INTRODUCTION

On 9 August, South Africa celebrated National Women’s Day and on 12 August, the Parliamentary Portfolio Committee on Police will monitor the impact of the Domestic Violence Act (DVA). In anticipation of parliament’s evaluation, Briefing 12, ‘Removing Guns in Domestic Violence’ identifies firstly, provisions within the DVA and Firearms Control Act (2000) that help protect women from gun-related domestic violence; secondly, failures to capitalise on these provisions and finally, ways in which these two Acts can better reinforce each other and save women’s lives.

Domestic violence in South Africa

South Africa’s Domestic Violence Act of 1998 (DVA) recognises that domestic violence includes intimate partner violence (IPV), child and elder abuse; as well as different forms of violence, including physical and sexual; economic; emotional, verbal and psychological. As the South African Police Service (SAPS) does not have a domestic violence crime category, its extent and nature needs to be determined from a range of other crimes, including assault, pointing a firearm, intimidation, rape or attempted murder. Further complicating our knowledge of how many women experience IPV is that it is significantly under-reported.

Guns in intimate partner violence

While women make up just 10% of gun homicide victims in South Africa, firearms play a significant role in violence against women; used to kill, rape, and to threaten and intimidate. A summary of research into IPV in South Africa shows that:

- Women are most vulnerable to being shot by an intimate partner in the home: 32% (1,147) of women killed in South Africa in 1999 died from gunshot injuries, reducing to 17% (462) in 2009; 60% (692) of gunshot homicides in 1999 occurred at home and 31% (405) of women were shot and killed by an intimate partner.

- Legal gun ownership significantly increases the risk of intimate femicide—suicide (the killing of a female by her intimate partner followed by the suicide of the perpetrator within a week of the homicide), with two-thirds (66%) of intimate femicide—suicide perpetrators in 1999 owning a legal gun.

- The high percentage of guns used in intimate-femicide-suicide is attributed to the lethality of guns and the ease with which they can be used, with international research showing that guns are up to 12 times more likely to result in death than non-firearm assaults in IPV. In South Africa, 83% of victims that were shot were killed and of the women victims of gun homicide, 68% were killed with a single shot, most often to the head and face.

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• A significant proportion of intimate partner-suicide perpetrators are employed in the police, army or private security industry, reflecting easier access to guns in these professions.9
• Guns are often used in rape – 41% of rapes reported by adult women to the police in Gauteng Province in 2003 involved a firearm10.
• Research in the USA shows that the four main types of threatening gun-related behaviour used by men in IPV is threatening to shoot their partner; cleaning, holding, or loading a gun during an argument; threatening to shoot a person or pet the partner cared about; and shooting a gun during an argument with their partner (Rothman et al., 2005)11.

**Removing guns in domestic violence**

South Africa’s Domestic Violence Act (1998) and Firearms Control Act (2000) allow the courts and/or the police to remove a firearm from a gun owner who misuses it.

**The Domestic Violence Act (DVA)**

The DVA allows magistrate’s courts to grant interim and permanent protection orders ordering the respondent to stop their abusive behaviour. The court can also order the police to remove a firearm or any other dangerous weapon from the respondent, whether the respondent owns the gun or simply has access to it. Section 9 of the DVA allows a magistrate to issue such an order if:

a). The respondent has threatened or expressed the intention to kill or injure himself or herself, or any other person in the domestic relationship, whether or not this would be with the firearm or other dangerous weapon.

b). Possession of the firearm is not in the interests of the victim or any other person in the domestic relationship because of the respondent’s i). State of mind or mental condition; ii). Inclination to violence; iii). Use of or dependence on intoxicating liquor or drugs.

**Problems with implementing the DVA**

The process for having magistrate’s courts remove a firearm is straight-forward; but service providers report a number of problems:

• In addition to delays in securing final protection orders12; local courts hardly ever order the police to remove guns13. A study of applications for protection orders in 2000–01 found that a very small proportion required the removal of guns from perpetrators14. The reasons for this include that there is low reporting of gun use by IPV victims as well as poor responses from criminal justice structures responsible for removing guns that have been reported, even when removal is a requirement once IPV involving a firearm has been reported15. The low removal rate of firearms following IPV is of particular concern as international research shows that:

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• Displaying a firearm in a domestic altercation is a predictor of actual use, with many victims of femicide reporting having been threatened with a firearm before being shot\textsuperscript{16}.
• A gun in the home being much more likely to be used to threaten and injure family members than to protect the home from intruders\textsuperscript{17}.
• A record of partner violence does not necessarily translate into safety for women:
  • One third of women killed in IPV had a protection order against their male partner: 338 women (33\%) killed by their intimate male partners in 2009 were in possession of a protection order at the time\textsuperscript{18}.
  • Half of police officers with domestic violence cases against them are allowed to keep their firearms: Just 70 firearms were seized from SAPS members in response to the 137 cases of domestic violence reported at 301 stations in the year between 1 October 2013 and 30 September 2014; of concern is that 80 of these were criminal cases\textsuperscript{19}.

The Firearms Control Act (FCA)

Chapter 12 of the FCA allows the courts and police to remove guns from gun owners who misuse their firearm:

Courts
Section 103 of the FCA gives the courts the power to declare a gun owner unfit to own a gun for a range of reasons, including if s/he is convicted of an offence involving the negligent handling of a firearm; handling of a firearm while under the influence of any substance which has an intoxicating or narcotic effect; any offence involving violence or sexual abuse for which the accused is sentenced to a period of imprisonment without the option of a fine; any offence involving physical or sexual abuse occurring in a domestic relationship as defined in the DVA; and any offence in terms of the DVA in respect of which the accused is sentenced to a period of imprisonment without the option of a fine.

Police
Section 102 of the FCA gives the Registrar the power to declare a person unfit to possess firearm. Section 102 identifies five reasons for reporting a gun owner to the police:
  a). A final protection order has been issued against the gun owner;
  b). The gun owner has expressed the intention to injure or kill himself or someone else using a firearm or other dangerous weapon;
  c). It is not in the interests of the gun owner or any other person that s/he keeps the gun, because of the person’s mental condition, inclination to violence or dependence on alcohol or narcotic drugs;
  d). The gun owner has failed to carry or store the gun safely, as required by law;
  e). The gun owner has provided information required in terms of FCA which is false or misleading.

Once a statement has been made, the police are required to undertake an investigation, including interviewing witnesses. If the gun owner is found unfit, s/he must hand in all of their guns and licences and is not allowed to apply for a gun licence for five years.

\textsuperscript{17} Hemenway, D. 2011. Risks and Benefits of a Gun in the Home. American Journal of Lifestyle Medicine: \texttt{http://ajl.sagepub.com/content/early/2011/02/01/15598276103966294}.
Impact of the Firearms Control Act (2000) on reducing domestic violence

In the 11 years between 1 July 2004 and March 2015 just 8,605 individuals were declared unfit to possess a firearm under Section 102 of the FCA\(^\text{20}\), which amounts to 0.5% of all licensed civilian gun owners; an exceptionally low figure considering that South Africa has one of the highest levels of IPV, which often involves firearms, in the world\(^\text{21}\).

Yet the findings of the most recent intimate femicide study in SA show that the number of women killed by their intimate partner has dropped from four women a day in 1999 (translating into one woman being killed every 6 hours) to three women a day (every 8 hours) in 2009\(^\text{22}\).

According to researchers, the reason for this drop in intimate femicide is because of a decline in the number of women that were shot and killed compared to deaths by other means, including stab and blunt injuries\(^\text{23}\). The researchers attribute this decrease in gun deaths to the implementation of the FCA, stating that, “This study has shown the effectiveness of the Firearm(s) Control Act in the reduction of crime and violence overall in our country”\(^\text{24}\).

Prevention rather than cure

International research shows that removing firearms after domestic violence has been reported is less effective than restricting access to people with a history of abuse\(^\text{25}\). Although Sections 102 and 103 of the FCA allow the state to declare gun owners unfit to possess their firearms; the strength of the FCA is that it makes provision to disqualify unfit people from owning guns in the first place. The FCA has two key elements to certify that only “fit and proper” people are granted firearm licences, these are:

1. Two-tier licensing system which involves establishing competency before issuing a licence to possess:
   • **Competency certificate – setting a minimum standard**: Like a learner’s licence to drive, anyone applying for a competency certificate as a first step for a firearm licence must meet certain requirements. The competency certificate thus sets a minimum standard for owning a firearm.
   • **Firearm licence - giving official permission**: Having obtained a competency certificate, the person wishing to own a firearm has to then apply for a licence. A separate licence is required for each firearm a person wishes to own. A firearm licence documents the state’s recognition that the person has been judged “fit and proper” to own a firearm.

2. Renewals: The FCA requires firearm licence holders to regularly renew their licences (depending on the licence type renewal periods vary between 2, 5 and 10 years). Imposing a limited duration on a gun licence provides for the following:
   • Regular confirmation that the licensed owner is still qualified to have a firearm.
   • An incentive for complying with the law – this places responsibility on the licence holder to maintain “fit and proper” behaviour since there is a risk the licence may be revoked.


Designated Firearms Officers
Designated Firearms Officers (DFOs) at each police station are responsible for liaising between firearm licence applicants/holders and the state. DFOs play a critical role in both the competency certificate and licence application process as well as licence renewals; for instance, the SAPS 517 Application for a Competency Certificate requires DFOs to, amongst other tasks, conduct a minimum of three interviews, two of which must be in person, and one of which must be with the applicant’s spouse to assess whether the applicant is “fit and proper”.

Oversight visits to police stations by Members of Parliament and research projects reveal that DFOs are not always able to conduct thorough background checks for a number of reasons including staff and equipment shortages. Proposed amendments to the FCA published in 2015 aim to address some of these difficulties by requiring the appointment of a DFO at each police station as well as providing a detailed description of the role and responsibility of the DFO.

CONCLUSIONS AND RECOMMENDATIONS
This Briefing has referred to various interventions to reduce guns in domestic and intimate partner violence, and thus save women’s lives. Below is a summary of key recommendations:

1. **Restrict gun ownership**: International research shows that one of the most effective strategies for reducing gun-related domestic violence involves stricter civilian gun possession legislation, which disqualifies high-risk individuals from gun ownership and thus potential/likely abuse before this takes place instead of removing guns after the fact. It is critical that DFOs are empowered with knowledge, skills and resources to be able to adequately undertake background checks of firearm licence applicants and motivate why they have declared firearm licence applicants unfit for gun ownership so these declarations are not overturned by the Firearms Appeal Board; in a report to the Parliamentary Police Committee on Police, the Appeals Board reported that for a range of reasons it overturned SAPS’ licence refusals and “usually took a decision in favour of the applicant”.

2. **Work-guns are left at work**: With the majority of intimate femicide-suicide perpetrators working in the security industry (reflecting easy access to firearms), obliging police officers to leave work-related guns at the station would help protect police officers from the risk of suicide and being targeted for their firearms, as well as safeguard their families from firearm-related domestic violence.

3. **Proactive removal of firearms in IPV**: While the removal of firearms and prohibition of firearm ownership following incidents of IPV are recognised as important policies to prevent violence, international research and South Africa’s experience is that this happens in the small minority of cases, despite the fact that the presence of a firearm in the home facilitates lethal violence against women. As such, it is recommended that courts and police officers be more proactive in asking about the presence of a gun and ensuring its removal when responding to incidents of IPV, even where victims do not request this.

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