

SAPS on Firearm Amnesty 2019/20: follow up meeting

Police

23 October 2019

Chairperson: Ms T Joemat-Pettersson (ANC)

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Meeting Summary

Video: [SAPS appears before the Police Portfolio Committee](#)

The Portfolio Committee on Police received a presentation from the South African Police Service on its proposed firearm amnesty in 2019/20. The presentation explained the legal background of the amnesty. It explained that the 2019/20 amnesty would not grant indemnity from prosecution to the owners of firearms found to have been used in crime, but a person who surrendered an illegal firearm would be allowed to apply anew for a license to possess the same firearm. The five stages of the amnesty were described: planning (which was already under way), implementation, reporting and monitoring, destruction and debriefing.

A lively discussion followed the presentation. While many Members wanted the amnesty to be approved, they voiced concerns about the readiness and capacity of the police service to receive, store and destroy the firearms that were handed in. In particular, concerns about the ballistic testing system and the names of the police stations excluded from receiving weapons were raised. Some Committee Members doubted that the amnesty would have any effect on violent crime, since firearms that were found to have been used in a crime were not protected by the amnesty. These Members said the intention of the amnesty was to target owners of firearms that had expired licenses. Members disagreed on whether this was a worthy intention. The Committee discussed an interim court order obtained by Gun Owners South Africa prohibiting the police from receiving firearms with expired licenses and deliberated on its relevance to the approval of the amnesty.

The Committee approved the amnesty with a starting date of 1 December 2019, running for six months. The Committee instructed the South African Police Service to deliver progress reports every two months during the amnesty, starting in February 2020, and asked for detailed reports on the outcomes of the 2005 and 2010 firearm amnesties. The Committee requested the Department of Police to consider a request from the FF+ to allow owners of firearms with expired licenses to renew their licenses during the amnesty, rather than having to surrender their firearms while a fresh license application was processed.

Meeting report

The Chairperson asked Members if they wanted to make any opening comments before she gave the floor to the delegation from the South African Police Service (SAPS).

Dr P Groenewald (FF+) said the Committee could not consider the Minister of Police's request to approve the firearms amnesty because the proposed start date was 1 October 2019, which had already passed. This could expose the Committee's decision to a legal challenge. He suggested the Minister should submit a new request with different dates.

Mr O Terblanche (DA) shared Mr Groenewald's concerns.

Mr E Maphatsoe (ANC) suggested that SAPS be given a chance to deliver its new presentation, and the matter of the date could be discussed afterwards.

Mr Groenewald was unwilling to allow this. The Committee could not approve the request if the correct dates were not in writing. He had read SAPS' presentation, and it showed the amnesty was targeting firearms with expired licenses. The Committee had not received the documentation it was supposed to have received, which would clarify which firearms were targeted. He drew attention to a recent interim court order obtained by Gun Owners South Africa (GOSA) which stated there was a difference in status between illegal firearms and firearms with expired licenses.

Mr Maphatsoe said Mr Groenewald could raise these matters after SAPS delivered its presentation.

The Chairperson said the Committee was advised it could approve the request to approve the amnesty based on an amended notice.

Mr Groenewald asked for a copy of this legal opinion.

The Chairperson said that it was received verbally but she could provide a written statement.

Mr Groenewald asked that the Committee be provided with the SAPS directive on the renewal of firearm licenses, which the Commissioner had promised to provide.

Ms J Mofokeng (ANC) said that SAPS should deliver its presentation.

Mr Terblanche suggested that the Committee should take a decision on the actual dates of the amnesty before proceeding.

Deputy Minister of Police, Mr Cassel Charlie Mathale, suggested that the amnesty begin on 1 November 2019. He denied that the amnesty was intended to sidestep the interim court order obtained by GOSA. It was intended to allow citizens to hand over legal and illegal firearms.

Presentation to the Portfolio Committee on Police on the Firearm Amnesty 2019/20

Maj. Gen. M Mamotheti, SAPS Component Head: Firearms, Liquor and Second-hand Goods Control, began by outlining the legislative background of the amnesty. She explained the 2019/20 amnesty would not grant indemnity from prosecution to the owners of firearms found to have been used in crime. She noted the amnesty would allow a person who surrendered an illegal firearm to apply anew for a license to possess the same firearm. She presented the objectives of the amnesty and the outcome of two previous firearm amnesties, in 2005 and 2010. She discussed recent and ongoing litigation related to the Firearms Control Act (FCA), while stressing that it was not related to the 2019/20 amnesty, and that although the Gauteng North High Court had recently interdicted SAPS from receiving firearms with expired licenses, the Minister had not been interdicted from declaring an amnesty. SAPS was also appealing the High Court judgement.

Maj. Gen. Mamotheti went on to outline the five stages of the amnesty: planning (which was already under way), implementation, reporting and monitoring, destruction and debriefing. She said 46 high risk police stations in the country were excluded from receiving firearms. 2 518 individuals would be screened and vetted to become Designated Amnesty Officials (DAOs). So far, 1 620 were screened and 109 vetted. She described in detail the process that took place once a firearm was handed in to the police. She discussed risks and how SAPS was mitigating them.

Discussion

Ms N Peacock (ANC) thanked SAPS for the detailed presentation. She found the statistics on crime frightening. The Portfolio Committee had asked SAPS to be proactive, so the Committee should help SAPS and approve the amnesty.

Ms P Faku (ANC) agreed. She also supported the Deputy Minister's suggestion to start the amnesty on 1 November 2019.

The Chairperson pointed out the Select Committee would only be meeting on 30 October 2019, so it did not seem like it would be possible to start on 1 November 2019.

Ms Faku said the Steering Committee members needed to be vetted, and this committee needed to be at a very high level.

Lt Gen S Jephtha, SAPS Acting Divisional Commissioner: Visible Policing, replied that the Steering Committee would be headed by a Deputy National Commissioner and all members would be vetted.

Mr Maphatsoe asked how the Integrated Ballistic Information System (IBIS) worked.

Ms M Molekwa (ANC) asked if there was any monitoring mechanism for the IBIS.

Ms Mofokeng noted that the IBIS contract had expired. How prepared were SAPS to do ballistic testing internally? Or was it going to appoint a new contractor?

Lt Gen B Mgwenya, SAPS Deputy National Commissioner: Human Resource Management, said the IBIS system would be in place again very soon. IBIS training took five days and there were officers who were able to train new officers.

Ms Mofokeng observed that there were 450 000 firearms in the country with expired licenses. How long would it take to process new licenses for all of these firearms? Was SAPS certain that it had enough capacity?

Mr Maphatsoe also wondered if SAPS had the capacity to process new tests and licenses in reasonable time for people who handed in firearms with expired licenses.

Maj Gen Mamotheti explained the process of applying for a firearm license would be the same during the amnesty as it was at other times. Nevertheless there would be a task team devoted to this.

Mr Shembeni asked what types of firearms had been handed in during previous amnesties. Were they South African made or foreign? SAPS needed to find out how foreign guns were entering the country.

Lt Gen Jephtha said this information could be made available.

Mr Mafanya (EFF) wanted more detailed information about the 2005 and 2010 amnesties. He also asked what the maximum number of guns a person was allowed to own was.

Maj Gen Mamotheti replied that the limits were outlined in chapter six of the Firearms Control Act.

Mr Mafanya asked if SAPS sent reminders to firearm owners to renew their licenses before they expired.

Maj Gen Mamotheti replied that the Constitutional Court had found this was not the responsibility of SAPS. It was also a significant expense. Nevertheless SAPS ran awareness campaigns to remind firearm owners it was their responsibility to renew their licenses.

Mr Groenewald said the proper purpose of a firearm amnesty was to reduce the circulation of illegal firearms that could be used to commit a crime. The majority of firearms handed in during the 2005 and 2010 amnesties were legal firearms, but an amnesty was not required to hand in a legal firearm. Not a single firearm used in a crime was handed in during either the 2005 or the 2010 amnesty. This was to be expected since the amnesty did not protect an individual who handed in such a firearm. It was clear, therefore, that the 2019/20 amnesty was aimed at firearms with expired licenses.

Mr Terblanche added that the amnesty would take firearms away from honest, law-abiding citizens. South Africa was a dangerous place, and honest, law-abiding firearm owners should be assisted and enabled to defend themselves.

The Deputy Minister denied this was the intention behind the amnesty. There was an impression that SAPS would pursue the owners of firearms with expired licenses once the amnesty was over. This was not the case. The process of dealing with the 450 000 firearms with expired licenses needed to be allowed to unfold, and he did not expect it to be resolved by the end of the amnesty period. Although some Members had issues, they did not seem to oppose the amnesty.

Mr Groenewald disputed the Deputy Minister's claim that the amnesty did not target the owners of firearms with expired licenses. It seemed to be intended to sidestep the interim court order obtained by GOSA. This litigation was not complete and the Minister's declaration of amnesty indicated the amnesty process should be put on hold until all legal action related to firearms was complete. A directive from the National Commissioner of SAPS also upheld the interim court order. If the amnesty was an urgent matter, why was SAPS taking so long to appeal the interim court order?

Mr Maphatsoe also wanted the status of the ongoing litigation to be explained.

Mr Terblanche asked if the interim order had been appealed yet.

Lt Gen Mgwenya assured the Committee that SAPS had taken the interim order into account. SAPS legal services would explain its interpretation of the ongoing litigation.

Col. Melville Cloete, SAPS Legal Services: Western Cape, explained the only relevant case was [*GOSA vs. National Commissioner of Police and the Minister of Police*](#), which was current being appealed. SAPS filed its heads of argument the week before, and GOSA would file its heads of argument on November 16, 2019. He stressed the interim order had no bearing on the implementation of a firearm amnesty. The National Commissioner's directive was still valid.

Mr Groenewald said that while the presentation counted 46 police stations to be excluded, the annexure to the notice to be gazetted, which was a far more important document, named only three. What were the names of the other 43 stations?

Mr Shembeni also asked which stations were excluded.

Ms Faku asked why these police stations were excluded.

Ms Mofokeng also wanted information about the reasons for the exclusions.

Lt Gen Mgwenya explained that SAPS had excluded these stations on the basis of a risk assessment. She would be able to provide the names of the stations.

Lt Gen Jephta added that more stations were excluded since SAPS's last meeting with the Portfolio Committee, following its directions. Criteria for exclusion included attacks on police stations and instances where firearms were stolen, as well as a station's firearm storage capabilities.

Ms Mofokeng asked if the screening and vetting process would be completed in time.

Mr Groenewald was worried that there would not be enough Designated Amnesty Officials (DAOs) vetted in time.

Mr Terblanche also doubted that SAPS would be ready. He did not think SAPS was even capable of keeping its own firearms safe.

Lt Gen Mgwenya expressed confidence in SAPS's readiness to carry out the amnesty.

Maj Gen Mamotheti conceded that vetting was a long process. Screening was expected to be completed by the end of October, but vetting would take longer.

Mr Terblanche was not convinced by these assurances. The presentation had not included anything about public participation in the amnesty, as the Committee had requested. Nor had there been any update about the Firearms Control Act Amendment Bill.

Lt Gen Mgwenya replied that a public awareness campaign was prepared, but it could not be rolled out until the request for the amnesty was approved by Parliament.

Mr Terblanche said that if all 450 000 illegal firearms were handed in, it would be regarded as a success, but it was SAP'S fault in the first place that there were so many illegal firearms.

Ms Peacock did not think that there was any problem with regarding this as a success for SAPS.

Mr Terblanche doubted that there would be a decrease in crime after the amnesty, based on the previous amnesties.

Ms Mofokeng disputed this - crime did go down after the previous amnesties.

Mr Groenewald argued that the decrease in 2010 was due to the Soccer World Cup and more visible policing.

Mr Terblanche said that ordinarily, firearms with expired licenses could be taken to a police station and a new license applied for immediately, whereas under the amnesty, the firearm would be taken by the police. He could not support this.

Mr Maphatsoe wondered if there could be a facility for people to hand in firearms anonymously.

Lt Gen Jephtha explained the amnesty provisions of the Firearms Control Act did not provide for anonymous hand-ins.

Mr Maphatsoe said illegally obtained firearms and firearms with expired licenses should not be treated in the same way by the amnesty, and the police should honour the interim order not to accept the latter.

Maj Gen Mamotheti said that a firearm whose license had expired automatically became an illegal firearm, according to the Constitution and the Firearms Control Act.

Mr Maphatsoe asked what SAPS got out of the destruction of firearms, and wondered if military veterans could be given an opportunity to be involved in the destruction.

The Chairperson asked Mr Maphatsoe to withdraw the second part of his comment.

Mr Maphatsoe agreed to withdraw it.

Lt Gen Jephtha explained that SAPS's risk was mitigated through the destruction of the weapons. It did not receive any money but SAPS was also not charged for it.

Summarising the first discussion session, the Chairperson asked SAPS to commit to ensuring the IBIS system was in place. Everyone agreed the first objective of the amnesty was to reduce circulation of illegal firearms in the country, and to provide firearm owners with the opportunity to hand in unwanted firearms.

Mr Groenewald had reservations about these statements. In particular, he believed the second point was irrelevant because an amnesty was not required to hand in a legal, unwanted firearm.

The Chairperson noted Mr Groenewald's reservations and said they would be discussed further in the second session. She asked if the Committee agreed that the ideal situation was to have no firearms circulating in society.

Mr Groenewald disagreed, but added that the question of reduction or complete eradication of firearm ownership was not at issue.

Continuing to summarise, the Chairperson said the Committee wanted to address the matter of how the amnesty would deal with expired firearm licenses. She noted the interim court order in the GOSA case did not prohibit the amnesty.

Mr Groenewald did not disagree but observed the interim order did oblige the police to return firearms with expired licenses to their owners.

The Deputy Minister explained that, although firearms with expired licenses were illegal, their owners could not be arrested. This was a problem that needed to be addressed but should not be conflated with the amnesty.

Mr Groenewald insisted that the Deputy Minister was being misleading. He read a directive issued to police stations in the North West province, which gave explicit instructions to prepare to receive firearms with expired licenses, and to advise owners of such firearms to voluntarily hand them in during the amnesty period.

Lt Gen Mgwenya replied that this directive was cancelled by a new directive, following the interim order in the GOSA case.

Ms Faku did not see the difference between an illegal firearm and a firearm with an expired license. She compared a firearm license with a driver's license. To stay within the law, firearm owners simply had to renew their licenses in time.

Mr Shembeni also stressed that an unlicensed firearm was the same as an illegal firearm.

Mr Maphatsoe agreed. The Committee could not give the impression that Members of Parliament were promoting the illegal possession of firearms. If one drove a car with an expired license, one could be arrested. Why should firearm owners be treated differently? The amnesty gave firearm owners an opportunity to renew their licenses. He acknowledged there were questions around SAPS's ability to process a large number of renewals in reasonable time, and suggested a staggered implementation.

Mr Groenewald observed that a person's car was not confiscated if their driver's license expired.

He would not object to owners of firearms with expired licenses being fined, but he did object to them being obliged to surrender their weapons. He would also support an amnesty which provided for renewal, as opposed to re-application, of expired firearm licenses, without the requirement of surrendering firearms while a new application was processed. This would address the uncertainty among firearm owners.

The Chairperson asked the Deputy Minister to seriously consider Mr Groenewald's suggestion.

The Deputy Minister agreed to consider the suggestion.

Mr Groenewald objected that it was within the power of the Portfolio Committee to decide whether to approve the amnesty. It did not have to request the Deputy Minister to consider its suggestions. It could make the Committee's approval of the amnesty conditional on it providing for the renewal of licenses.

The Chairperson replied that there was some uncertainty as to the legality of the suggestion and the capacity of SAPS to fulfil it. She did not want the Committee's decision to be challenged in court.

Mr Groenewald could not approve the amnesty without certainty that renewal would be provided for.

Mr Terblanche asked the Chairperson to add a request that the public be informed about the conditions of the amnesty.

The Chairperson agreed to include this request. She asked SAPS to provide detailed reports on the outcomes of the 2005 and 2010 amnesties, and if this was not possible, SAPS should compile detailed statistics on the outcome of the 2019/20 amnesty. The Chairperson said that the Committee would approve December 1 2019 as the start date of the amnesty, and that it would run for six months. The Committee would expect progress reports every two months, starting in February 2020.

The meeting was adjourned.