

## **Open Letter To Professor De Vos**

Professor Pierre de Vos' recent article on his blog entitled "[Guns kill people](http://constitutionallyspeaking.co.za/guns-kill-people-with-a-little-help-of-the-people-who-own-them/)" (<http://constitutionallyspeaking.co.za/guns-kill-people-with-a-little-help-of-the-people-who-own-them/>) should be read by all people interested in the pro-anti gun debate. This type of writing from a constitutional expert under the guise of intellectual debate typifies the anti-gun debate based on emotion, but short on fact and understanding of the fundamentals of the debate.

Firstly, let me make it clear that all pro-gun organisations respect the right of choice, i.e. you can choose not to have a firearm and that choice will be respected by us. Not so the anti-gunners, who feel that they have a right to dictate what rights their fellow citizens may have.

De Vos does not see or understand the inherent contradiction in his recognition for the support of the police's right to shoot to kill and his antigun stance. The rights contained in Section 49 of the Criminal Procedure Act are rights that all citizens have, not just the police. That is the first fundamental mistake that de Vos and others like him continually make. We must not forget that Section 49 was amended by our current government to take into account the advent of our new constitution and to acknowledge the right to life and the presumption of innocence. Section 49 in essence has two basic elements to it. The first is that any person who is under direct threat of serious physical harm may use force, including lethal force to protect themselves and anyone else whom they have a legal interest or obligation to protect. This part of Section 49 is to some extent a reflection of our common law right to private defence. The second part of Section 49 is the problematic part, because it gives the police and citizens the right to use lethal force in trying to effect an arrest, but subject to certain strict conditions (In my view it is the job of the police to arrest criminals and private citizens should not use legal force to effect arrests).

De Vos' contradiction is to give the police more powers whilst removing the right to self-defence from private citizens. What de Vos has perhaps overlooked is that there has been a massive growth in the private security industry, because of the police's inability to protect private citizens. In the event that guns are removed from private citizens and allowing police to shoot and kill (a right that they already have), everybody's level of protection will be substantially reduced and it is not going to deal with the crime problems in this country and is a simplistic solution that cannot work in current social circumstances.

This illustrates another flaw in de Vos' article. He and many others are quick to say "take all guns out of society and crime will be reduced", but they have no idea how to reduce crime and specifically how the removal of firearms will reduce crime. This in turn illustrates another factual shortcoming by de Vos and his ilk. There is no evidence anywhere in the world that removing guns from licenced firearm owners reduces crime. To take the latest example (and there are many) according to an article in the weekly Telegraph of the United Kingdom, United Kingdom gun crime has doubled in a decade. For those who know something about firearm history the United Kingdom progressively banned different types of firearms until, as of 1997 only shotguns and rifles are available for sporting use in the United Kingdom. Notwithstanding the bans on pistols, revolvers and self-loading rifles, crime with firearms has doubled, particularly with those types of firearms that have been banned. The statistics can be seen at [www.telegraph.co.uk](http://www.telegraph.co.uk), see <http://www.telegraph.co.uk/news/uknews/crime/6073001/Government-claims-of-falling-gun-crime-undermined-by-new-report.html> for one example. Coincidentally the United Kingdom has more firearms per capita than South Africa.

The next argument, which is an emotional one (and as an academic de Vos should know not to argue emotionally, but factually) is that he would rather face a criminal with a knife than one with a gun whose intent is on doing him harm. We all would rather face a criminal with a knife than a gun (unless you have a gun of course), but this argument does not tell us how to take guns or knives out of the hands of criminals, which is a consistent shortcoming of the arguments of the anti-gunners. Many anti-gunners argue that by banning guns, guns will be taken out of the hands of criminals. This presumes that criminals are prepared to surrender the tool of their trade. If you ask any career criminal he will say that he would prefer to have unarmed and unprotected victims, because it will make his/her job easier to rape, rob and murder.

Professor de Vos is correct in stating that the South African Bill of Rights does not contain any reference to a right to own firearms. What Professor de Vos ignores, or does not know, is that when our constitution was drafted and the Government received submissions on what should be contained in the Bill of Rights, pro-gun groups made the second largest number of submissions to Parliament requesting the embodiment of a right to own firearms in the Bill of Rights. Only the Prolife Lobby made larger submissions. This is a typical example of Government ignoring the wishes of its citizens.

In a recent News 24 poll, which asked its readers whether gun laws should be re-examined, 30% of the voters said yes and 70% said no. These poll percentages have been relatively consistent since they have been taken after 1996 by a variety of media organizations. This merely illustrates that as much as we would like to believe that the Bill of Rights embodies the rights of the citizens of South Africa, what the Bill of Rights effectively does is embody the wishes of the politicians who drafted the Bill of Rights, which politicians effectively ignored many of the substantial submissions made to them by a variety of interest groups when the Constitution was in the process of being drafted, because they did not agree with them. So much for democratic choice.

We all have a right to property and life. Unfortunately for Professor de Vos there are two recent High Court decisions where in both instances parts of the Firearms Control Act have been successfully challenged on a constitutional basis. The Justice Alliance case in Cape Town resulted in the Minister of Police being ordered to provide guidelines for the payment of compensation for firearm owners who have surrendered firearms. It is of great concern to me and many other practicing lawyers that notwithstanding what the Constitution says, senior Government officials have stated that when persons are forced to give up firearms, there will be no compensation payable. Where is their respect for property rights in this attitude? In the Pretoria High Court case of the South African Hunters & Game Conservation Association Judge Bill Prinsloo indicated that there is *prima facie* evidence that many provisions of the Firearms Control Act are unconstitutional.

There have been other pronouncements, both reported and unreported on the competence of the South African Police Services to effectively implement the Firearms Control Act in a manner that is reasonable, fair and consistent with the Constitution. *Lazarides v the Chairman of the Appeal Board* is one reported example and the matter of *Black v The Chairman of the Appeal Board*, which is unreported, is another example. I will gladly provide Professor de Vos with a copy of the *Black* judgment, because it shows how far our Government and its organs have slipped in understanding its own legislation and applying it effectively.

The next argument that de Vos perpetrates is straight from the pages of the "Gun free - How to argue" manual is that many people are actually killed by the guns that are owned by them. I am not sure where de Vos obtains his facts from, but I am aware of one study by Gun Free South Africa of dockets done in certain jurisdictions relating to this issue, which "proved" that guns do not protect people. The difficulty I have with this is quite simply that I cannot trust any research done by an organization that is biased in favour of a particular viewpoint. It is for this reason that organizations such as the South African Gun Owners Association do not conduct their own research, but rely on independent research, which can be trusted and if necessary factually verified. I have to disregard any research by any organization that has as a vested interest, the need or desire to prove a particular viewpoint, because the integrity of the researchers employed or retained by such organizations cannot be trusted and nor can the research.

It is quite clear however that independent research, such as that done by John Lott or Gary Mauser, clearly illustrates that with a greater prevalence of guns there is less crime. This viewpoint is supported by virtue of the fact that as the United Kingdom example illustrates; banning firearms does not lead to a reduction in gun crime, but leads to an increase in gun crime. The anti-gunners have no answer to this factually correct argument, because these facts are independent of any particular subjective viewpoint or dogma.

De Vos' final argument that banning guns would protect ordinary South African citizens from violent crime again repeats the flaw that this argument cannot explain how by banning legal guns criminals will stop using their illegal guns. Criminals operate outside of the law by definition and there is more than enough legislation that makes the carrying of an unlicensed firearm illegal with severe penalties. I bet de Vos does not know that possession of a fully automatic firearm carries a harsher sentence than if one were convicted of murder. He probably does not, and the fact that the Firearms Control Act contains such a harsh penalty still does not mean that criminals have rushed to hand in their firearms, because of their fear of being convicted. The United States has an extremely strict penal system where for example if you are sentenced to life imprisonment it means that you will die in prison and not be released after 15 years as is the case in South Africa. Since the mid 1970's, crime, particularly gun crime has consistently been declining in America, notwithstanding a massive increase in civilian possession of firearms.

Brazil recently conducted a referendum on whether private ownership of firearms should be permissible and much to the anti-gunners chagrin, 60% voted in favour of retaining private ownership of firearms. The international anti-gun movements pumped massive resources and campaign funds into Brazil, but failed to convince normal ordinary Brazilians that their arguments were convincing enough to vote 'no' to private ownership of guns.

I trust therefore that de Vos will do as we do, which is to respect the wishes and rights of his fellow citizens, particularly if your arguments cannot be factually supported and are based on flawed emotive assumptions. We respect yours Professor de Vos. Please do us the courtesy of respecting ours.

MARTIN HOOD