

2021 Measures to Address Violence and Unrest in a Time of COVID-19

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Abstract

This annual report addresses some statutory developments and case law concerning unrest, violence, crime statistics, violent protests, truth and reconciliation, security services, and arms and ammunition. There is a noted decrease in crime during the reporting period. This may be attributed to the COVID-19 lockdown restrictions on the movement of people. It is questionable whether the decline in crime statistics will continue. Violent protests ascribed to the incarceration of former President Zuma erupted during this period. The Civilian Secretariat for Police Service's *Integrated Crime and Violence Prevention Strategy* was published for comment. Family members of victims of gross human rights violations during apartheid still await the institution of criminal proceedings against the perpetrators. As espoused in a court decision, prisoners may not exercise conjugal rights while in a correctional facility. Several court cases dealt with the actions and activities of the security forces and their overreach during the lockdown period. Courts made scathing remarks in this regard. They also pronounced on the extension of licences for firearms and ammunition and allowed licence owners to apply for renewal where licences expired due to lax administration. The Firearms Control Amendment Bill, 2021, which gives effect to prior court decisions is also discussed.

Keywords: unrest; violence; crime statistics; violent protests; truth and reconciliation; security services; arms and ammunition



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Introduction

The COVID-19 lockdown restrictions led to a decrease in crime during this period. However, violence – presumably incited by the incarceration of former President Zuma – flared up in KwaZulu-Natal and other areas. To address crime and violence, the Civilian Secretariat for the Police Service published the *Integrated Crime and Violence Prevention Strategy*¹ (Strategy). The Strategy spells out the roles of institutions and persons in South Africa in eradicating crime and violence in communities. Arms and ammunition are used in the commission of crime and pursuance of violence; however, they are also used for protection against crime. The courts scrutinised the licensing, re-licensing, and destruction of firearms accordingly.

The courts found that the South African Police Services (SAPS) and the South African National Defence Force (SANDF) did not always fulfil their roles as they are required to or used more force or violence than was necessary. This occurred during the enforcement of COVID-19 restrictions. The courts further dealt with the review of sentencing orders and the privileges of detainees, a theme that came more to the fore over the last few years. The victims of gross human rights violence during apartheid and their families received grant increases for education purposes. However, they felt let down by the justice system as the perpetrators, as indicated in the Truth and Reconciliation report, have not been prosecuted.

This note reports on crime statistics, the Strategy, truth and reconciliation measures, security services, and arms and ammunition for the 2021 period.

Crime Statistics

The annual crime statistics for 2020/2021 released by the Minister of Police showed a significant decrease in crime rates (SAPS 2021). These statistics consider only the total reported cases. The significant decrease in crime statistics was largely due to the COVID-19 pandemic and the associated restrictions on the movement of people and national curfews. Minister Cele labelled the low crime rates as a “crime holiday” (O’Regan 2021) since low rates were unprecedented and perhaps a distorted representation of the crime landscape in South Africa. The Police Portfolio Committee applauded and welcomed what it perceived as improved crime statistics (Parliament 2021). Clearly, it will be difficult for the SAPS to present the same or better results when the country returns to a post-lockdown normal.

Contact crimes (murder, attempted murder, assault with grievous bodily harm, common assault, aggravated robbery, common robbery, and sexual offences) decreased by 13,9% (86 065 fewer cases than in 2019/2020). Sexual offences, specifically rape, decreased by 14,1% (5 959 fewer cases) (SAPS 2021). It is well-documented that rape cases are

1 GG 44173 (5 February 2021) Gen N 50, referred to as ICVPS, 2021.

underreported due to reasons such as familiarity and or personal relationships between the victims and perpetrators. The only contact crimes to have increased are attempted murder (0,4%), robbery of cash-in-transit vehicles (18,9%), and truck hijacking (16,2%) (SAPS 2021). The police prioritise the prevention of cash-in-transit robberies. For example, in Gauteng, they infiltrate robbery syndicates. However, these efforts are often sabotaged by the behind-the-scenes involvement of some SAPS members in robberies (Egwu 2021).

All other crime categories recorded fewer reported incidents (contact-related crimes (-8,9%), property-related crimes (-21,2%), and other serious crimes (-16,4%)). Crimes detected because of police action showed a significant decrease (-39,0%) (SAPS 2021). This could also be attributed to the large-scale deployment of law enforcement officers during COVID-19 Alert Levels 2 and 3.

The crime statistics for 2020/2021 are nowhere near the reality and lived experience prior to the lockdown. These statistics show the possibility of reduced crime rates and the active role the SAPS should play in that regard. Crime rates are expected to soar to the same heights they were at prior to the commencement of the COVID-19 lockdown.

Violent Protests

On 29 June 2021, Acting Deputy Chief Justice Khampepe ordered the imprisonment of former President Zuma for contempt of court. Subsequently, Zuma handed himself over to the prison authorities on 8 July 2021 and was taken into custody, which incensed his supporters and many others. Calls for his immediate release were made, but they were not heeded. As a result, Zuma's disgruntled supporters protested in Durban demanding his release. The protest in support of Zuma's release spread like wildfire throughout the KZN province and other parts of the country, making the country ungovernable (see Africa, Sokupa and Gumbi 2021, 35–39). People burnt trucks, sabotaged factories, and looted shopping centres and malls. Many people were injured and killed during the violence. Arguments that some Black people were perceived as looters and subsequently killed, sparked fresh racial discrimination claims, and created tensions in and between communities (Right2Protest 2021). It seemed not all looting was politically motivated, but poverty and disillusionment contributed (Africa, Sokupa and Gumbi 2021, 35–39).

The July 2021 unrest or uprising will always be remembered and forms part of South Africa's history on protests. The violent nature of the protest demonstrated what could become the new norm and set the benchmark for protests if the socio-economic circumstances of communities are not drastically improved and poverty alleviated. Furthermore, this will have dire effects on the economy of the locality and the entire country (see Right2Know 2021; Africa, Sokupa and Gumbi 2021, 35–39).

In addition to the KZN violence, taxi violence flared up across the country and special measures had to be introduced.² For example, in Mpumalanga all taxi operations and licences were suspended until the conflict could be resolved.³ In the Western Cape, certain routes and taxi ranks were closed and licences of taxis operating in the area were suspended.⁴

Integrated Crime and Violence Prevention Strategy

Owing to South Africa's crime statistics and continued violence, among other factors, the Civilian Secretariat for the Police Service published the *Integrated Crime and Violence Prevention Strategy* (Strategy) for comment in February 2021. Essentially, the Strategy sets out a vision for safer communities, recognises the need to address the drivers of crime and violence, and acknowledges that the prevention of crime and violence is not the sole responsibility of the police force. Based on the socio-ecological model, the Strategy acknowledges that violence results from a combination of factors that put persons at risk. Overall, the Strategy calls for interventions at various levels: primary level (for the general public); secondary level (for those regarded as being at risk of offending or of criminal victimisation); and tertiary level (for those who have already been affected by crime or have been victimised) (See ICVPS 202, iv.).

The Strategy deals with definitions, background to the Strategy, the regulatory framework and stakeholder engagement, followed by a discussion of the situational analysis, the strategic intent, and an in-depth reflection on the key focus areas. It consists of the following six pillars:

- Pillar 1: an effective criminal justice system (ICVPS 2021,7–16);
- Pillar 2: early intervention to prevent crime and violence and promote safety (ICVPS 2021, 17–28);
- Pillar 3: victim support (ICVPS 2021, 29–30);
- Pillar 4: effective and integrated service delivery for safety, security, and prevention of violence (ICVPS 2021,31);
- Pillar 5: safety through environmental design (ICVPS 2021, 32–33); and
- Pillar 6: active public and community participation (ICVPS 2021, 34–36).

The exposition of the various pillars is followed by key principles (ICVPS 2021, 37), a discussion of the critical success factors or system-level requirements (ICVPS 2021, 37–49) risk management (ICVPS 2021, 49), the roles and responsibilities of relevant

2 For example, Mpumalanga – PG 32353 (9 April 2021) PN 38; Sedibeng – PG 214 (7 July 2021) Gen N 748 and Western Cape – PG 8467 (23 July 2021) PN 77; PG 8475 (6 August 2021) PN 82.

3 Mpumalanga – PG 32353 (9 April 2021).

4 Western Cape – PG 8467 (23 July 2021).

players (ICVPS 2021, 50–52), implementation of governance (ICVPS 2021, 53–57), monitoring and evaluation (ICVPS 2021, 57–58), as well as a review strategy (ICVPS 2021, 58).

The Strategy must be considered in its entirety. However, this discussion will essentially focus on the six pillars alluded to above, the key principles, and critical success factors. The first pillar espouses an effective, efficient, and responsive criminal justice system. A professional criminal justice system is key. Equally important is the setting out of responsible or lead entities for certain actions, including the Department of Justice and Constitutional Development; the Justice, Crime Prevention and Security cluster (delivering an integrated justice system); and SAPS. All role players, including civil society, are responsible for addressing violence against women, children, and vulnerable groups. They need to address structural drivers of gender-based violence and femicide and develop and implement integrated responses relating to child protection services. The first pillar also encompasses the effective rehabilitation and reintegration programmes of detainees as well as effective restorative justice programmes and interventions.

The second pillar embodies the following five components:

- a healthy start for infants and children;
- a safe and supportive home, school, and community environment for children;
- context-appropriate child and youth resilience programmes;
- substance abuse treatment and prevention; and
- context-appropriate interventions for vulnerable risk groups.

In this regard, it is important for all role players to participate. Prevention is key. For example, children must not be exposed to crime and violence in communities and learning environments. The development of context-appropriate child and youth resilience programmes is also crucial.

Pillar three encompasses two components: (a) the design of a comprehensive framework promoting and upholding the rights of victims of crime and violence; and (b) comprehensive services delivered to victims of crime and violence. It is essential to develop and implement a comprehensive legal and policy framework and remove barriers faced by vulnerable groups. It is also imperative to adequately resource victim services and ensure that communities participate optimally.

Pillar four deals with two components: (a) access to comprehensive crime and violence prevention and safety and security services; and (b) professional and responsive service provision. This pillar is linked to pillar two but places more emphasis on crime prevention. In this context, the early screening of parents, caregivers, and children at

risk is crucial. Since many role players are involved in this process, effective inter-departmental and sectoral coordination is important.

Safety through environmental design in pillar five entails the integration of safety and crime prevention through environmental design into rural and urban design, planning, development, and upgrading. This is an interesting pillar in that land use planning and development are key. In this regard, specific areas deemed to be unsafe are targeted, while generally safe environmental planning is embarked upon. Both private and public sectors are involved, and they are committed to sustainable and meaningful community participation.

Pillar six embodies three components:

- sustainable forums for coordinated and collaborative action on community safety;
- public and community participation in development, planning, and implementation of crime and violence prevention programmes and interventions; and;
- public and private partnerships to support safety and crime and violence prevention programmes and interventions.

Crime prevention cannot take place without active, sustainable community participation. While this might be the point of departure, realising this in practice can be very challenging. In this regard, sustainable forums for coordinated and collaborative action for community safety are integral. Public and community participation in the development and planning of interventions is also important. Communities would know where the critical areas are and the intervention that may be successful or more effective because a one-size-fits-all approach would thus not suffice.

Underpinning the Strategy are the following four key principles:

- equality of access;
- protection and service;
- commitment to high-quality service;
- integrated planning and implementation; and
- evidence-based planning and implementation.

The following elements or factors are essential for the success of the Strategy:

- Strengthening legislation and policy for crime and violence prevention. This requires improving policy coherence, including setting out respective responsibilities of, for example, local, provincial, and national governments. It also entails developing corresponding monitoring and evaluation systems.

- Aligning strategies that address crime and violence prevention, dealing with, inter alia, the need to mainstream and integrate approaches to community safety across government and to integrate strategic planning across all three spheres of government.
- Dedicating sufficient budgets and resources to ensure community safety and crime prevention.
- Allocating resources for implementation and coordination mechanisms. Included herewith is the allocation of a budget and dedicated staff with the necessary skills;
- Strengthening inter-governmental cooperation systems. This includes providing the necessary capacity to municipal managers' offices and driving municipal strategies. The point of departure of the evidence-based planning and implementation factor is that strategic planning needs to be knowledge-based and that all interventions must be evidence-based, relevant to the local contexts, and informed by specific local needs. Integral herein is the existence of reliable, inter-sectoral data. Programmers and interventions must be responsive, accessible, and of high quality and must promote integrated service delivery.
- Promoting public and community participation. The Strategy promotes an "all society" approach, recognising the key role of communities and encouraging partnerships with the civil society and private sector.

The Strategy provides for monitoring and evaluation and suggests the development of a holistic monitoring and evaluation framework, in collaboration with all spheres of Government. The final Strategy will be revised every five years.

While the Strategy is welcomed, effective implementation ultimately depends on a variety of factors (ICVPS 2021, 49), most notably, the political will of the executive and senior leadership at the political and administrative levels. Other factors that will also determine the efficacy of the Strategy are the willingness to work together, sufficient funding, and effective alignment of relevant interventions. Crime prevention is a critical concern in South Africa and needs to be prioritised through the allocation of sufficient financial and human resources. The outbreak of the COVID-19 pandemic had an impact on all spheres and levels of government, including budgeting for critical issues. While health services and socio-economic considerations are extremely important from a budgeting point of view post-COVID-19, crime prevention should not be placed on the back burner.

National Unity and Reconciliation

The Government continues to increase assistance to apartheid victims to enable them to access basic and higher education.⁵ However, the Foundation for Human Rights in South Africa and family members of victims allege that the state has failed them,

3 GG 44230 (5 March 2021) GN R177; GG 44230 (5 March 2021) GN R178.

because the National Prosecuting Authority (NPA) has not instituted proceedings in the 300 cases identified by the Truth and Reconciliation Commission in 1998 (Anon 2021a; Ho 2021; Forbes 2021).

Security Services

Police Services

*Vuma v Executive Director: Independent Police Investigative Directorate*⁶ highlights the general duties of high-ranking officials in the SAPS and their responsibilities relating to supporting and assisting the Independent Police Investigative Directorate (IPID). In January 2021, the Gauteng Division of the High Court handed down an order confirming, among others, that the first, second, and third respondents, respectively the first, second, and third appellants in this matter – Vuma, Tsumane, and Sithole had breached their duties under sections 4(2) and 29(2) of the Independent Police Investigative Directive Act 1 of 2011 (IPID Act) by failing to furnish the IPID with information and documents for its investigations. The present matter was an application for leave to appeal the above order.

The Court, per Davis J, first scrutinised the jurisdictional requirements, namely that there should be a reasonable prospect of success or that there was another compelling reason for the appeal to be heard (para 2). While the breach of duties was contested, other findings of the main judgment were not challenged. This included that the IPID Act imposed a duty on every organ of the state, including the SAPS – an institution where the respondents had leadership roles – to assist the IPID in performing its functions effectively, and that such an obligation was specifically placed on members of the police force (para 3.1.1). These duties remained intact, irrespective of whether subpoenas had been served on the first to third appellants. Counsel’s explanation did not assist either as it became clear that, apart from a simple response, the appellants did not furnish any other particulars, or any information – clearly within their knowledge – of any aspect of the matters under investigation, nor did they assist in any other manner or fashion. “In fact, when requested to avail themselves for interviews, rather than comply with their statutory duties as police officers willing to contribute to the investigation of crimes, they sought legal assistance and, on this basis, thwarted IPID’s investigation” (para 4.2).

The Court was satisfied that the breach of duties remained relevant. While the appellants argued that they had no legal authority to furnish classified information, the Inspector General of Intelligence had already determined that there was no reason for the documents to be classified. The failure or refusal of the third appellant to declassify the documents amounted to a breach of statutory obligations. The second appellant requested that the documents be declassified but did not follow it up – a further breach

4 2021 (1) SACR 621 (GP).

of duty (para 4.4). The appellants did not take any active or positive steps to comply with their stated duties. The Court was satisfied that duties to assist existed irrespective of the timing and way the assistance was requested. In addition, the declassification of the relevant documents was not a prerequisite for rendering assistance. Further, the appellants frustrated the process for more than two years by withholding information and initiating a counter application, which underscored non-compliance with their duties (para 4.7 in general). In this light, the Court was satisfied that there was no reasonable prospect that another Court could on appeal find otherwise (para 5). The application for leave to appeal was thus dismissed with costs.

The judgment is welcomed. As alluded to in the main judgment (para 3.2), the Court would have expected the SAPS management to immediately investigate rumours of over-expenditure and corruption in its ranks. It is imperative that public servants, especially those in leadership and management, be above reproach and that any hint of corruption is investigated in depth, with the full support of said leadership corps. Not only would one expect such professional conduct, but it is required statutorily.

In *Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg v Minister of Police*⁷, the Constitutional Court declared section 13(7) of the South African Police Service Act 68 of 1995, which allows warrantless searches, unconstitutional. The Court acknowledged that this section aims to prevent crime. However, it has been abused and used against vulnerable residents who already live in undignified conditions in the Johannesburg inner city. According to the Court (paras 219–220) “severing section 13(7) in its entirety is the kind of remedy which will restore the dignity of the applicants and result in the kind of structural changes which will moderate the conduct of the police.” It will remove unfettered police powers, discrimination, and the possibility of harassment.

The Minister of Police indicated that police brutality remains a concern (Anon 2021f), while the IPID found that SAPS’s use of a water cannon on SASSA beneficiaries, who refused to social distance while in a queue, did not constitute misconduct. The report was condemned because vulnerable people who were also queuing were not considered. (See Human 2021.)

Correctional Services

The Correctional Services Amendment Act 7 of 2021, which deals with the minimum time a prisoner needs to serve before being released on parole, was passed in Parliament and will come into operation on a date determined in the Government Gazette.⁸ Prisoners need to be released on parole due to overcrowding in prisons. The Minister of

5 2022 (1) BCLR 46 (CC) para 221.

8 GG 44650 (1 June 2021).

Justice released a report in February 2022, which stated that South African prisons have an occupancy rate of 116.7% (Anon 2021b).

*S v Josephs*⁹ deals with automatic review under section 302(1) of the Criminal Procedure Act 51 of 1977 and how the provision functions in practice. In this regard, a magistrate sent a matter on automatic review on the basis that the convicted person was not represented at the time of his conviction and that the period of correctional supervision exceeded the limit set out in section 302(1) of the Act (for background paras 1–3). Henney J set out the position relating to automatic review by drawing distinctions between correctional supervision and imprisonment (paras 7–8). While both constitute forms of punishment a sentencing court can impose on a convicted person, one requires confinement (“committal to any institution established by law”), whereas the other does not (para 7). Correctional supervision is a community-based form of sentencing that embodies various forms, including house detention and compulsory work for community organisations without payment. The aim of this kind of sentencing is to enable a person to serve a sentence in a non-custodial manner (para 8).

An automatic review under section 302(1) takes place when an imprisonment exceeds three months or if a fine exceeds the amount determined by the minister. In this matter, however, correctional supervision, not a prison sentence, was at stake. As explained, the former deals with persons who deserve punishment, but do not need to be removed from society by way of incarceration. From the magistrate’s notes, it was clear that the convicted person was not to be removed from society, but correctional supervision would apply (para 10). Accordingly, the sentence handed down by the magistrate was not one that stood to be automatically reviewed as it did not entail incarceration (para 11). The judgment is valuable because it explains clearly which sentences ought to be sent for automatic reviews under the Criminal Procedure Act and which ones do not need automatic review and why.

In *P v Minister of Justice and Correctional Services*,¹⁰ the applicant sought relief against the respondents relating to the conditions of his incarceration, specifically to matters regarding contact and non-contact visits (para 10). Contact visits would include conjugal visits by his spouse and non-contact entailed the possession of a mobile phone to communicate with his spouse and family (para 1). The applicant is held at Zonderwater Correctional Facility, where he has been serving a 25-year sentence since July 2014. The applicant and his spouse got married in 2017 after they received permission to do so. Before marriage, they expressed their desire to have children and received permission for artificial insemination, as provided for by the policy. Permission was not granted initially, but the decision was reversed due to a *bona fide* error on the respondent’s side.

7 2021 (1) SACR 450 (WCC).

8 (66090/18) [2021] ZAGPPHC 77 (4 March 2021).

This process took 14 months, which the applicant indicated was a violation of his right to just administrative action in terms of section 33 of the Constitution. However, the applicant did not seek any relief on this matter. The reason could be that the application for permission could only be considered after marriage and due to the unusual application and the reversal of permission two months later, the Court was not convinced that the applicant’s stance constituted a violation of his constitutional rights. The applicant’s wife eventually fell pregnant through artificial insemination and gave birth (para 3–9). The applicant sought relief based on his right to establish and maintain healthy family relations. The application was brought under section 38 of the Constitution.¹¹ The applicant claimed a right to conjugal visits, but the Court found that there is no such express self-standing right for prisoners (para 68). Furthermore, the contact referred to in section 35 of the Constitution is used in the generic sense based on the idea of human interaction (para 71) and does not entail conjugal visits (para 72). The Court, however, noted that this may very well not be the last word on the matter as the “complexity of the human condition and the diverse range of human relationships and interaction simply meant that there is not a single model that fits all” (para 74).

On the application for access to or the possession of a mobile phone, the Court found that although the right to communicate is important in the rehabilitation process of prisoners, the applicant had sufficient opportunity for contact in the current system, which provides for both contact and non-contact visits (para 63). The conditions suggested by the applicant would also be “a full-time duty further stretching the human resources at correctional facilities” (para 63). The Court found that even if the above contacts have limitations, they are reasonable and justifiable (para 59). The application was accordingly dismissed.

Defence

*Koetsioe v Minister of Defence and Military Veterans*¹² involves an urgent application relating to the existence of an informal settlement in the vicinity of the Marievale Military Base in Gauteng. The base is a training facility for newly recruited members of the military police. Their training involves the use of firearms, pyrotechnics, dog training, and horse riding. Relations soured when some people moved into bungalows in the military compound. The bungalows later fell into a state of disrepair in 2017. Following various agreements, meetings, and court actions, including eviction proceedings, some of the settlers voluntarily relocated to land made available to them by the Ekurhuleni Municipality. Some settlers started a new informal settlement next to the military base, constituting a “village” (para 3). Various agreements and the involvement of senior military and municipality officials did not prevent civilians from unlawfully occupying the military base. The number of occupants of the informal settlement should likewise have been drastically reduced (para 3.11). Yet, there were

9 The right to approach a Court with an allegation or complaint that their human rights have been violated or that a violation is pending.

10 [2021] ZAGPPHC 203 (6 April 2021).

various concerns about the relocations, including that some of them had occurred during the lockdown in 2020. Various orders had also been handed down against the SANDF in relation to its conduct towards the community and the informal settlement in the vicinity of its facility (para 3.13).

The present relief sought by the applicants against the SANDF was linked to the conduct of members of the Defence Force who demolished houses and structures in the informal settlement, discharged firearms in its vicinity, grossly violated human rights, and damaged the applicants' homes and belongings in March (para 4.2). While conflicting evidence was placed before the Court, it concluded that, on a balance of probabilities, the villagers had breached the terms of their undertaking with the military base and the Municipality that once bungalows had been vacated there would not be a resumption of unlawful occupation and the re-erection of temporary structures. Furthermore, the villagers provoked members of the Defence Force by pelting them with stones. However, it was also clear that a few soldiers had entered the village, demolished at least three homes, and harassed and beat some community members (para 4.5).

The Court confirmed that although the Defence Force's demolition of informal structures was temporary, it "amounted to an attempted forceful eviction" and as it occurred without a court order, it "amounted to unlawful conduct and a breach of section 26(3)" (para 5.1). Moreover, that the community had breached its undertaking with the authorities was irrelevant as "[a] breach of contract does not justify self-help which amounts to spoliation" (para 5.1). Although members of the military could protect themselves against unlawful attacks, the stone-throwing incident had not been a full-fledged attack (para 5.4) and the village did not form part of the base over which the military exercised jurisdiction (para 5.5). Furthermore, the already extant order preventing the military from entering the village had been contravened (para 5.5). On the other hand, the community established a village on land adjacent to a military base, where ongoing training occurred. They would thus have to accept that certain military activities would take place in their vicinity (para 5.6).

In considering the matter, Davis J voiced his disappointment with the applicants' refusal to consider dispute resolution as a possible option to conclude the matter successfully (para 6). Under Rule 41A of the Uniform Rules, parties were obliged in every application to indicate whether such party agreed or opposed the referral of the dispute to mediation. The option of mediation had to be considered and could not be dismissed entirely. In the present matter, the Court was convinced that given the previous experiences and past agreements, as well as the applicants' own breach of their undertaking, "this matter could have (and still can benefit) from mediation" (para 6.5).

Regarding the specific relief, the Court underlined that existing orders must be regarded (para 7). The Court then considered each of the 11 prayers, ultimately focusing on prayer number two confirming that members of the military could not take the law into their

own hands and that unlawful conduct, including the destruction of homes without a Court order, could not continue (para 7.2).

Housing remains a critical issue in South Africa. The judgment reflects the continued struggle of the homeless and the conflicts that occur when people are forced to live in an informal settlement that is next to an active military base. The latter is of national importance and must function optimally, in the public interest. In that regard, one would also expect professional conduct in its operations and interaction with the community and civilians in general. It is hoped that mediation may be beneficial as Court proceedings in the past have not been successful, and sometimes Court orders have not been adhered to. If there remains a dire need for housing, merely putting agreements that forbid the reconstruction of demolished homes will not suffice.

Members of the Defence Force were deployed nationally to enforce COVID-19 regulations, prevent crime, maintain order, and preserve life, health, and property in terms of the Defence Act 42 of 2002.¹³ A code of conduct for Operation Prosper focusing on the local elections in November 2021 was also published.¹⁴ This code spells out the role of the SANDF in supporting the SAPS in maintaining order and providing logistical support during the elections, among others. Unfortunately, the Department of Defence's irregular spending increases by R3bn a year (Maqhina 2021).

National Intelligence

The submissions to the Zondo Commission indicated that there might be widespread corruption and financial irregularities in the work of the State Security Agency (Khanyile 2021). The evidence also indicates that there are poor governance structures in this important arm of governance. In 2021, the President transferred the state security portfolio to the Office of the Presidency (Africa 2021). It became apparent that national intelligence agencies either did not do their work or did not inform the Presidency and other security services about the threat of the July 2021 Uprising in KwaZulu-Natal and Gauteng referred to above.

Arms and Ammunition

The looting in KwaZulu-Natal also included the raiding of an ammunition depot in Durban where "1.2 million rounds of ammunition were stolen from a container yard in Durban in July." This led to fear that political violence will be on the increase in future (Global Initiative Against Transnational Organised Crime 2021). Notice was given that the State will destroy firearms, ammunition, and firearm parts that were voluntarily surrendered or forfeited to the State.¹⁵ These arms sometimes went missing or were sold

11 GG 44138 (10 February 2021) GN 78; GG 44997 (13 August 2021); GG 44867 (16 July 2021) GN 631.

12 GG 44849 (14 July 2021) GN 613.

13 GG 44679 (9 June 2020) GN 490.

to gangs or criminals as was illustrated in the *Raves v Director of Public Prosecutions, Western Cape* case.¹⁶

*Fidelity Security Services (Pty) Ltd v Minister of Police and Others*¹⁷ was an appeal against a dismissal with costs on a punitive scale by the High Court under the Firearms Control Act 60 of 2000.¹⁸ The background was briefly the following (para 4ff): The appellant is a registered security service provider, licensed to possess more than 8,500 firearms. Section 7 of the Act provides that if a juristic person wishes to apply for a licence, permit, or authorisation, it must nominate a natural person to apply on its behalf. Section 3 of the Act further provides that no person may possess a firearm unless he or she holds a licence, permit or authorisation. Additionally, the renewal of licences is set out in sections 24 and 28 of the Act – essentially, the process needs to be initiated at least 90 days prior to the expiry of a licence. Because many firearms whose licences expired on different dates were involved, an effective control system needed to be in place to keep track of all the licences that were about to expire. The person responsible for this at Fidelity left the employ of the company on 1 February 2016 and was replaced by Mr Wenzel on the same day. At that stage, it was discovered that about 700 licences had not been renewed and were consequently terminated by operation of law. Attempts to renew the licences were unsuccessful as the Designated Firearm Officer refused to accept late applications for renewal (para 9). All further attempts were likewise unsuccessful; the police steadfastly refused to budge. Further attempts through correspondence using letters were ignored and likewise unsuccessful (para 11). This led to the appellant launching a Court application insisting in its challenge that:

- (a) sections 24 and 28 were constitutionally invalid;
- (b) the police be compelled to accept late applications for renewal;
- (c) the police be directed to issue Fidelity Security Services with temporary authorisations;
- (d) an interdict restraining the police from seizing the relevant firearms be granted; and
- (e) in the alternative, a mandamus directing the police to accept new applications for firearm licences be given (para 12).

The application, which was opposed by the respondents, was dismissed in its entirety (para 16).

While the appeal was initially lodged on various grounds, it was narrowed considerably a few days before the appeal started, essentially boiling down to one issue: whether Fidelity could submit new applications for the firearms (para 20). The Court turned to the interpretation of rules and principles, highlighting that the relevant provision had to

14 2021 (2) SACR 140 (WCC).

15 [2021] 3 ALL SA 67 (SCA), 2021 (2) SACR 1 (SCA) (22 April 2021).

16 The judgment also dealt with an application for condonation of the late filing in paras 36–40, not canvassed in this discussion here.

be interpreted, having regard for the purpose of the Act. A sensible meaning was preferred over one that led to unbusinesslike results or one that undermined the apparent purpose of the Act, all relying on the ordinary rules of grammar and syntax (para 24–26).

The respondents argued that a party whose licence had been terminated by operation of law was precluded from applying for a new licence to possess a firearm under the Act. Accordingly, Fidelity allowed 700 licences to expire by operation of law when it failed to renew them. The so-called new applications sought by the appellant were thus in truth applications for renewal of the expired licences and not new applications (para 30). Furthermore, if a licence had been terminated by law, the gun holder would have to get rid of the firearm. Thus, counsel for the respondents argued that if the Court was to grant relief to the appellants, it would inevitably give force to an illegality, namely the unlawful possession of unlicensed firearms in contravention of section 3 of the Act (para 31). Having regard for the rules of interpretation, the Court highlighted that there is nothing in the legislation that would prevent “someone whose licence has terminated by the operation of law ... from applying for a new licence” (para 33). The Court found that if an owner does not apply for a new licence, the firearm must be destroyed. This will force the owner to buy a new firearm that needs a new licence. The Court indicated that this “is neither sensible nor businesslike” (para 34). The appeal was thus reinstated and upheld to the extent that the order of the High Court was set aside and replaced as follows: the appellant was entitled to apply for new licences to possess firearms listed in the annexure and the responsible Designated Firearms Officer was directed to accept such applications and deal with them in accordance with the Act.

While the result is indeed sensible and preferable over the destruction of 700 or 7000 firearms and the purchase of new firearms, only to restart the application process for licences, it does beg the question as to the necessity of the 90-day period set out for the process of renewal to start. If a licence can lapse and a renewal application can start thereafter, then the three-month period in the provision is effectively superfluous. Concerns were also raised about the interim period, whether a licence owner waiting for a licence to be issued will be regarded as possessing firearms without a licence (Anon 2021c).

The Firearms Control Amendment Bill, 2021,¹⁹ which proposes to prohibit persons to keep guns for self-defence, was met with opposition (Anon 2021d; Anon 2021e). However, the Bill attempts to address many issues, while acknowledging that guns are the major cause of loss of lives in South Africa.²⁰ The Bill amends the aims²¹ of the Firearms Control Act²² and introduces the Act’s principles. It also aligns “the control of

17 Clause 15 repealing ss 13–14 of the Firearms Control Act 60 of 2000.

18 Memorandum para 1.1.

19 Clause 2 amending s 2.

20 Clause 3 inserts ss 2A and 2B.

muzzle-loading firearms with the control over firearms²³ and addresses the confusion about the interpretation of the validity of competency certificates.²⁴ The number of firearms that dedicated hunters or sport shooters may hold is limited.²⁵ Each police station will have a Designated Firearms Officer. The Bill further gives effect to the decisions in *South African Hunters and Game Conservation Association v Minister of Safety and Security*²⁶ and *South African Hunters and Game Conservation Association v Minister of Safety and Security of the Republic of South Africa*.²⁷ The first case dealt with an order that all licences will remain valid, considering the challenges with the timeframes in the transitional clauses and the second case declared sections 24 and 28 of the Act unconstitutional.²⁸

The Bill seeks to address the issues raised in these cases and clarifies definitions and introduces other measures. Section 4(1) now clarifies that people may not possess grenades, rifle grenades as well as any de-activated or prohibited devices and firearms. The minister may also declare any ammunition as prohibited.²⁹ Persons between the ages of 18 and 21 will be allowed to obtain a competency certificate if there are compelling reasons thereto.³⁰ If a person has been issued with an interim protection order in terms of the Domestic Violence Act 116 of 1998, their application for a competency certificate may be suspended pending the final order.³¹ The applicant must disclose in their application that such an order is pending or has been issued.³² The Registrar may not issue a competency certificate to a person who is convicted of an offence involving the use of violence or who was sentenced to imprisonment without the option of a fine.³³ Applicants must now indicate what the firearm is intended for.³⁴ Furthermore, occasional hunters or sport shooters must indicate that they have permission from the owner of the property where the hunting or sport shooting will take place.³⁵ Clause 22 amends section 21 by removing the issuing of temporary authorisations to non-citizens. A temporary licence may be granted to an executor of an estate.³⁶ The to-be-inserted section 23A will allow for the ballistic sampling of all firearms that are licensed in terms of the Act and subject to the Minister's instruction in

21 Section 1, deletion of s 3(2) (cl 4), amends s 5 (cl 6).

22 Clause 12 inserts s 10A.

23 Cl 17 amending s 16; cl 18 amending s 16A.

24 (33656/2009) [2009] ZAGPPHC 93 (26 June 2009).

25 [2017] 3 All SA 1059 (GP); 2017 (2) SACR 288 (GP).

26 See e.g. amendment of s 24 by cl 26; cl 27 amending the table in s 27; cl 81 in relation to section 1 of the Act.

27 Clause 5.

28 Clause 7 inserting s 6(1A). If such a person applies for a licence, permit or authorisation, they must be supervised by someone older than 21 years for three years.

29 Section 9(7) inserted by cl 10.

30 Section 9(8).

31 Section 9(9) to be inserted.

32 Cl 13 inserting s 11A.

33 Cl 16 amending s 15.

34 Also see newly inserted s 147A (cl 78) in relation to deceased estates and the obligations of the executor in this regard. Cl 79 amends s 149 in relation to ammunition in inherited estates.

this regard.³⁷ If a licence is renewed or there is a change of ownership, the owner will have to ensure that the firearm is subjected to ballistic sampling.

Various notices were published in terms of the Non-Proliferation of Weapons of Mass Destruction Act 87 of 1998 to declare, for example, certain missile technology, nuclear-related dual-use equipment and chemicals as controlled goods.³⁸ Once declared, special measures apply.

Conclusion

Although the 2021 period showed a decline in crime statistics, it may, unfortunately, not be the same in 2022. It seems that the COVID-19 restrictions eased the work of the security services. However, by enforcing the COVID-19 restrictions, the security services also violated their own rules on how to deal with members of the public. The courts strongly criticised this unbecoming behaviour. The period also saw violent protests that nearly forced South Africa to capitulate into a failed state. The violence was ascribed to the imprisonment of Zuma although other factors may have contributed to the unrest.

Although there are measures in place to assist apartheid victims in line with the Truth and Reconciliation Commission recommendations, the perpetrators of gross human rights violations have not been prosecuted. Many of those people have either passed away or are aging and if prosecutions are to be instituted, the process will have to be expedited. Prisoners assert their rights and in the reporting period, a prisoner approached a Court to enforce his conjugal rights and the right to possess a phone. The Court indicated that these rights are limited and that enough measures are in place to allow for artificial insemination and opportunities to use phones in correctional facilities.

In terms of arms and ammunition, the courts indicated that holders of firearms whose licences expired should be able to apply for new licences. Although the Firearms Control Amendment Bill, 2021 raises some concerns, most of the proposed measures give effect to Court decisions or try to clear up interpretation issues. One of the concerns some people raise is that they will not be allowed to apply for licences for self-defence.

The role of the law and courts in controlling violence, whether from public entities or individuals or groups, becomes more important. Change will only come if all people in South Africa desist from violence. Everyone must be educated that violence is not the solution to problems. More dialogue on violence (whether in public or at home) is necessary. Local authorities, schools, religious institutions, and non-governmental

35 CI 25.

36 GG 44423 (8 April 2021) GN 318; GG 44423 (8 April 2021) GN 319; GG 44423 (8 April 2021) GN 320.

organisations can play a major role in this regard as set out in the *Integrated Crime and Violence Prevention Strategy*.

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