternatives to the assessed intervention, and may not take it as given that the intervention is the only justifiable way forward?
- Perhaps most importantly, the SEIA must contain a thorough and accurate costing exercise accurate, i.e., recognise and consider all the relevant costs (to society, the economy) in an honest manner.
- The SEIA drafters must not enter into the assessment with a foregone conclusion (usually manifested through evident confirmation and/or selection bias in favour of the intervention).

Unfortunately, there are a legion of extensive and crippling problems with almost all of the above. To such a serious extent that we advance the considered opinion that the document in its entirety should be discarded as unusable.

We will now proceed to dissect and discuss the most noteworthy findings.

2. Firearms Control Amendment Bill

There will be no comprehensive treatment of the clauses of the bill, as we regard the bill's fundamental premises, including the SEIA upon which it is based, to be flawed in ways fatal to any legislative proposals that might flow from them. Some of the bill's proposals were briefly set out in the introduction above.

2.1 Self-defence is a natural human right, despite any statutory indications to the contrary

It is our view that the Constitution makes ample provision for the recognition of a right to bear firearms in South Africa. However, assuming that it does not do so, it is undeniable that it is an inherent right of every person to defend themselves, particularly in light of the failure of South Africa's police services to do so on their behalf. Professor Koos Malan argues as follows:

“A more crucial legal consequence of a particularly constitutional nature arises from the state's failure or inability to keep the peace and safeguard its citizens' right to freedom from violence, namely, to the extent that the state does not or cannot effectively discharge this obligation, those whose right to freedom from violence is threatened as a result of such failure or inability are thereby summarily entitled to do individually and/or in cooperation with others, whatever is reasonably necessary in the circumstances, to restore and keep the peace and to effectively protect themselves against violence.”³

Even if the Constitution outright prohibited self-defence, it would be stillborn law, as the right to protect oneself, one's loved ones, and one's assets, is perhaps the oldest human right in existence. Before any concept of freedom of expression or privacy was developed, human beings regardless of locality or culture were defending themselves from mortal danger. It is a most basic human function to be able to protect oneself. Malan refers to this as a “primordial right” that every person possesses. No law, regulation, or political decision can validly take away this basic human right.

To the extent that the bill makes significant inroads into the right and ability of South Africans to protect themselves, even if it is adopted into law, it would be lawless law that will be disregarded.

2.2 Firearm ownership as an implication of constitutional rights

2.2.1 Section 39 and the common law right of self-defence

The Constitution does not, however, prohibit self-defence. In fact, a strong argument can be made that it holistically recognises and protects this right, and that the bill is for that reason unconstitutional *ab initio*.

Section 39(3) of the Constitution provides that:

“The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill [of Rights].”

It is clear that despite the absence of an explicit right to firearms contained in the Bill of Rights, the long-established and undeniable (common law, natural) right of a person to defend themselves, even with a firearm, is nonetheless a *right* (not a “privilege”) that South Africans possess, and the Constitution confirms as much.

³ Malan K. “The inalienable right to take the law into our own hands and the faltering state”. (2007). 4 *Journal of South African Law*. 646.

2.2.2 *The implicit right to firearm ownership*

Over and above the recognised common-law right to firearm ownership, there further exists an implicit *constitutional* right to firearm ownership that can be found in the Bill of Rights.

This right can be inferred from a holistic reading together of sections 9(1) and (2), 10, 11, 12, and 25(1) of the Constitution. These provisions provide as follows:

“9(1) Everyone is equal before the law and has the right to *equal protection and benefit of the law*.”

(2) Equality includes the *full and equal enjoyment of all rights and freedoms*. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”

“10 Everyone has inherent dignity and the right to have their dignity respected and protected.”

“11 Everyone has the right to life.”

“12(1) Everyone has the right to freedom and security of the person, which includes the right –

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) *to be free from all forms of violence from either public or private sources*;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the *right to bodily and psychological integrity*, which includes the right –

- (a) to make decisions concerning reproduction;
- (b) *to security in and control over their body*; and
- (c) not to be subjected to medical or scientific experiments without their informed consent.”

“25(1) No one may be deprived of property except in terms of a law of general application, and *no law may permit arbitrary deprivation of property*.”

(our emphases)

Over and above these provisions, however, one can furthermore argue that every other provision in the Bill of Rights, say, the right to cultural, religious, and linguistic communities (section 31), additionally assumes a right to self-defence. For, indeed, what if this right to freely form communities is violently endangered by others, and the police service is unavailable to assist?

It is in our view beyond any doubt that the Constitution recognises, protects, and advances a right to self-defence.

2.3 **Conclusion on the bill**

For the reasons sketched above, we propose that the Firearms Control Amendment Bill be withdrawn. The bill is inconsistent with human nature and the most basic of human rights, it is

inconsistent with the Constitution, and it can in no way be regarded as serving the public interest, as our discussion on the SEIA below will illustrate.

3. Socio-Economic Impact Assessments (SEIAs)

The most important tenet of the Rule of Law is its prohibition on arbitrariness. Arbitrariness is not only a symptom of unfair and bad governance, but is also very harmful to the economy, as it leads to uncertainty and means people and businesses cannot plan their affairs ahead of time.

The opposite of arbitrariness is reasonableness. Reasonableness consists of two elements, namely, rationality and proportionality. Proportionality means that there must not be an imbalance between the adverse consequences of a policy and the beneficial consequences.⁴ Rationality means that evidence must support the policy. Stated differently, there must be a rational connection between the purpose of the policy and the solutions proposed.⁵ It has also been said that a third element, effectiveness, is a part of reasonableness.

It stands to reason that the requirement of rationality, read together with section 195(1)(g) of the Constitution, which states the principles according to which the public administration must function, provides that transparency “must be fostered by providing the public with timely, accessible and accurate information”, requires that policy or legislative interventions must be supported by demonstrable evidence.

To determine whether a policy will have the consequence intended by the enacting authority, a study must be done as a matter of course, and must be publicly available to satisfy the principle of transparency. If a study is not conducted, it means the intervention is not supported by evidence, and is therefore irrational and unconstitutional, and if a study is not released to the public, government is failing to comply with section 195(1)(g), and thus, the process is unconstitutional. These studies are known as socio-economic impact assessments (SEIAs).

Without published SEIAs, government is called upon to *judge for itself* whether its *own* policies are reasonable. Such a state of affairs would make the Rule of Law a redundant concept.

For the people to have a say in the decisions that affect their lives, they must know how the decision was arrived at and on what basis, and their participation must be meaningful (in other words, government must engage in good faith) and not merely a façade. Without a SEIA, the public cannot participate in the policy-making and law-making processes as mandated by the Constitution.

In *Principles of Good Law*, the Good Law Project writes:⁶

“Although widely divergent, all the international assessment models amount ultimately to institutionalised procedures for determining the need for a law and its expected benefits. They are also concerned with the cost to government of implementation, as well as the capacity of government to police and enforce the law and the cost to the public of compliance. Other aspects considered are the economic and other likely impacts, the prospect of

⁴ Hoexter C. *Administrative Law in South Africa*. (2012). 344.

⁵ Hoexter 340.

⁶ Good Law Project 34.

unexpected or unintended consequences; and the behaviour modifications likely to be promoted by the law and distortions that might flow from them.”

It goes on to describe what a SEIA would encompass:⁷

“2. Socio Economic Impact Assessment (SEIA). Multi-faceted analysis *and quantification* of:

2.1 The purposes of laws – precisely what “mischief” they are addressing;

2.2 Desired consequences;

2.3 Estimated secondary and unintended effects, including impacts on the economy or society in general;

2.4 Feasibility and efficacy – prospects in practice of the law being observed, and if not, enforced by officialdom, police and the courts;

2.5 Costs and benefits – accurate and comprehensive estimates of costs of administration and implementation, enforcement and policing, compliance and avoidance/evasion/resistance;

2.6 Inter-departmental considerations – the extent to which other departments are implicated;

2.7 Administration and budget – advance provision for all budgetary, staffing, training and related needs; diversion or dilution of resources and capacity.”

The Department of Planning, Monitoring and Evaluations’ (DPME) SEIA System (SEIAS) guidelines describe the purpose of SEIA as follows:⁸

“3. The role of SEIAS

SEIAS aims:

- To minimise unintended consequences from policy initiatives, regulations and legislation, including unnecessary costs from implementation and compliance as well as from unanticipated outcomes.
- To anticipate implementation risks and encourage measures to mitigate them.”

The DPME regards a SEIA as more than a mere cost-benefit analysis. SEIAs, instead, must contribute to improving policy, rather than measuring their net value. It must, furthermore, “help decision makers to understand and balance” the impact of policy on different groups within society.⁹

That regulations or legislation can lead to unintended consequences is acknowledged by government. They could occur because of inefficiency, excessive compliance costs, overestimation

⁷ Good Law Project 35.

⁸ Department of Planning, Monitoring and Evaluation. “Socio-Economic Impact Assessment System (SEIAS): Guidelines.” (2015). 4.

⁹ DPME 7.

of the benefits associated with the regulation, or an underestimation of the risks involved with following through with the regulation.¹⁰

The SEIA System applies to legislation and regulations, as well as policy proposals.¹¹

4. SEIA on the Firearms Control Amendment Bill

4.1 Problem statement is problematic

The SEIA's problem statement is not formulated honestly. It starts by stating that the "proliferation of firearms creates a serious social problem in South Africa". There is no clear indication as to what the *serious social problem* is – one is led to infer that it is violent crime and murder. It is also, in many respects, untrue.

Firstly, there is no correlation (in fact, there is rather a reverse correlation) between civilian firearm ownership and violent crime.¹² It is also a fallacy to confuse correlation with causation – something that the SEIA repeatedly does by explicitly referring to civilian firearm ownership as a causal factor of violent crime.

Secondly, there is no *proliferation* of firearms in South Africa. According to the 2017 Small Arms Survey, South Africa placed 89th with a mere 9.7 guns in civilian possession per 100 people.¹³ This is fewer than Chile (12.1), Russia (12.3), Australia (14.5), Germany (19.6), New Zealand (26.3), Austria (30.0), Serbia (39.1), and the United States of America (120.5). All these countries have markedly lower homicide rates than South Africa.

The problem statement essentially claims that South Africa has suffered a marked and consistent increase in violent crime and murder, which is caused by the increased availability of firearms and that their licensed owners aren't required to redo competency tests, and that the problem is sustained because the FCA doesn't sufficiently limit civilian firearm ownership (as well as the "problem" of the High Court ruling in favour of firearm owners).

Pertaining the latter, it is regrettable that the drafter of the SEIA claims that a High Court judgment is problematic. Laying the blame for increased violence and criminality at the feet of a court upholding the law as written is deeply problematic.

As for the other claims in the problem statement: they are unsubstantiated, unreferenced, and unrealistically narrow. The problem statement takes the complex issue of crime and violence in South Africa, and lays it squarely and solely at the feet of civilian firearm ownership. It is entirely incorrect and wholly unrealistic to treat civilian firearm ownership as a causal factor for crime and violence – there is no proof or evidence thereof at all.

The document also completely ignores the documented drivers of crime and violence – economic (high rates of poverty and unemployment) and social factors, low levels of social trust and high levels

¹⁰ DPME 4.

¹¹ DPME 8.

¹² <https://dailyfriend.co.za/2021/05/28/legal-gun-ownership-is-inversely-correlated-with-gun-crime/>

¹³ <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>

of social friction, failures of the criminal justice system, etc. – as if they do not exist, or have no material consequence. This is farcical to the extreme.

Shockingly, no elaboration on the current state of the South African Police Service (SAPS) as a significant (and perhaps even dominating) factor of the high rate of crime and violence is made.

South Africa is the 6th most-homicidal country on Earth (as per the World Bank's publicly available data after correcting for outliers),¹⁴ and our homicide rate has increased every single year since 2011. The SAPS is presently in the middle of three years of consecutive budget cuts amounting to R19 billion, and the National Commissioner of Police (prior to these cuts being actioned) admitted to Parliament in October 2018 that the SAPS is already "overstretched", and that it is "impossible" for the police to fulfil its constitutional mandate.

This means that the SAPS cannot fulfil the following obligations:

1. Prevent, combat, and investigate crime;
2. Maintain public order;
3. Protect and secure the inhabitants of the Republic and their property; and
4. Uphold and enforce the law.

To the great detriment of the SEIA, none of these highly significant factors are explored or even touched upon.

For the problem statement to be properly formulated, it must acknowledge the multitude of underlying factors correlated to crime and violence, and correctly incorporate and control for them with adequate referencing and quantification. Unfortunately, the way it has been compiled creates the strong impression that the SEIA is agenda-driven for the purposes of reaching a preconceived conclusion.

4.2 Poor treatment of data and figures

The SEIA does not treat data and figures in an accurate manner. The document is littered with numerous egregious examples, and for the sake of brevity we include only a few noteworthy ones.

First, none of the claims made in the problem statement are substantiated or even referenced. Fallacious reasoning along the lines of murder and robbery being “crimes most likely to be committed with a firearm”, without providing proof as to the origins of such claims, abound.

Recent figures from the 2019/20 crime statistics published by SAPS state that out of 126,493 contact crimes, only 20,927 (16,54%) were committed by use of a firearm.¹⁵ This directly and meaningfully contradicts the abovementioned claim published in the SEIA.

¹⁴ https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?most_recent_value_desc=true

¹⁵ <https://www.timeslive.co.za/news/south-africa/2020-07-31-crimestats-top-15-instruments-used-to-commit-contact-crimes-in-sa/>

The drafter then continues by stating “an additional 1,362 illegal firearms and rounds of ammunition were recovered in the same reporting period. This could possibly indicate the greater availability of firearms.”

This is, again, a baseless statement and supposition at best. The tenuous link between the number of firearms recovered and the number in circulation is not even estimated or compared. The recovery would more likely be linked to the increase in the number of robberies with aggravating circumstances. It stands to reason that if there are more robberies, there are more opportunities for recovery.

Another problematic statement is the claim that “in 2012, research by the Medical Research Council (MRC) of South Africa claims that 57% of women killed in South Africa are murdered by their husbands or boyfriends and that licenced firearms are used in 75% of cases where a firearm is used.”

This research needs to be made available – there is no reference, link, or footnote identifying which research this is. It is therefore impossible to ascertain what research methodology was used, how statistical inference was applied, and if the sample sizes were sufficient or if the published outcomes are even remotely valid.

Additionally, there is no mention, whatsoever, regarding the actual proportion of intimate partner violence perpetrated by use of firearms; so it is impossible to obtain a remotely accurate estimation of the overall picture. Equally significantly, the research in question was published nine years ago, inferring the dataset it contains must be well over a decade old.

The rest of the data and figures within the SEIA are of the same quality as these examples – which illustrate cherry-picked research, correlation confused with causation, and either deliberate or negligent misrepresentation of the statistics without meaningful context.

This inaccurate treatment of data and figures is incompetent at best, or blatantly dishonest for the purpose of supporting an agenda at worst.

4.3 No other positions contrary to the bill

The drafter of the SEIA does not even once attempt to explore the advantages of proficient and lawful firearm ownership among civilians. There are many relevant discussion points in this regard, such as Ronald Noble, former Secretary General of Interpol, stating the national security advantages of an armed and trained citizenry, which are wholly omitted.¹⁶ Instead, the SEIA is utterly one-sided, and treats the existence of civilian gun owners entirely as a driver for crime and violence.

The SEIA states that the problem of “high levels of gun-related crime and violence in society” arises and persists because the “FCA does not sufficiently limit the number of firearms”. This statement is not quantified or expanded upon, and no references in support of its rather terminal conclusion are provided. It is merely stated as fact, sans substantiation.

The drafter continues by asking which “groups whose behaviour give rise to the identified problem (of crime and violence)?” and then supply their answer as “licensed gun owners”. Their reason?

¹⁶ <https://abcnews.go.com/Blotter/exclusive-westgate-interpol-chief-ponders-armed-citizenry/story?id=20637341>

Purely because licensed gun owners allegedly drive the “availability and proliferation of firearms”. Again, this is simply stated as fact without any substantiation at all.

To summarise – because gun owners exist, South Africa suffers from rampant violence and crime.

This is not a well-reasoned or rational argument. The fact that no supporting evidence bar unquantified conjecture is supplied, is shocking.

Continuing along this trend, the SEIA identifies “licence holders” as a “problem” because they won two court cases against the Minister of Police – one which ruled that all licences in terms of the 1969 Arms and Ammunition Act remain lawful, and the other which found the renewal provisions of the FCA (sections 24 and 28) to be unconstitutional.

In this instance, the drafter of the SEIA blames lawful firearm owners for the prevailing high rates of crime and violence because they successfully challenged unconstitutional and harmful provisions of the FCA in a court of law.

This is a bizarre conclusion not only devoid of rationality, but which also constructs a false causal direction wholly based on a perverse misinterpretation of legal process and procedures. Another shocking display of poor and malicious reasoning.

This is the full extent of the SEIA’s consideration of contrary positions. No examples are given pertaining the successful lawful use of firearms in the defence of life, of which there are thousands (if not tens of thousands) of cases every year. Nor are the social and economic benefits and importance of sport shooting and hunting even mentioned.

Hence, by not even acknowledging the existence of highly-legitimate contrary positions, the SEIA severely undermines its own objectivity and legitimacy.

4.4 Total absence of honest alternatives

When conducting a socio-economic impact assessment, it is of critical importance that all viable practical alternatives are explored and tested. This was simply not done in the SEIA under consideration.

In every section where the proposed problem of high levels of crime and violence are unpacked and discussed, the underlying issue is almost always identified as the FCA not being prohibitive enough. This position is not supported by any statistics, facts, or reasoned surmising – like nearly all claims in the SEIA, it is merely stated and the reader must simply accept what is written at face value.

To exacerbate this issue further, the drafter consistently bemoans the lack of effective implementation of the FCA as a major contributing factor to the identified problems, yet offers not a single proposal in order to rectify this shortcoming and make the implementation of the Act more efficient and effective. Instead, they take the irrational route of proposing more onerous legislation in order to offset the inability of the authorities to effectively enforce existing legislation.

Considering the above, it is therefore bizarre that the impact of policing, and significant challenges facing it (at national, provincial, regional, and metropolitan levels)¹⁷ and potential solutions for them

¹⁷ <https://irr.org.za/reports/occasional-reports/broken-blue-line-3>

are not even mentioned. Neither is the present state of the criminal justice system, which is reportedly near-collapse.¹⁸

Most surprisingly, for a study titled as a “socio-economic impact assessment”, the socio-economic factors driving crime and violence that urgently require significant attention (such as record-high unemployment) are given the merest of mentions only, with no analysis or even attempts at discussion.

And here another egregious error is committed: Firearm ownership is treated as a causal factor of violent crime (no evidence of this claim is given), which in turn is positioned as a causal factor of low economic growth (no evidence is provided here, either). This goes contrary to the accepted fact that economic factors (such as low growth and the associated negative externalities thereof) are, in fact, a significant driver of crime and violence.

Of course, one can rationally treat violence and crime as a significant “tax” on any economy, but then it must be thoroughly quantified and adequately explored; including the various manners in which crime and violence manifest themselves. Yet, assigning such a disproportionately colossal weight to civilian firearm ownership as a causal factor, especially when it is inversely correlated with crime and violence, is unreasonable to the extreme, and infers malice.

Lastly, our national crisis of education and the immensely negative impact it holds for our entire society is not even mentioned.¹⁹

Instead, only two possible policy options are listed: The preferred one of amending the FCA in order to restrict lawful firearm ownership, or keep the *status quo* as is.

By boiling an immensely complex set of challenges and issues down to a grossly oversimplified binary choice is simply not acceptable in the context of a SEIA.

4.5 Absent, perverted, and inaccurate costing

The drafter of the SEIA calculated no direct or indirect costs for the relevant stakeholders and sectors whatsoever.

The negative effects and externalities of the proposed restrictions on civilian firearm ownership on the safety and security of private citizens is not quantified or explored. This is a debilitating omission in no small part due to the extensive identified problems affecting policing mentioned earlier.

The proposals’ negative effects on the agricultural, hunting, and conservation industries and sectors are equally unlisted and unquantified. Considering that tens of thousands of jobs in these sectors, and entire communities dependent upon them, are at risk of being obliterated, the failure of the drafter to account for these effects is shocking. Equally, nothing is said about the potential impact on conservation itself – which is another glaring omission due to the vital link between hunting and conservation. Instead, the “Environmental Sustainability” cost is perversely listed as “not applicable”.

¹⁸ <https://www.news24.com/citypress/News/rising-crime-low-prosecution-rates-how-law-enforcement-in-sa-has-all-but-collapsed-20191021>

¹⁹ <https://irr.org.za/reports/occasional-reports/files/the-south-african-education-crisis-31-05-2018.pdf>

Lastly, the firearm industry – including wholesale, manufacturing, retail, gunsmithing, etc. – and the sport shooting sector is entirely ignored. No forward and backward linkages (both economic and societal) are quantified, listed, or even mentioned. This is yet another industry which directly creates tens of thousands of meaningful employment opportunities and billions of rands of revenue annually.

With an inexplicable absence of logic, the drafter readily proclaims the disastrous effects of crime and violence on economic growth and employment, yet completely fail at exploring said effects pertaining their own proposals.

Instead, the SEIA provides a disgracefully amateurish and dishonest attempt at a costing exercise, in which blatantly untrue statements (such as the claim that firearm owners “do not have to undergo a competency assessment to obtain a firearm licence) sit alongside criminally oversimplistic and inaccurate claims (such as that businesses and society’s only costs in this regard originate from firearms circulating in society). None of the costing claims are referenced or quantified.

4.6 Confirmation bias and foregone conclusions

There is a clear thread of confirmation and selection bias that runs through the entire SEIA – from the problem statement right through to the conclusion and summary.

Due to the complete absence of honest engagement with workable alternative options, or even the remotely adequate exploration of the variety of existing drivers feeding the problem, the drafter deliberately paves a yellow brick road to their conclusion.

In the SEIA’s summary, the authors simply state that the “only way” to address their problem statement, is to impose their preferred option of amending the FCA as per their recommendations.

This indicates that the contents of the Firearms Control Amendment Bill were preconceived, and the SEIA then tailored in order to lend support to the predetermined outcome, regardless of the myriad of facts, positions, and alternatives to the contrary.

4.7 Wits School of Governance report

On 26 June, the CSP released the “Analysis of the Effect of the Firearms Control Act on Crime, 2000 – 2014” – the so-called “Wits Report”. The CSP commissioned the Wits School of Governance (WSG) to compile the detailed report in December 2014.

The report is the document upon which the Firearms Control Amendment Bill, which seeks to outlaw self-defence as a reason to own a firearm, is partly based. And it was only released to the public recently, nearly six years after its creation, as a result of several organisations and individuals bringing immense pressure to bear upon the CSP by threatening court action.

It is therefore interesting to note that the report is not only uncontroversial, but a well-conducted and thoroughly-reasoned exercise in analysis. It also contrasts particularly sharply with the extremely poor quality of work that went into the SEIA herein considered, which is the only other supporting document of the proposed amendments that the CSP made available when the issue was first opened for public comment on 21 May.

The main objective of the WSG report was to assess the effects of the FCA on crime between 2000 and 2014. And the report's stated purpose is for its recommendations to inform amendments to the FCA.

In order to satisfy these requirements, the research team made use of detailed SAPS crime data to analyse a broad variety of violent crime trends from before the advent of the FCA to a full decade after its commencement. The report is comprehensive and meticulous, spanning 178 pages covering 15 years of data. It includes a full description of methodology and a comprehensive summary of the research. In short, it is a very high-quality text.

By extension, the ten conclusions of the Wits Report are instructive. For the sake of brevity, only some are elaborated here.

To start, the report finds that there is little evidence (and it is unlikely) that the FCA caused any decline in crime rates over the period in question. Instead, the decline can be ascribed to the level of strong and sustained policing as a "necessary condition for reducing firearm-related crime." The FCA is also found to be insufficient to reduce firearm-related crime in the absence of strong policing.

This is not a controversial finding. The Institute of Race Relations, for example, independently reached similar conclusions in their paper, "Don't add Chaos to Disorder – Exposing the Weakness of Key Civilian Disarmament Arguments", which was published before the Wits Report was made public.²⁰

Another finding pertains to the fact that fewer than 5% of all crimes reported to the SAPS are relevant to the FCA. Firearms are used in the perpetration of only about a third of all murders, and the report cautions that "violent crime should not be equated with firearms as they are often carried out with other weapons."

Tying-in with this finding, the report goes on to state that "strong policing must be maintained in order to achieve sustained decline in crime. In spite of the FCA, in the absence of strong policing, the usage of firearms in perpetrating murder (although not used in the majority of murders) tends to return to the higher levels."

The report also notes that so-called "firearm dependent crimes" – crimes dependent upon the use of firearms, such as truck hijackings and cash-in-transit robberies – are "impervious to the FCA". Even when these crimes decline under strong policing, the "level of usage of firearms in these crimes remains intact."

Hence, regardless of how onerous or restrictive gun control laws are, they have minimal to no effect on the murder rate, nor on the proportion of all murders committed by use of firearms. The FCA also has no effect at all on firearm dependent crimes. However, strong policing succeeds in bringing the overall crime rate (as well as the proportion of murders perpetrated by use of firearms) down, regardless of how strict or permissive firearm legislation is.

The report also found that there is little evidence that the FCA raising the legal age of firearm ownership from 16 to 21 had any effect on changing firearm use in crimes committed by young

²⁰ <https://irr.org.za/reports/occasional-reports/files/01a-2014-page-1-00-2014-gun-report-21-06-2021.pdf>

people. In fact, the authors note that “the distribution of age and gender of private firearm owners are very different from those of persons accused of crime.”

These findings illustrate a vastly different situation, requiring an entirely different solution, to the one the CSP presented to the public in the SEIA. We address this issue below.

As for the Wits Report’s recommendations to the CSP: Again, they are numerous and highly significant, but a few will be considered here.

Firstly, the report unequivocally states that the “[a]uthorities need to shift their misplaced, unconditional faith in the ability of the FCA to solve crime to policing; the FCA is not effective unless it functions under strong policing.”

The authors continue by recommending there should be specific policies and legislation in place to target firearm dependent crimes – hence that the focus must be shifted away from regulating law-abiding citizens, and actually put laws in place that complement policing and target criminals and crimes specifically, such as the Dangerous Weapons Act.

As to amending the FCA to place further onerous restrictions on licenced firearm owners, the report recommends that this is counterproductive and “increasingly stringent conditions for firearm licencing may be viewed as restricting their human rights to security.”

Lastly, in a highly prescient observation, considering this report was compiled in 2015, the authors state that “in the present and future of 3-D printing of firearms, the FCA may be inappropriate, and policing would once again be the effective strategy in the fight against crime.”

Considering the present reality where a layperson with a R3,000 3D printer and rudimentary knowledge of electrochemical machining²¹ can construct a fully-functional and robust firearm in their home with minimal effort and expense,²² the obsolescence of the FCA is all but confirmed. This again underlines the unrivalled importance of strong and effective policing as the most significant driving factor in fighting crime.

The Wits Report’s findings and recommendations make it patently clear that further restrictive amendments to the FCA will not only be ineffective at addressing violent crime, but the unintended negative externalities inherent to such restrictions will in fact exacerbate matters.

To effectively combat crime, the focus must be on policing itself – “authorities need to shift their misplaced, unconditional faith in the ability of the FCA to solve crime to policing.”

As previously stated, none of the aforementioned conclusions and recommendations are remotely controversial. They are grounded in good data, and the sound interpretation and quantification of that data. Yet this report was hidden from public view for nearly six years. And the CSP only released it after several organisations and private individuals threatened court action.

²¹ <https://www.thefirearmblog.com/blog/2019/08/13/make-a-factory-quality-9mm-rifled-barrel-in-your-kitchen-using-salt-water-and-electricity-ecm/>

²² <https://youtu.be/jlB2QV5wVxg>

It is staggering that the CSP, after obtaining the research they themselves commissioned at taxpayer expense, not only hid the report but acted entirely contrary to its findings and recommendations. This is in itself a damning exposé of dishonesty and arguably corruption.

The Wits School of Governance report entirely eviscerates the flimsy and irrational arguments manufactured by the CSP for the radical proposed FCA amendments, and by extension their chronic obsession with civilian disarmament.

It is therefore an immensely inconvenient and embarrassing truth, which paints a picture that is 180-degrees removed from the CSP's (and Minister Bheki Cele's) stated position.

And not only that.

The Wits Report proves that the CSP, the SAPS, and the Minister of Police have chronically lied to the public and Parliament about civilian-held firearms.

Hence why the poor-quality and highly dishonest SEIA was so shoddily cobbled together – the CSP needed to manufacture reasons, no matter how disingenuous and untruthful, to mislead the public and lawmakers into supporting FCA amendments that seek to deprive citizens of their licenced firearms.

To further exacerbate matters for the CSP and the Ministry, the report's emphasis on strong and effective policing as the fundamental driver in combating crime exposes the abysmal failure of the SAPS to perform their constitutionally-mandated duties.

Considering the cynical attempts by the Minister and the CSP to promote civilian disarmament as a solution for violent crime, in spite of what their own commissioned research says, it is necessary to make mention of just how dire the SAPS' inadequate policing situation is.

With no fewer than three Institute of Race Relations "Broken Blue Line" reports²³ chronicling the myriad of serious problems crippling the dysfunctional SAPS, the National Commissioner of Police admitting to Parliament that it is "impossible" for the SAPS to fulfil its constitutional mandate,²⁴ and the public viewing the SAPS as the least trustworthy²⁵ and most corrupt²⁶ state institution, it is apparent that the SAPS is in the midst of a terminal existential crisis.

Adding to this catastrophic predicament are rolling budget cuts over three years amounting to at least 20%²⁷ and the collapse of the police's forensic evidence systems²⁸ due to non-payment of a critical service provider.

It is therefore patently obvious that the SAPS is in no shape to remotely provide the strong and effective policing our country so desperately requires to bring violent crime under control. This

²³ <https://irr.org.za/reports/occasional-reports/files/broken-blue-line-3-final.pdf/view>

²⁴ <https://youtu.be/qATQBg7jJ-Q>

²⁵ <https://www.vocfm.co.za/saps-perceived-as-least-trusted-institution-in-sa-senior-researcher/>

²⁶ <https://businesstech.co.za/news/government/445728/hundreds-of-crooked-cops-in-south-africa-under-investigation-for-corruption/>

²⁷ <https://www.da.org.za/2019/08/saps-r20-billion-budget-cuts-could-lead-to-a-loss-of-23-000-personnel-over-next-3-years>

²⁸ <https://www.news24.com/citypress/news/police-lose-8-million-pieces-of-evidence-20210306>

calamitous emergency requires urgent and meaningful attention. Yet there is little indication from the Minister or the CSP that such attention is forthcoming.

When considering the state of the SAPS in the context of the WSG Report, it is reasonable to conclude that any attempts to further restrict law-abiding citizens from legally owning firearms for self-defence (or any other lawful purpose) is not only highly misguided, but atrocious. There is frankly no factual basis for such action.

However, urgently reforming our highly dysfunctional and broken police service is of vital importance. This is exactly where all the focus and effort should rightly be. And not on more meaningless FCA amendments.

4.8 Conclusion on the SEIA

The SEIA is a study plagued by fatal flaws. Its problem statement is deceitful, the treatment of data and figures shockingly substandard and academically dishonest – bordering on fraudulent – there is a complete and deliberate omission of honest alternatives, all contrary positions are entirely ignored, costing is perverted and hardly present, and the entire effort is tied together with a ridiculously transparent foregone conclusion.

That this SEIA now serves as the foundation for a seriously-proposed legislative amendment is outrageous. It transgresses every basic parameter of what can be considered a reasonable socio-economic impact assessment.

We therefore insist that the SEIA must be withdrawn and scrapped as invalid and unusable. By implication this means that the proposed Firearms Control Amendment Bill, which is constructed upon the erroneous and false conclusions contained within the SEIA, must equally be withdrawn and discarded.

5. Conclusion

As a consequence of the reasons advanced above throughout this submission, the FMF believes the only justifiable way forward is for the Firearms Control Amendment Bill to be withdrawn in its entirety, alongside its SEIA; and that if government wishes to re-introduce similar legislation in the future, it must be based on considered, honest, and accurate data and research.