

## Firearms Control Briefing

# The firearms amnesty has ended, does SAPS know where the guns are?

### Introduction

Three days before the 2020-21 national firearms amnesty ended, the SAPS reported that just 40,729 firearms had been handed in, either for destruction or by gun owners with expired licences applying for new licences. Assuming that all the firearms handed in had expired licences, this is just 9% of the 450,000+ firearms which the Supreme Court of Appeal estimated were in illegal possession due to licence non-renewal when it upheld the constitutionality of firearm licence renewals days before the 2020-21 amnesty began.

This Briefing explores what happens now that the national firearms amnesty has ended. It has been developed in preparation for a Portfolio Committee on Police meeting scheduled for 16 February at which the SAPS will be reporting on the 2020-21 national firearms amnesty, and includes key questions SAPS needs to answer to explain why the amnesty yielded such a poor response and what SAPS plans to do to deal with firearm owners in illegal possession as a result of licence expiry.

### Background: The SCA ruling

On 23 July 2020 the Supreme Court of Appeal (SCA) upheld an application filed by the National Police Commissioner and the Minister of Police against an urgent interim interdict granted by Judge Prinsloo on 27 July 2018 in the North Gauteng High Court.<sup>1</sup> The interdict, granted in response to an urgent application launched by Gun Owners of South Africa (GOSA), prevented the SAPS from enforcing various provisions relating to the renewal of firearm licences, including sections 24 and 28 of the Firearms Control Act – see Box 1.

The SCA judgement was scathing of Judge Prinsloo and GOSA's litigation and dismissed the application with costs.

#### Box 1: *Firearm licence renewals*

Gun licences in South Africa have historically lasted for life. This changed in 2000 when the Firearms Control Act (FCA) established a system for the regular renewal of firearm licences:

- Section 24 requires the holder of a firearm licence to apply to renew this at least 90 days before the licence expires.
- Section 27 lists the periods of validity of various types of licences issued under the FCA, e.g. a licence to possess a firearm for self-defence is valid for five years.
- Section 28 deals with the termination of a firearm licence: Under subsection 1a, a licence terminates when the validity period has expired unless the licence has been renewed. Once a licence is terminated for whatever reason, including failure to renew it before it lapsed, the holder is then in unlawful possession of a firearm, which is a criminal offence. The holder must dispose of the firearm in accordance with the FCA.

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<sup>1</sup> Schippers, Ashton (Judge). 2020. Judgement of the Supreme Court of Appeal, Case 561/2019 in the matter between the National Commissioner of Police (First Appellant) and Minister of Police (Second Appellant) and the Gun Owners of South Africa (Respondent) and Gun Free South Africa (Amicus Curiae), 23 July. (Online). Available at [www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/33-judgments-2020/3405-national-commissioner-of-police-and-another-v-gun-owners-of-south-africa-561-2019-2020-zasca-88-23-july-2020](http://www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/33-judgments-2020/3405-national-commissioner-of-police-and-another-v-gun-owners-of-south-africa-561-2019-2020-zasca-88-23-july-2020) (accessed 29 August 2020).

“The application is dismissed with costs, including the costs of two counsel.” Supreme Court of Appeal, 23 July 2020<sup>2</sup>

In summary, the SCA ruling affirmed:

1. The 2018 Constitutional Court ruling that gun ownership “is not a fundamental right under the Bill of Rights, but a privilege regulated by law under the [Firearms Control] Act.”<sup>3</sup>
2. That an expired firearm licence cannot be renewed: “When a firearm licence terminates as contemplated in s 24(1) of the Act, it comes to an end by the operation of law; it is no longer valid and thus cannot be extended.”<sup>4</sup> At the time of the SCA ruling there were an estimated 450,000 firearms for which licences had terminated due to non-renewal;<sup>5</sup> though this number will have increased.
3. That possession of a firearm without a valid licence is a contravention of Section 3(1)(a) of the FCA, which reads, “No person may possess a firearm unless he or she holds for that firearm a licence, permit or authorisation issued in terms of this Act.”<sup>6</sup> The penalty for being in illegal possession of a firearm is a maximum period of 15 years imprisonment.<sup>7</sup>

## National firearms amnesty

Fortunately for firearm owners with expired licences, a week after the SCA judgement, and following parliamentary approval, the Minister of Police declared a 6-month national firearms amnesty from 1 August 2020 to 31 January 2021.<sup>8</sup>

Under the conditions of the amnesty a firearm owner unlawfully possessing a gun could apply for amnesty from prosecution for being in illegal possession. They had two options under the amnesty:

- To surrender the firearm(s) for destruction.

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<sup>2</sup> Ibid, p. 3.

<sup>3</sup> Ibid, p. 18.

<sup>4</sup> Ibid, p. 22.

<sup>5</sup> See:

- On 15 June 2018, the SAPS reported that there were approximately 436,366 firearm licences that had terminated due to non-renewal. Source: Sitole, KJ (Khehla) (National Police Commissioner). 2018. Instructions relating to processing firearms for which licences terminated in terms of Section 28(1)(a) of the Firearms Control Act, 2000 (Act No 60 of 2000). Letter addressed to All Provincial Commissioners, 15 June.
- When the SCA made its ruling in 2020, it estimated the figure to be 450,000. Source: Schippers, Ashton (Judge). 2020. Judgement of the Supreme Court of Appeal, Case 561/2019 in the matter between the National Commissioner of Police (First Appellant) and Minister of Police (Second Appellant) and the Gun Owners of South Africa (Respondent) and Gun Free South Africa (Amicus Curiae), 23 July. (Online). Available at [www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/33-judgments-2020/3405-national-commissioner-of-police-and-another-v-gun-owners-of-south-africa-561-2019-2020-zasca-88-23-july-2020](http://www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/33-judgments-2020/3405-national-commissioner-of-police-and-another-v-gun-owners-of-south-africa-561-2019-2020-zasca-88-23-july-2020) (accessed 29 August 2020).
- It is likely this figure is higher than 450,000, considering the two year time lag and GOSA’s misinformation campaign which encouraged gun owners to break the law. See: GfSA. 2020. Firearms Control Briefing 2 of 2020: Implications of SCA judgement upholding SA’s firearm licence renewal system. 7 October. (Online). Available at <https://www.gfsa.org.za/component/jdownloads/send/14-gun-policy-briefs/197-briefing-2-of-2020-implications-of-supreme-court-of-appeal-judgement-upholding-firearm-licence-renewals> (accessed on 13 February 2021).

<sup>6</sup> Firearms Control Act (No 60 of 2000), Section 3: General prohibition in respect of firearms and muzzle loading firearms.

<sup>7</sup> Firearms Control Act (No 60 of 2000), Schedule 4: Penalties.

<sup>8</sup> Ministry of Police. 2020. Declaration of an amnesty in terms of Section 139 of the Firearms Control Act, 2000 (Act No. 60 of 2000). Government Gazette, Vol. 661, No. 43576, 31 July.

- To surrender the firearm(s) and apply for a new licence for said firearm.

The conditions of the amnesty could not allow a firearm owner to renew a firearm licence when that licence has expired as it de facto does not exist in law.

## Response to national firearms amnesty

On 28 January 2021, three days before the 2020-21 national firearms amnesty ended, the SAPS reported that just 40,729 firearms had been handed in, either for destruction or for firearm owners with expired licences to apply for new licences.<sup>9</sup> Assuming that all 40,729 guns handed in between 1 August 2020 and 28 January 2021 had expired licences,<sup>10</sup> this is just 9% of the 450,000+ firearms for which licences had expired.

While Covid-19 restrictions no doubt impacted on amnesty response rates, failure to act by both gun owners with expired licences and the police has contributed to the pool of illegal guns in South Africa:

### Gun owners

Even though breaking the law was endorsed by GOSA<sup>11</sup> and approved by Judge Prinsloo, who is described as, “The judge who kept unlicensed guns on our streets,”<sup>12</sup> non-compliance with the law by gun owners is a massive disservice to law abiding gun owners across the country and makes a mockery of claims that gun owners are “South African’s most law-abiding section of society.”<sup>13</sup>

### SAPS

At the time of the 2020-21 amnesty, GFSA urged the SAPS to develop a coordinated campaign to deal with the 450,000+ firearms in unlawful possession due to licence termination by identifying and encouraging these firearm owners to surrender their weapons during the amnesty – either for destruction or to apply for a new licence – and monitoring applications for amnesty so as to respond appropriately.<sup>14</sup> GFSA has also consistently urged the SAPS to take meaningful action to build public confidence in the police through open and accessible communication around the amnesty and the

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<sup>9</sup> South African Police Service. 2021. SAPS destroys over 35 000 firearms. SAPS Newsroom, 28 January. (Online). Available at [www.saps.gov.za/newsroom/msspeechdetail.php?nid=30652](http://www.saps.gov.za/newsroom/msspeechdetail.php?nid=30652) (accessed 5 February 2021).

<sup>10</sup> We know that not all 40,729 firearms handed in between 1 August 2020 and 28 January 2021 have expired licences: In mid January the SAPS reported that as of 13 January 2021, 23,399 firearms had been handed in, of which 20,260 were guns with expired licences. Source: South African Police Service Office of the National Commissioner. 2021. ONLY two weeks left to surrender illegal and unwanted firearms as well as firearm parts and ammunition. SAPS Newsroom, 13 January. (Online). Available at [www.saps.gov.za/newsroom/msspeechdetail.php?nid=30379](http://www.saps.gov.za/newsroom/msspeechdetail.php?nid=30379) (accessed 5 February 2021).

<sup>11</sup> For instance, GOSA’s ‘Renewal Rescue Pack’, which was publicly launched before the 2018 North Gauteng High Court interdict, claims that “By following the steps in this pack, using all the materials provided, you will be able to successfully renew your expired firearm licence. If SAPS refuse to accept your renewal we provide you with the resources you will require to successfully appeal that refusal, right up to a judicial review. If you are a GOSA Silver member (or better) we will do all of this for FREE!” Source: Gun Owners SA. 2018. The GOSA Renewal Rescue Pack (v1), 24 July.

<sup>12</sup> Webster, Dennis. 2020. The judge who kept unlicensed guns on our streets. New Frame, 7 September. (Online). Available at [www.newframe.com/the-judge-who-kept-unlicensed-guns-on-our-streets/](http://www.newframe.com/the-judge-who-kept-unlicensed-guns-on-our-streets/) (accessed 8 September 2020).

<sup>13</sup> Schoeman, Johan (GOSA representative). 2015. Comment made at the National Firearms Summit, Parliament of the Republic of South Africa, 24-25 March, 24 March. (Online). Available at <https://pmg.org.za/committee-meeting/20587/> (accessed 10 January 2018).

<sup>14</sup> GFSA. 2020. Firearms Control Briefing 2 of 2020: Implications of SCA judgement upholding SA’s firearm licence renewal system. 7 October. (Online). Available at <https://www.gfsa.org.za/component/jdownloads/send/14-gun-policy-briefs/197-briefing-2-of-2020-implications-of-supreme-court-of-appeal-judgement-upholding-firearm-licence-renewals> (accessed on 13 February 2021).

appointment of an official independent observer with monitors in all provinces to ensure oversight and transparency and to identify problems as soon as possible so that these can quickly be dealt with.

Yet:

1. The SAPS did very little to publicise and encourage the public to take advantage of the 6-month amnesty.
2. The SAPS took no action to build the public's trust; even the initial commitment by the Minister of Police to report monthly on gun-hand-ins as a way of building trust in the police was ignored, despite repeated requests by GFSA to give updates.
3. In some instances the SAPS refused to accept amnesty applications, even though the purpose of the amnesty is to encourage people in unlawful and illegal possession an opportunity to come under the law. In one high profile case the SAPS actively stopped someone from handing in firearms as he could not prove ownership of the guns in his possession; in the end the court had to intervene to force SAPS to accept his amnesty application."<sup>15</sup>

## Questions to ask SAPS about the 2020-21 firearms amnesty

In light of these failings, below is a list of questions for MPs to ask SAPS on 16 February when SAPS reports on the 2020-21 national firearms amnesty held from 1 August 2020 to 31 January 2021:

1. What steps did SAPS take to publicise the amnesty and encourage people with unwanted, unlawful (e.g. guns with expired licences) and illegal firearms (guns for which there is no documentary proof of ownership) to hand them in?
2. How many firearms, firearm parts and rounds of ammunition handed in were legal, how many were unlawful and how many were illegal?
3. How many firearms, firearm parts and rounds of ammunition were handed in for destruction?
4. How many unlawful firearms, firearm parts and rounds of ammunition were handed in while the owner applied for a new licence?
5. How many firearms did the SAPS refuse to accept and what were the reasons for refusal?
6. How many firearm owners are in illegal possession as a result of licence expiry and thus termination?
7. How is SAPS dealing with firearm owners in illegal possession as a result of licence expiry?

"I know many people are expecting and waiting for...another amnesty. If I were the Minister, before I proclaimed another

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<sup>15</sup> In November 2020 the North Gauteng High Court ruled that the SAPS "shall not be entitled to refuse to accept amnesty applications on the basis that: The person surrendering the firearm cannot prove ownership of such firearm; The firearm is not registered on the EFRS or any other firearm recording system of the South African Police Services; That it is a deceased estate firearm where the licence expired in the name of the licence holder; For any other reason contrary to the provisions of Section 139 (4)(a) of the Firearms Control Act 60 of 2000. Source: Van der Schyff, Elmarie (Judge). 2020. Order of the North Gauteng High Court, Case 54506/2020 in the matter between Brendon George Sternberg (Applicant) and the National Commissioner of the South African Police Services General KJ Sitole (First Respondent), the Minister of the South African Police Services (Second Respondent), and Major General Mamotheti (Third Respondent), 11 November.

amnesty I would ensure that a number of miscreants are very publicly arrested and charged and I would argue that the minimum mandatory prison sentences that apply to certain types of firearms are imposed on conviction.” Gun rights lawyer, Martin Hood, 3 February 2021<sup>16</sup>

## Conclusion

Although the 2020-21 firearms amnesty offered gun owners in unlawful possession due to licence expiry an opportunity to come under the law, the failure to act by both gun owners and SAPS has contributed to the illegal pool of guns in the country.

The risk posed by these illegally held firearms was highlighted by the SCA, which warned that there “is a real risk that some or many [of the firearms for which licences have expired], which are now illegally in the possession of their owners may be stolen or lost and end up in the hands of criminals who may injure or kill others.”<sup>17</sup>

As ruled by the Constitutional Court and upheld by the SCA, firearm ownership is not a right in South Africa, it is a privilege regulated by law; with both citizens and the state having responsibilities. Moreover, as noted in the SCA judgement, SAPS has both the power and the duty granted by the legislature to enforce the law.

Since 2011 gun violence in South Africa has been steadily increasing: Nationally, guns have overtaken knives as the weapon most used in murders,<sup>18</sup> while in Gauteng more people are shot and killed than die in traffic accidents.<sup>19</sup>

We call on MPs to act on their mandate and hold the executive to account: SAPS must explain to South Africa why it failed to perform its duty during the 2020-21 firearms amnesty and what it plans to do to recover illegally held firearms, including firearms for which licences have expired, when it reports to parliament on 16 February.

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<sup>16</sup> Hood, Martin. 2021. Post on Facebook, 3 February (Online). Available at [www.facebook.com/groups/mjhood](https://www.facebook.com/groups/mjhood) (accessed 8 February 2021).

<sup>17</sup> Schippers, Ashton (Judge). 2020. Judgement of the Supreme Court of Appeal, Case 561/2019 in the matter between the National Commissioner of Police (First Appellant) and Minister of Police (Second Appellant) and the Gun Owners of South Africa (Respondent) and Gun Free South Africa (Amicus Curiae), 23 July. (Online). Available at [www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/33-judgments-2020/3405-national-commissioner-of-police-and-another-v-gun-owners-of-south-africa-561-2019-2020-zasca-88-23-july-2020](https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/33-judgments-2020/3405-national-commissioner-of-police-and-another-v-gun-owners-of-south-africa-561-2019-2020-zasca-88-23-july-2020) (accessed 29 August 2020), p. 12.

<sup>18</sup> South African Police Service national annual crime statistics:

- South African Police Service. 2019. Crime Statistics: Crime situation in Republic of South Africa (12) months (April to March 2018-19). Presentation to Portfolio Committee on Police, 12 September. (Online). Available at <https://pmg.org.za/committee-meeting/28873/> (accessed 28 March 2020).
- South African Police Services. 2020. Crime situation in Republic of South Africa: Twelve (12) months (April to March 2019-20). Presentation to the Portfolio Committee of Police, 31 July. (Online). Available at [www.saps.gov.za/services/april\\_to\\_march\\_2019\\_20\\_presentation.pdf](https://www.saps.gov.za/services/april_to_march_2019_20_presentation.pdf) (accessed 3 August 2020).

<sup>19</sup> Gauteng Department of Health. 2019. Gunshot wounds and stabbings top the list of causes of death in Gauteng. Media statement, 5 November: Reports that for 2018/2019 financial year, “state mortuaries recorded 2416 gunshot deaths followed by motor vehicle accidents and stabbings at 1695 and 1295 respectively.”