

Unrest and Violence: 2018

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Abstract

In this issue of the *Journal of Law, Society and Development*, the most important measures and cases pertaining to crime statistics, truth and reconciliation, security services, arms and ammunition, terrorism, and corruption that were implemented or occurred during 2018 are described and discussed.

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

General

In this issue, the most important measures and cases pertaining to

- crime statistics
- truth and reconciliation
- security services
- arms and ammunition
- terrorism, and
- corruption

that were implemented or occurred during 2018 are detailed and discussed.



During this period, transport services were disrupted on several occasions and extraordinary measures had to be taken to curb “violence, unrest, conflict or instability”.¹ Several other violent and illegal protests also occurred. By July 2018, the police in KwaZulu-Natal had responded to 270 protests. Some of the protests involved the closure of freeways and the involvement of criminal elements, which led to such acts as the looting of trucks.²

Crime Statistics

In August 2018, the Minister of Police released the crime statistics for South Africa for the financial year 2017/2018. The general trends in the statistics are discussed in the next section.

Contact crimes include murder, attempted murder, common assault, assault with the intent to cause grievous bodily harm (assault with GBH), common robbery and robbery with aggravating circumstances. Overall, a decrease of 1,1% was recorded in the number of contact crimes reported nationally. Gauteng and the Western Cape continue to account for the most contact crimes.³

During the 2017/2018 financial year, 20 336 murders were recorded. This amounts to a 6,9% increase in comparison to the previous financial year, in which 19 016 murders were recorded. An average of 56 people are murdered daily in South Africa. In provincial terms, KwaZulu-Natal (4 382) and Gauteng (4 233) accounted for the most murders. However, the Western Cape showed the highest increase of 12,6% in murders for 2017/2018.⁴ Alarmingly, in 2017/2018, 19,3% of the total number of murder victims were women and children.⁵ The abovementioned murder statistics include but are not limited to the following:

- 62 farm murders;
- 2 930 murders of women;

¹ See, for example, the provincial notices published for comment in terms of the National Land Transport Act 5 of 2009 – PN 80 in *PG* 1973 of 13 July 2018; PN 84 in *PG* 1977 of 20 July 2018 (Ugu District Municipality) and PN 105 in *PG* 2001 of 20 September 2018 (Alfred Duma Local Municipality).

² Jeff Wicks, “KZN MEC declares War on Violent and Illegal Protesters” (*TimesLive*, 24 July 2018). <<https://www.timeslive.co.za/news/south-africa/2018-07-24-kzn-mec-declares-war-on-violent-and-illegal-protesters/>> (accessed 27 January 2019).

³ South African Police Service “Crime Statistics 2017/2018” (SAPS, 2018) <<https://www.saps.gov.za/services/crimestats.php>> (accessed 1 February 2019).

⁴ *Ibid.*

⁵ *Ibid.*

- 691 murders of boys, and
- 294 murders of girls.⁶

With regard to cases of attempted murder nationally, 2017/2018 saw a small increase in reported cases, from 18 205 in 2016/2017 to 18 233 in 2017/2018. This amounted to an increase of 0,2%. Gauteng accounted for most of the reported cases of attempted murder (4 462) and the Western Cape showed the highest increase (9,2%) in reported cases of attempted murder.⁷

Common assault showed a 0,1% decrease⁸ in the number of reported cases for 2017/2018. In 2017/2018, 156 243 cases were reported in comparison to the 156 450 in 2016/2017. However, the accuracy of these statistics is questionable: the fact that victims of common assault do not report all cases to the police is a contributing factor to the questionable accuracy of these statistics. Another contributing factor may be the fact that the parties involved are related to or known to one another, therefore they do not report these matters to the police. Assault with GBH was reported 170 616 times in 2016/2017. In 2017/2018, 167 352 cases of assault with GBH were reported to the police, which represents a decrease of 1,9%. Gauteng accounted for most of the reported cases of common assault (43 587) as well as for the highest increase (3,6%) in reported cases of assault.⁹ This province also accounted for the most reported cases of assault with GBH (39 552) and the North West province showed the highest increase (3,1%) in reported cases of assault with GBH.¹⁰

Both common robbery and robbery with aggravating circumstances decreased in 2017/2018. Common robbery was recorded 50 730 times in 2017/2018, down from 53 418 in the previous financial year, resulting in a positive decline of 5,0%. Robbery with aggravating circumstances decreased by 1,8% in 2017/2018.¹¹ Common robbery was reported 16 984 times in Gauteng and the highest increase of 9,1% was recorded in North West province.¹² Again, Gauteng is responsible for most of the reported cases of robbery with aggravating circumstances, with 51 706 cases reported in 2017/2018. The Northern Cape accounted for the highest increase of 8,9%.¹³

⁶ Africa Check, "Factsheet: South Africa's Crime Statistics for 2017–18" (2018) <<https://africacheck.org/factsheets/factsheet-south-africas-crime-statistics-for-2017-18/>> (accessed 1 February 2019).

⁷ SAPS (n 3).

⁸ Ibid.

⁹ SAPS (n 3).

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

Sexual offences include, among other types, sexual assault and rape. These are the predominant forms of sexual offence. The reported number of cases of sexual assault increased by 8,2%, from 6 271 in 2016/2017 to 6 786 in 2017/2018.¹⁴ When comparing 2017/2018 to 2016/2017, it appears that there was a 0,5% increase in the number of reported cases nationally.¹⁵ The Western Cape province accounted for 1 710 reported cases of sexual assault, which was the highest for province in 2017/2018. Limpopo had an increase of 26,3% in the number of reported cases of sexual assault.¹⁶ The number of reported cases of rape – at 8 062 – was the highest in Gauteng. This province also showed an increase of 4,7% in the number of reported cases of rape between 2016/2016 and 2017/2018. Some ten years ago, 46 647 cases of rape were reported nationwide. In 2017/2018, 40 035 cases were reported.¹⁷ However, statistics relating to the number of rapes are becoming increasingly worrisome. It appears unlikely, for example, that over the past ten years the difference in the number of rapes is only 6 612 cases. This may be partly a result of the failure of victims of rape to report this offence to the police.¹⁸

Property-related crimes include burglary at non-residential and residential premises, theft of motor vehicles and motorcycles, theft out of or from motor vehicles and stock theft. In general, a 6,0% decrease in the number of cases was reported nationwide: 540 653 reported cases in 2016/2017, versus 507 975 in 2017/2018. Gauteng province alone was responsible for a large number of the property-related crimes.¹⁹

The illegal possession of firearms and ammunition as a crime detected as a result of police action increased by 8,8% in 2017/2018²⁰ – Gauteng accounted for most of the reported cases. Firearms were used on 41,3% of the occasions when murders were committed.²¹ Firearms were also used in 59,5% of robberies with aggravating circumstances.²² Therefore, it is argued that there seems to be a link between the illegal possession of firearms and the commission of the abovementioned serious and violent crimes.

Statistics such as these are deplorable in a country that boasts a world-renowned Constitution.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Also see Junior Khumalo, “Murders committed against Women skyrocket across All Nine Provinces” (*City Press*, 29 August 2018).

¹⁹ SAPS (n 3).

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

Violent Protest

Section 3 of the Regulation of Gatherings Act (RGA)²³ requires the relevant local authority within a municipal area to be notified of an intended protest by the convener of such a gathering. The required notice must contain all the important information pertaining to the protest.²⁴ In terms of section 12(1)(a) of the RGA, failure to provide such notice is regarded as a criminal offence on the part of the conveners of the protest.²⁵ In *Mlungwana v The State*,²⁶ the accused persons unlawfully and intentionally protested in Cape Town against the poor state of sanitation in Khayelitsha without providing the City of Cape Town notice of the intended gathering as required by section 3 of the RGA. The accused persons were arrested and charged in terms of section 12(1)(a) of the RGA with the contravention of section 3 of the Act.²⁷

The Western Cape Division of the High Court (the court *a quo*) found the accused persons not guilty of the failure to provide notice of the gathering as permitted by section 3 of the RGA. An application for leave to appeal was subsequently granted on the premise that section 17 of the Constitution is violated by the criminalisation of the failure to provide notice.²⁸ The court *a quo* found that the criminalisation of the failure to provide notice of the intended gathering can have a chilling and deterring effect on the constitutional right to assemble.²⁹ The matter was referred to the Constitutional Court for confirmation and the State appealed against the judgment. The Constitutional Court confirmed the finding of the court *a quo* with regard to the unconstitutionality of section 12(1)(a) of the RGA. The Court reiterated the importance of the right to assemble and the severe nature of the limitation imposed by criminalising the failure to provide a notice of an intended gathering.³⁰ The fundamental misunderstanding in the application of the RGA lies with the municipalities. This notice in terms of section 3 of the RGA is often regarded as a permission-seeking process. However, the notice is supposed to be regarded only as a notification of the intended gathering.

National Unity and Reconciliation

Regulations were published to increase the amounts provided to victims or their dependants to access higher-education institutions.³¹ In December 2018, the regulations were amended.³² “Assistance” now refers to monetary assistance in terms of regulations

²³ Regulation of Gatherings Act 205 of 1993 (RGA).

²⁴ Section 3 of the RGA.

²⁵ Section 12(a) of the RGA.

²⁶ (CCT32/18) [2018] ZACC 45 (19 November 2018).

²⁷ *S v Mlungwana & Others* 2018 (1) SACR 538 (WCC) para 3–11.

²⁸ *Ibid* at para 5.

²⁹ *Ibid* at para 42.

³⁰ *Mlungwana* (n 27) at para 101.

³¹ GN R391 in *GG* 41535 of 29 March 2018.

³² GN R1373 in *GG* 42101 of 14 December 2018. Hereafter GN R1373.

5, 6, 7, 8, 8A, 8B and 8C, whereas “assistive device” would refer to a device to assist a person with a disability mentioned in Annexure 2 of the regulations, an approved device or software for the upgrading of an existing device.³³ Laptops are excluded, except if the device is necessary to assist the disabled person. The regulations now also define “disability”.³⁴ A person with a disability will also be allowed to request an additional payment of R48 000 per annum as human support.³⁵ Regulation 5 has been amended to give the actual fees for higher-degree education or vocational training.³⁶ Regulation 8A(7) has been substituted to allow for a once-off debt payment (incurred before 2015) not exceeding R65 000.

In July 2018, draft regulations pertaining to community rehabilitation were published for comment.³⁷ The first regulations of this nature were published for comment in 2013 but, owing to extensive comments, a new draft was published. As a result of the amendments to the first draft, the document was re-circulated for further comment. Section 42 of the Promotion of National Unity and Reconciliation Act 34 of 1994 allows the president to establish a fund from which reparations can be paid to communities and victims. Section 42(2A) provides for funding for the rehabilitation of communities and allows for regulations to regulate this matter. In terms of the draft regulations, the relevant accounting officer may allocate funding to a community rehabilitation project which may not exceed R30 million.³⁸ In determining the amount, the officer must take into account the nature of the project as well as any other funding that such project may have received from donors of private institutions.³⁹ The

Department of Justice and Constitutional Development, local government, victims of past atrocities and violence in the particular community or combined communities,⁴⁰ relevant organs of state and any other interested civil-society formation or organisation,

must identify the community rehabilitation project. This must be done during a consultative process.⁴¹ The people who should benefit are those who suffered or were

³³ Read with newly inserted reg 8B and Annexure 3 – inserted by reg 8.

³⁴ Regulation 2 of GN R1373.

³⁵ Newly inserted reg 8C – inserted by reg 9.

³⁶ Regulations 3–6 of GN R1373. Form 1 is amended accordingly – reg 12.

³⁷ Gen N 381 in *GG* 41766 of 13 July 2018. Hereafter Gen N 381.

³⁸ Regulation 2(1) read with reg 7 of Gen N 381. The funding may be incremental depending on the Fund – reg 9.

³⁹ Regulation 2(2) of Gen N 381. The money may be used only for the purpose that it is allocated for – reg 2(3).

⁴⁰ The accounting officer may combine communities but must take the following into account: “(a) the nature of the atrocities suffered by these communities; (b) the extent to which rehabilitation measures and programmes have already been implemented in respect of these communities; and (c) efficiency and effectiveness” – reg 3(1).

⁴¹ Regulation 3(2)(a).

affected by the atrocities.⁴² A multi-stakeholder project team, consisting of the abovementioned groups, must oversee the identification and implementation of the project in consultation with the community.⁴³

The accounting officer and the responsible authority must conclude a community rehabilitation agreement that includes all the details of the project. This must include setting out the roles and responsibilities of the different stakeholders as well as the terms and conditions of using the funding.⁴⁴ The accounting officer may appoint an organ of state or a non-governmental organisation (NGO) to oversee the implementation of the project.⁴⁵

Security Services

Police Services

According to *National Police Commissioner v Ngobeni*,⁴⁶ Lieutenant General Ngobeni, the Provincial SAPS Commissioner of KwaZulu-Natal, was appointed in 2009 and her term was renewed in 2014. In 2016 the National Police Commissioner served her with two notices, (a) indicating that a board of inquiry had been established to determine her “alleged misconduct and/or unfitness for office and/or capacity to execute [her] duties efficiently” and (b) a notice of suspension. She reacted by asking the KwaZulu-Natal High Court to review the establishment of the board and her suspension. The Court then set aside the establishment of the board and her suspension. Leave for appeal was denied but the respondents were allowed to petition the Supreme Court of Appeal (SCA).⁴⁷ The point in dispute was whether the National Police Commissioner had the power to appoint such a board and/or to suspend the Constitution of the Republic of South Africa, 1996 and sections 8 and 9 of the South African Police Service Act 68 of 1995.⁴⁸

Provincial commissioners are appointed by the National Commissioner and the National Commissioner exercises control and manages the police service.⁴⁹ In terms of section 207(6), a provincial executive may institute proceedings to remove, transfer or discipline the commissioner in accordance with national legislation. Section 8 of the South African Police Services Act describes the procedure if a provincial executive loses faith in its provincial police commissioner. The relevant MEC must inform the national Minister of Police, who should then direct the National Commissioner to

⁴² Regulation 3(2)(b).

⁴³ Regulation 3(3)–(6).

⁴⁴ Regulation 4. The responsible authority will be subject to regular reporting regarding implementation and expenses – reg 8.

⁴⁵ Regulation 6.

⁴⁶ 2018 (4) SA 99 (SCA).

⁴⁷ Ibid at para 1.

⁴⁸ Ibid at para 4.

⁴⁹ Section 207(1)–(2) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

establish a board of inquiry. The relevant provincial commissioner may be suspended during the hearing – but they must be consulted.⁵⁰ A similar procedure needs to be followed if the National Commissioner loses confidence in an appointee, except that they do not have to act upon a notice from an MEC or the Minister of Police.⁵¹ The SCA therefore upheld the appeal.⁵²

The Gauteng High Court in Pretoria ruled that it is unlawful for police officers under investigation by the Independent Investigation Directorate to launch an investigation into the conduct of the officials investigating them.⁵³

Correctional Services

During 2018, several cases dealt with the rights of prisoners. In *Pretorius v Minister of Justice and Correctional Services*,⁵⁴ the Court found that prisoners should also be allowed access to a computer (without a modem) in their cells and not only access to computers in designated study areas.⁵⁵ The Court found that the policy of the Department of Justice and Correctional Services discriminated against prisoners who are held in their cells for 18 hours. The Court stated as follows:

To the extent that the policy prohibits computers in cells for study purposes, it unfairly discriminates against applicants on the basis that it imposes disadvantages on them, it withholds benefits, opportunities and advantages, on the grounds that they are prisoners, thereby adversely affecting the equal enjoyment of their right to further education. The policy not only discriminates between prisoners and the general public; the department, in the manner in which it implements the policy, discriminates between inmates in Zonderwater, as opposed to inmates in other prisons.

The Court found that there was therefore unfair discrimination.⁵⁶ The department argued that the use of computers in cells is a security breach in terms of section 18 of the Correctional Services Act 111 of 1998. In terms of the policy, personal computers are not allowed in the cells.⁵⁷ The Court found that there was no evidence to substantiate

⁵⁰ *Ngobeni* (n 46) at paras 7–8.

⁵¹ Section 8(8) of the South African Police Services Act; *Ngobeni* (n 46) at paras 14–22.

⁵² *Ngobeni* (n 46) at para 23.

⁵³ Anon, “Litigation: Judge Bars ‘Revenge Investigations’ against Police Watchdog” (*Legalbrief Today*, 29 June 2018); Karyn Maughan, “Court Bashes Police ‘Revenge Investigations’” (*TimesLive*, 28 June 2018) <<https://www.timeslive.co.za/news/south-africa/2018-06-28-court-bashes-police-revenge-investigations/>> (accessed 27 January 2019).

⁵⁴ 2018 (2) SACR 501 (GP).

⁵⁵ For the factual background, see *Pretorius* (n 54) at paras 20–23.

⁵⁶ *Ibid* at paras 42–44.

⁵⁷ *Ibid* at paras 18–19.

such a claim that personal computers in a cell will lead to a breach of security.⁵⁸

In *Bapoo v Minister of Justice and Correctional Services & Others*,⁵⁹ the applicant approached the High Court, Gauteng Local Division, for a declaration that the respondents failed to comply with an order of court (granted 29 June 2014) when they failed to provide him with food suitable for his health.⁶⁰ The applicant, an inmate in the Johannesburg Medium “B” Correctional Centre, further alleged that the respondents had violated the provisions of the Correctional Services Act⁶¹ by not responding to his complaints.⁶² The applicant suffers from chronic atopic eczema and complained that the soya flour in the bread provided by the respondent triggered his allergy.⁶³ On 9 May 2019, the applicant addressed a letter of complaint to the head of the Correctional Centre, stating the above. Owing to the fact that the prison offers no reheat facilities to warm up potatoes and rice, he suggested the following alternatives:

- (i) providing him with bread not containing any soya flour;
- (ii) providing him with an alternative source of carbohydrate for dinner, together with the means to reheat it;
- (iii) permitting his family members to provide him with an alternative bread product free from soya flour.⁶⁴

The applicant addressed a second letter to the head of the Correctional Centre and, after he still had not received any response, he approached the Court for a contempt of court order.⁶⁵ Contempt of court is the intentional and unlawful violation of the dignity, repute or authority of a judicial body, or interference in the administration of justice in a matter pending before it.⁶⁶ The respondents should have been aware of and have willfully and intentionally not complied with an order for *mala fides* to be inferred, as established in *Frankel Max Pollack Vinderine v Menell Jack Hyman Rosenberg*.⁶⁷ The Constitutional Court adopted this approach and held that the presumption exists that when the elements of the test for contempt have been established, *mala fides* and wilfulness are presumed.⁶⁸ This will be the case unless the contemnor is able to lead evidence sufficient to create

⁵⁸ Ibid at paras 24–25; 36–38.

⁵⁹ (2018/22296) [2018] ZAGPJHC 436 (6 July 2018).

⁶⁰ Ibid at para [8].

⁶¹ 111 of 1998.

⁶² Section 8(1) and (2) of the Correctional Services Act 11 of 1998.

⁶³ *Bapoo* (n 59) at para [3].

⁶⁴ Ibid at para [5].

⁶⁵ Ibid at paras [4]–[7].

⁶⁶ JM Burchell, *Principles of Criminal Law* (5th ed, 2016). Cape Town: Juta, 864.

⁶⁷ 1996 (3) SA 355 (AD) at 367I–J.

⁶⁸ *Pheko & Others v Ekurhuleni City* 2015 (5) SA 600 (CC) at 621D.

doubt as to their existence.⁶⁹ The respondents suggested boiled potatoes and rice as an alternative starch; however, they would be served cold. The applicant then indicated that he could not consume these starches cold. After that, the respondent suggested a soya-free bread diet and indicated that they were in the process of setting up a delivery schedule with the supplier. The applicant rejected this option, indicating that the time frame for delivery was not set and may be delayed deliberately. He argued that a hot meal should be served to him at supper.⁷⁰ From the above it is clear that the respondent adhered to section 8 of the Correctional Services Act. In complying with section 8, it is clear that the respondents were considerate of the applicant's chronic illness and were intending to ensure that his health did not deteriorate.⁷¹ For these reasons, it could not be said that contempt of court was established and that the respondents had not shown good cause as to why they should not be held in contempt. The Court, however, held that the third respondent should speed up the delivery process of the soya-free bread.⁷²

Judge Johann van der Westhuizen of the Judicial Inspectorate for Correctional Services investigated 81 of South Africa's 243 correctional centres. He indicated that the correctional facilities are overcrowded. He also made mention of the unacceptable way in which mentally ill patients are treated.⁷³

The Minister of Justice and Correctional Services published a list of delegations in terms of the Correctional Services Act.⁷⁴ An investigation into the procurement of goods by the Department of Correctional Services was launched in terms of the Special Investigating Units and Special Tribunals Act 74 of 1996.⁷⁵

Defence

A call was published for nominations to appoint persons to the Defence Force Service Commission.⁷⁶ In the Department of Defence's Annual Report for the reporting period 1 April 2016 to 31 March 2017 it was mentioned that a Military Disciplinary Bill has been circulated for comment in the government. The Bill aims to provide "for the proper administration of the Military Justice system in a manner that ... promotes equality, fairness, transparency and accountability in the Defence Force".⁷⁷ By end of 2018, the

⁶⁹ Ibid; *Vinderine* (n 67) at para [14].

⁷⁰ *Vinderine* (n 67) at paras [18]–[22].

⁷¹ Ibid at para [29].

⁷² Ibid at para [30].

⁷³ Alex Patrick, "Cruel and Inhumane": Judge slams SA Prison Conditions" (*Times Select*, 12 October 2018).

⁷⁴ GN 960 in *GG* 41913 of 21 September 2018.

⁷⁵ Proclamation 10 in *GG* 41561 of 6 April 2018.

⁷⁶ GN 609 in *GG* 41711 of 15 June 2018.

⁷⁷ Department of Defence, "Annual Report 2016/17" (2018) 15–16 <https://www.gov.za/sites/default/files/gcis_document/201711/dod-annual-report-2017.pdf> (accessed 27 January 2019).

Bill had not yet been submitted to parliament.

Arms and Ammunition

The Constitutional Court dismissed an application calling for the confirmation of the unconstitutionality finding of sections 24 and 28 of the Firearms Control Act 60 of 2000 in *Minister of Safety and Security v South African Hunters and Game Conservation Association & Others*.⁷⁸ These sections were previously declared unconstitutional by the High Court on three grounds, namely: (a) irrationality and vagueness; (b) breaching the right of equality; and (c) violating the protection of property rights under section 25 of the Constitution.⁷⁹ Section 24 of the Act deals with the renewal of firearm licences and section 28 with their termination.

In approaching the issue, Froneman J stressed that gun ownership was not a fundamental right, but a privilege, regulated under and guided by very particular legislative measures.⁸⁰ The present Firearms Control Act was preceded by the Arms and Ammunition Act 75 of 1969, in terms of which a licence to possess firearms lasted for life (so-called “old-order” licences). The 2000 Act changed the legal position in that persons wishing to possess a firearm must first possess a competency certificate. Competence certificates expire after periods of two, five or ten years, depending on the nature of the firearm licence (sections 10(2) and 27 of the Act). To deal with the transition from the old to the new Act, the Schedule to the Act allowed previous licence-holders to hold a five-year licence, which had to be renewed, on application, at least 90 days prior to expiry of the five-year period. Old-order licences remained valid pending the outcome of renewal applications. Whereas many old-order licence-holders complied with the new measures and therefore applied for renewal before the five-year period lapsed, others failed to do so. It was in this light that an application was lodged in the High Court that the sections setting out renewal and termination were unconstitutional on the grounds alluded to above.

Froneman J dealt with each of the grounds, starting with vagueness and rationality.⁸¹ With regard to vagueness, the Court underlined that the doctrine does not require absolute clarity and lucidity. Furthermore, rationality does not entail the issue whether some means would achieve a particular purpose (the ends) better, but only whether the selected one could also rationally achieve the same end.⁸² Regarding the relevant sections and their wording, the Court was satisfied that “they cannot be clearer”.⁸³ It stated very clearly what needed to be done, how and when: in order to possess firearms

⁷⁸ (CCT177/17) [2018] ZACC 14 (7 June 2018).

⁷⁹ Ibid at paras [4]–[12].

⁸⁰ Ibid at para [1].

⁸¹ Ibid at paras [13]–[21].

⁸² Ibid at para [14].

⁸³ Ibid at para [16].

(ends) a licence had to be issued (means).⁸⁴ Whereas the Act does not specify what should happen after termination of the licence upon the passage of time, the Court proffered the view that it should be handed over to the police.⁸⁵ Vagueness and rationality should therefore not be confused with the consequences of measures, on the one hand, or implementation and practical difficulties, on the other.⁸⁶ Possessing a firearm without a licence is in contravention of the Act and therefore an offence.

The issue of equality entailed that there was unequal treatment between gun owners protected by the old order who did not have to apply for re-licensing and others not covered by the order.⁸⁷ In this regard, the Court acknowledged the clear differentiation between categories of termination of licences, but was satisfied that the differentiation was not arbitrary as it had a rational basis.⁸⁸ Under section 28(1)(a), it was clear from the outset that a licence was temporary, that it would terminate and that such termination was by operation of law – no administrative action was required. However, where section 28(1)(c) or (d) was concerned, a third party was involved and an administrative action was required of the Registrar. The latter had to determine that the licence-holder either (a) was no longer qualified to hold the licence or (b) had failed to comply with a provision of the Act or a condition of the licence.⁸⁹ The distinction between different categories was therefore rational. Accordingly, the equality challenge also failed.

The challenge regarding the contravention of section 25 – the property clause – was likewise unsuccessful.⁹⁰ Sections 24 and 28 do not independently give rise to deprivation and, even if they did, the deprivation was not arbitrary. A compensation regime was also contained in the Act for surrendered firearms.⁹¹ Furthermore, giving up some instances of ownership in potentially life-threatening firearms was not too great a price to pay for one of the purposes of the Act, namely, the enhancement of the constitutional rights to life and bodily integrity.⁹²

The unconstitutionality finding was therefore not confirmed, leaving sections 24 and 28 of the Act intact.

Commentators commended the general thrust of the judgment to uphold regular licence

⁸⁴ Ibid at para [17].

⁸⁵ Ibid at para [20].

⁸⁶ Ibid at para [21].

⁸⁷ Ibid at para [22].

⁸⁸ Ibid at para [24].

⁸⁹ Ibid at para [26].

⁹⁰ Ibid at paras [29]–[32].

⁹¹ Sections 134–137 of the Arms and Ammunition Act 75 of 1969.

⁹² *Minister of Safety and Security* (n 78) at para [31].

renewal as a cornerstone of South African gun-control legislation.⁹³ However, it was also underlined that legislation was effective only if it was indeed implemented and enforced. In this regard, it appears as if gun-control legislation in South Africa has been successful to the extent that gun-related deaths have declined markedly since stricter gun control was introduced in 2000. A new research report published by the University of Washington's Institute for Health Metrics and Evaluation⁹⁴ indicated that, while South Africa still ranks rather high internationally (12th on the list overall) on the list of gun-related deaths, the patterns documented in South Africa support a link between regulatory restrictions on firearm access and subsequent reductions in firearm death rates.

A recent report by the Small Arms Survey (June 2018) indicated that there are currently 5 351 000 firearms in civilian possession in South Africa – placing it as the 20th highest in the world behind countries such as Saudi Arabia (5,5 million) and Iran (5,9 million). Of these, approximately 3 million are registered (legal) firearms. This equates to about 9,65 civilian firearms per every 100 persons in the country.⁹⁵

Firearms Control Amendment Bill of 2018

The Constitutional Court judgment set out above exhibited some gaps in the Act, although they were not necessarily dealt with in the decision, which highlights the need for legislative amendment. In this regard, the Firearms Control Amendment Bill⁹⁶ was published.

The 2000 Act does not provide for a mechanism by which the failure to apply for renewal of a licence at least 90 days before the expiry of that licence (which requirement is administrative in nature) can be remedied. The purpose of the Bill is therefore to clarify that the application for the renewal of a licence for a firearm is an administrative action and that failure to comply with the requirements of the Act should attract an administrative fine. Provision is therefore made for renewal; and should a person fail to apply within specified periods, a method for surrendering or disposing of the firearm is also provided for.

⁹³ See, for example, E Mabuza, “End of the Road for Firearm Owners Who fail to renew Licences on Time” (*TimesLive*, 7 June 2018) <<https://www.timeslive.co.za/news/south-africa/2018-06-07-end-of-the-road-for-firearm-owners-who-fail-to-renew-licences-on-time/>> (accessed 27 January 2019).

⁹⁴ See Anon, “Global Ranking of Gun Deaths: Here’s Where South Africa stands” (*BusinessTech*, 29 August 2018) <<https://businesstech.co.za/news/lifestyle/268167/global-ranking-of-gun-deaths-heres-where-south-africa-stands/>> (accessed 27 January 2019).

⁹⁵ Anon, “Here’s How Many South Africans own a Gun” (*BusinessTech*, 20 June 2018) <<https://businesstech.co.za/news/lifestyle/252713/heres-how-many-south-africans-own-a-gun/>> (accessed 27 January 2019).

⁹⁶ [B40-2018].

Clause 1 of the Bill amends section 24 of the 2000 Act to allow for additional opportunities to apply for renewals or to surrender or dispose of firearms. Each additional opportunity attracts an administrative fine to be prescribed so as to serve as a deterrent for late applications. Clause 1 further provides that during these additional opportunities and until the period provided by the Registrar when notifying a holder of a licence that the licence has expired, the licence remains valid or is deemed valid until either the application is finalised or the firearm has been surrendered or disposed of. The lateness of the application and the administrative fine imposed do not disqualify the applicant from succeeding with the renewal application.

Clause 2 amends section 28 of the 2000 Act so that the Registrar is required to inform a holder of a licence of the possible actions to take when the affected licence has expired. Clauses 3 and 4 provide for amendments to sections 106 and 107 of the Act so that proof of an application for renewal will also suffice in the event of an inspection or a request by a police official or an authorised person. Clause 5 is transitional and makes provision for additional opportunities to apply for the renewal of a firearm licence or to surrender or dispose of a firearm. This provision is available to all licences issued before the commencement of this proposed Amendment Act. Administrative fines are prescribed accordingly.

Firearms and the South African Police

Whereas the Constitutional Court judgment and the corresponding Firearms Control Amendment Bill deal essentially with civilian arms possession, the disconcerting state of some members of the SA Police Force, their ability to handle weapons effectively and their general level of marksmanship have again been highlighted.⁹⁷

The Western Cape has 4 556 police officers who either cannot use a firearm properly or are not licensed to use one in the 2017/2018 financial year. This is partly due to the police shooting range complex not being fully operational and to shortages of ammunition, although poor oversight and management are also to blame. The total number of active operational officers in the Western Cape was 16 467 in June 2017. The 4 556 SAPS officers mentioned above equate to 27,6% of the provincial force. Previously, the numbers were as follows: 2015/16: 3 979, which improved slightly in 2016/17 to 3 101 and then worsened in 2018. The implications of not completing competency tests are severe, as members who are not yet competent in the use of a firearm and not well versed in the applicable legal principles are generally instructed to hand in their firearms. Furthermore, the Department of Police failed to submit a request

⁹⁷ See J Felix, “Thousands of SAPS Officers lack Firearm Competency” (*Cape Argus*, 17 May 2018) <<https://www.iol.co.za/capeargus/news/thousands-of-saps-officers-lack-firearm-competency-15019947-17-May-2018>> (accessed 28 January 2019).

for a six-month firearms amnesty to parliament in 2018.⁹⁸

Corruption

As in the past, corruption in its broad sense was again rife in South Africa. Most notably, the investigation began into state capture, as proposed by the former Public Protector, Adv Thuli Madonsela. This resulted in the appointment of the Zondo Commission, which is elaborated on in more detail below.

The Corruption Watch Report of 2018⁹⁹ reported on five areas specifically: corruption in schools, municipalities, the SA Police Force, licensing centres and state-owned entities – which together account for 36% of all complaints received. Compared to the previous year, 2017, there was an increase in all of these areas, except in the SA Police Force, where the figure of 7,6% dropped to 6,3% in 2018. Across these areas, the most common forms of corruption were bribery, irregularity in procurement, embezzlement of funds and theft of resources, and irregularities in employment.

Anti-corruption Highlights

The investigation into state capture and corresponding activities, coupled with the Corruption Watch Report, underlines the need for urgent and all-encompassing measures to counteract corruption. Yet there were some notable highlights in 2018 where corruption was indeed dealt with effectively or where the redress has been initiated and may still be ongoing.¹⁰⁰ Linked to the Life Esidimeni public hearings was the removal of former health MEC (period 2014–2017) Qedani Mahlangu from the Gauteng ANC provincial executive committee. The Gauteng Health Department recorded at least 144 deaths of mental-health patients who were removed from the Life Esidimeni healthcare facility to various NGOs, some of which were not registered or equipped to receive patients. Public hearings, presided over by former Deputy Chief Justice Dikgang Moseneke, were held from the end of 2017 to March 2018. The government was ordered to pay compensation to the affected families.

Two institutions integral to a successful, financially viable democracy include the National Prosecuting Authority (NPA) and the SA Revenue Service (SARS). President Ramaphosa effected changes to both these institutions by respectively appointing

⁹⁸ Anon, “Policy: Request for Firearms Amnesty off Table – Beukman” (*Legalbrief Today*, 24 August 2018).

⁹⁹ Corruption Watch is a 2012 initiative that deals with corruption complaints and publishes an annual report – see Kavisha Pillay (ed), “The Time is Now. Corruption Watch Annual Report 2017” (2018) <<https://www.corruptionwatch.org.za/wp-content/uploads/2018/04/Corruption-Watch-Annual-Report-04042018-FA-Single-Pages-CompressedV2-2.pdf>> (accessed 10 December 2018).

¹⁰⁰ See Corruption Watch, “Anti-corruption Highlights of 2018” (Corruption Watch, 7 January 2019) <<https://www.corruptionwatch.org.za/anti-corruption-highlights-of-2018/>> (accessed 28 January 2019).

Advocate Shamila Batohi as the new National Director of Public Prosecutions to oversee the NPA and removing SARS Commissioner Tom Moyane. Batohi's appointment followed the finding of the Constitutional Court that the appointment of her predecessor at the NPA, Shaun Abrahams, by former president Zuma was unconstitutional. Moyane's removal followed the recommendations of the Nugent commission of inquiry into alleged governance irregularities at SARS.

Commission of Inquiry: State Capture

One of the last acts of former president Zuma before his resignation on 14 February 2018 was to announce the establishment of a commission of inquiry into alleged state capture. Deputy Chief Justice Zondo was immediately appointed as commission chair. The public hearings started in August 2018 and will continue throughout 2019. To date, explosive evidence has been delivered by a host of witnesses, including former and current ministers, directors-general, spokespersons and ordinary citizens.

Proclamation 8 of 2018,¹⁰¹ issued under section 1 of the Commissions Act 8 of 1947, embodied an amendment of the regulations of the commission of inquiry into allegations of state capture. Under the new regulations a self-incriminating answer or statement given by a witness before the commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence under section 6 of the Commissions Act.¹⁰²

Public Audit Amendment Bill

The Public Audit Amendment Bill¹⁰³ was signed into law on 20 November 2018; it amends the Public Audit Act 25 of 2004. The main aim of the Amendment Act is to grant the Office of the Auditor-General South Africa (AGSA)¹⁰⁴ more power to act against officials and employees who waste taxpayers' money, as well as those who are aware that money is being siphoned off but decline to act against the culprits. The commencement date of this Act is yet to be set.

Whereas the Act does not prevent corruption and waste, it does provide for material irregularities to be referred to relevant public bodies for further investigation. It further authorises the issue of certificates of debt for failure to implement the AG's recommendations if financial loss was involved. It also makes provision for binding

¹⁰¹ Proclamation 8 in *GG* 41522 of 23 March 2018.

¹⁰² Section 6 deals with offences by witnesses.

¹⁰³ [B13-2018].

¹⁰⁴ The Auditor-General of South Africa is a chapter 9 institution with a constitutional mandate to strengthen the country's democracy as outlined in ss 181 and 188 of the Constitution. It is the only audit institution in the country that audits and reports on how the government is spending the South African taxpayers' money.

remedial action for failure to implement the AG's recommendations.¹⁰⁵

The additional powers granted to the AGSA enable them to curb and remedy irregular and wasteful state expenditure more effectively. This also means more liability for accounting officers and authorities. One of the main problems with regard to fiscal expedience has been that, when irregular or fruitless and wasteful expenditure has been identified by the Auditor-General, the claims have not been investigated by the accounting officers or authorities. One such example was the South African Broadcasting Corporation (SABC), which disclosed almost R5 billion worth of irregular expenditure, yet no staff have been held accountable nor have any monies been recovered.¹⁰⁶ Regulations underpinning the new law have already been drawn up.

Arms Deal and Corruption

Corruption Watch announced that the Sereti Commission, which dealt with the billion rand arms deal and alleged corruption, misled the public and failed to investigate all allegations effectively.¹⁰⁷ The Sereti Commission exonerated all the role-players, including president Mbeki, who confirmed in 2016 that no corruption had occurred. While its staff were prepared and committed during the initial start-up and the early period of the investigation, attitudes changed over time and key commission members resigned. Ultimately, either through wilful ignorance or incompetence, it now seems as if the Commission did not follow its brief. The record of the investigation shows clear gaps in the evidence.

¹⁰⁵ See the long title of the Bill.

¹⁰⁶ See Corruption Watch, "The Public Audit Act Amendment Bill – What's It About?" (Corruption Watch, 2018) <<https://www.corruptionwatch.org.za/the-public-audit-act-amendment-bill-whats-it-all-about/>> (accessed 28 January 2019).

¹⁰⁷ S Evans, "New Evidence shows Arms Deal Commission 'Ignored Critical Evidence of Wrongdoing'" (News24, 11 October 2018) <<https://www.news24.com/SouthAfrica/News/new-evidence-shows-arms-deal-commission-ignored-critical-evidence-of-wrongdoing-20181011>> (accessed 27 January 2019).

References

- Africa Check. 2018. “Factsheet: South Africa’s Crime Statistics for 2017–18”.
 <<https://africacheck.org/factsheets/factsheet-south-africas-crime-statistics-for-2017-18/>>.
 (accessed 1 February 2019).
- Anon. 2018. “Global Ranking of Gun Deaths: Here’s Where South Africa stands”.
BusinessTech, 29 August. <<https://businesstech.co.za/news/lifestyle/268167/global-ranking-of-gun-deaths-heres-where-south-africa-stands/>>. (accessed 27 January 2019).
- Anon. 2018. “Here’s How Many South Africans own a Gun”. *BusinessTech*, 20 June.
 <<https://businesstech.co.za/news/lifestyle/252713/heres-how-many-south-africans-own-a-gun/>>. (accessed 27 January 2019).
- Anon. 2018. “Litigation: Judge bars ‘Revenge Investigations’ against Police Watchdog”.
Legalbrief Today, 29 June.
- Anon. 2018. “Policy: Request for Firearms Amnesty off Table – Beukman”. *Legalbrief Today*,
 24 August.
- Burchell, Jonathan M. 2016. *Principles of Criminal Law*. 5th ed. Cape Town: Juta.
- Corruption Watch. 2018. “The Public Audit Act Amendment Bill – What’s It About?”
 <<https://www.corruptionwatch.org.za/the-public-audit-act-amendment-bill-whats-it-all-about/>> (accessed 28 January 2019).
- Corruption Watch. 2019. “Anti-corruption Highlights of 2018”.
 <<https://www.corruptionwatch.org.za/anti-corruption-highlights-of-2018/>> (accessed
 28 January 2019).
- Department of Defence. 2018. Annual Report 2016/17.
 <https://www.gov.za/sites/default/files/gcis_document/201711/dod-annual-report-2017.pdf> (accessed 27 January 2019).
- Evans, S. 2018. “New Evidence shows Arms Deal Commission ‘Ignored Critical Evidence of Wrongdoing’”. *News24*, 11 October. <<https://www.news24.com/SouthAfrica/News/new-evidence-shows-arms-deal-commission-ignored-critical-evidence-of-wrongdoing-20181011>> (accessed 27 January 2019).
- Felix, J. 2018. “Thousands of SAPS Officers lack Firearm Competency”. *Cape Argus*, 17 May.
 <<https://www.iol.co.za/capeargus/news/thousands-of-saps-officers-lack-firearm-competency-15019947-17-May-2018>> (accessed 28 January 2019).

- Khumalo, Junior. 2018. "Murders committed against Women skyrocket Across All Nine Provinces". *City Press*, 29 August. <<https://city-press.news24.com/News/murders-committed-against-women-skyrocket-across-all-nine-provinces-20180829>> (accessed 27 January 2019).
- Mabuza, E. 2018. "End of the Road for Firearm Owners Who fail to renew Licences on Time". *TimesLive*, 7 June. <<https://www.timeslive.co.za/news/south-africa/2018-06-07-end-of-the-road-for-firearm-owners-who-fail-to-renew-licences-on-time/>> (accessed 27 January 2019).
- Maughan, Karyn. 2018. "Court bashes Police 'Revenge Investigations'". *TimesLive*, 28 June. <<https://www.timeslive.co.za/news/south-africa/2018-06-28-court-bashes-police-revenge-investigations/>> (accessed 27 January 2019).
- Patrick, Alex. 2018. "'Cruel and Inhumane': Judge slams SA Prison Conditions". *Times Select*, 12 October.
- Pillay, Kavisha (ed). 2018. "The Time is Now. Corruption Watch Annual Report 2017". <<https://www.corruptionwatch.org.za/wp-content/uploads/2018/04/Corruption-Watch-Annual-Report-04042018-FA-Single-Pages-CompressedV2-2.pdf>> (accessed 10 December 2018).
- South African Police Service. 2018. Crime Statistics 2017/2018. <<https://www.saps.gov.za/services/crimestats.php>> (accessed 1 February 2019).
- Wicks, Jeff. 2018. "KZN MEC Declares War on Violent and Illegal Protesters". *TimesLive*, 24 July. <<https://www.timeslive.co.za/news/south-africa/2018-07-24-kzn-mec-declares-war-on-violent-and-illegal-protesters/>> (accessed 27 January 2019).

Cases

- Bapoo v Minister of Justice and Correctional Services & Others* (2018/22296) [2018] ZAGPJHC 436 (6 July 2018).
- Frankel Max Pollack Vinderine v Menell Jack Hyman Rosenberg* 1996 (3) SA 355 (A).
- Minister of Safety and Security v South African Hunters and Game Conservation Association & Others* (CCT177/17) [2018] ZACC 14 (7 June 2018).
- Mlungwana & Others v The State & Another* (CCT32/18) [2018] ZACC 45 (19 November 2018).
- National Police Commissioner v Ngobeni* 2018 (4) SA 99 (SCA).
- Pheko & Others v Ekurhuleni City* 2015 (5) SA 600 (CC).

Pretorius v Minister of Justice and Correctional Services 2018 (2) SACR 501 (GP).

S v Mlungwana & Others 2018 (1) SACR 538 (WCC).

Legislation

Arms and Ammunition Act 75 of 1969.

Commissions Act 8 of 1947.

Constitution of the Republic of South Africa, 1996.

Correctional Services Act 111 of 1998.

Firearms Control Act 60 of 2000.

Firearms Control Amendment Bill [B40-2018].

General Notice 609 in *Government Gazette* 41711 of 15 June 2018.

General Notice 381 in *Government Gazette* 41766 of 13 July 2018.

General Notice 960 in *Government Gazette* 41913 of 21 September 2018.

Government Notice R391 in *Government Gazette* 41535 of 29 March 2018.

Government Notice R1373 in *Government Gazette* 42101 of 14 December 2018.

National Land Transport Act 5 of 2009.

Proclamation 8 in *Government Gazette* 41522 of 23 March 2018.

Proclamation 10 in *Government Gazette* 41561 of 6 April 2018.

Provincial Notice 80 in *Provincial Gazette* 1973 of 13 July 2018.

Provincial Notice 84 in *Provincial Gazette* 1977 of 20 July 2018.

Provincial Notice 105 in *Provincial Gazette* 2001 of 20 September 2018.

Public Audit Act 25 of 2004.

Public Audit Amendment Bill [B13-2018].

South African Police Service Act 68 of 1995.