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The Case for Reform of Kenya's Firearms Licensing Law: Lessons from Comparative Experience

By: *Michael Sang* *

Abstract

This paper critically examines the state of firearm licensing laws in Kenya, shedding light on recent events and reported incidents that underscore the pressing need for comprehensive reform. Drawing insights from comparative experiences across various nations, including the United States of America, Canada, Australia, the United Kingdom, and Sweden, the discussion highlights deficiencies in Kenya's Firearms Act. Incidents of misuse of licensed firearms serve as catalysts for addressing critical aspects such as the establishment of a Firearms Registration Information System (FRIS), restrictions on firearm types and numbers, psychological assessments in licensing decisions, independent tribunals, regulations on disposal of firearms, handling of firearms owned by deceased individuals, and the imperative to combat trafficking offenses. By synthesizing lessons from diverse international contexts, the paper offers a roadmap for Kenya's policymakers to navigate the complexities of firearm regulation, emphasizing the paramount importance of a balanced approach that ensures individual rights are harmonized with the imperatives of public safety and public policy.

Key Words: *Legal Reform, Kenya, Firearms Licensing Law*

1. Introduction

In the contemporary global landscape, the regulation of firearms poses a complex and critical challenge for nations seeking to strike a balance between individual rights and public safety.¹ This discussion delves into the case of Kenya, specifically addressing the urgent need for reform in its firearms licensing law. Recent events have underscored the inadequacies of the current legislation, with reported incidents of misuse of licensed firearms, highlighting the pressing necessity for comprehensive reforms. Drawing lessons from comparative experiences across various countries, this discourse explores key deficiencies in Kenya's Firearms Act, presents preliminary observations from reported incidents, and puts forward

* LLB, *Moi University*; LLM, *University of Cape Town, South Africa*; PG Dip. in Law *Kenya School of Law*. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated.

¹ Guide on Firearms Licensing Law (2022) available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1116230/Firearms_guide_November_2022.pdf accessed 12 November 2023

proposals for strengthening the firearms licensing law. Through an examination of lessons learned from countries such as Canada, the United States of America, Australia, the United Kingdom, and Sweden, the study aims to provide a holistic understanding of best practices that can inform the evolution of Kenya's firearms regulations. The discussion encompasses aspects such as the establishment of a Firearms Registration Information System (FRIS), restrictions on the number and types of firearms, the role of independent forensic firearms experts, and the need for specialized tribunals. Each lesson learned from these diverse international experiences contributes to a comprehensive set of recommendations for Kenya, fostering a nuanced and effective approach to firearm regulation in the pursuit of national security and public safety.

2. Brief Overview of Kenya's Firearms Licensing Law in Light of Recent Events

2.1 Firearms Act

Kenya's Firearms Licensing Law is primarily governed by the Firearms Act. The Firearms Act, Chapter 114 of the Laws of Kenya, establishes the legal framework for the possession, use, and licensing of firearms in the country.² The main purpose of the act is to regulate the acquisition and use of firearms to ensure public safety and prevent the misuse of weapons.³

The Firearms Act outlines the criteria and procedures for obtaining a firearm license. Individuals seeking to own or carry a firearm must meet specific eligibility criteria, including age restrictions, mental stability, and a clean criminal record.⁴ The act categorizes firearms into various classes, distinguishing between different types of weapons such as air gun, air rifle, air pistol, revolver, crossbow, laser gun.⁵

Certain types of firearms are strictly prohibited for civilian ownership. This typically includes automatic weapons, military-grade firearms, and other high-capacity or particularly dangerous firearms.⁶ The act specifies the duration of firearm certificates and outlines the process for renewal.⁷ Additionally, it provides provisions for the revocation of the certificate in cases where individuals no longer meet the eligibility criteria or have violated the terms of their license.⁸

² Firearms Act cap 114

³ Ibid, long title

⁴ Ibid, sec 5

⁵ Ibid, sec 2

⁶ Ibid

⁷ Ibid, sec 5

⁸ Ibid

The act includes regulations regarding the safe storage⁹ and transportation¹⁰ of firearms to prevent accidents, theft, or unauthorized use. The act outlines penalties for various offenses related to the illegal possession, use, or trafficking of firearms. This includes fines and imprisonment for those found guilty of violating the provisions of the act.¹¹

2.2 Reported Incidents of Misuse of Licensed Firearms in Kenya Summary of Incidents

1. Private Compound Shooting in Karen, Nairobi

A guard was shot and wounded in the stomach and leg while responding to a distress call in a private compound in Karen, Nairobi. Businessman James Kariuki, involved in the incident, was asked to surrender his firearm after shooting the guard during a gang raid.¹²

2. Limuru Road Shooting by Paul Kobia

Businessman Paul Kobia shot and killed a suspected criminal on Limuru Road, Parklands, Nairobi, during a botched robbery. Kobia claimed the suspect had snatched his phone, prompting a chase and shooting.¹³

3. Brian Yongo's Shooting Incident in Runda

Businessman Brian Yongo shot in the air to "wake up" his guards who failed to open the gate as he arrived home. Yongo declined to honor police summons, obtained a court order preventing gun confiscation, and claimed impatience led to firing the shot.¹⁴

4. Road Rage Shooting in Dagoretti, Nairobi

Senior insurance firm manager Fredrick Mwaniki shot and killed a motorist and injured another in a road rage incident in Dagoretti, Nairobi. Mwaniki, a licensed gun holder, was charged with murder in the incident.¹⁵

⁹ Ibid, sec 18

¹⁰ Ibid, sec 29

¹¹ For instance, sec 4 outlines the penalty for purchasing firearms or ammunition without firearm certificate.

¹² Cyrus Ombati, 'Alarm over misuse by licensed gun holders' available at <https://www.standardmedia.co.ke/article/2000128862/alarm-over-misuse-by-licensed-gun-holders> accessed 12 November 2023

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

5. Police Reservist Disarmed in Parklands

A police reservist in Parklands was disarmed by security guards after shooting in the air to force entry into a women's hostel. The reservist, dropping off a female friend, fired twice in the air, leading to his arrest and seizure of his pistol, ammunition, and police-related items.¹⁶

These incidents highlight various instances of firearm misuse in Kenya, involving private individuals, businessmen, and even a police reservist. The incidents underscore challenges related to responsible firearm ownership, the potential for escalation in confrontational situations, and the need for strict adherence to firearm regulations.

2.3 Preliminary Observations

Numerous firearms in the hands of a few licensed holders (*some of whom should not have them*) with little regulatory safeguards

This observation highlights a potential issue within Kenya's firearms licensing system, suggesting that a disproportionate number of firearms are concentrated among a small group of licensed holders. Furthermore, it implies that some individuals within this group may not meet the necessary criteria for responsible firearm ownership, indicating lapses in the regulatory safeguards.

The presence of numerous firearms in the hands of a few individuals highlights potential weaknesses in the regulatory framework. This could include loopholes in the licensing process, insufficient background checks, or challenges in monitoring and enforcing compliance. The observation implies that some licensed holders may not be suitable or responsible gun owners. This could be due to changes in circumstances, such as mental health issues, criminal activities, or other factors that make them unfit to possess firearms.

Addressing these preliminary observations is essential for fostering a safer environment, ensuring responsible gun ownership, and preventing the misuse of firearms in Kenya.

Current practice of firearms licensing in Kenya emphasizes permitting rather than restricting gun ownership particularly for the well to do and connected applicants.

This observation suggests that the current firearms licensing practices in Kenya may lean more towards facilitating gun ownership, particularly for individuals

¹⁶ Ibid

with financial means or influential connections. The focus appears to be on granting permits rather than implementing stringent restrictions, potentially leading to a situation where firearms end up in the hands of those who might not strictly meet the criteria for responsible ownership.

The observation implies that the emphasis in the current firearms licensing system is on facilitating the issuance of permits, making it easier for individuals to acquire firearms. The suggestion that well-to-do and connected applicants may have an advantage in obtaining firearm licenses points to potential inequality in access. This could result in a disparity where certain individuals, due to their socio-economic status or connections, are more likely to be granted licenses.

If the licensing system is biased towards permitting rather than rigorous restriction, there is a risk that firearms could end up in the hands of individuals who may not meet the necessary criteria for responsible ownership. This raises concerns about the potential misuse of firearms. Addressing this observation involves striking a balance between respecting the rights of individuals to own firearms for legitimate reasons and ensuring that the licensing process is rigorous enough to prevent misuse and maintain public safety.

3. Deficiencies of Kenya's Firearms Act

3.1 Lack of Digitized Registration of Firearms and Firearms Holders

The absence of a digitized registration system for firearms and their holders is a notable deficiency in Kenya's Firearms Act. A digitized system involves the electronic recording and management of information related to firearms and their owners, offering various benefits in terms of efficiency, accuracy, and security.¹⁷ The current deficiency suggests that the registration of firearms and their holders is primarily done through manual, paper-based systems. This traditional approach can be prone to errors, delays, and challenges in data retrieval.

A lack of digitization implies that tasks such as processing applications, updating records, and conducting background checks may be less efficient compared to modern, automated systems. Manual record-keeping can pose security risks, as paper documents are susceptible to loss, damage, or unauthorized access.

¹⁷ Guide on Firearms Licensing Law (2022) available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1116230/Firearms_guide_November_2022.pdf accessed 12 November 2023

Digitizing records enhances security measures, protecting sensitive information related to firearms and their owners.¹⁸

A digitized system allows for easier and quicker access to information when needed. Manual records may be time-consuming to search through, potentially impacting the effectiveness of law enforcement and regulatory agencies. A digitized registration system enables real-time tracking and monitoring of firearms, facilitating better oversight by regulatory authorities. It can help ensure that licensed firearms are being used responsibly and are not involved in criminal activities.¹⁹ A digitized system streamlines processes for law enforcement agencies, allowing them to efficiently conduct background checks, monitor firearm usage, and respond to incidents in a timely manner.

3.2 Lack of Policy Guidance on the Number and Types of Firearms

This deficiency points to a lack of clear policy guidance within Kenya's Firearms Act regarding the permissible number and types of firearms that individuals are allowed to possess. The absence of specific guidelines in this regard can lead to ambiguity, potential loopholes, and challenges in regulating the proliferation of firearms.²⁰ The deficiency suggests that the Firearms Act may not provide explicit guidance on the maximum number of firearms an individual can own or the types of firearms permitted for civilian possession. Without clear policy guidance, there is a risk that individuals could accumulate a large number and various types of firearms without proper justification.²¹ This lack of restriction might contribute to an increased proliferation of firearms.

The absence of specific limits may create challenges for regulatory authorities in monitoring and overseeing the distribution and ownership of firearms. This can hinder efforts to prevent the accumulation of firearms by individuals who may pose a risk. The deficiency raises concerns about the potential misuse of firearms. Without defined limits, individuals might acquire more firearms than necessary for legitimate purposes, increasing the risk of unauthorized use or diversion for illicit activities.²²

¹⁸ Ibid

¹⁹ Ibid

²⁰ Reinvent Kenya. "Arms & Ammo booklet." Published June 2022. Available at: https://www.reinvent-kenya.com/wp-content/uploads/2022/06/Arms-Ammo-booklet-A5_compressed.pdf [Accessed 18 November 2023]

²¹ Ibid

²² American Psychological Association. "Gun Violence Prevention." Available at: <https://www.apa.org/pubs/reports/gun-violence-prevention> [Accessed 18 November 2023].

Addressing the lack of policy guidance on the number and types of firearms is essential for maintaining a balance between individual rights to firearm ownership and ensuring public safety through effective regulation and oversight.

3.3 Lack of Continuous Psychological Review of Firearms Holders

This deficiency points to a gap in the Firearms Act in Kenya, where there is a lack of provisions for continuous psychological reviews of individuals holding firearm licenses. Without a system for ongoing psychological assessments, there may be a risk of overlooking changes in mental health that could impact the responsible ownership of firearms.

The current deficiency suggests that the psychological assessment of firearm holders may occur only at the time of initial application. There is a lack of mechanisms for regular, ongoing psychological reviews throughout the duration of the license. Individuals' mental health can change over time due to various factors. Without continuous reviews, the regulatory framework may miss evolving mental health conditions that could affect the safe possession and use of firearms.²³

Mental health is a crucial factor in determining an individual's fitness to own and use firearms responsibly.²⁴ A lack of continuous psychological assessments may pose risks to public safety if a firearm holder develops mental health issues after the initial evaluation.²⁵ Ongoing psychological reviews serve as a preventative measure, allowing authorities to identify warning signs or changes in behavior that might indicate an increased risk of misuse of firearms.²⁶

3.4 Arbitrary Powers of the Firearms Licensing Bureau

This deficiency highlights concerns regarding the discretionary powers wielded by the Firearms Licensing Bureau (FLB) within the framework of Kenya's Firearms Act. The observation suggests that the FLB may have arbitrary interpretations of the Act's discretionary guidance, potentially leading to inconsistent application and decision-making.

²³ Ibid

²⁴ RAND Corporation. "Mental Illness as a Risk Factor for Gun Violence." Available at: <https://www.rand.org/research/gun-policy/analysis/essays/mental-illness-risk-factor-for-gun-violence.html> [Accessed 18 November 2023].

²⁵ Ibid

²⁶ Ibid

The Firearms Act contains provisions with discretionary language, allowing authorities, including the FLB, some flexibility in decision-making.²⁷ However, the lack of clarity or specificity in these provisions could lead to arbitrary interpretations.²⁸ The deficiency implies that the FLB may not consistently apply the Act's provisions, leading to varied decisions based on subjective interpretations. This can result in a lack of transparency and fairness in the licensing process.

Arbitrary powers can create opportunities for the abuse of authority within the FLB.²⁹ If discretionary guidance is subject to inconsistent interpretation, it may lead to decisions influenced by factors other than the merit or circumstances of individual applications.³⁰

3.5 Lack of Independent Forensic Firearms Examiners

This deficiency points to a gap in the Firearms Act in Kenya, where there is a lack of provision for independent forensic firearms examiners. Independent examiners play a crucial role in conducting impartial and objective analyses of firearms-related evidence, and their absence may impact the reliability and fairness of investigations.³¹

Forensic examination of firearms is vital in criminal investigations to determine aspects such as ballistics, weapon identification, and the trajectory of bullets. Independent examiners contribute to unbiased analyses.³² Without independent examiners, there is a risk of bias in forensic analyses. Examiners directly associated with law enforcement agencies may face challenges in maintaining objectivity, potentially affecting the accuracy and fairness of investigations.³³

The deficiency may impact the quality and credibility of firearms-related evidence presented in legal proceedings. Independent examiners are typically seen as more

²⁷ International Committee of the Red Cross (ICRC). "Firearms Act 2010." Available at: <https://ihl-databases.icrc.org/en/national-practice/firearms-act-2010> [Accessed 18 November 2023]

²⁸ Ibid

²⁹ Ibid 17

³⁰ Ibid 17

³¹ Ibid 28

³² Ibid

³³ Ibid

trustworthy and less likely to be influenced by external pressures.³⁴ The involvement of independent forensic firearms examiners enhances public trust in the investigative process.³⁵ It provides assurance that examinations are conducted impartially, contributing to the credibility of law enforcement activities.³⁶

3.6 Disposal of Firearms and Ammunition in Closed Criminal Cases

This deficiency highlights a potential gap in the Firearms Act of Kenya regarding the procedures for the disposal of firearms and ammunition used as evidence in closed criminal cases. The lack of clear guidelines on disposal can lead to uncertainties in handling these items post-case closure.³⁷ Without established procedures, there is a risk of improper handling or storage of firearms and ammunition, which may pose security concerns. This includes the potential for theft, loss, or unauthorized use if not appropriately addressed.³⁸

The disposal of firearms and ammunition involves legal and ethical considerations. Clear guidelines are necessary to ensure compliance with the law, prevent potential misuse, and uphold ethical standards in the handling of such items.³⁹ Improper disposal practices may compromise public safety, as firearms and ammunition could end up in the wrong hands.⁴⁰ Establishing secure and standardized procedures is crucial for preventing unintended consequences.

3.7 Lack of Regulations on Deceased Licensed Firearms Holders

This deficiency underscores a gap in the Firearms Act of Kenya concerning regulations pertaining to the firearms owned by individuals who were licensed but have since passed away. The absence of clear guidelines on how to handle firearms in such cases may lead to potential issues in their proper disposal or transfer. In the absence of clear regulations, there is a risk that firearms owned by

³⁴ United Nations Office on Drugs and Crime (UNODC). "Firearms as Evidence." Available at: <https://www.unodc.org/e4j/en/firearms/module-8/key-issues/firearms-as-evidence.html> [Accessed 18 November 2023].

³⁵ Scientific American. "Firearm Forensics Has Proven Reliable in the Courtroom and in the Lab." Available at: <https://www.scientificamerican.com/article/firearm-forensics-has-proven-reliable-in-the-courtroom-and-in-the-lab/> [Accessed 18 November 2023]

³⁶ Ibid

³⁷ Philip J. Cook and Harold A. Pollack, "Reducing access to guns by violent offenders" (2017) 3 RSF: The Russell Sage Foundation Journal of the Social Sciences

³⁸ Ibid 33

³⁹ Ibid

⁴⁰ UNODC. "Indirect Impacts of Firearms on States or Communities." Available at: <https://www.unodc.org/e4j/zh/firearms/module-1/key-issues/indirect-impacts-of-firearms-on-states-or-communities.html> [Accessed 18 November 2023].

deceased license holders may be subject to unregulated transfers, potentially leading to misuse or improper possession.

The lack of guidelines on the handling of firearms from deceased license holders may pose security concerns, including the risk of these weapons falling into unauthorized hands or being used for illicit purposes. The deficiency contributes to legal ambiguity, making it challenging for authorities to determine the proper course of action in managing and disposing of firearms owned by deceased individuals with valid licenses.

3.8 Lack of Trafficking Offences

This deficiency points to a gap in the Firearms Act of Kenya, specifically the absence of explicit provisions addressing trafficking offenses related to firearms. The lack of clear regulations on trafficking can impede efforts to combat the illicit trade of firearms and contribute to increased security risks. Trafficking involves the illegal trade, transfer, or movement of firearms, and without explicit regulations, addressing such activities becomes challenging.⁴¹

Without defined trafficking offenses, law enforcement authorities may face difficulties in investigating, prosecuting, and penalizing individuals involved in the illegal trafficking of firearms. This limitation hampers efforts to curb the flow of illicit weapons. The absence of trafficking offenses contributes to heightened security risks as illicitly traded firearms may be more readily available to criminals, insurgent groups, or other entities involved in unlawful activities.⁴²

Many countries recognize the importance of having clear laws against firearm trafficking to meet international obligations.⁴³ The lack of specific provisions may impact Kenya's compliance with regional and international agreements aimed at preventing the illicit trade of weapons.

4. Proposals for Strengthening Kenya's Firearms Licensing Law: Lessons from Comparative Experience

4.1 Establishment of a Firearms Registration Information System (FRIS)

Sweden serves as a notable example in the establishment of a Firearms Registration Information System (FRIS). The Swedish Police Authority maintains a centralized

⁴¹ Ibid

⁴² Ibid

⁴³ UNODC. "International Instruments with Global Outreach." Available at: <https://www.unodc.org/e4j/en/firearms/module-5/key-issues/international-instruments-with-global-outreach.html> [Accessed 18 November 2023].

database that records comprehensive information on registered firearms and their owners.⁴⁴ Sweden's FRIS is a centralized and integrated database that stores detailed information on registered firearms. This includes data on the make, model, caliber, and ownership details of each firearm.⁴⁵

The system allows for real-time updates and monitoring, ensuring that information on firearms and their owners is current and accurate. This capability enhances law enforcement's ability to access timely data during investigations. FRIS in Sweden is integrated with other relevant systems, such as criminal records and mental health databases. This integration provides a comprehensive overview of firearm owners and enhances decision-making processes.⁴⁶

Access to FRIS is secure and protected to prevent unauthorized use. The system adheres to stringent data protection measures, ensuring the confidentiality and privacy of information stored in the database. The FRIS facilitates efficient tracking and tracing of firearms, allowing law enforcement to quickly identify the origin and ownership history of a firearm. This capability is vital for investigations and crime prevention.⁴⁷

4.1.1 Recommendations for Kenya

Kenya can learn from Sweden's approach by investing in modern technology to establish a secure and user-friendly FRIS. This might involve the use of advanced software and infrastructure for efficient database management.

Collaboration with relevant stakeholders, including law enforcement agencies, firearm owners, and IT experts, is crucial for the successful implementation of FRIS. Engaging with experts who have experience in developing and maintaining such systems is valuable.

Proper training for users, including law enforcement personnel and administrators managing the system, is essential. Training programs ensure that the system is utilized effectively, and users are well-equipped to navigate and interpret the information.

⁴⁴ Polisen 'Weapon licence and processing times' available at <https://polisen.se/en/laws-and-regulations/firearms/weapon-licence/#:~:text=In%20order%20to%20be%20granted,are%20hunting%20and%20target%20shooting>. Accessed 13 November 2023

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

Furthermore, Kenya should establish a robust legal framework governing the use, access, and protection of data within the FRIS. Clear guidelines on data privacy and security are imperative to gain public trust and comply with legal standards.

4.2 Restricting the Number of Firearms per Household and Prohibition of Heavy Guns (Rifles and Shotguns)

A noteworthy example offering best practices in restricting the number of firearms per household and prohibiting heavy guns is Japan. Japan has implemented stringent regulations on firearm ownership, including limitations on the number of firearms individuals can possess and a focus on handguns rather than rifles or shotguns.⁴⁸ Japan imposes strict limits on the number of firearms per household. This restriction ensures that individuals can only own a limited number of firearms, reducing the overall prevalence of guns in society.⁴⁹

The emphasis on handguns, rather than rifles or shotguns, is a key feature of Japan's firearm regulations. Handguns are considered to be more easily concealable and pose a lower risk compared to long guns, aligning with a focus on public safety. Japan has a thorough and rigorous licensing process for firearm ownership. Individuals must undergo background checks, psychological assessments, and demonstrate a legitimate need for owning a firearm. This process contributes to responsible ownership and ensures that only qualified individuals can possess firearms.⁵⁰

Firearm licenses in Japan come with regular renewal requirements. This ensures that individuals continuously meet the criteria for responsible firearm ownership and that changes in circumstances, such as mental health, are regularly assessed.⁵¹

4.2.1 Recommendations for Kenya

Kenya can draw a lesson from Japan by establishing clear limits on the number of firearms allowed per household. This restriction can help prevent the accumulation of a large number of firearms in a single residence, reducing the overall risk.

⁴⁸ India Today (2022) 'Tokyo's zero-tolerance gun laws: What makes Japan different from other nations, lessons for India' available at <https://www.indiatoday.in/news-analysis/story/tokyo-zero-tolerance-gun-laws-former-pm-shinzo-abe-gun-laws-uk-us-canda-india-1973447-2022-07-08> accessed 13 November 2023

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

Focusing regulations on handguns, which are more concealable and can be considered higher risk, may be a prudent approach. This can be complemented by more stringent licensing requirements for handguns compared to other types of firearms.

Kenya can enhance its licensing procedures, introducing comprehensive background checks, psychological assessments, and a thorough vetting process. This ensures that only individuals with a legitimate need and a clean record can obtain a firearm license.

In addition, implementing regular license renewal requirements can contribute to ongoing assessments of firearm owners, ensuring that they continue to meet the necessary criteria for responsible ownership.

4.3 Incorporating Psychological Assessment in Licensing Decisions

A notable example of a country incorporating psychological assessment in licensing decisions is Germany. Germany has stringent firearm regulations that include a comprehensive psychological evaluation as part of the licensing process. This approach aims to assess the mental fitness and stability of individuals applying for firearm licenses.⁵²

Germany requires individuals applying for a firearm license to undergo a mandatory psychological evaluation conducted by a licensed psychologist. This evaluation assesses the applicant's mental health, stability, and suitability for firearm ownership. The psychological assessment in Germany emphasizes mental fitness and stability, recognizing the impact of an individual's psychological well-being on their ability to responsibly own and use firearms.⁵³

The psychological evaluation provides objective criteria for licensing decisions. It helps authorities determine whether an individual poses any mental health risks that could compromise the safe ownership and use of firearms. In some cases, Germany requires individuals to undergo periodic reassessments of their mental fitness throughout the duration of their firearm license. This ensures ongoing monitoring of psychological well-being.⁵⁴

⁵² Expat info (2023) 'Gun laws in Germany' available at <https://www.iamexpat.de/expat-info/german-expat-news/gun-laws-germany> accessed 13 November 2023

⁵³ Ibid

⁵⁴ Ibid

4.3.1 Recommendations for Kenya

Kenya can learn from Germany's approach by integrating mandatory psychological assessments into its firearm licensing process. This can be conducted by licensed psychologists and serve as a critical component of the overall evaluation.

Kenya should clearly define and include mental health criteria in the licensing process. This involves establishing specific indicators and assessments to evaluate an applicant's psychological well-being and stability.

Kenya should provide training for licensed psychologists who will be conducting the assessments. Ensuring that assessors are well-trained and follow standardized protocols enhances the reliability and consistency of evaluations.

Kenya should also consider implementing regular review mechanisms where individuals with firearm licenses are periodically reassessed for their mental fitness. This ongoing evaluation can help identify any changes in mental health over time.

4.4 Establishment of a Firearms Tribunal

An exemplary case demonstrating the establishment of a Firearms Tribunal is found in the United Kingdom. The United Kingdom established the Firearms Appeals Committee, which functions as an independent tribunal tasked with hearing appeals related to firearm licensing decisions.⁵⁵ The Firearms Appeals Committee in the United Kingdom operates independently of law enforcement agencies and licensing authorities. This ensures impartial adjudication of appeals and provides an avenue for individuals to challenge licensing decisions. The tribunal consists of members with specialized knowledge in firearms legislation, licensing procedures, and legal matters. This expertise contributes to informed and well-reasoned decisions on appeals.⁵⁶

The establishment of a dedicated tribunal promotes transparency and fairness in the appeals process. Individuals who disagree with licensing decisions have the opportunity to present their case before an impartial body. The tribunal provides a legal mechanism for individuals to challenge decisions, ensuring that licensing

⁵⁵ Guide on Firearms Licensing Law (2022) available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1116230/Firearms_guide_November_2022.pdf accessed 12 November 2023

⁵⁶ Ibid

authorities adhere to the law and follow due process. This legal oversight contributes to the overall integrity of the firearms licensing system.⁵⁷

4.4.1 Recommendations for Kenya

Kenya can draw from the UK's experience by establishing an independent Firearms Tribunal responsible for hearing appeals related to firearm licensing decisions. This tribunal should be separate from law enforcement agencies and licensing authorities.

We should ensure that the tribunal consists of members with specialized knowledge in firearms legislation, licensing procedures, and legal matters. This expertise is crucial for making well-informed decisions during the appeals process.

We should also define a clear and accessible appeals process for individuals dissatisfied with firearm licensing decisions. This includes outlining the procedures, timeframes, and requirements for filing an appeal with the Firearms Tribunal.

Kenya should implement mechanisms for regular reviews of decisions made by the Firearms Tribunal to assess the consistency and fairness of rulings. Periodic evaluations contribute to continuous improvement in the tribunal's operations.

4.5 Regulations on Independent Forensic Firearms Experts

The United States of America provides a valuable lesson in the regulation of independent forensic firearms experts. In the U.S., forensic firearm examination is often conducted by independent experts, and their work is subject to regulations and standards set forth by organizations such as the Association of Firearm and Tool Mark Examiners (AFTE).⁵⁸ The AFTE in the United States of America establishes certification standards and provides training for forensic firearms examiners. This ensures that individuals conducting firearm examinations possess the necessary skills, knowledge, and expertise.⁵⁹

Forensic firearms experts adhere to a code of ethics that outlines professional conduct and standards. This includes principles of impartiality, objectivity, and the commitment to providing accurate and unbiased analyses. The U.S.

⁵⁷ Ibid

⁵⁸ Association of Firearm and Tool Mark Examiners available at <https://afte.org/> accessed 13 November 2023

⁵⁹ Ibid

emphasizes quality assurance in forensic firearm examinations. Laboratories and experts follow standardized protocols, ensuring the reliability and reproducibility of results. This commitment to quality is essential for the integrity of legal proceedings. Independent forensic firearms experts often undergo peer review processes, where their work is scrutinized by other experts within the field. This helps validate findings and maintain high standards of accuracy.⁶⁰

4.5.1 Recommendations for Kenya

Kenya can benefit from implementing certification standards for independent forensic firearms experts. This could involve the creation of a regulatory body or the adaptation of international standards to ensure that examiners meet specific qualifications.

Kenya should develop and implement a code of ethics for forensic firearms examiners in Kenya. This code should emphasize principles of impartiality, objectivity, and ethical conduct to maintain the integrity of examinations.

Kenya should emphasize quality assurance protocols in forensic firearm examinations. This involves standardizing procedures, ensuring proper documentation, and implementing measures to validate and verify findings.

Kenya should also introduce peer review processes to evaluate the work of independent forensic firearms experts. Peer reviews contribute to the credibility of examinations and provide additional layers of scrutiny to enhance accuracy.

We should also implement continuing education requirements for forensic firearms experts to stay updated on advancements in the field. This ensures that examiners maintain their skills and knowledge throughout their careers.

4.6 Regulations on Disposal of Firearms and Ammunition in Closed Criminal Cases

Canada offers a noteworthy example of best practices in regulating the disposal of firearms and ammunition in closed criminal cases. The Royal Canadian Mounted Police (RCMP) has established clear guidelines and procedures for the disposal of firearms and related items.⁶¹ Canada has standardized procedures for the disposal of firearms and ammunition used as evidence in closed criminal cases. These

⁶⁰ Ibid

⁶¹ The Royal Canadian Mounted Police available at <https://www.rcmp-grc.gc.ca/> accessed 13 November 2023

procedures ensure consistency and legality in the handling of such items. The disposal of firearms and ammunition is governed by a clear legal framework in Canada. This framework outlines the conditions under which disposal is permitted, ensuring compliance with the law and preventing any potential misuse.⁶²

The disposal processes in Canada are designed to be transparent. This includes providing documentation of the disposal and maintaining records, contributing to accountability and oversight. Safety is a paramount consideration in the disposal of firearms and ammunition. Canada's regulations prioritize safe and secure methods of disposal to prevent any accidents or unauthorized access to these items.⁶³

4.6.1 Recommendations for Kenya

Kenya can draw from Canada's experience by establishing clear and standardized protocols for the disposal of firearms and ammunition in closed criminal cases. These protocols should outline the procedures and conditions for disposal.

Kenya should develop a legal framework that clearly defines the conditions under which the disposal of firearms and ammunition is permitted. This framework should ensure compliance with the law and prevent any potential legal challenges.

Kenya should emphasize the importance of documentation and record-keeping in the disposal process. Keeping detailed records provides transparency, allows for accountability, and ensures that the disposal is conducted in accordance with established protocols.

Kenya should prioritize safety considerations in the disposal of firearms and ammunition. This includes implementing secure methods of disposal to prevent accidents and unauthorized access, aligning with best practices for handling potentially dangerous items.

4.7 Regulations on Deceased Licensed Firearms Holders

Australia serves as a notable example in implementing regulations on deceased licensed firearms holders. The Australian approach involves clear guidelines and procedures for managing firearms owned by individuals who held valid licenses

⁶² Ibid

⁶³ Ibid

but have passed away.⁶⁴ Australia has regulations that require prompt notification of the death of a licensed firearms holder. This ensures timely initiation of the process for managing and transferring firearms owned by the deceased individual.⁶⁵

The country has well-defined procedures for the transfer or surrender of firearms owned by deceased license holders. These procedures consider factors such as legal inheritance and the qualifications of heirs to possess firearms. Australia has a legal framework that governs the transfer of firearms from deceased individuals to heirs or other designated recipients. This framework provides clarity on the conditions under which such transfers are permitted.⁶⁶

The regulations include provisions for the secure storage of firearms during the transition period. This ensures that firearms are handled responsibly and do not pose a security risk during the transfer process.

4.7.1 Recommendations for Kenya

Kenya can benefit from implementing regulations that mandate the prompt reporting of the death of a licensed firearms holder. This requirement ensures timely action in managing the firearms owned by the deceased.

Kenya should establish clear and comprehensive procedures for the transfer or surrender of firearms owned by deceased license holders. These procedures should consider legal inheritance, eligibility of heirs, and the proper documentation required for the process.

Kenya should develop a legal framework that outlines the conditions and legal requirements for the transfer of firearms from deceased license holders. This framework should provide guidance on the lawful and responsible transfer of firearms to designated recipients.

We should also consider incorporating provisions for secure storage of firearms during the transfer process. This ensures that firearms are stored in a manner that prevents unauthorized access and enhances overall public safety.

4.8 Trafficking Offences

⁶⁴ Lexology (2022) 'Firearms license laws across Australia' available at <https://www.lexology.com/library/detail.aspx?g=509e0668-a66e-4c86-befb-93a6a4e4a58a> accessed 13 November 2023

⁶⁵ Ibid

⁶⁶ Ibid

The United States of America serves as an instructive example in addressing trafficking offenses related to firearms. The U.S. has implemented comprehensive federal laws, including the Gun Control Act of 1968 and subsequent amendments, that specifically target the illegal trafficking of firearms.⁶⁷ The U.S. imposes stringent regulations on federally licensed firearm dealers, requiring them to maintain records of firearm sales and report multiple sales of handguns to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). This helps trace and track firearms in the event of trafficking.⁶⁸

Federal laws explicitly prohibit the trafficking of firearms, including the illegal transfer, sale, or transportation of firearms across state or international borders with the intent to engage in criminal activities. The U.S. laws stipulate severe penalties for individuals engaged in firearms trafficking. These penalties include significant fines and lengthy prison sentences, acting as a deterrent to potential traffickers. The legislation encourages collaboration between federal, state, and local law enforcement agencies to combat firearms trafficking effectively. This multi-agency approach enhances information-sharing and enforcement capabilities.⁶⁹

4.8.1 Recommendations for Kenya

Kenya can consider enacting comprehensive legislation specifically targeting firearms trafficking. Such legislation should define trafficking offenses, establish strict penalties, and provide law enforcement with the necessary tools to investigate and prosecute offenders.

Kenya should implement strict regulations on firearm dealers, requiring them to maintain detailed records of sales and report suspicious activities. This aids in tracing the movement of firearms and identifying potential trafficking patterns.

Kenya should introduce clear prohibitions on the interstate trafficking of firearms, emphasizing the illegal transfer or sale of firearms across regional or national borders with criminal intent.

We should establish severe penalties for individuals involved in firearms trafficking. This includes substantial fines and lengthy prison sentences to deter individuals from engaging in illegal activities related to firearms.

⁶⁷ Association of Firearm and Tool Mark Examiners available at <https://afte.org/> accessed 13 November 2023

⁶⁸ Ibid

⁶⁹ Ibid

We should also promote collaboration between various law enforcement agencies at the national, regional, and local levels. Cooperation enhances the ability to track and investigate firearms trafficking activities effectively.

5. Conclusion

In the course of examining Kenya's firearms licensing law and drawing insights from international experiences, it becomes evident that a comprehensive reform is imperative to address the multifaceted challenges associated with firearm regulation. The reported incidents of misuse underscore the urgency of revisiting the existing legal framework to align it with contemporary needs and global best practices.

The comparative experiences from countries such as the United States of America, Canada, Australia, the United Kingdom, and Sweden offer invaluable lessons for Kenya's policymakers. Establishing a robust Firearms Registration Information System (FRIS) emerges as a crucial step, mirroring successful implementations in Sweden and Canada. Such centralized databases not only streamline information management but also enhance real-time monitoring and investigation capabilities.

Restricting the number and types of firearms per household, as observed in Japan, presents a prudent strategy to curtail potential risks associated with firearm ownership. The incorporation of psychological assessments in licensing decisions, akin to Germany's model, adds a layer of scrutiny that can contribute to responsible firearm ownership.

The establishment of independent tribunals, exemplified by the United Kingdom, provides an avenue for impartial adjudication, ensuring transparency and fairness in the appeals process. Further, regulations on the disposal of firearms and ammunition, inspired by Canada's approach, can mitigate potential security risks associated with the handling of these items.

Australia's model for handling firearms owned by deceased license holders emphasizes the need for clear procedures and legal frameworks to manage the transfer or surrender of such firearms. Additionally, addressing trafficking offenses, guided by the stringent laws in the United States of America, is crucial for preventing the illicit trade of firearms.

A holistic approach to firearm regulation in Kenya necessitates a multifaceted reform strategy that encompasses legal, technological, and procedural dimensions.

By adopting the lessons learned from diverse international experiences, Kenya can forge a path toward a more secure, accountable, and responsible firearms licensing system, ultimately safeguarding both individual rights and public safety. The evolution of Kenya's firearms regulations must align with the dynamic nature of contemporary challenges, fostering a resilient and effective framework for the future.

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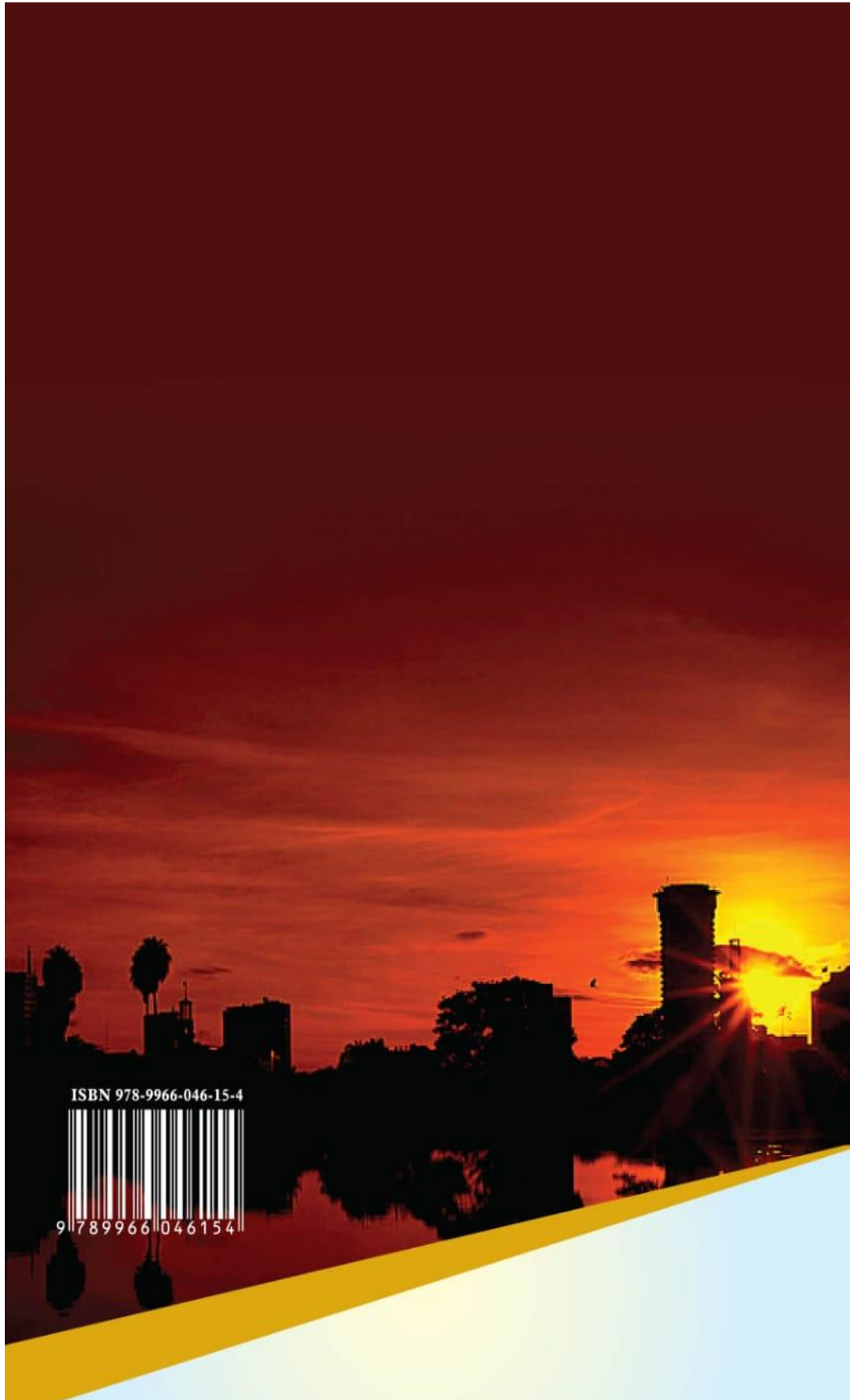
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