

AGGRAVATED ROBBERY IN THE ZAMBIAN
CRIMINAL JUSTICE SYSTEM: CONTROLLED
USE OF FIREARMS

BY

PATRICIA NACHILIMA

UNZA

2013

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SPR
LLB
NAC
2013
C-1

**AGGRAVATED ROBBERY IN THE ZAMBIAN CRIMINAL JUSTICE SYSTEM:
CONTROLLED USE OF FIREARMS.**

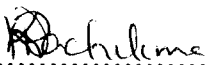
BY PATRICIA NACHILIMA

(29004101)

Being a Directed Research essay submitted to the University of Zambia Law Faculty in Partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

DECLARATION

I, PATRICIA NACHILIMA, do hereby declare that this Directed Research Essay is my authentic work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other Institution for the award of Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without the prior authorization in writing of the author.


.....

Candidate's Signature

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I Recommend that the Directed Research Essay under my supervision by:

PATRICIA NACHILIMA

(Of Computer No. 29004101)

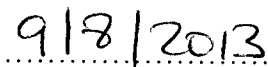
Entitled:

**AGGRAVATED ROBBERY IN THE ZAMBIAN CRIMINAL JUSTICE SYSTEM:
CONTROLLED USE OF FIREARMS.**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements pertaining to format as laid down in the regulations governing Directed Research Essays.


.....

Dr. P.T. Sambo


.....

Date

ABSTRACT

The regulation of firearms is a pertinent issue in every nation because it hinges on the protection of human life. A nation with uncontrolled use of firearms is prone to have high levels of insecurity. As a result nations, such as Zambia have developed firearm laws which control the use of firearms in that particular State. The Firearms Act, Chapter 110 of the Laws of Zambia regulates firearms in Zambia. This research investigates the role of the firearm licensing procedure prescribed in the Firearms Act, with regard to the controlled use of firearms. This study is important because it coincides with a period of public debate and outrage on the uncontrolled use of firearms, increase in aggravated robbery cases and other related cases in Zambia. There have been newspaper reports and cases concerning shootings and cases of aggravated robberies. This uncontrolled use of firearms has raised concern as to how the Firearms Act aids regulation of firearms. Using desk analysis this research evaluates legislation such as the Firearms Act and the Penal Code; it also evaluates literature such as case law and other documentation. Information relevant to this research was also obtained from interviewing officers at the Zambia Police Headquarters and the Office of the Director of Public Prosecutions. This research finds that the licensing procedure under the Firearms Act does not regulate access of firearms to the public because of the weaknesses in the licensing procedure. This research recommends that the Firearms Act be amended to include stringent measures to control access of firearms to the public.

Much appreciation is also extended to every member of the 2013 Law School graduating class for the fun and hard times throughout this journey. To Maloba, my very good friend I am grateful for all the help and encouragement you rendered to me throughout our University life, your valuable criticism in all areas of my life and tolerance; all the fun times and bad times. Am glad to say I can always count on you. To my friends Mazuba, Emmanuel and Mary I am grateful for your friendship and kindness. All the tears and laughter I will forever cherish because they made us come out stronger.

Finally, I am eternally grateful to my Lord and Savior Jesus Christ for calling me to be a lawyer; to him I give all the honor and glory forever!

DEDICATION

Dedicated to Bertha Mulenga Sichilima and Godfrey Chisunga Sichilima, who always believed in me and gave me the courage and strength to keep believing in myself and never give up on my dreams, the most loving people my heart will ever know.

TABLE OF STATUTES

The Canadian Criminal Code

The Constitution, Chapter 1 of the Laws of Zambia

The Criminal Procedure Code, Chapter 88 of the Laws of Zambia

The Firearms Act, Chapter 110 of the Laws of Zambia

The Penal Code, Chapter 87 of the Laws of Zambia

TABLE OF CASES

Gathuri Njuguna v Republic 1965 EA 583

John Timothy and Feston Mwamba v The People (1977) ZR 394

Jordan Nkoloma v The People (1978) ZR 278 SC

Kanyama v The People 1974 SCJ

Mugala v The People 1975 ZR 282 SC

Mwachilima v The People (1972) ZR 287

Mwape v The People (1976) ZR 160

R v Morris (1984) AC 320

R v Mulamula (1962) R&N 550

R v Mulamula 1962 R& N 550

R v Taylor (1911) 1 KB 674

Tambwe and Another v The People, SCZ appeal No. 155 of 1997

The People v Chimbala (1973) ZR 118 (HC)

CONTENTS

Research Topic.....	i
Declaration.....	ii
Supervisor's Approval.....	iii
Abstract.....	iv
Acknowledgement.....	vi
Dedication.....	vii
Table of Statutes.....	viii
Table of Cases.....	viii
CHAPTER 1	2
1. Introduction.....	2
3. Statement of the problem.....	6
4. Objectives of the study.....	8
5. Significance of the study.....	9
6. Methodology.....	10
CHAPTER 2	11
AGGRAVATED ROBBERY AND FIREARM OWNERSHIP IN ZAMBIA.....	11
1. Introduction.....	11
2. ELEMENTS OF AGGRAVATED ROBBERY.....	12
2.1 The offender must be armed with an offensive weapon.....	12
2.2 The offender must steal something.....	15
2.3 Use or threaten to use violence in order to retain the thing stolen.....	18
3. Who can own a firearm in Zambia?.....	21

4. Conclusion.....	30
CHAPTER 3	32
LICENSING PROCEDURE UNDER THE FIREARMS ACT	32
1. Introduction	32
2. Procedure of obtaining a firearm licence	33
3. Control of use of firearms after grant of firearm licence	38
4. Conclusion.....	41
CHAPTER 4	42
EFFECT OF THE LICENSING PROCEDURE ON ACCESS TO FIREARMS BY THE PUBLIC	42
1. Introduction	42
2. The Effect of the Licensing Procedure under the Firearms Act on Accessibility of Firearms to the Public.....	43
3. Accessibility of Firearms by the Public and the Consequential effect on the Commission of Aggravated Robbery involving the use of a Firearm	46
4. Conclusion.....	48
CHAPTER FIVE	49
CONCLUSION AND RECOMMENDATIONS	49
1. Introduction.....	49
2. General Conclusions	49
3. Recommendations	50

CHAPTER 1

1. Introduction

This research investigates the role of the firearm licensing procedure prescribed in the Firearms Act, Chapter 110 of the Laws of Zambia (hereinafter referred to as “the Firearms Act”) with regard to the controlled use of firearms.¹ In order to achieve this aim, this research will *inter alia* consider how the licensing of firearms regulates the accessibility of firearms to the public. Further, this research will take into account whether or not the controlled use of fire arms reduces the commission of crimes specifically aggravated robbery. This research will also investigate the offence of aggravated robbery examining its constituent elements under the criminal justice system. This research will specifically focus on aggravated robbery in which use of a firearm is involved.

This research comprises of five chapters. The second chapter evaluates the offence of aggravated robbery with regard to section 294 of the Penal Code, Chapter 87 of the Laws of Zambia; it also evaluates who can legally own a firearm in Zambia under the Firearms Act. The third chapter evaluates the licensing procedure under the Firearms Act. The fourth chapter examines the effect of the licensing procedure under the Firearms Act on the accessibility of firearms by the public and consequently the effect on the commission of aggravated robbery involving use of a firearm in Zambia. The fifth chapter will provide a general conclusion of the research and give recommendations where necessary.

¹ ‘Controlled use of firearms’ in this research arises from the licensing procedure under the Firearms Act. The licensing procedure is a way in which the use of firearms is controlled.

2. Background

The Penal Code, Chapter 87 of the Laws of Zambia (hereinafter referred to as “the Penal Code”) is the main law that regulates the criminal justice system in Zambia. The Criminal Procedure Code, Chapter 88 of the Laws of Zambia (hereinafter referred to as the “the Criminal Procedure Code”) gives support to the Penal Code in regulating the criminal justice system. The objective of the Penal Code is to establish a Code of Criminal Law² and it sets out criminal offences and their constituent elements as well as principles of sentencing. While the Penal Code gives the substantive law, the Criminal Procedure Code gives the procedure to be followed in criminal cases.³ Offences prescribed by the Penal Code are dealt with in accordance with the provisions prescribed in the Criminal Procedure Code.⁴

Aggravated robbery is provided for in section 294 of the Penal Code, which provides that:

- (1) Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony of aggravated robbery and is liable on conviction to imprisonment for life, and notwithstanding subsection (2) of section twenty-six shall be sentenced to imprisonment for a period of not less than fifteen years.
- (2) Notwithstanding the provisions of subsection (1), the penalty for the felony of aggravated robbery under subsection (1) shall be death-
 - (a) Where the offensive weapon or instrument is a firearm, unless the court is satisfied by the evidence in the case that the accused person was armed not with a firearm and-
 - (i) That he was not aware that any of the other persons involved in committing the offence was armed; or

² Preamble of the Penal Code

³ Preamble of the Criminal Procedure Code

⁴ Section 3 of the Criminal Procedure Code

- (ii) That he dissociated himself from the offence immediately on becoming so aware; or
- (b) Where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence, unless the court is satisfied by evidence in the case that the accused person neither contemplated nor could reasonably have contemplated that grievous harm may be inflicted in the course of the offence.
- (3) In this section 'firearm' has the meaning assigned to it in section two of the Firearms Act [Cap 110].

From section 294, three elements of aggravated robbery are construed, namely;

- i) The offender must have an offensive weapon or instrument;
- ii) Must steal something;
- iii) Must use violence or threaten to use violence in obtaining or retaining the thing stolen.

The offence of aggravated robbery in Zambia is common and this can be attributed to the increase in the commission of aggravated robberies. For instance, in the year 2010, 1448 cases of aggravated robbery were reported with 548 arrests made.⁵ These figures increased in the year 2012, with 2183 cases reported and 638 arrests made.⁶ This clearly indicates the increase in commission of aggravated robbery. The number of aggravated robbery cases handled by the Office of the Director of Public Prosecutions⁷ (herein after referred to as "DPP") from January 2010 to March 2013, indicate a minimal difference. This further shows that the offence of aggravated robbery in Zambia is common.⁸

⁵ Zambia Police Headquarters, Criminal Statistics Office, Lusaka

⁶ Zambia Police Headquarters, Criminal Statistics Office, Lusaka

⁷The author is mindful that the Office of the Director of Public Prosecution is now called the National Prosecution Authority, which operates under the National Prosecution Authority Act No. 34 of 2010. However, for purposes of this research the office will be referred to as the Office of the Director of Public Prosecution (DPP).

⁸ Office of the Director of Public Prosecution, Registry Office, Lusaka

YEAR	NUMBER OF CASES
2010	87
2011	61
2012	65
2013	37

Table 1: Aggravated robbery cases handled by the Office of the Director of Public Prosecutions, January 2010 to March 2013⁹

The purpose of the Firearms Act is to regulate the use of firearms and this regulation of firearms is achieved through the issuance of licences and certificates, the control of the import, export, movement, storage, possession, sale, manufacture and repair of firearms and ammunition.¹⁰ The requirement of a firearm licence and firearm certificate before a person can own a firearm aids the regulation of firearms. The Firearms Act prescribes conditions that prohibit certain persons from holding a firearm licence and certificate.¹¹ This means that persons, who do not qualify to hold a firearm licence and certificate under the Firearms Act, are prohibited from possessing a firearm. The Firearms Act also regulates the use of firearms by recognising the need to regulate import and export of firearms, as well as movement of these firearms from one location to the next location.¹² Restrictions are prescribed by the Firearms Act as to who can import and export firearms and ammunition. The Firearms Act sets restrictions as to the sale, manufacture and

⁹ Office of the Director of Public Prosecution, Registry Office, Lusaka

¹⁰ Preamble of the Fire Arms Act

¹¹ Section 10 of the Firearms Act provides that no person shall purchase, acquire or have in his possession any firearm or ammunition unless he holds a firearm license. Section 12 (4) of the Firearms Act provides that an application for a firearm certificate shall be refused where the applicant is not competent to use the firearm, applicant has inadequate knowledge of the Firearms Code, firearm is in dangerous condition, firearm is a prohibited article and where the Inspector General has reason to believe the firearm is required for unlawful purpose

¹² Part II of the Firearms Act

repair of firearms and ammunition. Firearms may only be sold by a registered firearms dealer and repaired by such a dealer.¹³

This research however, will focus on the licensing procedure in the Firearms Act as one of the ways in which the use of firearms is controlled in Zambia. The Act prescribes persons who cannot be granted firearm certificate and firearm licence.¹⁴ The Law makes it illegal to purchase or have in ones possession a firearm if the person in question does not hold a firearm licence.¹⁵ This research will also attempt to determine whether the controlled use of firearms contributes to the reduction in the commission of crimes involving the use of firearms specifically, aggravated robbery.

3. Statement of the problem

In the event of aggravated robbery there are various legal interests of the victim that could be affected in some way or another by the perpetrator, namely, the rights of a person to property and the right to privacy which are fundamental human rights requiring protection.¹⁶

The Constitution, Chapter 1 of the Laws of Zambia (hereinafter referred to as “the Constitution”) guarantees the right to privacy¹⁷ and property¹⁸. Article 16 (1) of the Constitution provides that:

¹³ Part IV of the Firearms Act

¹⁴ Section 12(4) of the Firearms Act provides that an application for a firearm certificate shall be refused where the applicant is not competent to use the firearm, applicant has inadequate knowledge of the Firearms Code, firearm is in dangerous condition, firearm is a prohibited article and where the Inspector General has reason to believe the firearm is required for unlawful purpose.

¹⁵ Section 10 of the Firearms Act

¹⁶ Deidre Joubert, “The Crime of Robbery in South African Law.” *International Journal of Arts and Sciences* 3, no.15 (2010) : 130

¹⁷ Article 17(1) of the Constitution of Zambia

¹⁸ Article 16 of the Constitution of Zambia

The increase in aggravated robbery cases and use of firearms in public continues to threaten the safety of people in society; it creates personal, public and social insecurity.²³ Because of the insecurities created by the uncontrolled use of firearms public interest²⁴ has developed with regard to accessibility of firearms. This consequently raises a number of questions:

1. Are the firearms recovered from crime scenes licensed?
2. What are the consequences of being found with an unlicensed firearm?
3. If an unlicensed firearm is impounded where does it go?
4. Do responsible authorities engage in unlawful firearm transactions?
5. What is the implication of uncontrolled firearm use on the increase in incidents of aggravated robbery?

Against this background this research seeks to examine the role that the licensing procedure under the Firearms Act, plays with regard to controlled use of firearms. Further, this research will ascertain whether or not the controlled use of firearms has an effect on the commission of crimes, more specifically aggravated robbery.

4. Objectives of the study

- a. To examine the constituent elements of aggravated robbery in the criminal justice system in order to establish the relationship, if any, between the commission of aggravated robberies and uncontrolled use of firearms.

²³ The Post Newspaper, September 13, 2012, article entitled “*Two Die in Family Attack*”, it was reported that two people in Mbala where shot as they were sitting warming themselves near a brazier. The assailants allegedly used a muzzle loader. It was disclosed by the Mbala District Commissioner that this was not the first time an attack like this happened.

²⁴ There have been various newspaper reports concerning aggravated robbery, some in which it is shown that the residents decide to take the law into their own hands, this was reported in the Post Newspaper, October 2nd, 2012, article entitled “*Mob in Lusaka burns suspected thief to death*”. It is from this article that the author deems aggravated robbery and uncontrolled use of firearms to be public interest.

b. To critically analyse the licensing procedure of firearms under the Firearms Act and determine the role, if any, that it plays in the controlled use of firearms.

5. Significance of the study

This study is important because it coincides with a period of public debate and outrage on the uncontrolled use of firearms, increase in aggravated robbery cases and other related issues.²⁵ Further, there have been newspaper reports and case law, of some registered firearms being recovered from crime scenes, raising concern as to as to the role of the licensing procedure in the Firearms Act.²⁶ Against this background, this study is timely as it seeks to ascertain the controlled use of firearms *vis a vis* the licensing procedure in the Firearms Act. This is important in determining whether the requirement to hold a firearm licence and the procedure of obtaining a licence are ways in which to regulate the use of firearms.

The research will address questions relating to who can own a firearm and whether the regulations in the Firearms Act have an effect on the prevalence of firearms in the public and the consequent effect on the commission of crimes, in which firearms are involved, with specific emphasis on aggravated robbery. Further, this study is vital as it will contribute to knowledge and literature which may be used by other scholars carrying out research in this area and other related subjects.

²⁵ The Post Newspaper, October 2, 2012, article entitled, "*Mob in Lusaka burns suspected thief to death*", the Lusaka Province Police Commissioner in an interview said that the residents of Kanyama and John Laing complained to the police that bandits had terrorised them for some time. The Daily Mail Newspaper, 22nd August 2012 after the gun down of a bandit the Lusaka Province Police Commissioner stated "this act of elimination comes in the wake of various reports of aggravated robberies..."

²⁶ The People v Friday Mwamba HK/65/2011, in this case the firearm used in committing the offence of aggravated robbery was lawfully licensed.

6. Methodology

This research will be conducted by analysing literature and case law on the offence of aggravated robbery. It will also analyse the provisions of the Firearms Act with regard to the licensing procedure under the Firearms Act. In addition, it will comprise of visits to the relevant institutions and interviewing appropriate officers, this will be in relation to the licensing procedure under the Firearms Act. The aim of these visits will be to obtain information concerning the procedure involved in attaining a firearm licence and the control of use of firearms after a firearm licence is granted. The information obtained will be in the form of statistics and other documentation.

CHAPTER 2

AGGRAVATED ROBBERY AND FIREARM OWNERSHIP IN ZAMBIA

1. Introduction

The aim of this chapter is to evaluate the offence of aggravated robbery with regard to the law under the Penal Code, Chapter 87 of the Laws of Zambia (hereinafter referred to as “the Penal Code”) and who can own firearm in Zambia under the Firearms Act, Chapter 110 of the Laws of Zambia (hereinafter referred to as “the Firearms Act”). Section 294 of the Penal Code provides for aggravated robbery. This chapter will critically discuss the elements of aggravated robbery, by reference to case law and other literature works. Aggravated robbery consists of three elements namely, the offender being armed with an offensive instrument or weapon steals something and uses or threatens to use violence in order to retain the thing stolen.²⁷ The type of aggravated robbery evaluated in this research is the type where a firearm is the offensive weapon used. This chapter will further evaluate who can own a firearm in Zambia under the Firearms Act. It will evaluate the categories of persons prohibited from owning firearms and those that can legally own firearms under the Firearms Act. The aim of this chapter is relevant to the overall research on aggravated robbery and the controlled use of firearms *vis a vis* the licensing procedure. This chapter therefore lays the basis by providing a critical understanding of the elements of aggravated robbery. Furthermore, the type of aggravated robbery discussed in this

²⁷ Section 294 of the Penal Code

research involves the use of a firearm. Therefore, this chapter provides clarity relating to legal ownership of firearms in Zambia.

2. ELEMENTS OF AGGRAVATED ROBBERY

2.1 The offender must be armed with an offensive weapon

A robbery stage by a single offender is not aggravated unless that offender is armed with an offensive weapon or instrument. Where this is not the case the offender must have acted in the company of another person or persons.²⁸ This was the principle in the case of *Tambwe and another v The People*²⁹. In this case the appellant was convicted of aggravated robbery on his own, on the ground that he was armed with a gun. There was no proof that the weapon was a gun within the meaning of the Firearms Act. However, there was ample evidence that a number of people took part in the robbery. The appellant appealed against conviction of robbery and the Supreme Court found him guilty of the offence of aggravated robbery whilst acting together with persons unknown.

The principle in the above case brings out section 294 (1) of the Penal Code, which states that “Any person who, being armed with any offensive weapon or instrument, or being together with one person or more....” This means that if any person acts on his own and is not armed, the robbery is not aggravated unless he was armed. If he acts with one or more persons the robbery is aggravated despite not been armed. There are two standards set, on one hand, if a person acts alone and is not armed the robbery is not aggravated, on the other hand however, if one acts with more than one person and is not armed the robbery is aggravated. These two different standards

²⁸ *Tambwe and Another v The People*, SCZ appeal No. 155 of 1997

²⁹ *Tambwe and Another v The People*, SCZ appeal No. 155 of 1997

create unfairness in that, even where a person acts alone the gravity of violence used or threatened may be equal with that where one acts with one or more persons. The law should be uniformly applied, such that even where more than one person act together but are not armed the robbery should not be aggravated due to absence of an offensive weapon or instrument as is the case where one person acts alone. The essence of the offence of aggravated robbery is the presence of an offensive weapon or instrument.³⁰ Where there are one or more persons and they are not armed they should be charged with robbery as well, in the same way that a person acting on his own and is not armed is charged with robbery and not aggravated robbery.

To establish the offence of aggravated robbery, one must be armed with an offensive weapon.³¹ The term “offensive weapon” has not been defined and therefore left to wide interpretation, for instance, it is interpreted to include *inter alia* weapons such as firearms, knives, machetes and iron bars. Other jurisdictions, such as Canada, have defined offensive weapon to mean “anything used, designed to be used or intended for use, in causing death or injury to any person, or for the purpose of threatening or intimidating any person and, without restricting the generality of the foregoing, includes a firearm”.³² This definition gives a clear interpretation as to what constitutes an offensive weapon under the Canadian law. The term “offensive weapon” as it is now under the Zambian law is not defined and should therefore be defined in the Penal Code so as to give it a clear and concise interpretation. As mentioned in chapter one this research focuses on firearms as an offensive weapon in the commission of aggravated robbery.

³⁰ Section 294 of the Penal Code

³¹ Section 294 of the Penal Code

³² Section 2 of the Canadian Criminal Code

To establish the offence of aggravated robbery where a firearm is used it must be shown that the firearm in question falls within the ambit of the definition of a firearm under the Firearms Act.

Section 2 of the Firearms Act defines a firearm as:

(a) any lethal barrelled weapon of any description from which any shot, bullet, bolt or other missile can be discharged or which can be adapted for the discharge of any such shot, bullet, bolt or other missile;

(b) Any weapon of any description designed or adapted for the discharge of any noxious liquid, gas or other thing;

(c) any barrel or any frame or body to which a barrel may be attached, incorporating a mechanism designed to cause controlled detonation or discharge of any shot, bullet, bolt or other missile and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing such weapon .

Section 2 is liable to wide interpretation; for instance it can be taken to suggest that a firearm is one from which live ammunition is capable of being fired. This interpretation was applied in the case of *John Timothy and Feston Mwamba v The People*³³, the Supreme Court considering the issue relating to proof as to the use of firearm held that, to establish an offence under section 294(2) which carries the death penalty, the prosecution must prove that the weapon used was a firearm within the meaning of the Firearms Act, that is to say that it was a lethal barrelled weapon from which a shot could be discharged or which could be adapted for the discharge of a shot. Whether a firearm is loaded with the wrong or correct ammunition is immaterial as it is capable of firing, therefore falling within the definition of a firearm.³⁴

In addition, section 49(5) of the Firearms Act gives a different scope of the interpretation of a firearm. It provides that an imitation firearm should be deemed as an offensive weapon within the meaning of section 294 of the Penal Code; this further widens the interpretation of a firearm

³³ (1977) ZR 394

³⁴ *Kayamba and another v The People*, SCZ Judgment No. 3 of 2000

because an imitation firearm is not capable of firing live ammunition. The case of *Jordan Nkoloma v The People*, justifies section 49(5) of the Firearms Act, it was held that the legislature clearly intended that to threaten another with an imitation firearm should come within the definition of aggravated robbery, it is the fear instilled in the victim that qualifies it to be deemed as an offensive weapon. This means that it is immaterial that the firearm is capable of firing live ammunition; the fear instilled in the victim is the significant factor. As long as the firearm seen by the victim seemed capable of firing ammunition, it is a firearm within section 2 of the Firearms Act.³⁵

2.2 The offender must steal something

This element basically connotes theft; it is provided for in section 265 of the Penal Code, it provides that:

(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

(2) A person who takes and converts anything capable of being stolen is deemed to do so fraudulently if he does so with any or the following intents that is to say;

(a) Intent permanently to deprive the general or special owner of the thing of it....

Section 265 shows that theft consists of five elements namely, taking and moving; a thing capable of been stolen; belonging to another; intention of permanent deprivation and fraudulent intent. Aggravated robbery from its definition in Section 294 of the Penal Code entails that something must be stolen. Therefore, if theft is not proved aggravated robbery cannot be established. From this background it is pertinent that the offence of theft must be discussed under this element of aggravated robbery, therefore each element of theft will be discussed in this chapter to give clarity on this element of aggravated robbery.

³⁵ John Timothy v Feston Mwamba (1977) ZR 394

Theft requires that one takes something without the consent of the owner of the thing so taken and moved. There must be an intention to permanently deprive the owner of the thing so taken.³⁶ A person taking in such a manner but without such intent would according to the Penal Code be guilty only of some kind of assault.³⁷ Intention of permanent deprivation does not require actual proof of any permanent deprivation. Intention to permanently deprive is satisfied if it can be shown that the accused person has an intention to indefinitely exclude the victim from exercising his right to property.³⁸ The most essential feature of the requirement of intention of permanent deprivation is that the person who steals intends to deprive the owner of his property permanently, by means of keeping the property, disposing of it, destroying it or hiding it so that it is not to be found.³⁹

In the event that the accused, for one reason or another, or on his own volition, changes his mind after stealing a thing belonging to another and decides to return the thing to the place where it originally was located, he cannot escape conviction for theft. This is because the situation has not changed, for at the time of stealing the *actus reus* was accompanied by the *mens rea* that is the intention to permanently deprive.⁴⁰

Taking and moving is another element of theft. The ordinary meaning of take is to move something or to get something in one's possession, or get control of something. Taking and moving also implies that this should be done without the consent or knowledge of the

³⁶ The People v Chimbala (1973) ZR 118 (HC)

³⁷ The People v Chimbala (1973) ZR 118 (HC)

³⁸ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia* (Lusaka: UNZA Press, 2006), 586

³⁹ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 587

⁴⁰ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 587

owner.⁴¹ The phrase 'takes' and 'moves' gives the impression that the thing taken and moved is a tangible thing, the taking must be factual and not merely fictional. This means that the property stolen must be capable of being stolen in accordance with section 264 of the Penal Code.⁴²

To establish the offence of theft, the accused must get possession without a claim of right and carried away the thing. Claim of right is defined as an honest claim of right without intention to defraud.⁴³ Claim of right may arise from a mistake of pure fact, for instance, a mistaken belief that the owner of property has consented to the accused's treatment of it.⁴⁴

It is not necessary for a claim of right to be valid nor indeed, is it necessary for it even to be reasonable; all that is required is that the belief in the validity of the claim be honestly held. If the alleged claim is unreasonable this may be a factor to be taken into account by the court deciding whether it was honestly held.⁴⁵

The discussed elements of theft namely, taking and moving, a thing capable of being stolen, belonging to another, intent to permanently deprive and fraudulent intent must be proved in order to establish the offence of theft. Theft is an element of aggravated robbery, which requires that something should be stolen in order to secure conviction for aggravated robbery. The stealing of something connotes theft.

⁴¹ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 583

⁴² Section 264 of the Penal Code provides that every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

⁴³ Section 8 of the Penal Code, chapter 87 of the Laws of Zambia

⁴⁴ R v Mulamula (1962) R&N 550

⁴⁵ Mwachilima v The People (1972) ZR 287

2.3 Use or threaten to use violence in order to retain the thing stolen

The use or threat to use violence is an element of aggravated robbery as provided for in section 294 of the Penal Code. The absence of threat or use of violence during the robbery means aggravated robbery cannot be established.

In *Kanyama v The People*⁴⁶, the court had to determine whether or not it was necessary that the person subjected to actual violence should be the immediate custodian of the thing stolen. In this respect the court said:

it is unnecessary for the person (against whom violence is used) to be the immediate custodian of the thing stolen; it is sufficient if, in the words of [section 294 of the Penal Code], the violence is used or threatened to be used is used to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.

This view from the court means that actual violence used or threatened to be used must be applied to the victim or property, however, actual violence is not required, threat of the use of actual violence is enough.⁴⁷ The actual violence need not be applied on the owner of the property; it could be directed at a third party. The violence used against any person or any property must be applied intentionally or recklessly. It must be proved that the accused was aware that he used or threatened to use violence to any person or to any property.⁴⁸

Actual violence or threat of violence used must be in order to obtain or retain the thing stolen and not for any other reason. In the case of *Mugala v The People*⁴⁹ the appellant was convicted of aggravated robbery. The prosecution case against him was that he stole some items from the

⁴⁶ (1974) SCJ

⁴⁷ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 599

⁴⁸ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 595

⁴⁹ (1975) ZR 282 (SC)

farm house and attacked a night watchman at a farm and hit him with an iron bar, however he did not attack him to retain the things stolen but as an act of revenge. Counsel for the defendant argued that in terms of section 294 (1) of the Penal Code which relates to aggravated robbery, it was necessary for the prosecution to show that the violence was used in order to obtain or retain the thing stolen. He further argued that the violence used against the watchman was an insensate act of revenge and had nothing to do with the taking of the stolen articles. It was held that aggravated robbery had not been established as it was not proved beyond doubt that the attack on the watchman was connected with the theft.

The requirement that actual violence must be applied or threatened to be applied at or immediately before or immediately after the time of stealing raises the question of time frame.⁵⁰

The issue of time frame was discussed in the case of *Gathuri Njuguna v Republic*⁵¹ where the High Court of Kenya said, the propriety of the conviction for robbery with violence depends upon whether or not the violence was used immediately after the articles were stolen. This decision would appear to state that robbery cannot be committed if the violence is used or threatened to be used a long time before the theft, or sometime after the theft is completed.⁵²

The use of actual violence presents a challenge as the severity of violence to be considered to secure conviction for aggravated robbery has not been prescribed in the Penal Code. It is uncertain as to whether even a mere shove is sufficient violence against a person to constitute the

⁵⁰ Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 596

⁵¹ 1965 EA 583

⁵² Simon E. Kulusika, *Text, Cases and Materials on Criminal Law in Zambia*, 596

offence of robbery, or does the intensity of the violence applied need to be somewhat severe, such as wounding the victim in the process.⁵³

Where violence is not actually used but is merely threatened, it still falls under aggravated robbery because, the essence of the offence of aggravated robbery is the threat, putting a person in fear by threats, even though the person giving the threat is not in a position to carry it out, is squarely within the words used by the legislature in section 294 (1) of the Penal Code.⁵⁴

The issue of fear was also discussed in the case of *Mwape v The People*⁵⁵. The question in this case was whether violence to property was sufficient to result in conviction, or whether something more is required, such as putting the person who is the immediate custodian of the thing stolen in fear. The court said:

In our view violence to property alone without inducing fear in the mind of the person having charge of or in any way connected with such property cannot amount to aggravated robbery...This construction is of significance because it is necessary to avoid an absurdity in law which would make various types of violence to property aggravated robbery.

This therefore means that the violence applied to property must induce fear in the victim otherwise the crime of aggravated robbery is not committed. Violence to property alone cannot amount to aggravated robbery.

Part 2 of this chapter has shown that aggravated robbery consists of three elements. These elements are, firstly an offender must be armed with an offensive weapon, secondly, that something must be stolen and lastly, there must be use or threat of use of violence in order to

⁵³ Deidre Joubert, "The Crime of Robbery in South African Law." *International Journal of Arts and Sciences*,3: 131

⁵⁴ *Jordan Nkoloma v The People* (1978) ZR 278 SC

⁵⁵ (1976) ZR 160 p.167

retain the thing stolen. These three elements must all be proved in order to establish aggravated robbery.

The type of aggravated robbery discussed is that in which a firearm is involved. It is therefore important that this research should discuss who can and who cannot own a firearm in Zambia. In addition, there are various news paper reports concerning the commission of aggravated robberies and shootings in Zambia.⁵⁶ This raises concern as to who is allowed to own a firearm in Zambia and whether the law governing this subject precludes or includes persons involved in such crimes. Concern is raised as to whether the law governing ownership of firearms is comprehensive enough, so as to eliminate the possibility of firearms falling in the hands of law offenders. This chapter therefore turns to discuss who can own a firearm in Zambia.

3. Who can own a firearm in Zambia?

Firearm laws aim to define conditions that prohibit a person from possessing firearms; implement regulations to prevent prohibited persons from possessing firearms; restrict carrying of concealed firearms outside the home and to regulate the design of firearms to enhance public and personal safety.⁵⁷

The Firearms Act does not prescribe a category of persons allowed or prohibited from possessing firearms; the Firearms Act instead prescribes persons who will be denied a firearm certificate. A

⁵⁶ The Daily Mail Newspaper , August 22, 2012, article entitled “Bandit gunned down” the Lusaka Province Police Commissioner, Solomon Jere stated that there have been various reports about aggravated robbery and that the police would gun down any bandits involved in such crimes. Police have offered reward to members of the public who surrender firearms. The Daily Mail Newspaper, May 6, 2013, article entitled “Children Shot; 2 kids battling for their lives after being shot in Kalomo”, Southern Province Police Commissioner confirmed the incident. The children were shot by unknown assailants. This shooting occurred after a man in Namwala was shot by unknown assailants.

⁵⁷ Daniel Webster et al., *The Case for Gun Policy Reforms in America* (Baltimore: Johns Hopkins Centre For Gun Policy and Research, 2012), 2

firearm certificate authorises the issuance of a firearm licence.⁵⁸ A firearm licence in turn permits a person to purchase or possess a firearm.⁵⁹ Persons under the Firearms Act prohibited from grant of a firearms certificate, may be interpreted to be the categories of persons not allowed to possess a firearm.

Firstly, the Firearms Act prohibits one who is not competent from obtaining a firearm certificate.⁶⁰ The term “competent” as used in the Firearms Act is not defined, therefore it is not certain as to who a competent person is under the Firearms Act. As a result the term “competent” is liable to wide interpretation. For instance, a person who is not competent to own a firearm can be interpreted to mean one who is mentally ill or to mean one who simply does not understand how to use a firearm, in other words an inexperienced firearm handler. One who is not competent to use a firearm is deprived of owning a firearm because it would be a danger to him and the public at large. An incompetent person may be considered to be mentally ill⁶¹, whether violent or not. Persons with serious mental illnesses such as schizophrenia, bipolar disorder and major depression are more likely to commit violence against others and themselves, than are individuals who do not have these disorders.⁶² Therefore such individuals should be considered incompetent and prohibited from having in their possession firearms.

⁵⁸ Section 13 of the Firearms Act

⁵⁹ Section 10 of the Firearms Act

⁶⁰ Section 12 (4) (b) of the Firearms Act

⁶¹ Section 2 of the Mental Disorders Act chapter 305 of the Laws of Zambia, defines mental disorder as any person who in consequence of mental disorder or disease is incapable of managing himself or his affairs, or is a danger to himself and others, or unable to conform to the ordinary usage of society in which he moves or requires supervision, treatment or control. From this definition it can be construed that a mentally ill person could be interpreted to fall under the term “not competent” under the Firearms Act.

⁶² J. Monahan et al, *Rethinking Risk Assessment: The MacArthur Study of Mental Disorder and Violence* (New York: Oxford University Press, 2001)

According to the competency certificate (form 16)⁶³, in addition to one being competent to use a firearm he must also understand how to use the particular firearm. A person who is an inexperienced firearm handler is more prone to misfire⁶⁴ than a person who understands how to use a firearm.⁶⁵ Misfiring could lead to accidental shootings, this means one who is incompetent not only poses a threat to the public but to himself as well.

In the event that, the applicant does not understand the use of a firearm, the police will train the individual how to use a firearm. This is done by way of classes.⁶⁶ However, the Firearms Act is silent on this matter it only provides that if one is not competent he will not be granted a firearm certificate.⁶⁷ Competency of an individual to own a firearm is evidenced by a certificate of competency which is issued by the officer in charge. This is as provided in section 12 of the Firearm Regulations of the Firearms Act, which states that “A certificate of competency shall be issued by the officer in charge of police to whom the application for a firearm certificate or a provisional firearm certificate was made.”

The criteria used by the police officer to determine sufficient understanding of how to use a firearm is not certain, because it has not been prescribed in the Firearms Act. This brings in the aspect of discretion, because, there is no set criteria prescribed for the officer to follow in determining if a person is competent to own a firearm. Discretionary power presents challenges

⁶³ Second Schedule to Firearms Regulations of the Firearms Act

⁶⁴ Misfire in this research refers to failure to discharge or fire properly. Oxford Dictionary of English. www.oxforddictionaries.com accessed 5/08/2013

⁶⁵ P. Cummings et al, “State Gun Safe Storage Laws and Child Mortality Due to Firearms.” *JAMA* 278, no. 13 (1997): 1084-6

⁶⁶ Zambia Police Headquarters, Central Firearms Registry, Lusaka. The Central Firearms Registry is where all records of registered firearms are kept, these records include names and contact details of the licensed firearm holders.

⁶⁷ Section 12 (4) of the Firearms Act

because it is not by its very nature susceptible to external control.⁶⁸ The criteria used by police officers to determine competency of an individual to own a firearm is not certain as different officers might use a different criteria, there is need for the Firearms Act to prescribe what is to be considered when determining competency of an individual to own a firearm so as to create certainty and uniformity.

A person without adequate knowledge of the Firearms Code cannot be granted a firearm certificate and therefore, cannot own a firearm.⁶⁹ The Firearms Code is a code containing information, directions and advice for purposes of guiding persons associated with or using firearms or ammunition.⁷⁰ This code is prepared by the minister and the information put in the code is that which appears to the minister as proper or desirable as guidance to firearm users.⁷¹

The words “as appear to him to be proper and desirable” in section 41 of the Firearms Act, give the minister discretionary power to prepare the Code. This means that the minister has the ability to act or make decisions according to his own judgment. This discretionary power is brought in check by requirement of National Assembly’s approval to the proposed Firearms Code and any amendments made to the Firearms Code.⁷²

An individual with inadequate knowledge of the Firearms Code cannot own a firearm, as the lack of knowledge may put the user in danger in that he is not aware of the guidelines relating to use of the firearm. This therefore puts the public in danger as well, in that the user will not have

⁶⁸ legal-dictionary.thefreedictionary.com accessed June 2, 2013

⁶⁹ Section 12 (4) (c) of the Firearms Act

⁷⁰ Section 41 of the Firearms Act

⁷¹ Section 41 of the Firearms Act

⁷² Section 41 (2) of the Firearms Act

adequate knowledge relating to use of the firearm. A person with inadequate knowledge on guidelines on how to use a firearm, for instance, may not realise that a firearm is loaded or that a pistol may have a round loaded in the chamber even after the ammunition clip is removed. This inadequacy in knowledge may lead to accidental shootings which in the process might harm third parties.⁷³

Firearms or ammunition that is in a dangerous condition are prohibited from being in the possession of any individual.⁷⁴ This is because it endangers the life of the possessor and the public. A firearm that is prone to misfire or go off unintentionally is a dangerous firearm, this means that the firearm may go off on its own without any effort from the user.⁷⁵ For the safety of the public a firearm must be easy to conceal and should not go off unintentionally.⁷⁶ Section 12 (4) of the Firearms Act provides that if a firearm is in dangerous condition the applicant cannot be issued a firearm certificate.

When a firearm is been inspected by the officer in charge and it is found to be in a dangerous condition, the officer will not issue a firearm certificate, the officer will advise that the firearm be taken to a registered arms dealer where it will be repaired.⁷⁷ After the firearm has been repaired and is no longer in a dangerous condition, the firearm will have to be brought back to the officer in charge for inspection.⁷⁸

⁷³ D.W. Webster et al., *The Case for Gun Policy Reforms in America*, 8

⁷⁴ Section 12 (4)(d) of the Firearms Act

⁷⁵ D.W. Webster et al., *The Case for Gun Policy Reforms in America*, 10

⁷⁶ D.W. Webster et al., *The Case for Gun Policy Reforms in America*, 10

⁷⁷ Section 35 of the Firearms Act

⁷⁸ Zambia Police Headquarters, Central Firearms Registry, Lusaka

The Firearms Act does not prescribe persons with criminal records as persons who will be denied a firearm certificate. This could be interpreted to mean that as long as they meet the qualifications set out in section 12, this person may be granted a firearm licence. This is because the Firearms Act does not specifically exclude persons with criminal records from being granted a firearm certificate which authorises the issuance of a firearm licence.

In practice however, persons with previous criminal convictions are not granted a firearm certificate; every applicant's finger prints are scanned, if the finger print scan shows that one has a criminal record he cannot be granted a firearm certificate which authorises the grant of a firearm licence.⁷⁹ It is risky to allow or permit persons with criminal records to have access to firearms easily because it is likely that they may use the firearms acquired to commit crimes. There should be stringent regulations as regards access of firearms to persons with criminal records, especially those involved in violent crimes involving the use of a firearm.⁸⁰ This is because it is feared that they may want to use the firearms for unlawful purpose and they are more likely to commit future crimes than individuals that are non felons.⁸¹

The Inspector General of Police may not issue a firearm certificate where he believes it may be required for unlawful purposes⁸², for instance in a case where the applicant is an ex convict. Other jurisdictions such as the United States clearly set out in their statutes that felons and ex felons are not allowed to possess firearms.⁸³ The Firearms Act should prescribe which category

⁷⁹ Zambia Police Headquarters, Central Firearms Registry, Lusaka

⁸⁰ D. W. Webster et al., *The Case for Gun Policy Reforms in America*, 3

⁸¹ D.W Webster et al., *The Case for Gun Policy Reforms in America*, 3

⁸² Section 12 (4) (e) of the Firearms Act

⁸³ D.W. Webster et al., *The Case for Gun Policy Reforms in America*, 1

of criminals will be prohibited from owning firearms, whether it will cover only those that committed felons or if those that committed misdemeanors will be covered as well.

The Firearms Act sets 18 years as the minimum legal age to own a firearm; this is the minimum legal age set to purchase, acquire or have in a person's possession an air gun having a caliber of or exceeding .44958 centimeters.⁸⁴ However, the Firearms Act sets 21 years as the minimum age at which a person can lawfully purchase, acquire or have in his possession any firearm or ammunition. Minimum age restrictions for firearm possession are prudent because the risk of perpetration or being victimised by serious violent crimes increases rapidly during adolescence and in the early 20's.⁸⁵ Brain structures related to risk taking and impulse control are developing throughout adolescence and this may contribute to heightened risk of violent behavior among this age group.⁸⁶

The Firearms Act does not only provide for persons that will not be granted a firearm certificate (authorises grant of firearm licence), but also for those that are exempted from holding a firearm licences as well, despite having a firearm in their possession. This means certain persons are allowed to own firearms without being holders of firearm licences. This is discussed in this chapter so as to provide clarity as to who can own a gun without a firearm licence in Zambia.

Section 11 (2) of the Firearms Act , provides that “a person carrying on the business of a firearms dealer and registered as such, or a servant of such person, may purchase, acquire or have in his possession a firearm or ammunition in the ordinary course of that business without

⁸⁴ Section 18 of the Firearms Act

⁸⁵ Johnson, Blum and Giedd. “Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy.” *Journal of Adolescent health* 45, no3 (2009): 216-21

⁸⁶ Johnson, Blum and Giedd, “Adolescent maturity and the brain; the promise and pitfalls of neuroscience research in adolescent health policy”. *Journal of Adolescent health* 45, 216-21

holding a firearm licence.” An individual that carries on business concerning firearms is not required by the Firearms Act to hold a firearm licence; this is because he is a registered arms dealer and is required by nature of the business to handle various firearms. Therefore, if he was required to own a firearm licence for each firearm he handled it would be burdensome and a never ending procedure. This is because it would mean that the firearms dealer would have to have a firearm licence for every firearm he acquires for the purpose of business transactions.

A person carrying a firearm belonging to another person who holds a firearm licence may have in his possession that firearm under instruction from and for use of that other person for sporting purposes only without himself holding a firearm licence.⁸⁷ The law permits any person to carry a firearm belonging to another without holding a firearm licence; however this must be under instruction of the firearm licence holder. Where one carries the firearm without permission or instruction from the license holder such possession is unlawful. In this instance the firearm must be used for sporting purposes only by the license holder, the Firearms Act does not provide for any other purpose this is closed list therefore anything outside sporting purposes makes such possession unlawful.

The law permits an individual participating in a theatrical performance or rehearsal to have a firearm for purposes of the performance or rehearsal without holding a licence⁸⁸. This means that actors in a play or film involving use of a firearm need not have a license to use the firearm for that particular purpose, the firearm used does not belong to the actor it may be rented or belong to the company producing the performance. Placing an obligation on actors to to hold a firearm

⁸⁷ Section 11 (4) of the Firearms Act

⁸⁸ This is provided for in section 11(7) of the Firearms Act

licence for purposes of a theatrical performance, would make acting very expensive and delay the entire production.

A member of an approved club or of a cadet corps may have in his possession a firearm or ammunition when engaged as such member in, or in connection with drill or target practice, without holding a firearm licence.⁸⁹ Approved club means a club approved by the Minister in terms of any regulations for the time being in force relating to shooting clubs.⁹⁰ Members of a club may possess a firearm without holding a licence; the purpose of belonging to such clubs is usually for target practices or drill practices. Such firearms often belong to the particular clubs and are registered as such.⁹¹

Other categories of persons exempted from holding firearm licenses are persons carrying on a business as an auctioneer,⁹² persons attending a sporting meeting where a firearm is used for purposes of starting the races,⁹³ tourists in possession of a valid tourist's permit⁹⁴ and persons using the firearm for purposes of slaughtering animals.⁹⁵

This part of chapter two has shown that, the Firearms Act does not clearly prescribe which category of persons cannot own firearms; it only prescribes the category of persons that will not be granted a firearm certificate which authorises the grant of a firearm licence. Section 12 of the

⁸⁹ Section 11 (5) of the Firearms Act

⁹⁰ Section 2 of the Firearms Act

⁹¹ Section 11 (5) of the Firearms Act

⁹² Section 11 (3) of the Firearms Act

⁹³ Section 11 (8) of the Firearms Act

⁹⁴ Section 11 (9) of the Firearms Act

⁹⁵ Section 11 (10) of the Firearms Act

Firearms Act does not provide for persons with criminal records as prohibited persons to the grant of a firearm certificate. This causes uncertainty as to whether a criminal who satisfies section 12 (2) of the Firearms Act can be granted a firearm certificate, also where past history of violence⁹⁶ is present the law does not stipulate that a firearm certificate should be denied.⁹⁷ The Law under the Firearms Act does not provide for applicants that have a criminal record, this loophole in the Act could therefore be a means by which criminals manage to access firearms.

The Firearms Act does not mention mentally disturbed persons as well. A mentally ill person is not fit to use a firearm as it is a danger to them; most mental illnesses make an individual violent. The Firearms Act should therefore clearly state that such individuals should not be granted access to firearms by way of firearm licence.

4. Conclusion

In conclusion, this chapter has discussed the three elements of the offence of aggravated robbery, namely, there must be an offensive weapon or instrument, something capable of being stolen and there must be use or threat to use violence on property or person in order to retain the thing stolen. In order to secure a conviction for aggravated robbery, all these elements must be proved in a court of law. The chapter went further to show who can legally own a firearm in Zambia under the Firearms Act. Although the Firearms Act does not specifically prohibit certain persons from owning firearms, it however, lists persons who should not be granted a firearm certificate, for instance persons that are not competent and persons who do not have adequate knowledge of

⁹⁶ Violence here could include *inter alia* assault provided for in section 247 of the Penal Code and gender based violence which is provided for in the Anti-Gender Based Violence Act No.1 of 2011

⁹⁷ Aaron Karp, 'Completing the Count: Civilian Firearms'. *Small Arms Survey 2007: Guns and the City* (Cambridge: Cambridge University Press, 2007). Annex 4 ranks 178 countries by their rate of total civilian gun ownership. The table estimates the number of privately owned guns in each country both lawfully and unlawfully possessed, irrespective of population.

the Firearms Code. The firearm certificate authorises the grant of a firearm licence. The Firearms Act does not make provision for persons with criminal records and mentally disabled as a category of persons prohibited from owning firearms. The absence of such provision could act as a loophole in the Firearms Act through which offenders of the law may have access to firearms. Furthermore, the Firearms Act also provides for persons exempted from holding firearm licences, such persons include firearm dealers, actors in a theatrical performance and members of approved clubs. This means this category of persons can lawfully possess firearms without holding a firearm licence.

CHAPTER 3

LICENSING PROCEDURE UNDER THE FIREARMS ACT

1. Introduction

This chapter examines the licensing procedure under the Firearms Act, Chapter 110 of the Laws of Zambia (hereinafter referred to as the “Firearms Act”). This aim will be achieved by evaluating the procedure of obtaining a firearm certificate under the Firearms Act. This chapter will also evaluate what form of control the Firearms Act provides after one has been granted the firearm licence. This chapter is important because this research is concerned with controlled use of firearms *vis a vis* the licensing procedure. It is therefore pertinent to discuss the licensing procedure before discussing its impact on the control of firearms in Zambia. Generally, firearm laws aim to define conditions that prohibit a person from possessing firearms; implement regulations to prevent prohibited persons from possessing firearms; restrict carrying of concealed firearms outside the home and to regulate the design of firearms to enhance public and personal safety.⁹⁸

The Firearms Act requires that an individual who is in possession of a firearm should hold a firearm licence. Section 10 of the Firearms Act, provides that “no person shall purchase, acquire or have in his possession any firearm or ammunition unless he holds a firearm licence.” From this provision it is highlighted that it is unlawful for any person to possess a firearm if he does not hold a firearm licence. This requirement is a way in which the use of firearms is regulated in

⁹⁸ D.W. Webster et al., *The Case for Gun Policy Reforms in America*, 1

that only licence holders can purchase or have a firearm in their possession. Records of licence holders are kept at the Central Firearms Registry⁹⁹, these records make it easier to track down a firearm owner who is licensed.¹⁰⁰

Where one is in possession of a firearm without a licence, this is illegal possession.¹⁰¹ In such a case the firearm is confiscated by the police and person in possession charged.¹⁰² In an event where the firearm is recovered from a crime scene, the police get in touch with the firearms registry so as to determine if that particular firearm is licensed. If the owner of the firearm is not traced, the police confiscate the firearm which is later disposed of by the court.¹⁰³

2. Procedure of obtaining a firearm licence

The procedure followed in attaining a firearm licence is provided for in part III of the Firearms Act. Before one applies for a firearm licence, he must have a firearm certificate authorising the issue of the firearm licence in respect of the firearm to which the certificate relates.¹⁰⁴ A firearm certificate is not defined by the Firearms Act, section 2 only states that a firearm certificate means a certificate granted under the provisions of section 12. The purpose of a firearm certificate is to authorise the issue of a firearm licence.¹⁰⁵

⁹⁹ The Central Firearms Registry is located at the Zambia Police Headquarters. All records of licensed firearm holders are kept at the Registry

¹⁰⁰ Section 4 (1) of the Firearms Act

¹⁰¹ Section 10 of the Firearms Act

¹⁰¹ Section 4 (1) of the Firearms Act

¹⁰² Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹⁰³ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹⁰⁴ Section 13 of the Firearms Act

¹⁰⁵ Section 13 of the Firearms Act

In order to obtain a firearm certificate, one must apply to the officer in charge of police at any police station.¹⁰⁶ The officer in charge of police includes a police officer of or above the rank of sub inspector present at the police. This application must be in the prescribed form (form 11). In an event that the applicant cannot write or speak English adequately, he may make his application verbally to the officer in charge, who will then fill in form 11 on behalf of the applicant.¹⁰⁷

A firearm certificate may be issued where the applicant submits a certificate of competency and he satisfies the officer in charge of police that he has adequate knowledge of the Firearms Code. However, satisfaction of these two conditions does not mean the applicant will be granted the firearm certificate; the Inspector General may refuse to issue the firearm certificate without assigning any reason.¹⁰⁸

The firearm certificate must relate to the particular firearm that the applicant seeks to hold a firearm licence for. In addition to this, the applicant must produce the firearm which relates to the firearm certificate.¹⁰⁹ The purpose of producing the firearm is so that it can be inspected by the officer in charge, to ensure it is not in a dangerous condition and to ascertain that it is the particular firearm which relates to the firearm certificate.¹¹⁰

¹⁰⁶ Section 12 (1)

¹⁰⁷ Section 8 (2) of the Firearm Regulations. Form 11 requires that the applicant give their personal details, purpose for which firearm is required, the type of firearm and ammunition which relate to the application and whether the applicant has been convicted of any crime before.

¹⁰⁸ Section 12 (3) (d) of the Firearms Act

¹⁰⁹ Section 13(2)(a) of the Firearms Act

¹¹⁰ Section 13 (2) (b) of the Firearms Act

Where an application for a firearm certificate is rejected and the applicant is aggrieved by such refusal, he may appeal such refusal to the minister, who will review circumstances of the refusal.¹¹¹ The minister may either dismiss this appeal without assigning any reasons or he may direct that the firearm certificate be issued. Where the minister decides that the certificate should be issued the inspector general is to comply with such directive.¹¹²

The application for a firearm licence is made to the licensing authority of the area in which the applicant resides. The licensing authority is the police and the city council¹¹³, for instance if one lives in Lusaka and wishes to apply for a firearm licence, this application may be taken to any police station in Lusaka or the Lusaka City Council.

Once the firearm certificate has been granted to an individual, he may then fill in an application for a firearm licence; this application is called form 'K'. This application is required to be in a triplicate form, this means the applicant must have three copies of the application.¹¹⁴ In the application (form 'K') one must state the reason why he wishes to own a firearm. This reason must be legitimate and reasonable. The applicant is then requested to have his fingerprints scanned and to submit a photocopy of his national registration card. This is to enable the particular officer in charge to perform a background check on the applicant.¹¹⁵ If the background

¹¹¹ Section 12(6) of the Firearms Act

¹¹² Section 12 (6) of the Firearms Act

¹¹³ Section 5 of the Firearms Act

¹¹⁴ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹¹⁵ Zambia Police Headquarters, Central Firearms Registry, Lusaka

check reveals that the applicant has a criminal record the licence will not be granted, because the individual is deemed not fit to own a firearm.¹¹⁶

The process for a firearm licence to be approved takes more than 1 year; this is because the committee that approves firearm licences only sit once a year.¹¹⁷ However, it is not a guarantee that once an application for a firearm licence has been lodged that it will be approved. The committee decides whether to grant the applicant a firearm licence or to reject the application.¹¹⁸

This research paper now turns to discuss the licensing procedure pertaining to second hand firearms, this is important because this research is concerned with controlled use of firearms *vis a vis* the licensing procedure. A second hand firearm is also a firearm; therefore it is pertinent that the procedure of how to obtain a firearm licence relating to a second hand firearm is discussed.

Where the application for a firearm licence pertains to a second hand firearm, the process is not as cumbersome as that of a new firearm. In this case, the owner of the firearm is to write a letter to the central firearms registry informing them that he intends to sell a firearm to a particular person.¹¹⁹ The letter should include details of the firearm being sold. In addition, a photocopy of the front page of the blue book (this is the page where the names of the licence holder appear) and the first page of the blue book (this is where the details of the firearm appear), should be attached to the letter.¹²⁰ The buyer of the firearm is then required to fill in the application form (form 'K') and submit a photocopy of his national registration card with the central firearms

¹¹⁶ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹¹⁷ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹¹⁸ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹¹⁹ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹²⁰ Zambia Police Headquarters, Central Firearms Registry, Lusaka

registry. This process takes three months to process. The probability that an individual will be granted the firearm licence is high.¹²¹

The difference in the two applications (the application for a licence pertaining to a new firearm and that pertaining to a second hand firearm) with regard to processing and procedure creates a challenge. An application for a second hand firearm does not require much formality; this is evidenced by the short period within which the application is processed and the higher probability of obtaining a firearm licence. The difference between the two applications seems to suggest that, application for a licence pertaining to a new firearm is more stringent than that for a second hand firearm. The regulations applying to a new firearm should be equal to that of second hand firearms, because despite one having a status of being brand new and the other a second hand, there are both firearms within section 2 of the Firearms Act, and therefore need to be regulated.

Applications for firearm licence pertaining to both new and second hand firearms should be considered by the same committee, with the same manner of thoroughness. Background checks for both applicants should be extensive considering the reasons given as to why a person intends to own a firearm. The applicant must demonstrate that the reason given is reasonable such as hunting or self defence. Finger print scan as form of background check is not sufficient, this process should be more rigorous; it should include inquiring about the applicant's place of residence, he's tendencies to commit violent acts, various tests should be taken such as drug, mental and written tests.¹²² These tests will reveal whether one is competent to own a firearm or

¹²¹ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹²² D.W. Webster et al., *The Case for Gun Policy Reforms in America*, 11

not. Classes concerning safe firearm use, storage and carrying should be conducted by licensing authorities.

The probability of being granted a firearm licence should be equal with regard to new and second hand firearms, probability of an individual being granted a licence for a second hand firearm is high. This should not be the case as the flexibility in the application process for a licence pertaining to a second hand firearm could act as an incentive for individuals with criminal intent to obtain firearms easily.

When the firearm licence is granted it is in the prescribed form, the licence states the licence holder's details on the front page. The second page states the description and serial number of the firearm to which it relates.¹²³ Description here refers to the type of firearm licensed, for instance it could be a revolver or rifle, description also includes how many calibers the firearm is, for instance it could be 9mm. The licence may have condition subject to which the firearm is held,¹²⁴ the common condition is that the firearm should not be transferable. This means no other person except the licence holder is to be in possession of the firearm.¹²⁵ The firearm licence also prescribes quantities of ammunition authorised to be purchased in a year.¹²⁶

3. Control of use of firearms after grant of firearm licence

This research is concerned with controlled use of firearms *vis a vis* the licensing procedure, it is therefore pertinent that forms of control of the use of firearms after the grant of a firearm licence is discussed. After a firearm licence is granted, the issue that arises is whether the use of such

¹²³ Section 13 (3) of the Firearms Act

¹²⁴ Section 13 (4) (c) of the Firearms Act

¹²⁵ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹²⁶ Section 13 (4) (b) of the Firearms Act

firearm is controlled thereafter by the licensing authorities. The Firearms Act does not have a section or part under the Firearms Act that prescribes regulation of use after an individual is granted a firearm licence. The Firearms Act however, provides some conditions which suggest regulation after a firearm licence is granted. For instance, a licensed holder of a firearm is expected to keep the firearm in a secure location, such a safe.¹²⁷ This is in order to keep the firearm away from other persons, because the law does not permit transferability of firearms to another person. The other purpose for requiring that the holder secure his firearm is to prevent accidental shootings from occurring in a situation where he fails to secure the firearm; for instance, if a child found the firearm their first instinct would be to play with the firearm which could result in an accidental shooting.¹²⁸ The licensed holder is expected to take precautions against possible injury or damage to persons or property;¹²⁹ this precaution could be taken by ensuring the firearm is secure and in safe custody at all times. The other reason why safe custody of a firearm is required is so as to prevent the firearm from being stolen.¹³⁰ This requirement should be taken a step further by requesting that an individual applying for a firearm licence show the licensing authorities how he intends to store the firearm.

A person who is under the influence of alcohol or is behaving in a disorderly manner and in possession of a firearm will be guilty of an offence.¹³¹ This section does not exclusively apply to

¹²⁷ Section 38 (1) of the Firearms Act provides that “Every person having in his possession or under his control any firearm or ammunition shall keep the same at all times securely and in safe custody, and shall take all reasonable precautions to ensure that such firearm or ammunition is not lost or stolen or able to come into the possession of any person not lawfully entitled to be in possession thereof.”

¹²⁸ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹²⁹ Section 40 of the Firearms Act

¹³⁰ Section 38 (1) of the Firearms Act

¹³¹ Section 47 (1) of the Firearms Act

licensed holders but to any person. This provides some form of control concerning licensed holders, because the Firearms Act makes it a punishable offence to have in ones possession a firearm while in a drunken state.

The Firearms Act does not prohibit any other forms of carrying a firearm apart from carrying it when one is drunk. This should not be the only circumstance where carrying of firearms is prohibited; carrying of a firearm in under any circumstance should not be permitted by the Firearms Act. Carrying of firearms tends to increase aggravated assaults.¹³² Individuals who wish to carry their firearms when going out in public should be given a permit by the licensing authorities and grant of such permit should be accompanied by a valid reason and safety training classes for carrying firearms in public.¹³³

These are the only forms of control provided for under the Firearms Act, after the grant of a licence. There are other forms of control that can be improvised at any earlier stage, production stage to be more specific. The firearms permitted to be used in Zambia should be those designed to be fired only by an authorised user, in this case the owner of the firearm. This will entail only licensed users will be able to use the firearms in circulation, therefore making it easier to trace firearms in crime scenes back to the owner. This would also lead to decrease in unintentional and self inflicted shootings by underage youth, as well as crimes committed with stolen guns.¹³⁴ Firearms should also be designed to have magazine safety disconnect devices and loaded

¹³² D.W. Webster et al., *The Case for Gun Policy Reforms in America*,11

¹³³ D.W. Webster et al., *The Case for Gun Policy Reforms in America*,11

¹³⁴ J.S. Venrick et al, "Unintentional and undetermined firearm related deaths; a preventable death analysis for three safety devices." *Injury Prevention* 9, (2003): 307-311

chamber indicators; these are relatively inexpensive safety features already available on some handguns.¹³⁵ This will prevent unintentional shootings such as those by children.

4. Conclusion

In conclusion this chapter has shown the procedure of obtaining a firearm licence under the Firearms Act. For an individual to apply for a licence he must have a firearm certificate, this certificate authorises the grant of a firearm licence. Therefore the applicant must firstly apply for a firearm certificate. This application must be in the prescribed form, which is form 11. The firearm certificate must relate to the firearm that the applicant seeks to hold a firearm licence for. If a person's application for a firearm certificate is rejected he may appeal such refusal to the minister. Where the firearm certificate is granted, form "K" is to be filled in by the applicant. This chapter also discussed applications pertaining to second hand firearms. It was shown that this procedure is flexible in that probability of grant of firearm licence is high, and this procedure is also less formal. The process for grant of licence takes three month while that pertaining to a new firearm takes one year. The regulations applying to a new firearm should be equal to that of a second hand firearm, because despite one having a status of being brand new and the other second hand they are both firearms requiring regulation. This chapter further went on to show forms of control of firearms after the grant of firearm licence. The Firearms Act only provides for safe storage of the firearm and prohibition of carrying the firearm whilst drunk. However, there are other forms controls that can be implored such as requiring a permit to carry a firearm outside your premises and taking classes for such.

¹³⁵J.S. Venrick et al, "Unintentional and undetermined firearm related deaths; a preventable death analysis for three safety devices." *Injury Prevention* 9, 307-311

Chapter 4

EFFECT OF THE LICENSING PROCEDURE ON ACCESS TO FIREARMS BY THE PUBLIC

1. Introduction

The aim of this chapter is to examine the effect of the licensing procedure under the Firearms Act, Chapter 110 of the Laws of Zambia (hereinafter referred to as the “Firearms Act”) on the accessibility of firearms to the public and consequently the effect it has on the commission of crimes involving use of firearms, in particular aggravated robbery. This chapter is relevant to this research for two reasons. Firstly, this research is concerned with the offence of aggravated robbery and the controlled use of firearms *vis a vis* the licensing procedure under the Firearms Act. This chapter therefore provides clarity on the effect of the licensing procedure of firearms on the accessibility of such firearms by the public. The effect of the licensing procedure on the accessibility of firearms shows the level of firearm control if any, that is contributed by the licensing procedure. Secondly, this research also considers the effect of controlled use on the commission of aggravated robbery; therefore this chapter gives clarity on the effect of the licensing procedure on the commission of aggravated robbery.

2. The Effect of the Licensing Procedure under the Firearms Act on Accessibility of Firearms to the Public

Part III of the Firearms Act provides for the licensing procedure of a firearm. This procedure as discussed in chapter 3 of this research has weaknesses.¹³⁶ This part discusses the weaknesses of the licensing procedure and how they increase accessibility of firearms to the public. The Firearms Act does not provide for a stringent procedure to acquire firearms, thereby allowing easier access to firearms by the public. For instance, it does not expressly prohibit persons with criminal records from acquiring firearm certificates which authorise the grant of firearm licence. The absence of such a qualification with regard to obtaining a firearm licence makes it much more flexible for persons with criminal records to obtain firearms because they are not expressly excluded from obtaining a firearm certificate in the Firearms Act. Therefore persons with criminal records should be expressly excluded in the Firearms Act because they may require firearms for unlawful purposes.

Furthermore, the procedure to obtain a secondhand firearm licence is very flexible; this makes access to firearms more trouble-free, as this procedure guarantees an applicant that he will be granted a firearm licence.¹³⁷ An application for firearm licence pertaining to a second hand firearm does not take as long as an application for a new firearm,¹³⁸ this indicates that the licensing procedure pertaining to a second hand firearm is not as stringent as the one pertaining

¹³⁶ The licensing procedure was discussed in part two of chapter three of this research, under the heading “Procedure of Obtaining a Firearm Licence”

¹³⁷ Zambia Police Headquarters, Central Firearms Registry, Lusaka

¹³⁸ Zambia Police Headquarters, Central Firearms Registry, Lusaka

to a new firearm. The waiting period for the grant of a firearm licence relating to a second hand firearm is three months, while that relating to a new firearm is one year.¹³⁹

The Firearms Act does not provide for procedure used in determining a person as competent to own a firearm, as a result different police officers may use different criteria to determine one competent. The lack of uniformity in the definition of a competent person, results in a situation where two persons with equal knowledge about firearms, apply in different stations, end with one being granted and the other being denied a firearm certificate. This is because the criteria used to determine who is competent to own a firearm are not certain under the Firearms Act. This loophole makes it easier for non competent persons to attain firearms, leading to unlawful use of firearms in crimes such as aggravated robbery, as well as, misfiring¹⁴⁰ because the person does not understand how to use the firearm.

Furthermore, for a person to be granted a firearm certificate they ought to have adequate knowledge of the Firearms Code, which is prepared by the minister.¹⁴¹ However, police officers are not knowledgeable of this Code; they often mistake it to be the Firearms Act.¹⁴² This in itself is a short coming in that lack of knowledge about the Firearms Code entails that individuals granted firearm certificates could or could not have knowledge pertaining to the Firearms Code, without question from the officer in charge. This therefore increases accessibility of firearms to

¹³⁹ Zambia Police Headquarters, Central Firearm Registry, Lusaka

¹⁴⁰ Misfiring in this research means failure to discharge or fire properly. Oxford Dictionary of English. www.oxforddictionaries.com

¹⁴¹Section 12 of the Firearms Act, The Firearms Code was discussed in part three of chapter two of this research under the heading “who can own a firearm in Zambia?” The Firearms Code is a Code containing information, directions and advice for purposes of guiding persons associated with or using firearms or ammunition.

¹⁴² Zambia Police Headquarters, Central Firearm Registry, Lusaka

the public because persons not qualified under section 12 (c) of the Firearms Act are able to obtain a firearm certificate which gives them access to firearms.

In addition, the use of a firearm after a person is granted a firearm licence is not monitored therefore, one is able to transfer firearm to another, for purposes other than that stated in their application for a firearm licence.¹⁴³ The transfer of a licensed firearm to another person is illegal;¹⁴⁴ the lack of strict monitoring after grant of licence makes this activity common. The danger in this is that the transferred firearm may be used for unlawful purposes, without much monitoring from the licensing authorities.¹⁴⁵ Such transfer makes access to firearms by the public common and much easier.

From the above weaknesses in the Firearm's Act, the access of firearms by the public is not stringently controlled, as a result there are a large number of persons with access to firearms, both licensed and unlicensed. This is evidenced by research conducted which indicates that an estimated total number of 230,000¹⁴⁶ persons in Zambia own firearms, this number indicates high accessibility of firearms by the public as only 86,642¹⁴⁷ persons have registered firearms. The disparity between the two figures is very large, this means that over 100,000 persons own firearms in Zambia which are not licensed and therefore not recorded by the Central Firearm Registry, such that if an offence was committed using these firearms tracing the culprit or owner of the firearm would be almost impossible. Transfer and sale of these unlicensed firearms is

¹⁴³ The People v Friday Mwamba HK/65/2011, the owner of the licensed firearm lent it to a friend who claimed he's intentions were to use it for hunting. This was the firearm used in the commission of the crime

¹⁴⁴ The People v Friday Mwamba HK/65/2011

¹⁴⁵ The People v Friday Mwamba HK/ 65/2011

¹⁴⁶ Aaron Karp, 'Completing the Count: Civilian Firearms'. *Small Arms Survey 2007: Guns and the City*. 38-71

¹⁴⁷ Aaron Karp, 'Completing the Count: Civilian Firearms'. *Small Arms Survey 2007: Guns and the City*, 38-71

unmonitored thereby contributing to the prevalent accessibility of firearms to the public. Considering the weak forms of control of firearms in Zambia this indicates that a large number of firearm uses in Zambia go on uncontrolled and unmonitored by the licensing authorities. Such uncontrolled use is evidence by many cases of unlawful shootings in Zambia reported in the newspapers.¹⁴⁸

3. Accessibility of Firearms by the Public and the Consequential effect on the Commission of Aggravated Robbery involving the use of a Firearm

It has been argued in support of firearm laws that legislation reduces the incidence of violent crimes by reducing the prevalence of firearms. Firearm laws regulate the availability of firearms; as a result there are fewer firearms accessible thereby leading to a reduction in commission of crimes. On this view, fewer firearms mean less crime.¹⁴⁹ Contrary to the above arguments, it has also been argued that there is no relationship between firearm laws and rate of crimes. On this view firearm ownership has no significant effect on the commission of crimes.¹⁵⁰

This research focuses on the licensing procedure under the Firearms Act as a way in which use of firearms is controlled and the consequential effect of such control on the commission of crimes, specifically aggravated robbery. The commission of aggravated robbery in Zambia is

¹⁴⁸ The Daily Mail Newspaper, 6th May, 2013, article entitled "Children Shot; 2 kids battling for their lives after being shot in Kalomo". Two Children of Chisamu village in Kalomo are battling for their lives in Kalomo District Hospital After being shot by unknown persons. This shooting happened a day after a 55 year old man of Butele village was allegedly shot by unknown persons. . The Post Newspaper, 13th September 2012, article entitled "Two die in Family attack" it was reported that two people in Mbala were shot as they were sitting warming themselves near a brazier. The assailants allegedly used a muzzle loader. It was disclosed by the Mbala District Commissioner that this was not the first time an attack like this happened.

¹⁴⁹ John C. Moorhouse and Brent Wanner, "Does Gun Control Reduce Crime or Does it Increase Gun Control", *Cato Journal* 26, no.1 (Winter 2006) : 103

¹⁵⁰ G., Kleck, and E.B, Patterson, "The Impact of Gun Control and Gun Ownership Levels on Violence Rates." *Journal of Quantitative Criminology* 9, (1993) : 249 - 87

fairly common.¹⁵¹ This could be attributed to the prevalent accessibility of firearms in Zambia by the public, which is noticed in the huge disparity between the number of persons with firearms and the number of firearms licensed in Zambia.¹⁵² The prevalent accessibility of unlicensed firearms makes it more probable that these firearms will land in the hands of persons with unlawful intentions thereby increasing the risk to commission of crimes. This is because the firearms are not registered with the firearms registry and therefore cannot easily be traced back to anyone. With a lot of firearms available in the public the commissions of aggravated robbery involving the use of firearms are prone to increase because the offenders can easily access firearms from the public without much trouble or formality.

In addition, the Firearms Act does not provide for strict regulations concerning the controlled use of firearms before and after one is licensed. For instance, the flexibility of obtaining a firearm licence for a second hand firearm may act as an incentive to the public to obtain a firearm within a short period of time. The ability to legally obtain a firearm with such ease contributes to the accessibility of firearms by the public.

This therefore shows that the firearm licensing procedure is not sufficient to have an effect on the commission of aggravated robbery involving the use of firearms;¹⁵³ there is need for an effective enforcement mechanism. An effective enforcement mechanism will curtail accessibility of firearms to the public which will subsequently fairly reduce the commission of aggravated

¹⁵¹ In 2010, 1448 aggravated robbery cases reported with 548 arrests made. In 2012, 2183 aggravated robbery cases were reported with 638 arrests made. Zambia Police Headquarters, Statistics Office, Lusaka.

¹⁵² An estimated number of 230,000 persons in Zambia own firearms, only 86,642 firearms are registered. Aaron Karp, 'Completing the Count: Civilian Firearms'. *Small Arms Survey 2007: Guns and the City*, 38-71

¹⁵³ This may be noted in the number of aggravated robberies committed in the county in the past years. For instance in 2010 there were 548 arrests made, in 2012 there were 638 arrests made.

robbery involving the use of firearms as firearms will not be easily accessed.¹⁵⁴ The firearm laws need to be comprehensive, effectively covering for persons prohibited from owning firearms and providing for a strict procedure for buying firearms, second hand or new. There is need to provide for regulations with regard to control of use of firearms after the grant of a licence.

4. Conclusion

In conclusion this chapter has shown that there is a fairly high rate of accessibility to firearms by the public in Zambia. There is a huge disparity between the number of persons with licensed and unlicensed firearms. This prevalent accessibility is attributed to the weaknesses in the licensing procedure under the Firearms Act, such as the flexible process of obtaining a firearm pertaining to second hand licence, lack of definition of competent person to own a firearm, the lack of provision for persons with criminal records as prohibited persons from owning firearms and lack of monitoring use of firearms after grant of firearm licences. The chapter has also shown that prevalent accessibility of firearms to the public is likely to increase the commission of aggravated robberies in the country; this is because the firearms are easily accessible without much trouble or formality. Most of these firearms are not licensed thereby making it difficult to trace them back to anyone. The licensing procedure as it is under the Act has no influence on the controlled use of firearms. As a result, there is need for a comprehensive licensing procedure and effective enforcement mechanism.

¹⁵⁴ John C. Moorehouse and Brent Wanner, "Does gun control reduce crime or does crime increase gun control", *Cato Journal*, 103

robbery involving the use of firearms as firearms will not be easily accessed.¹⁵⁴ The firearm laws need to be comprehensive, effectively covering for persons prohibited from owning firearms and providing for a strict procedure for buying firearms, second hand or new. There is need to provide for regulations with regard to control of use of firearms after the grant of a licence.

Conclusion

In conclusion this chapter has shown that there is a fairly high rate of accessibility to firearms by the public in Zambia. There is a huge disparity between the number of persons with licensed and unlicensed firearms. This prevalent accessibility is attributed to the weaknesses in the licensing procedure under the Firearms Act, such as the flexible process of obtaining a firearm pertaining to second hand licence, lack of definition of competent person to own a firearm, the lack of provision for persons with criminal records as prohibited persons from owning firearms and lack of monitoring use of firearms after grant of firearm licences. The chapter has also shown that prevalent accessibility of firearms to the public is likely to increase the commission of aggravated robberies in the country; this is because the firearms are easily accessible without much trouble or formality. Most of these firearms are not licensed thereby making it difficult to trace them back to anyone. The licensing procedure as it is under the Act has no influence on the controlled use of firearms. As a result, there is need for a comprehensive licensing procedure and effective enforcement mechanism.

¹⁵⁴ John C. Moorehouse and Brent Wanner, "Does gun control reduce crime or does crime increase gun control", *Ohio Journal*, 103

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

1. Introduction

This chapter draws general conclusions on this research and further provides recommendations in identified areas of weakness. The recommendations given are both long term and short term recommendations.

2. General Conclusions

The general conclusion that can be drawn from the four chapters in this research is that the offence of aggravated robbery is common in Zambia. As shown in chapter one, in 2010, 1448 cases were reported with 548 arrests made. In the year 2012 a slight increase is noted as there were 2183 cases reported with 638 arrests made. The seriousness of this offence has been noted by the police officials as reported in various newspaper articles.¹⁵⁵ This research has focused on aggravated robbery involving the use of a firearm. Considering that the commission of this crime is common, there is a need to control the accessibility and use of firearms. The Firearms Act regulates the access as well as use of firearms in Zambia, through the licensing procedure of firearms. However, the licensing procedure is not comprehensive, as was shown in chapter three

¹⁵⁵ These newspaper articles have been referred to in part three of chapter one under the heading "Statement of the problem" and in part five of chapter one under the heading "Significance of the study".

of this research.¹⁵⁶ The weakness in the Firearms Act makes it possible for practically any person to have access to firearms and this consequently increases the likelihood of the commission of aggravated robbery, as was shown in chapter four of this research.¹⁵⁷ Some of the weaknesses in the Firearms Act contributing to prevalent accessibility of firearms include the lack of express prohibition of persons with criminal records and mental illness from obtaining a firearm licence, it does not define who a competent person is and it does not provide for many regulations after the grant of a firearm licence.

3. Recommendations

Having examined the effectiveness and efficiency of the licensing procedure under the Firearms Act, it can be concluded that the licensing procedure is not comprehensive. The following are the proposed recommendations:

This research has shown that the licensing procedure under the Firearms Act has many weaknesses. It is therefore proposed that Part III of the Firearms Act which relates to the firearm licences should be amended to include a section that clearly outlines the categories of persons not allowed to own firearms as opposed to outlining persons prohibited from obtaining a firearm certificate. Persons such as those with criminal records, a history of violence for instance assault and gender based violence and mentally challenged persons should be expressly included in Part III of the Firearms Act as a category of persons prohibited from owning firearms.

¹⁵⁶ The weakness of the licensing procedure was discussed in part two of chapter three under the heading “The effect of the licensing procedure under the Firearms Act on accessibility of firearms to the public”.

¹⁵⁷ The consequent effect of the weaknesses of the licensing procedure on the commission of aggravated robbery was discussed in part 3 of chapter four under the heading “Accessibility of firearms by the public and the consequential effect on the commission of aggravated robbery involving the use of a firearm”

Furthermore, it is suggested that an applicant's background check should not only be comprised of a fingerprint scan or reference to personal information given on the application form. It should go beyond this and include interviewing and investigating a minimum of two respectable persons that have known the applicant for at least two years. This process of recommendation will ensure that recommenders may be held responsible for the illegal use of firearms by an applicant. This will cover instances where firearms are discovered at crime scenes and the owners of the firearms cannot be traced.

Furthermore, this research has shown that the lack of the definition of "competent" person in the definition section¹⁵⁸ of the Firearms Act causes uncertainty in determining who is competent to own a firearm. It is proposed that the Firearms Act should be amended to include the definition of a competent person under Part III of the Firearms Act¹⁵⁹. The Firearms Act should also give a comprehensive outline of the criteria to be used in determining a person as competent to own a firearm. The officers conducting this process should undergo training with regard to determining the competence of an individual to own a firearm.

The Firearms Act should be amended to expressly include the waiting period¹⁶⁰ and what is considered by the committee when granting a firearm licence. The procedure used to obtain a licence for a second hand firearm should be adjusted; it should not be flexible, obtaining the licence should not be as of right, the applicant should undergo a series of back ground checks and give a reasonable reason why the firearm is required. The application form with regard to

¹⁵⁸ Section 2

¹⁵⁹ This part of the Firearms Act provides for firearm licences

¹⁶⁰ This is the length of time that is provided for before a firearm licence is granted. This is important because this is the time within which the committee considers applications for firearm licences

second hand firearm should be considered by the same committee that gives firearm licences pertaining to a new firearm.

This research has shown that the Firearms Act makes provision for safe storage of firearms as a means of control after one has been granted a firearm licence. However, it is not comprehensive because safe storage of firearms is not adequately provided for.¹⁶¹ It is therefore proposed that when a person applies for a firearm licence, safe storage of the firearm which relates to the application should be inspected by officers of the licensing authority, so as to ensure that it is secure and safe and that such storage actually exists. Such inspection should be conducted every year. In addition, persons with licences should be requested to have a permit to allow them carry their firearms outside their premises for any reason. Such permit should be valid for one year. One must give valid reason as to why they wish to carry firearm outside their premises

This research has shown that licensing authorities are not aware of the Firearms Code provided for under the Firearms Act. It is proposed that the officers should be sensitised about the Firearms Code through workshops and other educational forums. The Firearms Act regulates the use of firearms in Zambia and because it has many weaknesses, it cannot fully achieve the objectives set out in the preamble. In order to effectively achieve its preamble purpose the Firearms Act must be amended as recommended.

¹⁶¹ This was discussed in part three of chapter three under the heading “Control of use of firearms after grant of firearm licence”

BIBLIOGRAPHY

BOOKS

Daniel Webster et al., *The Case for Gun Policy Reforms in America*. Baltimore: Johns Hopkins Centre for Gun Policy and Research, 2012

Karp, Aaron. "Completing the count: Civilian firearms". *Small arms Survey 2007: Guns and the City*. Cambridge: Cambridge University Press, 2007

Kulusika, Simon E. *Texts, Cases and Material on Criminal Law in Zambia*. Lusaka: UNZ Press, 2006

Monahan J, et al. *Rethinking Risk Assessment: The MacArthur Study of Mental Disorder and Violence*. New York: Oxford University Press, 2001

NEWS PAPER ARTICLES

Daily Mail Newspaper, August, 22nd, 2012, "Bandit gunned down".

Daily Mail Newspaper, May 6th, 2013 "Children shot: 2 kids battling for their lives after being shot in Kalomo".

The Post Newspaper, October 2nd, 2012 "Mob in Lusaka burns suspected thief to death".

The Post Newspaper, September 13th, 2012 "Two die in family attack".

JOURNALS

Cummings et al. State Gun Safe Storage Laws and Child Mortality due to Firearms. *JAMA* 1997; 1084-6

Johnson, Blum and Giedd, "Adolescent maturity and the brain; the promise and pitfalls neuroscience research in adolescent health policy". *Journal of Adolescent health* 45, no.3 (2009) 216-21

Joubert, Deidre. "The Crime of Robbery in South African Law". *International Journal of Arts and Science* 3, no. 15 (2010): 130 – 154

Kleck, G. and Patterson, E.B. "The Impact of Gun Control and Gun Ownership Levels on Violence Rates." *Journal of Quantitative Criminology* 9, no. 3 (1993): 249 – 287

Moorhouse, John and Wanner Brent. "Does gun control reduce crime or does crime increase gun control." *Cato Journal* 26, no. 1 (2006): 103 -104

Venrick et al, "Unintentional and undetermined firearm related deaths; a preventable death analysis for three safety devices." *Injury Prevention* 9, (2003): 307-311

WEBSITES

www.oxforddictionaries.com Accessed August 5, 2013

legal-dictionary.thefreedictionary.com Accessed June 2, 2013