

Farlam recommendations: SAPS & IPID progress report; Firearms Amnesty: Minister of Police briefing

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Chairperson: Mr F Beukman (ANC)

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Meeting Summary

The Committee received briefings from the South African Police Service (SAPS) and the Independent Police Investigative Directorate (IPID) on the Farlam Commission progress report. The Minister of Police also briefed the Committee on the firearms amnesty.

The first finding from the Farlam Commission on equipment highlighted that all radio communications and recordings of SAPS should be preserved and plans for Public Order Policing (POP) operations should identify the means of communication which SAPS members would use to communicate with each other. SAPS had already made a submission that had been forwarded to the Council for Scientific and Industrial Research (CSIR) and the Division of Technology Management Services (TMS) for the development of an integrated riot helmet with radio communication capabilities. The second finding was that SAPS should develop and implement a protocol for communication in large operations. The protocol formed part of the Joint Operational Centre (JOC) structure of the operational plan for every deployment, and was enforced by the Operational Commander. The first finding on first aid stressed that in operations where there was a high likelihood of the use of force, the plan should include the provision of adequate and speedy first aid to those who were injured.

In order to deal with the recommendations on the Farlam Commission, SAPS had ensured that a total of 1 084 posts were approved, of which 609 posts had been filled, and the lateral transfer process had been halted after the first placement. All new entry-level police members would in future undergo basic crowd management training as part of their basic training curriculum. R31.1 million had been allocated for the procurement of vehicles, and R16.5 million to remove and refit aircraft camera systems for the Air Wing in support of the Farlam Commission's recommendations, and would be finalised before the end of the 2016/2017 financial year. R2.4 million had been allocated to the Human Resource Development (HRD) division for the training of public order policing (POP) personnel.

Members complained about the slow pace with which the SAPS was implementing the demilitarisation of the police force, as it was five years since the Marikana massacre had taken place. It would be important to know if SAPS had identified all the next-of-kin victims in the Marikana massacre, especially in cases where victims were foreign nationals. The presentation by SAPS lacked clear timeframes for the finalisation of all the recommendations. Some Members asked if there were any members of the police at the management level that had been charged over the Marikana massacre.

The Farlam Commission had recommended that IPID needed to investigate scene one of the Marikana massacre, focusing on whether SAPS had exceeded the bounds of self defence, and delays in conveying medical assistance to scene. With scene two, IPID was mandated to investigate the issue of command and control, failure to stop the operation after scene one, the possible liability of senior officers in the SAPS and the shooting of strikers by various members of the SAPS. The total number of miners who died on 16 August 2012 was 34. One death was never reported, resulting in a case of defeating the ends of justice and failure to report death in police custody.

IPID had also been mandated to investigate cases of torture and assault, and there had been 152 victims. The case had been referred to the National Prosecuting Agency (NPA) in North West for a decision, and it had come back with queries which had been attended to. In regard to the allegation of misleading the Farlam Commission by General Phiyega, as per the Farlam Commission recommendation, the investigation was complete and awaiting an NPA decision. IPID would not be able to conclude the investigation with regard to the reconstruction of scene two unless the required funding was secured.

Members asked what had been causing delays in the reconstruction and investigation of scene two of the Marikana massacre. The Minister would need to have a discussion with the Treasury in order to request the additional funding needed to investigate scene two of the Marikana massacre. Some Members asked about the total number of investigators that IPID had managed to train in handling crime scenes. It was concerning to see that IPID was continuously being under-funded, and Members of Parliament should know that they have an important role to play in influencing the budget of the Department. What was the reason for the delays in cases that had been referred to the NPA? What was the stipulated timeline for the conclusion of those cases that had been referred to the NPA?

The Minister highlighted that the objectives of the 2017 firearm amnesty were 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 and prevent crime and violence, and to promote safety. A total of 33 823 illegal firearms and 46 632 legal firearms had been surrendered during the firearm amnesty of 2005, and 11 887 illegal firearms and 30 442 legal firearms had been surrendered in the firearm amnesty of 2010. The lessons that had been learnt in the previous amnesties included a need for record-keeping of surrendered firearms, and clearly stipulated timeframes for the transfer of firearms from police stations to the point of destruction. It was also important to have a centralised destruction of firearms, in order to minimise any possible risks.

Gun-Free South Africa also made a presentation in which it stressed that firearm amnesties were very complicated and complex undertakings, and the right conditions were absolutely critical for success. The question was whether a firearm amnesty could possibly reduce the circulation of illegal firearms, as this was where the primary problem was. The issue of trust was something that SAPS would have to deal with in order to ensure that there was an increase in the number of people who would surrender their firearms. There were a number of factors that would need to be taken into consideration in order to ensure that the firearm amnesty became a success in getting illegal and legal firearms off the streets, and these included the conditions of the amnesty and civilian oversight. It would be impossible for SAPS to get illegal firearms off the streets if there was identification of information at hand-in points. South Africa would perhaps need to have a blanket amnesty, as had been done in countries like Brazil and Australia. The issue of civilian oversight was about creating conditions and an environment where people felt comfortable to come and hand in their firearms.

The Confederation of Hunting Associations of South Africa (CHASA) said that the intention of the firearm amnesty was to reduce the circulation of illegally possessed firearms, which would in turn result in the reduction of contact crimes. The questions that needed to be asked were whether law-abiding citizens required an amnesty and if that was the case, then under what conditions. Special

care was required so that the amnesty did not inadvertently lead to serious criminals, many still under investigation, getting “off the hook” as a result of prosecution gaps which the amnesty opened. The Minister had to ensure that full consultation with the National Prosecuting Authority took place prior to finalising amnesty terms, especially those divisions specialising in organised crime, drugs and gangsterism, and wildlife crime. It was also known that some of the surrendered firearms filtered into the hands of violent criminals. although it was still unknown how many had been returned by confirmed criminals.

Members expressed concern about the fact that the firearm amnesty seemed not to accommodate those individuals that had committed criminal activities with illegally acquired firearms. SAPS would need to find ways to ensure that those individuals that had committed criminal activities with illegal firearms were also catered for in the amnesty. The Minister should also brief the Committee about those firearms that had been surrendered, but had ended up on the market again. It was also clear that SAPS would perhaps need to find a way to incentivise people to surrender their illegal firearms and ammunition. It would be important to know if the amnesty also included those individuals who were late for the renewal of the gun licences. There was absolutely no need for an amnesty for those individuals who legally owned a firearm. SAPS would need to go into detail to show the real effectiveness of the amnesty. Some Members wanted to know whether there was concrete evidence that the firearm amnesty would reduce crime and gun violence in the country.

Meeting report

Briefing by the SA Police Service (SAPS) on the Farlam Progress Report

Ms Nashee Sewpersadh, Acting Deputy Director-General (DDG): Ministry of Police, said that the first finding from the Farlam Commission on equipment highlighted that all radio communications and recordings should be preserved, and plans for Public Order Policing (POP) operations should identify the means of communication which SAPS members would use to communicate with each other. A submission had been forwarded to the Council for Scientific and Industrial Research (CSIR) and the Division of Technology Management Services (TMS) for the development of an integrated riot helmet with radio communication capabilities. The second finding was that SAPS should develop and implement a protocol for communication in large operations. The protocol formed part of the Joint Operational Centre (JOC) structure of the operational plan of every deployment and was enforced by the Operational Commander. In case of radio communication failure, the Long Range Acoustic Devices (LRAD-26) had been purchased.

Ms Sewpersadh stressed that the third findings on equipment highlighted that SAPS should focus on the adequacy of the training of the members who used specialised equipment such as water cannons and video equipment, to ensure all members who may use such equipment were adequately trained to do so. The SAPS should also review the procurement, servicing and training processes that had resulted in expensive equipment purchased by the SAPS not being used, either adequately or at all. 53 video cameras had been procured for the POP units. In addition, in support of evidence preservation, 200 external hard drives, 65 voice recorders and 238 still cameras had been procured. Public Order Policing had standardised the list of equipment to be procured. Each unit was allocated equipment based on the size of the unit, ensuring that all units had the same type of equipment, such as video equipment. The procurement of equipment had been centralised to ensure standardisation. Training was provided on the use of all specialised equipment procured. The contracts for the maintenance of specialised equipment (e.g. water cannons) were in the process of being finalised and all other specialised equipment would be procured with service level agreements for maintenance contracts and training.

Ms Sewpersadh said that the first finding on first aid stressed that in operations where there was a high likelihood of the use of force, the plan should include the provision of adequate speedy first aid to those who were injured. There should also be a clear protocol which stated that SAPS

members with first aid training and who were on the scene of an incident where first aid was required, should administer first aid. All police officers should be trained in basic first aid and specialist firearm officers should receive additional training in the basic first aid skills needed to deal with gunshot wounds. The Human Resource Development (HRD) division had registered a project to accelerate first aid training for all SAPS members. However, First Aid Levels I, II and III were currently part of the National Intervention Unit (NIU) and Special Task Force (STF) training curricula. The Panel of Experts was currently considering the feasibility of including first aid training in the POP training curriculum.

The Commission recommended further that in POP situations, operational decisions must be made by an officer in overall command that had recent and relevant training, skills and experience in POP. In response to the recommendation, SAPS had trained a number of POP members, including crowd management for platoon commanders, operational commanders' training, and re-assessment.

Ms Sewpersadh pointed out the following additional reforms that had been implemented within the POP environment:

- Introduction of policy and guidelines related to the policing of public protest, gatherings and major events;
- Approval of National Instruction 4 of 2014, to operationalise the POP policy and guidelines;
- Approval of the POP enhancement strategy, which seeks to build POP capacity and modernise equipment;
- Review of the municipal standard for Metropolitan Police, to clarify roles and responsibilities
- Review of the POP training curriculum;
- Review of the Use of Force Directive;
- Review of the SAPS's basic training curriculum to include a comprehensive crowd management training course;
- Joint exercises involving all specialised units had been introduced.

In conclusion, Ms Sewpersah indicated that a total of 1 084 posts had been approved, of which 609 posts had been filled, and the lateral transfer process had been halted after the first placement. All new entry-level police members would, in future, undergo basic crowd management training as part of their basic training curriculum. This was being done to ensure an understanding of crowd management among all SAPS members. It would also facilitate joint operations between other SAPS components and POP members. The new First Responder training course for station members would enhance the management of spontaneous or unplanned events.

A total of R31.1 million had been allocated for the procurement of vehicles. R16.5 million had been allocated to remove and refit aircraft camera systems for the Air Wing in support of the Farlam Commission recommendations (which would be finalised before the end of the 2016/2017 financial year) and R2.4 million had been allocated to the Division: HRD for the training of POP personnel.

Briefing by the Independent Police Investigative Directorate (IPID) on the Farlam Progress Report

Mr Matthew Sisoko, Head: National Investigations, IPID, said that on 16 August 2012 the IPID had commenced its investigation. On 23 August 2012, the Farlam Judicial Commission had been appointed by the President in terms of Proclamation No. 50 of 2012. Thereafter the Minister of Police, Mr Nathi Mthethwa, had instructed that the IPID investigation should be put on hold to allow the Commission to conclude its business. On 1 October 2012, the Farlam Judicial Commission of Enquiry had commenced with its work. On 25 June 2015, the Farlam Judicial

Commission of Enquiry Report had been released. IPID was then mandated to implement some of the recommendations that had a bearing on its constitutional and legislative mandate.

Mr Sisoko indicated that the Commission recommended that the following matters be referred to the Director of Public Prosecution, North West, for further investigation and to determine whether there was a basis for prosecution:

- The incident of 13 August 2012, and whether the killing of Mr Sokhanyile in circumstances where there were conflicting versions of allegations that the shooters acted in private defence.
- The killing of Mr Mati, where there was a difference of opinion about whether the fatal wound was a gunshot wound or a stab wound.

During the investigation of the above matters, it was decided that the death of two police officers -- Warrant Officer Lepaaku and Warrant Officer Monene -- one miner (Mr Jokanisi) and the attempted murder of Warrant Officer Baloyi and five other miners be investigated in conjunction with the above. The investigation was at an advanced stage, and the authentication of video footages, certified copies of transcripts from the Farlam Commission of Enquiry and ten statements was outstanding. The due date for submission of this docket (incident of 13 August 2012) for decision to the National Prosecuting Agency (NPA) was 28 March 2017.

The Farlam Commission Report recommended that IPID needed to investigate the scene of the Marikana massacre, focusing on whether SAPS had exceeded the bounds of self defence and delayed in conveying medical assistance to the scene. On scene two, IPID was mandated to investigate the issue of command and control, failure to stop the operation after scene one, possible liability of senior officers in the SAPS, and the shooting of strikers by various members of the SAPS. The sequence of the events showed that 16 miners were shot dead next to the cattle kraal in scene one, and 14 miners were shot and killed at the koppie in scene two. Three miners who were shot earlier at scene one or two died at the hospital, and one miner who was shot either at scene one, or two who died inside the police canter at the detention centre. The total number of miners who died on 16 August 2012 was 34. In relation to the body in the canter, the death was never reported, and as a result a case of defeating the ends of justice and failure to report a death in police custody (contravention of Sec 29 (1)(a)(b) read with Sec 33 (3) of IPID Act 1/2011), had been registered. The matter had been fully investigated and the docket was submitted to the NPA for decision on 7 March 2017.

Mr Sisoko highlighted that the consequences of the SAPS's attempt to mislead the Commission. Chapter 23 (c) (4) of the Farlam Report indicated that there was a prima facie case that the National Commissioner and the Provincial Commissioner for the North West who knew the true facts, approved Exhibit L in the SAPS presentation, which contained the incorrect facts. All relevant statements pertaining to this matter had been obtained and forwarded to the NPA for further directives. Chapter 19 (72) of the Farlam Report indicated that, as the memory stick contained top-secret information, it would appear prima facie that Brig Malahlela was guilty of contravening section 4(1)(b)(dd) of the Protection of Information Act 1982, for neglecting or failing to take proper care of the memory stick. All relevant statements pertaining to this matter had been obtained and forwarded to the NPA for further directives.

Chapter 12 (I) of the Farlam Report indicated that the Commission criticised the handling of the scenes by IPID and the lack of personnel and experts by IPID, and that IPID relied on the SAPS and therefore did not operate independently in all respects in this investigation. The staffing and resourcing of IPID should be reviewed to ensure that it was able to carry out its functions effectively.

IPID had started the process of training investigators on better handling of crime scenes. This was an ongoing training intervention. The reliance on SAPS with regard to experts would continue to be a challenge until appropriate funding was secured. There was no issue with Section 24 (5), as IPID understood that where a person incriminated him/herself, the interview would be stopped, the person would be informed of his rights and taken to a magistrate for a confession. The funding based on IPID's expansion strategy had been requested from Treasury without success. Instead, the IPID budget had been reduced, resulting in the freezing of posts for investigators.

In conclusion, Mr Sisoko pointed out that there had been cases of torture and assault, and there were 152 victims. The case had been referred to the NPA in North West for a decision, and it had come back with queries which had been attended to.

With regard to the allegation of misleading the Farlam Commission by General Phiyega, as per the Farlam Commission recommendation, the investigation was complete and awaiting an NPA decision. IPID would not be able to conclude the investigation with regard to the reconstruction of scene two unless the required funding was secured. Capacity still remained a challenge. It was important that IPID was appropriately staffed and funded to execute its mandate.

Discussion

The Chairperson complained about the time that was being taken to implement the demilitarisation of the police force, as it was five years since the Marikana massacre had taken place. The Secretariat for Police had already briefed the Committee that the issue of demilitarisation of police was being investigated. It was also unclear whether there was a timeline in place that would ensure that the matter of the demilitarisation of police was expedited. What was the reason for the delays in cases that had been referred to NPA? What was the stipulated timeline for the conclusion of those cases that had been referred to NPA?

Mr A Shaik-Emam (NFP) said that there had been progress made in dealing with the Marikana massacre, including the setting up of the Commission. It would be important to know if SAPS had identified all the next-of-kin victims of the Marikana massacre, especially in cases where the victims were foreign nationals.

Mr L Ramatlakane (ANC) also agreed that there was a lot of work that had already been done in dealing with the Marikana massacre, as demonstrated in both of the presentations. The Committee should be briefed on the current outlook in finalising all the recommendations that had been made by the Commission. The presentation by SAPS had lacked clear timeframes for the finalisation of all the recommendations. It was unclear as to what was causing delays in the reconstruction and investigation of scene two by IPID. The Minister would need to have a discussion with the Treasury in order to request the additional funding needed to investigate scene two of the Marikana massacre. The Commission had been established by the President and the judge had presented the recommendations, and therefore it was problematic for the IPID to be unable to investigate and reconstruct scene two because of a R5 million lack of funding. There was no doubt that R5 million could be found somewhere else to reconstruct scene two. What was the actual problem in the video authentication of the Marikana massacre?

Ms M Mmola (ANC) asked about the total number of investigators that IPID had managed to train in handling crime scene. What was the actual reason for Treasury for not wanting to provide IPID with additional funding for the investigation of scene two?

Mr P Groenewald (FF+) asked if there were any members of the police at the management level who had been charged in connection with the Marikana massacre. It was concerning to see that the plaintiff's attorneys could appoint the medical experts and the cost would be for the taxpayers.

Mr Z Mbhele (DA) wanted to know where the Department would get additional funds, since Parliament had already made an ultimate decision on the appropriation of funds for various programmes. It was concerning to see that IPID was continuously being under-funded, and Members of Parliament should know that they had an important role to play in influencing the budget of the Department. The Marikana massacre made it quite clear that police members were not adequately trained to deal with public violence. The Committee should also be provided with detailed information on the issue of the demilitarisation of police, as Members had already been briefed on the matter. What was the quantifiable cost of the Marikana massacre?

Mr P Mhlongo (EFF) said that there should be project management within SAPS to deal with what was expected from SAPS members in respect of short and long-term goals. If project management had been implemented within SAPS, then black people would not have been “gunned down like pigs” in the Marikana massacre.

SAPS response

Mr Nathi Nhleko, Minister of Police, responded that it was expected that the issue of demilitarisation of police would be contentious. The Committee should not take a simplistic view on the issue of demilitarisation of police, as this entailed the execution of work by SAPS members. The demilitarisation of police should not be limited only to the police ranks, but in the broader society and how the country would deal with the culture of violence. The manner in which police members were trained was more important than the issue of demilitarisation of police. The demilitarisation of police was not a decision that could be taken overnight, as it was complex and multifaceted and Members would need to mirror the debate on the demilitarisation of police against the country’s past. SAPS was already looking at ways to deal with people who had unlawfully lodged claims for compensation. The Farlam Report did not deal with operational capacity of SAPS, but the Committee could be assured that there was enough capacity within SAPS to deal with emerging threats.

Minister Nhleko explained that SAPS had set up a transformation task team that would deal with a comprehensive approach to transform SAPS at the management level. The duration of the task team was three years. The issue of project management was indeed crucial, and it was a matter to be located within the programme management office. SAPS would also need to take into consideration legal factors in the project management process. It was easy to do proper planning, but there were external factors that were beyond SAPS. The medical experts would need to come and determine the nature/extent of injury of claimants. It would be impossible to determine the quantifiable cost of the Marikana massacre, as there was no figure in the world that could quantify what had happened there. There was no need for deducing what could have or should have been done better to avoid the Marikana massacre, as this was a pointless exercise. The priority should be to ensure that the country never again got to experience what happened in Marikana.

Lt Gen Bonang Mgwenya, Head of Human Resource Management: SAPS, said that SAPS would conduct research on the demilitarisation of the police, and the research had to be finalised by the end of March 2017. There was a seminar that invited external researchers to make their inputs on the demilitarisation of the police. There was an investigation that had been conducted against 87 police members. The conclusion of the investigation showed that all 87 were clean from the allegations of maladministration or wrongdoing. There were currently criminal investigations that were being undertaken against senior officials within SAPS.

There was a project plan to ensure that SAPS was able to get all the required equipment for the next financial year. The station commanders were responsible for the maintenance of peace, like during the student protests. There were more than 7 000 station commanders and 15 000 SAPS members to be trained for the management of public violence.

Mr Mbhele admitted that it was indeed pointless for the country to be focusing on what could have or should have been done differently to manage the Marikana massacre. However, part of reflecting on the Marikana massacre was also to ensure that there was a level of accountability for those involved.

Mr Mhlongo asked for a further explanation on what was meant by the concept of transformation, as this had not been clearly articulated by the Minister. Transformation meant different things to different people. What was absolutely clear in the Marikana massacre was that the killing of black miners by black officers showed that the country was still suffering from a deep sense of “colonial syndrome”. It was also suspicious for the SAPS to absolve 87 police members from any wrongdoing while IPID had proved that there was an unreported body that had been found.

Minister Nhleko replied that the country had allowed a particular narrative that focused on a narrow political game after the Marikana massacre. The finalisation of the compensation of the next-of-kin was dependent on the ongoing litigation on the manner. There was hope that the ongoing litigation would be finalised sooner, rather than later. It was true that there should be accountability for those involved in the Marikana massacre. However, SAPS would also need to be careful as to how accountability would be implemented so as not to be opportunistic in the process. Despondence on the matter of Marikana would certainly not help at all. It sounded like some Members had second guessed the Farlam Report, although it had dealt with a number of topical matters.

The issue of transformation fell under the broad term of transforming the management and police service as a whole. The reality was that the “colonial syndrome” was limited not only to the police, but was affecting the broader society. The country would need to deal with the history of black people and the issue of dispossession. The “colonial syndrome” was something that the country would need to confront, and this also spoke to social transformation.

Mr Robert McBride, Head: IPID, said the levels of engagement between IPID and the NPA had increased and cooperation with the NPA had been particularly excellent. There was a joint team working with the NPA on a number of cases, and there had also been discussions on meeting deadlines and so forth. It had been decided that 24 April should be the deadline for dealing with cases related to the Marikana massacre. The Commission was clear that IPID needed to be properly staffed and funded in order to be able to carry out its duties. It was strange that all the 87 police members had been absolved of any wrongdoing in the Marikana massacre, considering that so many people had died. Perhaps SAPS should also involve IPID in the investigation of those cases to fulfil the purpose of an independent investigative oversight. There was a need to avoid the situation where the police would end up investigating themselves.

Mr Sisoko responded that there was a team of five prosecutors from NPA that worked with the investigators of IPID, and they met every two weeks. The delay in the cases that had been referred to the NPA was because of further queries that had developed in some investigations. All the queries that had been flagged in these cases had been concluded, and IPID was expecting that there would be a decision taken by the NPA on the matter. All the victims in the Marikana massacre had been identified in the investigations, and there had been an interaction with the next-of-kin in this regard.

The footages that were linked to the investigation by IPID were those that were taken by the Lonmin security. There were also footage that had been taken by the media houses. It would be difficult to get authentication of the video footage from the role players involved in taking those videos. IPID was compelled to obtain subpoenas to deal with the matter of authentication of the video footage. There was a progress on the Lonmin side in terms of getting and authenticating the video footage obtained.

A total of 20 investigators had been trained to deal with crime scenes, and the plan was to train more investigators in this financial year, but this had not happened because of budget constraints. The plan for the next financial year was to train all investigators to be able to deal amicably with issues around crime scenes. The queries on the assault and torture that involved SAPS members would also need to be investigated, although this was a costly exercise.

Firearm Amnesty: Briefing by the Minister

Mr Nhleko said that he was entitled to declare an amnesty by notice in the Gazette if the amnesty may result in the reduction of the number of illegally possessed firearms in South Africa, and it was in the public interest to do so. Section 139(2) of the Firearms Control Act, 60 of 2000, also provided that such amnesty would be valid only if it was approved by Parliament, and the amnesty must specify the conditions under which amnesty may be granted. There were a high number of illegally possessed firearms in circulation in South Africa, and firearms were the major contributor to crime in the country. The purpose of the Firearms Control Act, 60 of 2000 was to deal with the removal of illegally possessed firearms from society. A person who surrendered a firearm or ammunition in compliance with the notice was indemnified against prosecution only for the unlawful possession of such illegal firearms and ammunition. The previous amnesties had yielded significant success in South Africa. A firearm must be surrendered to a member of the police on duty at a police station, who must issue a receipt for the firearm and ammunition, and all surrendered firearms were ballistically tested.

Major General Dawie Rabie, Cluster Commander of Port Elizabeth, said that focused operations during amnesty periods resulted in an increased number of firearms being surrendered. Various communication and public awareness campaigns had been conducted. A total of 33 823 illegal firearms and 46 632 legal firearms had been surrendered during the firearm amnesty of 2005. 11 887 illegal firearms and 30 442 legal firearms had been surrendered in the firearm amnesty of 2010. The lessons that had been learned in the previous amnesties included a need for record keeping of surrendered firearms, and clearly stipulated timeframes for the transfer of firearms from police stations to the points of destruction. It was also important to have a centralised destruction of firearms. This was preferable, to minimise any possible risks.

The objectives of the 2017 Firearm Amnesty were the following:

- To reduce the number of illegally possessed firearms in circulation in South Africa;
- To provide firearm owners the opportunity to hand in unwanted firearms;
- To prevent crime and violence, and to promote safety;
- To ensure that people living in South Africa felt safe and had no fear of crime.

Maj Gen Rabie said that station commanders would be required to submit daily situational report to the Cluster Commander to validate information against the Operational Planning and Monitoring (OPAM) system. The station commanders would also have to conduct weekly inspections on firearm files, until the date the disposal order for the firearm was issued. The Provincial Joint Operational Centre (PROVJOC) would need to submit a daily consolidated provincial situational report with OPAM and the National Joint Operational Centre (NATJOC) would also need to submit a national consolidated report to the National Commissioner. All these were measures that had been put in place to ensure effective administration, record-keeping and processing at all departmental levels. The Firearm Amnesty 2017 was scheduled to extend from 1 April to 30 September 2017.

Briefing by Gun-Free SA (GFSA) on Firearm Amnesty

Ms Adele Kirsten, Director: GFSA, said that firearm amnesties were very complicated and complex undertakings, and the right conditions were absolutely critical for success. The question that everyone should be asking themselves was whether a firearm amnesty could possibly reduce

the circulation of illegal firearms, as this was where the primary problem was. SAPS needed to assure everyone that it was possible to reduce the circulation of illegal firearms through an amnesty.

It would be very narrow to view an amnesty as the only tool to reduce the problem of circulation of illegal firearms. The amnesty was usually successful among those people who no longer wanted their firearms, or those who no longer needed a firearm. It was disappointing to note that the SAPS presentation had not focused on the need for the surrendering of ammunition. There were people out there who had called GFSA and indicated that they no longer wanted their firearms, but they did not know what to do as they did not trust the police. The issue of trust was something that SAPS would have to deal with in order to ensure that there was an increase in the number of people who were able to surrender their firearms.

Ms Kirsten said that SAPS would also have to deal with the reality that there were people who had failed to renew their gun licences but were also unwilling to go through the process of amnesty. SAPS would need to be thinking very carefully in terms of appealing to the broader audience for the implementation of the amnesty. There were a number of factors that would need to be taken into consideration in order to ensure that the Firearm Amnesty became a success in getting illegal and legal firearms off the streets, and these included the conditions of the amnesty and civilian oversight. It would be impossible for SAPS to get illegal firearms off the streets if there was identification of information at hand-in points. South Africa would perhaps need to have a blanket amnesty, as had been done in countries like Brazil and Australia. The issue of civilian oversight was about creating conditions and an environment where people felt comfortable to come and hand in their firearms. SAPS should also start looking at ways in which people would be able to take their guns to the police stations, and perhaps there should be a neutral venue to surrender firearms. The issue of the destruction of the firearm at the point of handing in would prove to be crucial in getting illegal guns off the streets.

Ms Kirsten emphasised that SAPS should also be looking at ways to promote the amnesty by providing people with incentives on why they should surrender their firearms, whether this was a person who no longer wanted the gun, or a criminal. SAPS would need to segment its audience and have focused groups, like targeting gangsters and finding out what the conditions were that could make them surrender their firearms.

South Africa had had three firearm amnesties since 1994, with a success of 130 000 guns, and this was not bad as it meant there were over 130 000 not on the streets. The firearm amnesty of 2004 resulted in the surrender of 450 000 guns in Brazil, while in Australia the number had been 660 000. Australia was obviously vastly different from South Africa, but there were important lessons that could be learnt from both Brazil and Australia. The firearm amnesty in those countries came along with stricter gun laws and this was seen as the best combination to make an impact.

The reason Australia managed to get so many guns in the 2004 firearm amnesty was precisely because the country prohibited the use of semi-automatic firearms. SAPS should not in any way view an amnesty as a stand-alone intervention. SAPS would need to continue focusing on crime prevention, use of intelligence services, a search-and-seizure approach and other mechanisms in place to deal with the circulation of illegal firearms and gun violence. A total of 100 people were shot at in South Africa every day, and 16 to 18 of those people were killed. There was something that everyone could do to make a difference in stopping the circulation of illegal firearms and gun violence.

Confederation of Hunting Associations of South Africa (CHASA) on Firearm Amnesty

Mr Stephen Palos, Chief Executive Officer, CHASA, said that the Cabinet had been briefed on the Minister of Police's intention to declare an amnesty in terms of the Firearms Control Act, 2000

(Act No 60 of 2000), for a period of six months to maximise the participation of the community, and would commence on 1 April 2017 and end on 30 September 2017. The intention of the firearm amnesty was to reduce the circulation of illegally possessed firearms, which would in turn result in the reduction of contact crimes.

The questions that needed to be asked were whether law abiding citizens required an amnesty and if that was the case, then under what conditions. Special care was required so that the amnesty did not inadvertently lead to serious criminals, many still under investigation, getting “off the hook” as a result of prosecution gaps which the amnesty opened. The Minister had to ensure that full consultation with the National Prosecuting Authority of South Africa had taken place prior to finalising amnesty terms, especially those divisions specialising in organised crime, drugs and gangsterism, and wildlife crime.

Mr Palos mentioned that the amnesty needed to recognise that the concept of “Inadvertent Criminalisation” was real due to:

- Service delivery constraints (some stations were literally rationing the quantum of applicants per day, by prior appointment only).
- Inconsistent processes between provincial regions, and even between stations within a region.
- Turnaround time for renewal, especially on Section 13 licences, was too soon.
- Sheer human forgetfulness.
- The Western Cape was attempting to use the renewal process to audit every issued licence, requiring an actual physical inspection of each and every firearm when renewed.
- The above was further complicated by extremely ambiguous wording in the “Renewal of Competency” in the 2006 Amendment of the Firearm Control Act
- The process to manage deceased estate firearms was unnecessarily complicated, and not well understood by the public.

Mr Palos pointed out that while rumours of an amnesty had existed since after the Firearm Summit in 2015, there was absolutely no stakeholder management regarding how the amnesty would be handled. A general amnesty now, without having finally solved systemic problems including legislative, regulatory, capacity within the SAPS Central Firearms Register (CFR), and data integrity issues, may be extremely premature. There were three pending court cases, due to be heard in April, relating primarily to the “Late Renewal of Licences” issue. These cases could render the proposed amnesty (or parts thereof) moot, or even illegal. The high profile cases, often exaggerated by the media, were mischievously used to “force actions” by political leadership.

CHASA would caution the Minister to ensure he had been well counselled towards a holistic solution to the entire problem. The previous amnesties had resulted in cases, two of which were very high profile, of firearms leaking back into criminal hands from surrendered stockpiles. No one could be sure just how prevalent this may have been. Nothing concrete appears to have changed within SAPS to ensure this would not be repeated.

The amnesty should analyse the consequences and results of the last amnesty. At the close of the amnesty period, a total of 32 169 firearms and 348 083 rounds of ammunition had been handed in, representing a major victory in the fight against firearm proliferation in South Africa. It was also known that some of those firearms had filtered into the hands of violent criminals, although still unknown was how many of those firearms had been returned by confirmed criminals. The legislative review of current draft amendments to the Firearms Control Act (FCA) must be prioritised. This had to be done in conjunction with proper stakeholder engagement at a “workshop” level to ensure the complexities of firearm ownership and use were taken into account. The process above should be vested in the Office of the Civilian Secretary for Police. The participants should thus include (apart from firearm advocacy elements) the Gun-Free lobby, as

well as representatives from the NPA. The functional capacity of the CFR, including manpower and skills, should be addressed as well. This had been spoken about for years, but there had not been any fundamental change. In particular, the Act had introduced the concept of “competency” as the guiding principle in legitimate, responsible firearm ownership, yet the poor wording of the 2006 amendment, coupled with the licence renewal shambles, had lost this essential element.

Discussion

Mr Shaik-Emam expressed concern about the fact that the firearm amnesty seemed not to accommodate those individuals that had committed criminal activities with illegally acquired firearms. SAPS would need to find ways to ensure that those individuals that had committed criminal activities with illegal firearms were also catered for in the amnesty. The strategy should focus on getting all illegal firearms off the streets. It was a pity to hear SAPS complaining about the cost of amnesty when 16 to 18 people were shot at and killed daily. The Minister should also brief the Committee about those firearms that were surrendered, but ended up on the market again.

Mr Ramatlakane said that there were important issues that had been flagged in the presentations by the Minister, GFSA and CHASA. The issue of the circulation of illegal firearms and ammunition needed to be dealt with promptly. It was also clear that SAPS would perhaps need to find a way to incentivise people to surrender their illegal firearms and ammunition. It would be important to know if the amnesty also included those individuals who were late for the renewal of their gun licenses. The Committee should be clear that the collection of the illegal firearms would remain a priority, and was a necessary and important step to be undertaken.

Ms Mmola asked if there would be a mechanism in place to ensure that the designated amnesty officials at the police station levels were not selling the firearms that had been surrendered. It was also unclear if there was a safe place for the storage of the firearms that had been surrendered. It had also been indicated that the firearms would go through ballistic tests in order to investigate whether they had not been used to commit criminal activities. The important question then was what exactly the point of an amnesty was, if those individuals that had surrendered their firearms were still going to be investigated.

Mr P Groenewald (FF+) said that blaming guns for crime was like blaming pencils for incorrect spelling and the focus of SAPS should be on the individual people who owned a firearm. There was absolutely no need for an amnesty for those individuals that legally owned a firearm. SAPS would need to go into detail to show the real effectiveness of the amnesty. The Committee should be provided with the figures of both the illegal and legal firearms that had been surrendered in the previous amnesty. It looked like the amnesty had been misused to get guns out of the people, including the legal owners of firearms. It would be extremely difficult to encourage a criminal to hand in an illegal firearm, as they often used it to commit criminal activities. The introduction of a blanket amnesty would be defeating the aims of justice, as it would let criminals get away with murder. Why was there a sudden implementation of the amnesty from April? There should be a process that would allow the renewal of gun licences for those individuals that had missed the deadline for the reapplication. It was quite clear that there was no administrative capacity to handle the firearms in the country.

Mr Mbhele asked if there was concrete evidence that the firearm amnesty would reduce crime and gun violence in the country. It was concerning to hear this morning about 30 firearms that had been stolen by criminals from a police station in Eastern Cape, and this again pointed to the issue of the safe storage of firearms.

Mr J Maake (ANC) said it was impossible to expect criminals to hand in their illegal firearms at a police station, as this was one of the places that was mostly avoided by any criminal. Perhaps SAPS should find a mechanism where people could safely hand in their firearms without having to go to a

police station. There should also be a measure in place that would allow compliance in the handing in of illegal firearms.

The Chairperson wanted to know if there would be a vetting of the individuals to handle the whole process of the firearm amnesty.

SAPS response

Minister Nhleko responded that most of the concerns that had been raised by Members belonged at the policy review level, and could be properly dealt with in the amendment of the Firearms Control Act. The fact that the surrendered firearm needed to be handed in at a police station was clearly something that could be deliberated in the Act, and not directly in the firearm amnesty. The critical question was why people needed to be armed in the first place, and why people thought being armed somehow promoted their safety.

Mr Groenewald interjected, and asked why the Minister himself needed to have bodyguards to protect him.

Minister Nhleko responded that the country would need to deal with the culture of violence that permeated our society. It was indeed true that one needed to deal not only with the issue of firearms, but the individual that owned that particular firearm. However, it was also difficult to deal with that in a society that was saturated by the culture of violence. The reality was that robbery and sexual offences were mainly dominated by the usage of firearms. The problem of robbery in was that there was also a usage of firearms in robberies. Firearms were also being used by friends who happened to have a squabble while drinking, and this accentuated the culture of violence in our country.

The amnesty was an attempt to eliminate the circulation of illegal firearms. It was indeed true that SAPS should perhaps explore other avenues that would be used for handing in of firearms other than police stations. Any firearm that had been handed in would still have to go through the ballistic test in order to investigate whether it had not been used to commit criminal activities. It would be impossible to expect SAPS to ignore the process of ballistic tests, as it was a component of the amnesty. The principle of removing illegal firearms did not mean that those guns that had been used to commit criminal activities should be ignored.

Lt Gen Gary Kruser, Deputy National Commissioner: SAPS, clarified that there was a high number of people who were in possession of unlicensed firearms, and some people had not renewed their licences. This was what SAPS was already dealing with. SAPS had also offered an opportunity to those who had failed to renew their firearms, to submit for renewal without facing any prosecution and this had been discussed with the National Prosecuting Authority. It was true that it was difficult to implement the Firearms Control Act. The Minister had already indicated that there was a task team that had been appointed to focus on the amendment of the FCA, and this would cover a number of concerns that had been flagged by Members. In relation to the issue of ballistic testing, the ballistic testing was not able to identify the user of the firearm in a particular murder, but it was able to tell police where the firearm had been accessed and this would allow it to start investigating about where the firearm originated.

Lt Gen Kruser said that the Australian firearm amnesty had been introduced after there had been a drastic amendment to the Firearms Control Act in that particular country. The firearm amnesty did not mean that there should be no investigation on whether the firearm had been used for murder or not. The amnesty was really an attempt to reduce the circulation of illegal firearms in the country. The amnesty also dealt with cases where individuals surrendered firearms they considered as obsolete or no longer needed. The vetting of officials dealing with the amnesty would take place,

although this would be a process, considering the vast number of members that would be involved in the amnesty throughout the country.

An investigation would take place if a firearm that had been surrendered was linked to a crime that had been committed. The statistics were clear: that there were 11 887 illegal firearms and 30 442 legal firearms that had been surrendered in the firearm amnesty of 2010. The firearm amnesty was part and parcel of a broader strategy to reduce the circulation of illegal firearms. This year so far had been the best year for SAPS for the recovery of a number of illegal firearms.

Mr Mbhele expressed disappointment that the Minister had not presented any real figures showing that there was a correlation between a firearm amnesty and a reduction in gun violence. The Minister should state outright that the intention of the amnesty was to reduce gun possession and not gun violence. There was clear evidence that there had been an increase in gun violence and crimes committed with the use of firearms. The evidence did not seem to suggest that a firearm amnesty was an effective mechanism to deal with gun violence. There should be measures in place that would ensure a quick destruction of firearms at the point of handing in, which would prove to be crucial in getting illegal guns off the streets. The issue of the management of confiscations by the SAPS, whether drugs or firearms, was something that was of particular concern.

The Chairperson said time was not on the side of the Committee, and therefore requested that some outstanding issues should be dealt with at an appropriate time.

The meeting was adjourned.