

Board: Dr. Herman Els; Mr. Juan Kolud; Mr. Robert F. Young, Jr.; Mr. Harold Els;

Done under our hand on this 2nd day of December 2019:

Herman Els:




Juan Kotzé:



Robert F Young (Jnr):



Hardus Els:



67 HEZ



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF POLICE

NO. 1527

27 NOVEMBER 2019

DECLARATION OF AN AMNESTY IN TERMS OF SECTION 139 OF THE FIREARMS CONTROL ACT, 2000 (ACT NO. 60 OF 2000)**MINISTRY OF POLICE**

By virtue of the powers vested in me by section 139(1) of the Firearms Control Act, 2000 (Act No. 60 of 2000), I General Bhekokwakhe Hamilton Cele, Minister of Police, hereby declare an amnesty as defined in section 138 of the said Act.

Under section 139(2)(b) of the Firearms Control Act, 2000, I determine the period during which persons may apply for amnesty to commence on 1 December 2019 to 31 May 2020). Under section 139(2)(c) of the Firearms Control Act, 2000, I determine the conditions under which amnesty will be granted, to be as follows:


- (a) A written application for amnesty by an applicant must, with the exception of the police stations set out in the Annexure, be handed to the duly appointed Designated Amnesty Officer at any police station in the Republic of South Africa. The application must state the full names, identity or passport number and residential address of the applicant, as well as the type, calibre, make, model and all marked serial numbers or other identification marks on the firearm or the particulars of the ammunition;
- (b) The firearm or ammunition concerned must be surrendered by the applicant to the Designated Amnesty Officer at the relevant police station and the Designated Amnesty Officer must issue a receipt in respect of such firearm or ammunition to the applicant; and
- (c) An applicant for amnesty who wishes to apply for a licence to possess the firearm surrendered by him or her as contemplated in section 139(4) of the Firearms Control Act, 2000, must when surrendering the firearm, in writing, for a licence to possess the firearm. The application for a licence must be lodged within 14 days from the date on which the firearm was surrendered with the relevant Designated Firearms Officer (the



relevant Designated Firearms Officer has the meaning assigned to it in the Firearms Control Regulations, 2004).

- (d) An application contemplated in section 139(4)(a) of the said Act shall not apply to illegal firearms where documentary proof of previous ownership cannot be produced.

I further determine that the South African Police Service must conduct ballistic tests on all firearms surrendered in terms of this amnesty, and if an application for a licence to possess the firearm as contemplated in paragraph (c) of this Notice is not duly lodged, or has not been lodged within the specified period, such firearm must be destroyed in accordance with Regulation 93(4) of the Firearms Control Regulations, 2004.



GENERAL BH CELE, (MP)
MINISTER OF POLICE
28/08/2019

ANNEXURE

NAME OF PROVINCE	NAME OF POLICE STATION
KwaZulu-Natal	Isipingo
Western Cape	Bellville South
Mapumalanga	Kanyamazane

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CASE NO: 33656/2009

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

PRETORIA 26 JUNE 2009

BEFORE THE HONOURABLE MR JUSTICE POSWA

In the matter between:

THE SOUTH AFRICAN HUNTERS AND GAME
CONSERVATION ASSOCIATION

APPLICANT

AND

THE MINISTER OF SAFETY AND SECURITY

RESPONDENT

HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of record

IT IS ORDERED

1. THAT all firearm licences contemplated in sub-item 1 of item 1 of schedule of the firearms control Act, Act 6 of 2000 shall be deemed to be lawful and valid pending final adjudication of the main application ;
2. THAT this order shall operate as an interim order, with immediate effect, pending final adjudication of the main application relating to this case.
3. THAT the costs of this application will be costs in the main application.



BY THE COURT

REGISTRAR

☐ Att: Nell
HIGH COURT TYPIST: J Maphopha

RELEVANT SECTIONS IN THE ACT:

1. Section 138 of the Act defines an amnesty as follows:

"138. Definition- In this chapter "amnesty" means an indemnity against prosecution for the unlawful possession of a firearm or ammunition"

2. Section 139 of the Act deals with the declaration and conditions of the amnesty itself, as follows:

"139. Amnesty (1). The Minister may by notice in the Gazette, declare an amnesty if

(a) the amnesty may result in the reduction of the number of illegally possessed firearms in South Africa; and

(b) it is in the public interest to do so.

(2) A notice contemplated in subsection (1)

(a) will only be valid if it is approved by Parliament

(b) Must specify the period during which person may apply for amnesty;
and

(c) must specify the conditions under which an amnesty may be granted.



(3) A person who surrenders a firearm or ammunition in compliance with a notice published in terms of subsection(1), may not be prosecuted in relation to-

(a) the firearm, for having been in possession of the firearm without that appropriate licence permit or authorization; or

(b) the ammunition, for having been in possession of that ammunition without having been in lawful possession of a firearm capable of discharging the ammunition.


(4) (a) A person who surrenders a firearm in compliance with a notice published in terms of subsection (1), may apply in terms of this Act for a licence in respect of that firearm;

(b) If a licence is granted the firearm and ammunition, if any, surrendered in terms of this Act must be returned to the holder of the licence.

(5) The Registrar must dispose of any firearm or ammunition surrendered in compliance with a notice in terms of subsection (1) in such manner and after expiry of such period as may be prescribed." (Emphasis added.)

SECTION 24 RENEWAL OF FIREARM LICENCES:

(1) The holder of a licence issued in terms of this Chapter who wishes to renew the licence must at least 90 days before the date of expiry of the licence apply to the registrar for its renewal.

A handwritten signature, possibly reading 'M. M.', is enclosed within a large, hand-drawn oval. To the right of the oval are the initials 'A.A.'.

SECTION 27. PERIOD OF VALIDITY OF LICENCE OR PERMIT.

A licence or permit mentioned in Column 2 of the Table below remains valid for the period mentioned in Column 3 of that Table.

SECTION NUMBER	TYPE OF LICENCE	PERIOD OF VALIDITY
13	SELF DEFENCE	FIVE YEARS
14	RESTRICTED FIREARM FOR SELF DEFENCE	2 YEARS
15	OCCASIONAL HUNTING OR SPORT SHOOTING	10 YEARS
16	DEDICATED HUNTING OR SPORT SHOOTING	10 YEARS

28. Termination of firearm licence-

(1) A licence issued in terms of the Chapter terminates-

(a) upon the expiry of the relevant period contemplated in section 27,
unless renewed in terms of section 24;

.....

(6) any period contemplated in this section may be extended by the
Registrar on good cause shown.

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 21177/2016

Date:

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO ✓
(2) OF INTEREST TO OTHERS JUDGES: YES/NO ✓
(3) REVISED

4-7-2017 *[Signature]*
DATE SIGNATURE

In the matter between:

**THE SOUTH AFRICAN HUNTERS AND GAME
CONSERVATION ASSOCIATION**

APPLICANT

AND

**MINISTER OF SAFETY AND SECURITY OF THE
REPUBLIC OF SOUTH AFRICA**

RESPONDENT

JUDGMENT

[Handwritten signature]

of the Act. I am of the view that such an order is appropriate, at least until the Constitutional Court has made its determination on the matter.

[68] I make the following order:

- 68.1 Section 24 and 28 of the Firearms Control Act, 2000 (Act 60 of 2000) are hereby declared unconstitutional;
- 68.2 Parliament is given 18 months within which to effect the amendment of the Act in order to ensure constitutional compliance;
- 68.3 All firearms issued in terms of the Firearms Control Act, 2000 (Act 60 of 2000), which are or were due to be renewed in terms of section 24 of the Firearms Control Act, 2000 (Act 60 of 2000), shall be deemed to be valid, until the Constitutional Court has made its determination on the constitutionality of the aforesaid sections; and
- 68.4 The Respondent is ordered to pay the costs of the Applicant, which costs will include the costs of two counsel.


R G TOLMAY

JUDGE OF THE HIGH COURT



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South African Police Service

Suid-Afrikaanse Polisie

Privaatsak Private Bag	X94 PRETORIA	Faks No Fax No.	012 393 2616
Your reference/U verwysing:			THE NATIONAL COMMISSIONER
My reference/My verwysing:	3/5/2/157		DIE NASIONALE KOMMISSARIS
Enquiries/Navrae:	Maj Gen Motlhalo Maj Gen Mamotheti		PRETORIA
Tel:	012 421 8009 012 353 6581		0001

- A. The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
- B. ALL DIVISIONAL COMMISSIONERS
- C. ALL PROVINCIAL COMMISSIONERS
- D. The Head
CORPORATE COMMUNICATION
- E. All Heads
HEAD OFFICE
- F. All Section Heads
HEAD OFFICE
- G. All Commanders
SAPS ACADEMY AND TRAINING CENTRES
- H. ALL DEPUTY NATIONAL COMMISSIONERS
- I. The Chief of Staff
MINISTRY OF POLICE

**RENEWAL OF FIREARMS LICENCES IN TERMS OF SECTION 24 OF THE
FIREARMS CONTROL ACT, 2000 (ACT 60 OF 2000)**

- A-G.1. Circular 27/5/2/1 of the Acting Divisional Commissioner: Visible Policing dated 21 August 2015, has reference
- 2. The aim of this letter is to provide further clarity regarding the renewal of firearm licences.

**RENEWAL OF FIREARMS LICENCES IN TERMS OF SECTION 24 OF THE
FIREARMS CONTROL ACT, 2000 (ACT 60 OF 2000)**

3. Section 24 provides that: "The holder of a licence issued in terms of this Chapter who wishes to renew the licence must at least 90 days before the date of expiry of the licence apply to the Registrar for its renewal"
4. Applications for renewal of firearm licences must be lodged at least 90 days before the expiry of the licence. Applications for renewal may, however be considered if the application is lodged in less than 90 days, in which case reasons for the late application must be provided on the application form.
5. Licences for which renewal applications have been lodged as per paragraph 4 above will remain valid until the application has been decided upon.
6. The above scenario applies only to persons who possess licences issued under the Firearms Control Act, 2000 (Act 60 of 2000).
7. In terms of the Interim Court Order in the SA Hunters matter, the "Green Licences" issued under the Arms and Ammunition Act, 1969 (Act 75 of 1969) remains valid. This Order covers persons who at no stage migrated to the current Act of 2000. In the event such persons would like to apply for a licence under the Firearm Control Act, 2000, their applications must be dealt with as new applications and the person would remain in lawful possession of the relevant firearm under the "Green Licence" until the application has been decided upon.
8. In the case where a person want to renew or apply for a licence, but the validity of the licence has already expired, the person must be informed that he/she is not anymore in lawful possession of the firearm and that the firearm must be surrendered to the nearest police station.
9. When a firearm in respect of which the licence has expired is voluntarily surrendered, the owner will not be prosecuted.
10. The contents of this directive must be brought to the attention of all DFO's for compliance.

H-I.1. For your information.

memorandum
ACTING NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
JK PHAHLANE

Date: 2016-02-03

LIEUTENANT GENERAL

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79



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO. 46684/18

PRETORIA 27 JULY 2018

BEFORE THE HONOURABLE MR JUSTICE PRINSLOO

In the matter between:

GUN OWNERS OF SOUTH AFRICA ("GOSA")

APPLICANT

AND

THE NATIONAL COMMISSIONER OF POLICE
THE MINISTER OF POLICE

1ST RESPONDENT
2ND RESPONDENT

HAVING read the documents filed of record, heard counsel and considered the matter:

IT IS ORDERED THAT

1. The South African Police Service ("SAPS") as represented herein by the first and second respondents are prohibited from implementing any plans of action or from accepting any firearms for which the license expired at its police stations or at any other place for the sole reason that the license for the firearm expired, and the SAPS is prohibited from demanding that such firearms be handed over to it for the sole reason that license for such a firearm has expired, and this order will operate as an interim interdict, pending the further determination of this application as prayed for in paragraphs 3 to 9 below.
2. This matter is postponed to the opposed motion roll for further determination of the following relief, as prayed for by the applicant.
3. By declaratory order of court the periods referred to in sections 27 and/or 24(1) and 24(4) of the Firearms Control Act, Act 60 of 2000 ("the Act"), may be extended in terms of section 28(6) thereof in order for people that hold expired licenses to apply for the renewal thereof on good cause shown, within a period determined by the court.
4. The first respondent is to withdraw the circular issued by the Acting National Commissioner on 3 February 2016.

Private Bag X67, Pretoria 0001

2018 -08- 03

GD-PRET-006

- 2 -

5. The first respondent is to issue a directive that the information technology system of the Central Firearms Register be restored to a position that it is able to accept applications for renewal of licenses which are lodged inside the 90 (ninety) days' period envisaged in Section 24(1) of Act.
6. The first respondent is to issue a directive that the information technology system of the Central Firearms Register be restored to a position that it is able to accept applications for renewal of licenses which have expired because the period of their validity contemplated in section 27 of the Act has expired.
7. Any applications for renewal contemplated in paragraphs 5 and 6 above shall be subject to the requirement of "good cause" as contemplated in section 28(6) of the Act.
8. Any applicant who has lodged an application for renewal and who has *prima face* provided good cause in the relevant space provided in SAPS Form 518(a), shall be deemed to be in lawful possession of the firearm until his application has been decided.
9. Further and/or alternative relief.
10. The costs of this application, inclusive of the costs of two counsel, if applicable, are reserved for decision in main application.

BY THE COURT



REGISTRAR
VZ

Attorney: LARRY MARKS

Private Bag X67, Pretoria 0001
2018 -08- 03
GD-PRET-006

Firearm Amnesty: SAPS briefing; IPID Amendment Bill: status & way forward

HE 8

81

NCOP Security and Justice

11 September 2019

Chairperson: Ms S Shaik (ANC, Limpopo)

What follows below is just the minutes of the meeting referring to the firearms amnesty

Meeting Summary

The South African Police Services (SAPS) briefed on the proposed 2019/20 Firearm amnesty. The amnesty would grant indemnity against possession of illegal firearms. Owners could bring in firearms without being prosecuted, and could also apply for licensing of the surrendered weapon. The amnesty period would be from 1 October 2019 to 1 March 2020. The aim with the removal of illegal firearms was in the public interest, as firearms were the instrument most commonly used in especially violent crimes. Provinces had to conduct risks assessments, and there would be screening and vetting of amnesty officials. Nine storage facilities were identified in provinces and inspected for risk mitigation.

Members were not convinced that crime rates would be brought down, as it would be mostly law-abiding citizens who would surrender weapons. SAPS state of readiness for the project was questioned, as public trust and information about the project first had to be built and made available. There were risks attached to what would happen to collected weapons, and the possibility that criminals might target known storage facilities. Loopholes in the Firearms Control Act were alluded to. SAPS was instructed to take the Committee's issues on board and return with a re-submission.

The Committee received two presentations on the Independent Police Investigative Directory (IPID) Amendment Bill. The Parliamentary Legal Services explained the rationale of the bill. The Content Advisor highlighted the issues raised during submissions on the bill.

The Committee discussed procedural steps to be taken to process the Bill. There was a view that the Committee should review of the entire IPID Act. However, the counter and majority view was that Committee should only focus on the amendment relating to the removal of the Executive Director by the National Assembly.

Meeting report

Introduction by the Chairperson

The Chairperson noted that the Minister had stated that the SAPS wanted to institute a firearm amnesty project. Apologies were received from the Minister and Deputy Minister of Police. She allowed the police delegation leader to introduce the delegation. The delegation was led by Major-General Japhta, and the briefing would be presented by Major-General Mamotheti.



Briefing by the SAPS on the firearm amnesty

The briefing was presented by Major-General Maropeng Mamotheti.

Section 139(1) provides that the Minister of Police may, by notice in the Gazette declare an amnesty if the amnesty may result in the reduction of the number of illegally possessed firearms in South Africa and it is in the public interest to do so. Section 139(2) of the Firearms Control Act, 2000 (Act No 60 of 2000), also provides that such amnesty will only be valid if it is approved by Parliament.

The 2019/20 firearm amnesty would grant indemnity against possession of illegal firearms. Owners could bring in firearms without being prosecuted, and could also apply for licensing of the surrendered weapon. The amnesty period would be from 1 October 2019 to 1 March 2020.

The aim of the amnesty is

- To reduce the number of illegally possessed firearms in circulation in South Africa
- To provide firearm owners with the opportunity to hand in unwanted firearms
- To prevent crime and violence and to promote safety
- To address the fundamental causes of crime, in order to effectively protect our communities

The project would be conducted in 5 phases:

Phase 1: Planning

Phase 2: Implementation

Phase 3: Reporting and Monitoring

Phase 4: Destruction

Phase 5: Debriefing

A Steering Committee, consisting of all the role players was established and developed the action plan in terms of work breakdown structure. Provinces will conduct risks assessment and identify stations to be excluded in the project, before 15 September 2019. The implementation process flow and draft guidelines were developed and will be distributed to the provinces when the Amnesty is announced. A total of nine centralised storage facilities were identified in provinces and inspected for risks mitigations.

SAPS identified a number of risks and mitigating actions:

Theft of firearms

Process flow with actual days. o Vetting and screening of DFO's, including SAPS 13 members
Ensure security measures and accountability within the SAPS 13 stores

Damage to firearms

Identified central storage facilities in provinces to alleviate overcrowding

Delay in IBIS Testing process

Trained additional members in IBIS testing

Inadequate security and attacks on police stations

Police Stations to comply with the criteria on minimum standards

Access Control, in accordance with National Instruction 17 of 2019

Enhancement of security at Centralised storage facilities

Risk assessment will be conducted on continuous basis and alert responsible Reactionary Units

Communication of operation hours

Attacks or theft during transportation

Transportation plans developed to provide escort on bulk

Risk assessment will be conducted on continuous basis and alert responsible Reactionary Units

Increase in number of application for firearm licences

Decentralisation of fingerprints

Establish task teams for processing of applications

The removal of illegal or excess firearms is indeed in the public interest and is supported by the crime statistics, which indicates that firearms are the instrument most commonly used in the commission of crime, especially violent crimes. In order to ensure the success of the 2019 Firearm Amnesty, it is imperative that all the people of South Africa be involved in this project, to ensure that all people in South Africa are and feel safe.

Discussion

Mr E Mthetwa (ANC, KZN) remarked that he could see a gap. There had at first been the green firearm licence and then a card. Some owners still had the old form. When re-application was a month late, the licence could not be renewed and the firearm had to be handed in.

Mr G Michalakos (DA, Free State) commented that for the amnesty to be successful, trust had to be built among the public. How was that to be done? If weapons had to be stored centrally, there would have to be checks for weapons going missing. There was a case where a police officer had sold confiscated guns. The previous time a big chunk of the weapons got lost. What happened there had to be avoided in future. There were challenges around the operational status of the Central Firearm Registry (CFR). Did the moratorium on the intake of firearms affect the amnesty? It could be that most of the guns handed in would be from honest people who did not renew their licences. The amnesty could not bring down crime rates. There were loopholes in the Firearms Control Act that had to be closed, and only then could an amnesty be called for. The proposed exercise would not bear fruit.

Ms M Mmola (ANC, Mpumalanga) referred to slide 4, where it was stated that there would be no indemnity for weapons used for crimes like murder and robbery. There had been problems with that, the previous time. She referred to slide 7, where it was stated that provinces had to conduct risks assessments and identify stations to be used in the project, before 15 September. It was already 11 September. In how many provinces had assessments been conducted? There were nine centralised storage facilities. How would these be secured? There would be screening and vetting of officers employed in the project. Had any training been done for officers?

Mr Gxoyiya (ANC, Northern Cape) referred to planning *vis a vis* the commencement date. It was stated in the draft letter that there would be no amnesty if the previous owner could not be identified. There would also not be amnesty for firearms used for murder or robbery. Those are the weapons that are wanted, but most owners of such weapons would keep them.

Mr T Dodovu (ANC, North West) remarked that the project would not work. It was supposed to commence in 2017, but it was not finalised due to administrative delays. What had caused the delays? People were killed daily with illegal weapons, and it was not known how to quell that. The project was to start in three weeks and yet the public was not exposed to information. There had to be a campaign to make every SA aware of the project. He agreed with Mr Michalakakis that it would only be the law-abiding owners who would hand in the guns. The police had to go out and hunt for the illegal weapons. He was not convinced that any headway was being made, and there were risks attached to the project.

Mr S Mfayela (IFP, North West) remarked that when he was growing up police stations were safe places, but it was no longer the case. Ammunition was stored at police stations, with only a security guard to watch over it. Stations that were not safe could be robbed of weapons.

Mr I Sileku (DA, Western Cape) asked about the success and failure of previous amnesty projects. The Minister of Police had admitted that SAPS members confiscated and used guns. What did the SAPS do with guns?

Ms Z Ncitha (ANC, Eastern Cape) commented that she would have expected more reference to what was achieved in previous amnesty projects. Would the amnesty be extended across provinces? The conditions and safety of police stations were relevant. Criminals would target unsafe stations. How safe were police stations? The Committee was not satisfied with the readiness of SAPS to launch the project. There were challenges that made very few police stations qualified for the project.

Ms Mmola asked if there was stakeholder engagement before the decision to institute the project.

The Chairperson asked about communication. Would there be a centralised helpline or complaint line? Was there the necessary capacity, and how would theft be prevented? There would have to be centralised electronic information. The Committee had many issues. Amnesty might be necessary, but with the history of firearms control, it would be crucial to build public trust. There was still outstanding information required by the Committee. She proposed that the SAPS take the Committee's issues on board, and then return to make a re-submission.

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BRIEFING TO THE PORTFOLIO COMMITTEE ON POLICE

FIREARM AMNESTY 2019/2020

11 September 2019



ON A JOURNEY TO A SAFER SOUTH AFRICA

Creating a safe and secure, crime free environment, that is conducive for
social and economic stability, supporting a better life for all.

#PatrioticandSelflessService



Presentation Overview



1. Purpose
2. Background
3. Objectives
4. Implementation Phases
 - 4.1 Planning
 - 4.2 Execution
 - 4.3 Reporting and monitoring
 - 4.4 Destruction
 - 4.5 Debriefing
5. Risks and Mitigation
6. Conclusion



Purpose



To brief the Select Committee on Security and Justice, on the Draft Notice of Declaration of Amnesty, in terms of Section 139 of the Firearm Control Act, 2000 (Act No. 60 of 2000) and outline processes, in that regard.



Background



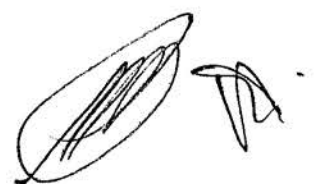
- ❑ Section 139(1) provides that the Minister of Police may, by notice in the Gazette declare an amnesty if the amnesty may result in the reduction of the number of illegally possessed firearms in South Africa and it is in the public interest to do so.
- ❑ Section 139(2) of Firearms Control Act, 2000 (Act No 60 of 2000), also provides that such amnesty will only be valid if it is approved by Parliament.
- ❑ In terms of Section 138 of the Firearm Control Act, "amnesty" means an indemnity against prosecution for the unlawful possession of a firearm and ammunition.
- ❑ In accordance with Section 139(4)(a) of the said Act, persons who surrendered these illegal firearms may apply for licences to possess same.
- ❑ The process to declare the Amnesty, commenced in 2017 and could not be finalised due to administrative delays.
- ❑ A project plan for Firearm Amnesty, for the period 1 October 2019 to 31 March 2020, was developed and costed, to ensure effective implementation and monitoring.
- ❑ The Steering Committee has been established to oversee the implementation and monitor the process.



Objectives



- 1 To reduce the number of illegally possessed firearms in circulation in South Africa
- 2 To provide firearm owners with the opportunity to hand in unwanted firearms
- 3 To prevent crime and violence and to promote safety
- 4 To address the fundamental causes of crime, in order to effectively protect our communities
- 5 To ensure people living in South Africa feel safe and have no fear of crime





Project Phases



- ☐ Phase 1: Planning
- ☐ Phase 2: Implementation
- ☐ Phase 3: Reporting and Monitoring
- ☐ Phase 4: Destruction
- ☐ Phase 5: Debriefing

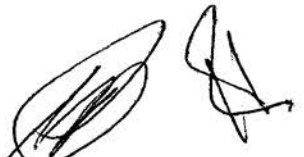


Phase 1: Planning



Objective: To ensure readiness of all provinces and police stations to implement Amnesty

- Steering Committee, consisting of all the role players established and the action plan developed in terms of work breakdown structure.
- Provinces to conduct risks assessment and identify stations to be excluded in the project, before 15 September 2019.
- Implementation process flow and draft guidelines were developed and will be distributed to the provinces when Amnesty is announced:
 - Transportation of firearms;
 - Screening and vetting of Designated Amnesty Officials and SAPS 13 Officials;
 - Criteria for appointment of Designated Amnesty Officials;
 - Identification of centralised storage facilities; and
 - Checklist
- A total of nine centralised storage facilities were identified in provinces and inspected for risks mitigations.





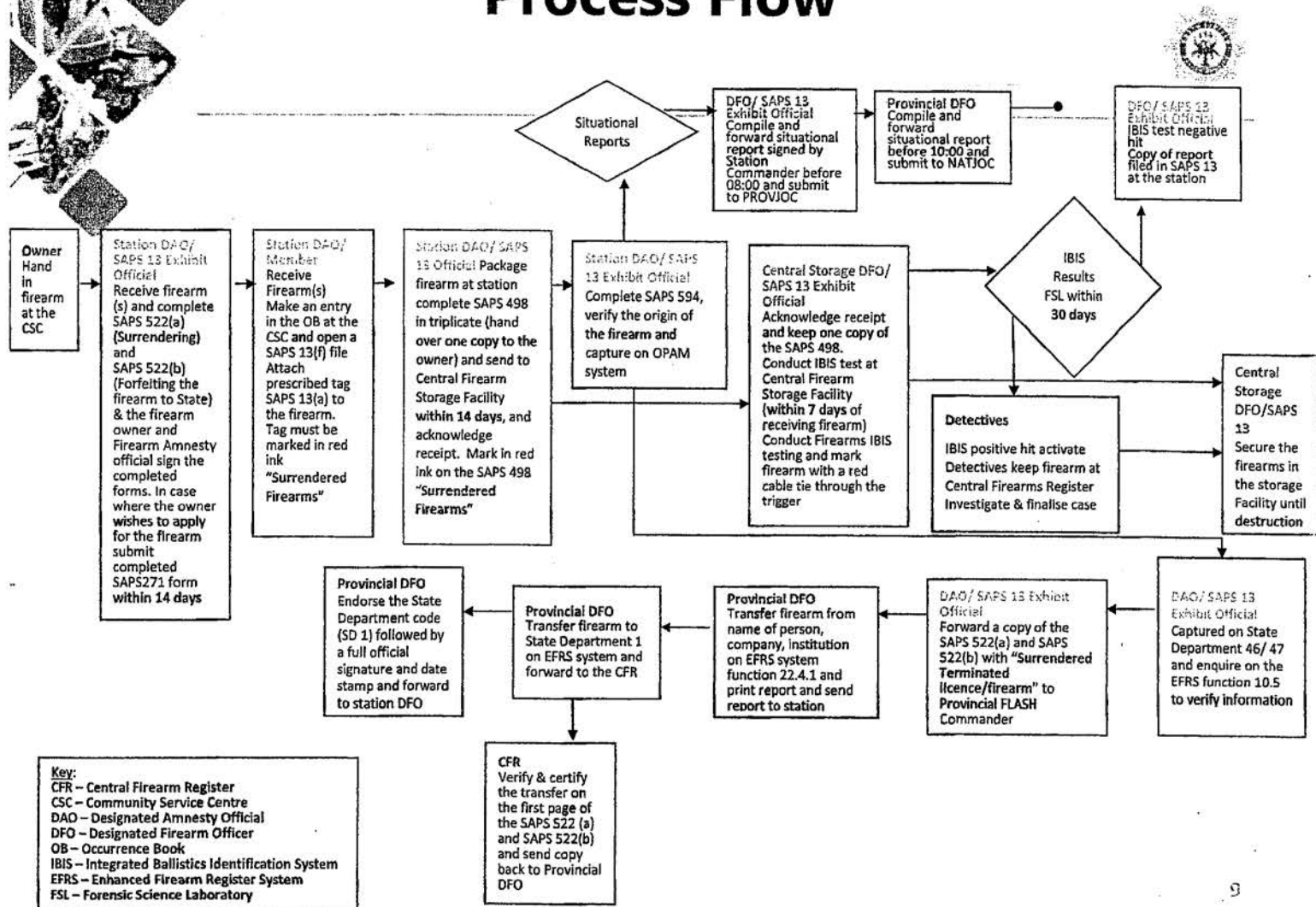
Phase 1: Planning



Objective: To ensure readiness of all provinces and police stations to implement Amnesty

- Communication plan was developed and ready for implementation.
- Relevant codes for 'Amnesty Project' were created on the Enhanced Firearm Register System (EFRS) system to ensure proper capturing and monitoring of the project.
- Additional guidelines on enhanced firearm destruction process were finalised.
- The Designated Firearms Officials to undergo the approved Integrated Ballistic Identification System (IBIS) test training programme within the provinces.
- Details of members were provided to Division: Crime Intelligence for screening and vetting.
- A Detective investigative team will be established upon the announcement of the Amnesty.
- Two workshops with provincial FLASH commanders were conducted during 2017/2018 and a refresher workshop planned, for 12 September 2019.

Process Flow





Phase 2: Implementation



Objective: Ensure the effective implementation of the 2019/2020 Firearms Amnesty Project

- Implementation of the approved communication (internal and external) plan.
- Issue National Instruction (NCCF) to communicate implementation process.
 - Implementation of process flow and checklist.
 - Establishment of the task team for the processing of applications.
 - Established enquiry desk at the Central Firearm Register (CFR).
 - Activation of the Detective Service for investigation.

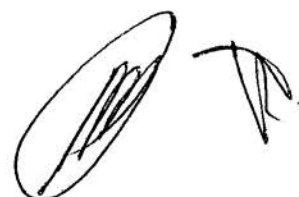


Phase 3: Reporting & Monitoring



Objective: Ensure the effective reporting and monitoring of the 2019/2020 Amnesty Project

- Implement the reporting template for monitoring purpose.
- Activate monitoring teams to conduct quality assurance visits with specific focuses on identified problematic.
- Generate and analyse daily, weekly and monthly reports received for intervention by monitoring teams.
- Monitor Amnesty firearms handed in, linked to crime and firearms licences applications received.





Phase 4: Destruction



Objective: Decrease the opportunity for the proliferation of firearms through destruction

- Conduct an audit of the Amnesty firearms ready for destruction.
- Compile a destruction plan for the Amnesty firearm.
 - Compile notice of firearms for destruction and gazetting.
 - Updating the EFRS system with the details of the firearms.
 - Compile a final destruction report.



Phase 5: Debriefing



Objective: Conduct debriefing on the outcome of the 2019/2020 Firearm Amnesty Project

- Develop a standardise debriefing and impact assessment template.
- Conduct debriefing sessions at all levels and compile a final Amnesty report.
- Compile and submit a consolidated report of the 2019/2020 Firearm Amnesty Project.

Risks and Mitigations



Identified risks	Mitigating Actions
Theft of firearms.	<ul style="list-style-type: none"> ○ Process flow with actual days. ○ Vetting and screening of DFO's, including SAPS 13 members. ○ Ensure security measures and accountability within the SAPS 13 stores.
Damage to firearms.	<ul style="list-style-type: none"> ○ Identified central storage facilities in provinces to alleviate overcrowding.
Delay in IBIS Testing process.	<ul style="list-style-type: none"> ○ Trained additional members in IBIS testing.
Inadequate security and attacks on police stations.	<ul style="list-style-type: none"> ○ Police Stations to comply with the criteria on minimum standards. ○ Access Control, in accordance with National Instruction 17 of 2019. ○ Enhancement of security at Centralised storage facilities. ○ Risk assessment will be conducted on continuous basis and alert responsible Reactionary Units. ○ Communication of operation hours.
Attacks or theft during transportation	<ul style="list-style-type: none"> ○ Transportation plans developed to provide escort on bulk. ○ Risk assessment will be conducted on continuous basis and alert responsible Reactionary Units.
Increase in number of application for firearm licences	<ul style="list-style-type: none"> ○ Decentralisation of fingerprints. ○ Establish task teams for processing of applications.



Conclusion



The removal of illegal or excess firearms is indeed in the public interest and is supported by the crime statistics, which indicates that firearms are the instrument most commonly used in the commission of crime, especially violent crimes.

In order to ensure the success of the 2018 Firearm Amnesty, it is imperative that all the people of South Africa be involved in this project, to ensure that all people in South Africa are and feel safe.

HE9

Government Notice

Date:

DECLARATION OF AN AMNESTY IN TERMS OF SECTION 139 OF THE FIREARMS CONTROL ACT, 2000 (ACT NO. 60 OF 2000)

MINISTRY OF POLICE

By virtue of the powers vested in me by section 139(1) of the Firearms Control Act, 2000 (Act No. 60 of 2000), I General Bhekokwakhe Hamilton Cele, Minister of Police, hereby declare an amnesty as defined in section 138 of the said Act.

Under section 139(2)(b) of the Firearms Control Act, 2000, I determine the period during which persons may apply for amnesty to commence on 1 October 2019 to 31 March 2020. Under section 139(2)(c) of the Firearms Control Act, 2000, I determine the conditions under which amnesty will be granted, to be as follows:


- (a) A written application for amnesty by an applicant must, with the exception of the police stations set out in the Annexure, be handed to the duly appointed Designated Amnesty Officer at any police station in the Republic of South Africa. The application must state the full names, identity or passport number and residential address of the applicant, as well as the type, calibre, make, model and all marked serial numbers or other identification marks on the firearm or the particulars of the ammunition;
- (b) The firearm or ammunition concerned must be surrendered by the applicant to the Designated Amnesty Officer at the relevant police station and the Designated Amnesty Officer must issue a receipt in respect of such firearm or ammunition to the applicant; and
- (c) An applicant for amnesty who wishes to apply for a licence to possess the firearm surrendered by him or her as contemplated in section 139(4) of the Firearms Control Act, 2000, must when surrendering the firearm, in writing, for a licence to possess the firearm. The application for a licence must be lodged within 14 days from the date on which the firearm was surrendered with the relevant Designated Firearms Officer (the



relevant Designated Firearms Officer has the meaning assigned to it in the Firearms Control Regulations, 2004).

- (d) An application contemplated in section 139(4)(a) of the said Act shall not apply to illegal firearms where documentary proof of previous ownership cannot be produced.

I further determine that the South African Police Service must conduct ballistic tests on all firearms surrendered in terms of this amnesty, and if an application for a licence to possess the firearm as contemplated in paragraph (c) of this Notice is not duly lodged, or has not been lodged within the specified period, such firearm must be destroyed in accordance with Regulation 93(4) of the Firearms Control Regulations, 2004.



GENERAL BH CELE, (MP)
MINISTER OF POLICE
28/08/2019



ANNEXURE

NAME OF PROVINCE	NAME OF POLICE STATION
KwaZulu-Natal	Isipingo
Western Cape	Bellville South
Mapumalanga	Kanyamazane



Thursday, 31 October 2019]

HE 10

No 92 – 2019] FIRST SESSION, SIXTH PARLIAMENT

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 31 OCTOBER 2019

TABLE OF CONTENTS

ANNOUNCEMENTS

National Assembly and National Council of Provinces

1. Classification of Bills by JTM.....2
2. Bills passed – to be submitted to President for assent.....2

National Assembly

1. Introduction of Bills2
2. Referral to Committees of papers tabled2

National Council of Provinces

1. Membership of Subcommittee on Review of Council Rules3

TABLINGS

National Assembly and National Council of Provinces

1. Speaker and Chairperson.....3
2. Minister of Finance.....3

National Assembly

1. Speaker3

COMMITTEE REPORTS

National Assembly

1. Justice and Correctional Services.....6
2. Police8

[The following report replaces the Report of the Portfolio Committee on Police, which was published on page 97 of the Announcements, Tablings and Committee Reports, dated 30 October 2019]

2. Report of the Portfolio Committee on Police on the Firearms Amnesty declaration dated 24 October 2019.

The Portfolio Committee on Police, having considered the notice from the Speaker of the National Assembly, that was referred to it on 28 August 2019 (ATC No. 51 - 2019) for a declaration of a firearm amnesty in terms of section 139(2)(a) of the Firearms Control Act, 2000 (Act No. 60 of 2000), reports as follows:

The Committee met on 11 September 2019 to consider the request for the amnesty and found that there were technical problems with the presentation of the South African Police Service (SAPS) as well as the required documentation. The Committee resolved to request the SAPS to correct the defects. The Committee resumed on 23 October 2019 to scrutinise the further documentation. All the necessary documents were made available to the Committee Members and based thereon, the Committee approved the Minister's request for an amnesty period. The Committee amended the proposed amnesty period from 1 October 2019 to 31 March 2020 to 01 December 2019 to 31 May 2020.

The Committee also requested the Minister of Police to consider declaring a separate process for the renewal of expired licences that should run concurrently to the amnesty period.

The Democratic Alliance has reserved its rights with regard to the report.

Report to be considered.

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Sh
2017
[Signature]

**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Tel: (012) 3832800, Fax: (012) 383 2818/20 Private Bag X8080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

The Honorable Ms. TR Modise
Speaker of the National Assembly
Parliament of the Republic of South Africa
CAPE TOWN
8000

Dear Ms Modise

**DECLARATION OF AMNESTY IN TERMS OF SECTION 139 OF THE FIREARMS
CONTROL ACT, 2000 (ACT NO. 60 OF 2000)**

In terms of section 139 of the Firearms Control Act, the Minister of Police may, by notice in the *Gazette* declare an amnesty if—

- (a) The amnesty may result in the reduction of the number of illegally possessed firearms in South Africa; and
- (b) It is in the public interest to do so.

Section 139(2) of the Firearms Control Act also provides that an amnesty—

- (a) Will only be valid if it is approved by Parliament;
- (b) Must specify the period during which persons may apply for amnesty; and
- (c) Must specify the conditions under which amnesty may be granted.

A draft Notice for a declaration of a firearms amnesty was tabled by my predecessor, the former Minister of Police, the Honorable, FA Mbabula during the latter part of 2017

[Signature]

DECLARATION OF AMNESTY IN TERMS OF SECTION 139 OF THE FIREARMS CONTROL ACT, 2000 (ACT NO. 60 OF 2000)

and that the same was, in turn submitted by your predecessor to the Portfolio Committee of Police for a report.

The Portfolio Committee of Police was however unable to consider the draft Notice prior to 1 February 2018; being the proposed date on which the amnesty period was set to commence.

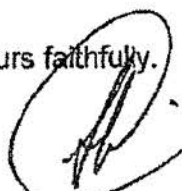
I am advised that following further interaction with the Committee during February 2018, last mentioned, in principle approved the draft Notice and the Amnesty to commence on 1 June 2018. I am also advised that the Committee required that my predecessor table a new letter with the National Assembly containing the new date, prior to approval thereof.

While I am in support of the declaration of an amnesty on the conditions that were in principle already agreed to by the Portfolio Committee of Police, I further wish to add that an application contemplated in section 134(4) of the said Act shall not apply to illegal firearms where documentary proof of previous ownership cannot be produced.

Accordingly it is proposed that the new dates for amnesty be 1 October 2019 to 31 March 2020.

It will be appreciated if the amended draft notice can be forwarded to the Portfolio Committee of Police for consideration.

Yours faithfully.



MINISTER OF POLICE

BH CELE, MP

Date:

15/08/2019



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ORIGINAL

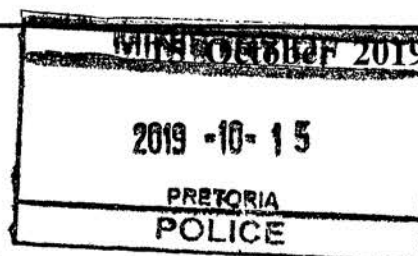
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1st FLOOR/VLOER
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BOKSBURG
E-MAIL / E-POS: juan@therescueshop.co.za
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Our reference: Mr Kotze
Maj Genl Mamotheti. 27/5/2/1



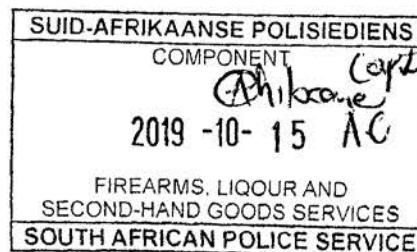
Genl Bheki Cele,
The Minister of Police,
c/o The National Commissioner of Police,
Wagthuis Building, Pretoria.

General Sithole,
The National Commissioner of Police,
Wagthuis Building,
231 Pretorius street, Pretoria,



VERY URGENT

Maj General Mamotheti,
The Registrar,
S A Police Central Firearms Registry,
Volkstemstreet, Pretoria
BY HAND.



Lieutenant General Jephta,
The Divisional Commissioner Visible Policing,
South African Police,
540 Pretorius street,
Arcadia, Pretoria.

Dear Minister and Generals,

Received: [Signature]
Staff Officer: Divisional Commissioner:
Visible Policing
Stafoffiser: Afdelingskommissaris:
Sigbare Polisieëring
2019-10-15

[Handwritten signatures]

URGENT REQUEST TO:

- 1. WITHDRAW SAPS NATIONAL CIRCULAR DATED 3 FEBRUARY 2016 IN RESPECT OF NON VALIDITY OF LICENCES ISSUED IN TERMS OF THE ARMS AND AMMUNITION ACT (ACT 75 OF 1969) THAT HAVE "MIGRATED" TO THE FIREARMS CONTROL ACT (ACT 60 OF 2 000); AND**
- 2. TO APPLY SECTION 28(6) OF THE FIREARMS CONTROL ACT TO GIVE AN EXTENTION OF TIME TO RE LICENCE FIREARMS; AND**
- 3. GIVE UNDERTAKINGS IN RESPECT OF IMMINENT AMNESTY.**

1. INTRODUCTION.

- 1.1. We act on behalf of the National Hunting and Shooting Association (NHSA), a firearm owners association which is also an accredited hunting and sports shooting association in terms of the Firearms Control Act (Act 60 of 2000) ("The Act").
- 1.2. NHSA represents approximately 35 000 members of whom many have a direct interest in this matter.
- 1.3. We estimate that approximately 700 000 to 1 million firearm owners in South Africa are being affected by this matter under discussion. **It is therefore in the national interest that you give urgent attention to the request set out hereunder.**

2. AMNESTY.

We have taken note that the South African Police Service (SAPS) have on 11 September 2019 made a proposal to the Portfolio Committee on Police ("the Committee") that a firearm amnesty should be declared in terms of section 139 of the Act.

3. COMMITTEE'S DECISION.

We understand that the committee has not accepted the proposals that were tabled. Some newspaper reports indicated that public participation was also required.

4. PRESENT SITUATION.

- 4.1. From enquiries made over the last few days at various Designated Firearm Officers (DFO's) and SAPS officers in control of SAPS 13 stores, we were informed that you had since the Committee's decision, given instructions in respect of the safe keeping of large amounts of firearms in anticipation of a firearms amnesty.
- 4.2. We have also taken note of the SAPD Provincial Commissioner, North West's instruction dated 17 September 2019 (which is attached hereto as annexure "A"), which instructs that an audit must be done in respect of persons who have failed to renew their firearm licences and to advise them to voluntarily hand in their firearms during the "proclaimed" amnesty period of 1 October 2019 -31 March 2020.

5. PROBLEMS FORESEEN.

- 5.1. In the briefing to the committee, you also referred to section 139(4) of the Act which provides that:
"A person who surrenders a firearm or ammunition in compliance with a notice published in terms of section (1) may apply in terms of this Act for a licence in respect of that firearm". (my emphasis)
- 5.2. It is a clear legal requirement that firearms, which are the subjects of an amnesty, **must be surrendered to the Police pending an application for a licence for such firearm.**

6. REQUIREMENTS FOR A LAWFUL, EFFECTIVE AND CREDIBLE AMNESTY.

- 6.1. In order to have a lawful and effective amnesty, the following should be complied with:
- 6.1.1. There must be a proper definition of which firearms are regarded to be an "illegal" firearm;
- 6.1.2. The amnesty must not be *ultra vires*.
- 6.1.3. Only firearms that are in fact illegally possessed, should be handed in during an amnesty.

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7. DISPUTE ABOUT WHICH FIREARMS ARE ILLEGALLY POSSESSED.

- 7.1. **It is of the utmost importance that clarity be obtained on the *crux* of the matter as to which firearms are “legal” and which are “illegal” before an amnesty is declared.** We point the following out:
- 7.2. On 26 June 2009 Judge Prinsloo made the following *interim order* in the case of the S A Hunter versus the Minister of Safety and Security:
“IT IS ORDERED
*1. That **all** firearm licences contemplated in sub item 1 of item 1 of the schedule of the Firearms Control Act shall be deemed to be lawful and valid pending the final adjudication of the main application.”* (my emphasis).
- 7.3. Sub item 1 of item 1 refers to licences that had been issued in terms of the Arms and Ammunition Act, 75 of 1969. Hereafter referred to as “green licences.”

8. SAPS INTERPRETATION FROM 2009 UNTIL 2016.

The Police have accepted from 26 June 2009 until 3 February 2016 that ALL old green licences were valid as is provided in the S A Hunters *interim order*.

9. SAPS INTERPRETATION SINCE 2016 OF FIREARMS AS BEING “ILLEGAL.”

- 9.1. Commissioner Phahlane’s national circular dated 3 February 2016, (Annexure “B” hereto, paragraph 7 thereof) states that the S A Hunter’s 2009 *interim order* “covers persons who at no stage migrated to the **current Act of 2000**”. (my emphasis) (“the Phahlane interpretation”)
- 9.2. The effect of this interpretation, as set out in the circular, is that:
- 9.2.1. All firearms that were licenced before 1 July 2004 **that had not been re-licenced, are still legally possessed;** and
- 9.2.2 Once a firearm had been re- licenced (migrated to the new system), and the new licence has lapsed, such firearm is in illegal possession.

- 9.3. **We are respectfully of the opinion that the above interpretation of the 2009 SA Hunters vs Minister of Police's *interim order* is incorrect and infringes upon hundreds of thousands firearm owners.**

10. PRESENT PRE- AMNESTY INSTRUCTIONS.

We understand from the above that your present instructions in respect of the upcoming amnesty are that:

- 10.1 You apply the Phahlane interpretation that Green licences that have migrated to the new system are not valid;
- 10.2. All firearms, with licences that had been issued in terms of the Firearms Control Act (white licences), that had not been renewed before the expiry date, will be regarded as being "illegal firearms"; and
- 10.3. Such firearms will have to be handed in at an SAPS 13 store pending an application for the renewal of such firearm's licence in terms of the amnesty process.

11. PROPER PERUSAL OF SA HUNTERS VS MINISTER OF POLICE APPLICATION.

- 11.1. The present dispute about the validity of licences is whether the Court intended to only give protection to green licence holders who had not taken part in the re licencing process.
- 11.2. The notice of motion in the S A Hunters application:
- 11.2.1 challenged the constitutionality of the transitional provisions; and
- 11.2.2 requested that the court should make an order that "All licences issued in terms of the Arms and Ammunition Act (my emphasis) be deemed to be valid".
- 11.2. The agenda for the court case was therefore intended to be so wide to include **all** firearm owners (and not limited to only those owners who had not migrated).
- 11.3. In his judgment, (on page 6 from line 18) Judge Prinsloo states the following:

"In the course of his argument, Mr Bergenthuin (for the Applicant) also pointed out that the group that stands to be criminalized next week is not confined to the 1969 licence holders who failed to apply for renewal. It also includes those who applied for renewal, but had their applications turned down. There is no provision in the New Act or regulations, so it was pointed out, to cater for the position of an unsuccessful applicant for renewal. Once a renewal application has been refused and the subsequent appeal turned down the unsuccessful previous licence holder will also be in unlawful possession of the firearm and open to prosecution."

- 11.4. It is therefore clear that the arguments in the 2009 urgent application were not only limited to green licence holders who didn't migrate to the white licence system. The argument was clearly also about the rights of firearm owners who would migrate to the new system.
- 11.5. The unconstitutionality of the transitional provisions were also attacked on the basis that the firearm owners who wanted to migrate to the white licences' constitutional rights to lawful, reasonable and procedurally fair administrative action, were also challenged.
- 11.6. This would in our opinion also include the present situation of uncertainty about the relicensing of expired firearm licences.
- 11.7. On page 17 from line 8 Judge Prinsloo makes the following remarks;
*"Another prominent constitutional challenge mounted in the main application flows from the right to lawful, reasonable and procedurally fair administrative action as intended by the provisions of section 33 of the Constitution. In this regard it was submitted by the applicant that the respondent doesn't have resources to implement the administration necessary to finalise the renewal of firearms renewals or new application within reasonable periods taking into account the time limits stipulated in Schedule 1 of the New Act.
The legislature should have taken into account the available administrative facilities and should not have designed a transitional arrangement which cannot be implemented by the officials of the respondent. The lack of administrative facilities appears to be uncontested on the papers."*
- 11.8. This attack on the **fair administrative action** was launched on behalf of all green licence holders who had applied for the relicensing of their

firearms. **All** old green licence holders' rights were therefore protected in the judgment.

12. CORRECT INTERPRETATION.

- 12.1. I attach as annexure "C" hereto the opinion of adv Van Eeden SC and point out that it has previously been made available on various occasions to Genl Bothma, Brig Mabula and the Minister's legal advisor on amnesty, Adv Chemane.
- 12.2. We are of the opinion that it was the legislatures intention that all licences that had been issued in terms of the Old Act, would expire on 30 June 2009. As a result of the S A Hunters interim order, which was granted on 26 June 2009, (four days before the termination date) **none of the green licences terminated.**
- 12.3. Our opinion is that all green licence remained valid and if a white licence was also issued, the holder had two licences for the same firearm.
- 12.4. It is pointed out that the main application challenged the constitutionality of the provisional provisions of the Act. **The main application has until today not been decided and the interim order is consequently still in place.**
- 12.5. We further point out that there is no suggestion in the order that it's interpretation should be limited to warrant the Phahlane interpretation. In our opinion, the contrary is true.
- 12.6. **If the whole judgment is read, it is clear that the position of licence holders with old green licences who have "migrated" to the new Act, were also considered in the argument and judgment.**
- 12.7. Consequently we are of the opinion that the Pahlane interpretation is incorrect, prejudicial to firearm owners and invalid.
- 12.8. Notwithstanding the fact that the validity of the Pahlane interpretation has been challenged in the GOSA vs Minister of Police matter, until present nobody has defended or explained the Phahlane interpretation.
- 12.9. We have taken notice that in your letter (which is attached as annexure "D") dated 5 July 2019 addressed to AGRISA, you continue to follow the Phahlane interpretation. We have also noted that you remarked: " It

must be emphasized though that this order relates only to licenses that were never at any stage translated in terms of the Firearms Control Act, 2000. It is clear that you continue to follow this incorrect interpretation.

13. PURPOSE OF AMNESTY.

Section 139 (1) provides that the Minister may by notice in the Gazette, declare an amnesty if- *“An amnesty may result in the reduction of the number of illegally possessed firearms and it is in the public interest to do so.”*

14. INTENDED REMOVAL OF “EXCESS” FIREARMS.

- 14.1. In the conclusion of your briefing (which is attached as annexure “E”) it was submitted to the Committee that *“the removal of illegal or excess firearms is indeed in the public interest.....”*
- 14.2. The Act does not provide that “**excess**” firearms can be reduced through an amnesty process. Only “**illegally possessed**” firearms are covered.
- 14.3. We are of the opinion that your actions will be *ultra vires* if you intend to reduce “**excess**” firearms through an amnesty.

15. PRESENT POSITION.

- 15.1. Your letter dated 5 July 2019 addressed to AGRISA (of which a copy is attached as annexure “D”) has come to our attention.
- 15.2. We have noted that in your explanation of the current legal situation, you state the following in the letter: *“The Pretoria High Court issued an Interim Order in 2009 to the effect that licenses issued in terms of the Arms and Ammunition Act, 1969 and had not been migrated in terms of the Transitional Provisions contemplated in Schedule 1 of the Firearms Control Act, 2000 remained valid. This position will remain as is until the order is appealed. It must be emphasized though that this order*



relates only to licenses that were never at any stage translated in terms of the Firearms Control Act, 2000." (my emphasis).

115

- 15.3. We submit that your remark that "*this position will remain as is until the order is appealed*" is also an incorrect interpretation of the legal position.
- 15.4. It is therefore clear that you, as present SAPS Management, without applying your minds to this important matter, also hold the opinion that a firearm is in illegal possession if the licence has expired, irrespective whether the owner had a licence that had been issued in terms of the previous Act or wants to renew the licence that had been issued in terms of the new Act.
- 15.5. We are of the opinion that these remarks are inaccurate, without substance, intended to mislead and to cause prejudice to gunowners.

16. UNFAIR LEGAL POSITION IN RESPECT OF EXPIRED WHITE LICENCES. THE "TOLMAY -PREJUDICED".

- 16.1. On 7 July 2017 Judge Tolmay ruled in the second S A Hunters case that the re- licensing of white licences, as provided for in sections 24 and 28 of the Firearms Control Act, were unconstitutional and ruled that the owners of all white licenses that had expired **as well as those persons who still have to re- licence their firearms** will not be in unlawful possession thereof.
- 16.2. This matter was only settled by the Constitutional Court judgment on 4 June 2018, (11 months later) when it was ordered that section 24 and 28 were constitutional **and that licences had to be renewed.**
- 16.3. Judge Tolmay's judgment had the following effect on gunowners who only had white licences:
 - 16.3.1 Those who had failed to re-license their firearms, were not in unlawful possession of their firearms;
 - 16.3.2. **Those whose licenses would expire in the future, didn't have to continue with the re- licensing of their firearms.**
- 16.4. During the 11 month period, thousands of firearm owners who wanted to apply for the renewal of firearm licences which were still valid, were turned away by DFOs who informed the public that in view of the



Tolmay judgment, they need not apply for the renewal of their firearm licences.

116

- 16.5. We estimate that approximately 400 000 firearm owners, who at the time when the Tolmay judgment was given, still had the opportunity to apply for the re-licencing of their firearms, failed to do so as a result of Judge Tolmay's order.

17. CONSTITUTIONAL COURT JUDGMENT.

- 17.1. The Respondent (S A Police Service) appealed the Tolmay decision and on 7 June 2018 the Constitutional Court ruled that sections 24 and 28 of the FCA are constitutional and upheld the appeal.
- 17.2. The effect was that all white licences that had expired had lapsed and the gunowners (who only have white licences), who believed they are covered by a High Court Order, were suddenly "unlawfully" in possession of such firearms and were committing a serious offence by being in possession thereof. The Constitutional court didn't grant any reprieve to person who had been affected by the Tolmay judgment
- 17.3. This result is not fair and it is clearly a matter that has to be solved by:
- 17.3.1. fair administrative action; or
 - 17.3.2. by an amendment to the Act (to provide that such firearms need not be handed in) and an amnesty to provide for the re-licencing of the firearms.

18. EFFECT OF CONSTITUTIONAL COURT JUDGMENT ON VALIDITY OF GREEN LICENCES.

- 18.1. It is pointed out that the Constitutional Court did not make any findings on the validity of green licences and the *interim order* in respect of the deemed validity of green licenses of the 2009 SA Hunters case remains unchanged.
- 18.2. From the above it should be clear that a large number of law abiding firearm owners are not in this predicament because they were negligent, but because they complied with the Tolmay order. The unfortunate gunowners who find themselves in this predicament, can be referred to as the "Tolmay prejudiced".




19. EFFECT OF CONSTITUTIONAL COURT JUDGMENT ON VALIDITY OF GREEN LICENCES.

It is pointed out that the Constitutional Court did not make any findings on the validity of green licences and the *interim order* in respect of the deemed validity of green licenses of the 2009 SA Hunters case remains unchanged.

20. LAW ABIDING CITIZENS' RELUCTANCE TO HAND IN FIREARMS INTO SAPS 13 STORES.

- 20.1. We are representing thousands of law abiding citizens who own and need firearms for self protection, hunting or sports shooting. They want to operate within the ambit of the law, but are precluded therefrom by your incorrect interpretation and refusal to allow them to re licence their firearms.
- 20.2. Firearm owners are reluctant to hand in firearms at Police stations because it was widely publicised that Colonel Prinsloo, (who was in charge of firearms that had been handed in during the previous amnesty), had stolen approximately 2 500 firearms. It was also reported that those stolen firearms ended up in the hands of criminal gangs.
- 20.3. It is also clear that your measures to move all surrendered firearms to central points, is not only impractical, but will not exclude the risk that firearms will get stolen from Police custody.
- 20.4. It was further recently reported in the newspapers that in an answer session in parliament, the Minister of Police disclosed that 4 357 firearms had been lost by the Police during the previous 6 years.
- 20.5. It was also reported that the Police Service had lost 9.5 million rounds of ammunition.
- 20.6. It is clear that the members of the public have (with good reason) lost their confidence in the Police's ability to safely keep firearms that had been handed in.
- 20.7. It is further clear that the SAPS can, in view of what has been stated above, not expect good cooperation from gunowners, especially if their perception is that they have been treated unfairly and that the amnesty is an attempt to disarm them.



21. SOLUTION TO THE PROBLEM THAT "ILLEGAL" FIREARMS MUST BE HANDED IN DURING AMNESTY.

21.1. We suggest that you can solve the problems by administratively, without an amnesty, providing for the re-licencing of such firearms by:

21.1.1. Revoking the circular. The effect will be that all firearms that had been licenced in terms of the previous Act, will be legally possessed; and

21.1.2 Applying the provisions of section 28(6) of the Act, which provides that all time periods (including the period for relicensing as set out in section 27) can be extended on good cause shown. We submit that the confusion about the legality of firearms and the prejudice suffered by the "Tolmay-prejudiced" should be regarded as being good cause shown to extend the period.

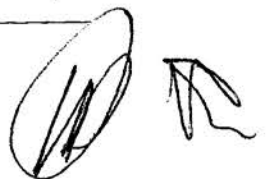
21.2. Such firearms will not need to be handed in at SAPS 13 stores because it is not "illegally possessed".

22. WRITER HEREOF'S INVOLVEMENT IN THE AMNESTY PROCESS.

22.1. Writer hereof represented the Hunters Forum during the 2011 Amnesty and was a member of the National Amnesty Committee.

22.2. I was during 2018 mandated by the Hunters Forum to engage with the Minister of Police's legal advisor to discuss the Amnesty. Mr Fred Camphor, the CEO of S A Hunters and writer hereof met with adv Chemane on 10 July 2018 to discuss the amnesty process.

22.3. During the meeting with adv Chabane we discussed the need for an amnesty and in particular the importance of public participation and that the uncertainty about "illegal firearms" be cleared up. We also provided Adv Chemane with a copy of Adv Van Eeden's opinion. We indicated that we would like to give input into the process and also requested to be put in contact with the officials who are presently working on the amnesty. I attach our letter dated 11 July 2018 hereto as annexure "F".



22.4. During the meeting, Adv Chemane undertook not give us feedback, which we have not yet received. Notwithstanding our request, we have also not received particulars of the officials who are driving the amnesty process and have consequently not had the opportunity to meet with the persons who are initiating the amnesty process.

22.5. From enquiries made with other members and organizations who were part of the previous National Amnesty Committee, it appears that there have been no consultations or public participation in respect of the proposed amnesty and nobody who represent firearm owners, has been invited to be part of a National Amnesty Committee.

22.6. The Hunters Forum represent approximately 180 000 firearm owners of whom a large number are being affected by this matter. No amnesty will have any credibility if it is not supported by the firearms industry. The Police also need the organized firearm owners to effectively communicate with members of the public.

23. MALA FIDES.

23.1. We submit that it is clear that you are acting *mala fide* by:

23.1.1. The deliberate misinterpretation and distortion of the 2009 interim court order (to only include green licences that had not migrated);

23.1.2. Not opening the matter for public participation;

23.1.3. Acting *ultra vires* by attempting to expand the terms of reference of the amnesty to cover "excess" firearms;

23.1.4. Notwithstanding the existence of 'good cause' as provided for in section 28 (6) of the Act, to refuse to allow law abiding firearm owners to re licence their firearms;

23.1.5. Your intention to prejudice firearm owners;

23.1.6. Attempting to push the amnesty through without amendment to the Act to at least cover the Tolmay prejudiced.

23.2. In our opinion an appropriate order for cost on a punitive scale will be justified against the officials in your personal capacity if you continue with the present conduct.

24.DEMAND.

24.1. It is demanded that you **immediately withdraw the National Commissioner's circular of 3 February 2016**, failing which my instructions are to bring an application in the High Court to:

- 24.1.1. set the circular aside;
- 24.1.2. request a declaratory order that all licences issued in terms of the Arms and Ammunition Act (irrespective whether it had "migrated" or not), will remain valid pending the outcome of the main application;
- 23.1.3. **An order for cost on a punitive scale against those officials in their personal capacity who persist in this unlawful conduct.**

24.2. That you will give an undertaking to apply the provisions of section 28(6) of the Act to allow on good cause shown, for an extension of time to renew white licences that have expired;

24.3. If you are not prepared to give the undertakings set out in par 23.1 and 23.2 above, you are requested to give a written undertaking that you will not proceed with the amnesty before the Act has been amended to provide that gunowners, who have only white licences that have expired, need not surrender firearms to the SAPS pending the outcome of the renewal of their firearm licences.

24.4. You are requested to undertake that you will provide writer hereof with:

- 24.4.1. The conditions of the amnesty (as provided for in section 139(2)(c) of the Act) that you will make to the Committee;
- 24.4.2. The date when and the place where the next briefing to the Committee will take place.
- 24.4.3. Confirmation whether the Committee has instructed you to keep the implementation of the amnesty over until the GOSA-matter has been finalised or not.



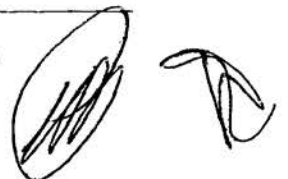

25. **ACKNOWLEDGEMENT OF RECEIPT AND TIME FRAME.**

25.1 Please acknowledge receipt hereof and let me know when a reply to my letter can be expected.

25.2 All my client's rights are reserved.

Yours faithfully,

JUAN KOTZE

Handwritten signature and initials in the bottom right corner.