

Gun Ban Position Paper

Position paper

*Peaceful Responsible Owners of Guns (PROGUN)
and United Airsoft Alliance (UAA)*

PROGUN opposes a Total Gun Ban

A total gun ban is unrealistic and not feasible within the Philippines. While other countries and organizations such as IANSA (International Action Network on Small Arms) may advocate such a ban, the conditions prevailing in other countries as well as the Western European countries where IANSA has its base, are different from the Philippines.

Unlike the Western countries, the Philippines suffers from rampant crime in the form of robberies and thefts, kidnapping, drug violence, terrorism in the South, Communist insurgency, and political and profession related killings. In spite of the best efforts of the Philippine National Police (PNP) and the Armed Forces (AFP), these crimes have not been curbed or lessened over the years. If anything, the crime situation in the country has gotten worse.

The mandate of the PNP is to preserve general state of peace and order. **The PNP are not mandated to protect individual citizens** on a 24 hour basis, seven days a week. Stated otherwise, the police cannot be present everywhere and always to protect its citizens. For this reason, the more affluent Filipinos hire private security guards for their homes and subdivisions or personal bodyguards for the even wealthier. However, for the ordinary citizens who are not as moneyed, a total gun ban would leave them totally defenseless against criminal elements.

There are insufficient number of police to protect the citizenry

On a per capita basis, there are clearly insufficient number of police with which to provide protection for the entire citizenry. Moreover, due to lack of financial resources, our police are under-equipped and lack the crime fighting tools that they ought to have in their inventory such as police cars, firearms, non-lethal weapons, communications equipment, and precinct jails and facilities.

Police work is reactive rather than proactive. This means that police often fail to be present at the scene of the crime to prevent the crime from happening; rather the police arrive after the crime has been committed for investigation and pursuit of the criminal. This is small consolation for the families of victims who have already been murdered, assaulted, kidnapped or raped. Moreover, a large number of crimes are not even solved. Consider the following unsolved murder victims:

- Judges Henrick Gingoyon (RTC-Pasay) and Voltaire Rosales (RTC-Tanauan), who were shot dead in relation with cases that they were handling.
- *Justice Valerio* of the Office of the Government Corporate Counsel (OGCC) shot dead in front of his home upon arrival at night.
- *Arm Scor Vice president Danny De La Paz* who was shot dead on the way home from the plant by hired gunmen. De la Paz, who was an accomplished competitive shooter, was unable to carry his firearm at that time due to the COMELEC gun ban.
- *The numerous journalists and broadcasters* who have been shot dead on occasion of their handling of sensational issues.

This deficiency is recognized by civil society. **Consequently, the modern concept of crime prevention is the citizens acting in conjunction with the police in community crime prevention.** Thus, barangay tanods and police, neighborhood watches, and private security guards supplement the police in their crime prevention work. This also should include a responsible armed citizen base, who may bear their firearms in protection of themselves, their families and their homes, until such time as the police may arrive. These are recent actual cases that prove that the prudent use of firearms in the hands of a competent citizen, saves lives:

- In the recent case of Sonny Parsons, in Marikina City, he used a lawfully licensed pistol to protect himself and his family against drug crazed criminals who entered his house and attempted to rob his family and rape his daughter. The shooting was held to be justified in the Parsons case, by the Marikina City Prosecutor's Office.
- Prosecutor Jonathan Lledo of the Quezon City Prosecutor's Office used a concealed Glock 26 to restrain an amok inmate who got loose in open court and wield a concealed ice pick. The inmate who attempted to kill Judge Rosanna Fe Maglaya of RTC-Qc Branch 85, and who took a court stenographer as hostage, as subdued by prosecutor Lledo and the BJMP guards who arrived later.
- Champion Shooter Grace Tan was acquitted of homicide when she shot a criminal whom she caught in the act of trying to steal her car. Tan, who had surprised the criminal, was attacked her judicious response immediately neutralized the criminal without any further incident.

The right to life and self-defense is a natural, human right

The right of citizens to life, liberty and property is enshrined in our Constitution. This means that each and every Filipino has a fundamental and inalienable right to maintain and protect his own life and that of his family, and others, if necessary. **The State cannot enact legislation which would curtail or prevent the right of its citizens to life or defense thereof**, otherwise such laws or rules would be unconstitutional. Thus Article II Section 5 of the Constitution provides:

Sec. 5. The maintenance of peace and order, and the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all people of the blessings of democracy.

Article II Section 1 of our Constitution, similarly provides that:

"Sec. 1 No person shall be deprived of life, liberty, or property without due process of law, not shall any person be denied the equal protection of the laws."

The right to life, and the defense of the right to life, is a human right. The right to life is in fact the most basic right from which all other human rights flow. Article 3 of the Universal Declaration of Human Rights states, "Everyone has the right to life, liberty, and security of person." Moreover, the Covenant on Civil and Political Rights states:

"Every Human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life."

Use of firearms in Self-Defense is supported by the court rulings

Statutory law likewise recognizes the right to self defense and the corresponding use of firearms to accomplish the purpose of defense of life of law abiding citizens. Article 11 of the Revised Penal Code specifically authorizes self-defense as an exempting circumstance, and the "reasonable means employed to prevent or repel" such unlawful aggression. Thus, a defender who employs force to repel unlawful aggression does not incur any criminal liability when he uses "reasonable means to prevent or repel". The same article likewise applies to any one who acts not only in defense of his person, but also his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those by consanguinity within the fourth civil degree, or even a stranger.

"Reasonable means necessary to prevent or repel" an unlawful aggression necessarily includes the right to use a firearm in self-defense. This has been proven in a long line of Supreme Court cases. No less than a former President and Chief Justice of the Philippines, Jose P. Laurel, was absolved by the Supreme Court for killing a man with a fan knife, in a fiesta fight when his life was threatened. (People vs. Jose P. Laurel). Some examples of the courts upholding the use of firearms as reasonable means for self-defense are:

- **People vs. Lara, 48 Phil 153** – Use of a pistol to kill an attacker who was much larger than the defender and who threatened the life of the defender, was held to be reasonable means and justified.
- **People vs. Benito 70 OG. 5540** – Use of a rifle to kill a pistol-armed attacker was held to be justifiable self-defense.
- **People vs. Caina** – A police officer who used his firearm to shoot and kill a knife wielding assailant was held to be reasonable and justifiable.
- **People vs. So** - "When a lawless person attacks on the streets or in the victim's home, he assumes the risk of losing his life from the act of self-defense by the firearm of his victim; otherwise law abiding citizens will be left at the mercy of lawless elements. Hence, the requisite of reasonable necessity of the means employed to prevent or repel unlawful aggression should, in these times of danger be interpreted liberally in favor of the law abiding citizens."

Thus, while the Constitution or the law does not explicitly state the word "firearm", the Supreme Court rulings are clear that **Firearms are indeed a matter of right which can be used by law abiding citizens in self-defense scenarios**. Otherwise, were it not so, the concept of self-defense as against a gun or knife wielding criminal who attacks a law abiding citizen, would be meaningless. Hence, even if the Philippines does not have an explicit "2nd amendment" right as in the U.S., these criminal rulings and statutes clearly prove that Philippine citizens have a right to lawful self-defense, and to wield the tools necessary to implement their defense.

Owners of Legitimate, Licensed Firearms are not criminals

It should be stressed that legitimate, licensed firearms owners are not criminals. The statistics of the PNP-Firearms and Explosives Unit indicate that of all crimes involving the use of firearms, less than 1% are committed by people using licensed firearms. The vast majority, or 99%, of crimes involving firearms are committed using unlicensed firearms.

Thus, gun bans of licensed firearms are never effective in preventing crime because precisely, criminals do not use licensed firearms. Whether there is a gun ban or not, criminals will still be able to obtain and use illegal firearms.

The problem of criminal use of illegal firearms is a crime problem. Stricter gun licensing or gun bans are not the solution. When a sensational crime is committed with the use of a firearm, it is illogical to enforce a gun ban on law abiding citizens who are not the perpetrators of such crime. Precisely, the response of law enforcement should be to catch the criminals, not to punish law abiding citizens.

Total Gun ban is proven to be a failure in real life

Historically, total gun bans have been proven to be failures in societies where such policy is implemented. Cities where the highest crime and terrorism exists, are in fact cities with total gun bans. Some examples of localities wherein there are total gun bans and yet have the highest crime rates are Detroit, Washington D.C., New York City, Los Angeles, and Belfast Northern Ireland. In the Philippines during the total gun ban imposed by martial law, firearms were readily available and were sold and transferred openly with impunity, most especially among criminals. There was no drop in crime rate then.

Inversely, in a number of countries wherein there is an open policy on firearms, crime rates are practically zero. For example in Switzerland and Israel, every male above 18 years is required by

law to possess a military assault rifle in his home. And yet, in these countries the crime rate, particularly, from shootings, is practically zero. Clearly there is no direct correlation between Gun bans and crime prevention.

In the Philippines, **the COMELEC total gun ban has failed to prevent the hundreds of people from getting shot and killed** every election period thru election related violence. The vast majority, if not all, of these election related shootings are committed not by responsible licensed gun owners, but by professional gunmen or hired goons wielding unlicensed firearms. Ironically, when election period is over and the COMELEC gun ban is lifted, the crime and shooting rate goes down significantly. There is thus no direct correlation between the COMELEC gun ban and a decrease in firearms involved crimes, in fact the inverse is true. PROGUN does not therefore support the COMELEC Gun Ban.

Improvement of Firearms Licensing and Registration

The right to possess a firearms would become illusory, if the cost for obtaining a license and the requirement therefore would be so prohibitive that no one could possibly comply with, or pay the fees. PROGUN has always recommended and requested for:

- **Lower firearms license fees and permit to carry fees.** The cost of the fees must also consider the costs of obtaining all requirements for licensing, which as of this writing amounts to approximately P6900 for a 4 year license. We consider this prohibitively expensive. It also discourages otherwise lawful middle class citizens from obtaining licenses for their guns and registering their firearms.
- **Less red tape** for licensing and registration- The more requirements that are required for a firearms license, the more red tape and potential corruption there is. If there are too many requirements for a gun license application, gun owners are forced to resort to “fixers” who offer “non-appearances” for their requirements. This is bad for the PNP since unqualified gun owners could obtain licenses, and bad also for qualified gun owners to have to resort to such dubious services from “fixers”, and pay more.
- **Implement on-line registration** through the internet and decentralize the licensing and registration process in favor of the FESAGS and regional commands.

To make it easier for both the PNP and gun owners to obtain licenses and register their firearms, PROGUN suggests the following:

- **License the individual, not the firearm** – The individual, and not the firearm, should be tested, qualified, and licensed. A gun owner should not have to go through the licensing process (with all the requirements) over and over again for every firearm he purchases. This is not only unnecessarily repetitive and time consuming, it adds to the red tape. A better solution would be to require the individual firearm owner to apply for and obtain a license which is renewable every four years (like a drivers license). The license holder may use his license for any and all purchases of firearms. But each firearm purchased will have a one-time registration fee. A limit on the number of firearms purchased by a single individual may be imposed such as 10 firearms person.
- **Lower fees and liberalization of Permit-to-Carry Outside of Residence.** This is the heart of firearms ownership inasmuch as a firearm to be truly effective as a crime prevention instrument must be carried at all times, because crime strikes anywhere, especially when you least expect it. We also recommend that licensed gun owners be allowed to keep licensed guns in their cars even without PTCFOR.
- No restriction as to caliber, mechanism and action type, so long as the weapons are classified as Small Arms.
- **60 day grace period** for renewal upon expiration of firearm license.

Special categories of Firearms licenses and permits

PROGUN recognizes the following special categories of firearms holders, which should have a separate and distinct treatment, and fee, from other license holders, to wit:

Collectors of relics - Recognizing that some firearms owners are collectors of large quantities of old and collectible firearms, It is recommended that a special category of license be implemented for collectors of firearms relics. A one time fee of P20,000 covering the entire collection of firearms relics. Individual one time registration of collectors firearms. No restriction as to caliber, mechanism and action type, so long as the weapons are classified as Small Arms. For purposes of definition, relics are firearms that are at least 50 years old, or later firearms that are classified as relics by a competent museum curator.

Competitive Shooters – Lower license fees for Olympic and competitive shooters. Permit to transport nationwide and generous limits for transporting ammunition. These competitive shooters are bringing glory to our country thru competition, hence they should be granted incentives as well as to promote and encourage participation in the shooting sports.

Hunters – There is a large sport hunting community in the Philippines. Hunters should to be given permit-to-hunt nationwide or permit-to-carry, with excepted regions with insurgency.

Amnesty for firearms

PROGUN supports the amnesty for loose firearms. This will enable the holders of loose firearms to return to the fold of the law and for the PNP to get unlicensed firearms off the streets. The proliferation of unlicensed firearms in the general public will eventually become a crime problem for the police, if it is left unchecked. Consequently, it is in the better interest of the PNP to holds amnesties for the registration and licensing of loose firearms.

PROGUN also supports and recommends that amnesty for loose firearms should be for unlimited number of firearms, so as to encourage as many firearms registrations as possible, consistent with the rationale of an amnesty.

PROGUN also supports and strongly urges the amnesty for expired firearms licenses. Out of a total of 1,200,000 licensed firearms, 600,000 have failed to renew their licenses. The reason was either cost or ignorance of procedure. If the PNP imposes large penalties and back fees for the renewal of these expired licenses, it would no longer be attractive for the gun owners to renew their licenses (which is the main reason, actually). We propose that the PNP have an amnesty for expired firearms license holders and waive all back fees and penalties, and charge only the current fees. This would make it less of a financial burden upon the guns owners, most of whom own more than one firearm, and encourage these holders of expired licenses to come out and renew.

The projected revenue for the government, if all 600,000 expired license owners would renew their licenses at current rates, would be NINE HUNDRED TEN MILLION PESOS (P910,000,000.00.)!

Airsoft guns and replicas

PROGUN and United Airsoft Alliance (UAA) initiated the legalization of the airsoft guns in support of various airsoft teams which played these types of war games nationwide. As a result, then Chief PNP Avelino Razon signed PNP Order No. 12 dated December 2007, for the one time registration of airsoft guns and a nationwide permit-to-transport. Considering the success of this endeavor and the corresponding income in fees generated for the government, we strongly recommend that this arrangement be maintained.

OTHER CONCERNS

Accounting of Firearms (AFP, LGU's Other government and juridical entities)

The accounting of firearms inventories of the Armed Forces (AFP), Philippine National Police (PNP), and Local Government Units (LGU's) is a simple matter of maintaining the proper

documentation for each firearm issued to each individual or unit. Regular paper work would suffice, but if finances would permit a computerized data base of such firearms, their source, and end user, would be a more efficient system of tracking firearms, and ultimately preventing them from falling into the wrong hands.

Accountability for lost or stolen firearms within the unit should be the command responsibility of the unit commander.

For Local Government Units, responsibility for the loss or theft of the firearms within the LGU should be borne by the head of the LGU concerned.

There should also be strict implementation of the serial number listings of the firearms, registration, and to whom the firearm is issued.

For firearms which are in court custody (custodia legis) as part of evidence of a crime, the firearms must be surrendered to the PNP-FED as soon as the case is terminated.

Responsibility for loss or theft of firearms in custodia legis should fall upon the presiding judge and/or the Clerk of Court of the branch.

Review and strengthen Supreme Court Administrative Rules on disposition of firearms and criminal evidence in terminated cases.

Impose administrative and/or criminal sanctions for negligence of judicial employees.

Owner of lost firearm should be compensated at the fair market value of the lost firearm or firearm accessories.

This position paper may be freely downloaded from the PROGUN website:
<http://progun.ph/gun-ban-position-paper>

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