

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number:

In the matter between:

GUN OWNERS OF SOUTH AFRICA ("GOSA")

Applicant

And

THE NATIONAL COMMISSIONER OF POLICE

1st Respondent

THE MINISTER OF POLICE

2nd Respondent

NOTICE OF MOTION

To the Registrar of this Court and the Respondents:

Take notice that the Applicant will apply before this court on Tuesday 17 July 2018 at 10h00 or as soon thereafter as the matter can be heard, for the following order:

1. That this application be heard as an urgent application as provided for in terms of Rule 6(12) of the Uniform Rules of Court, and that the normal rules relating to applications including those relating to service of documents and time limits be dispensed with;
2. Directing that the SAPS as represented herein by the 1st and 2nd Respondents be prohibited from implementing any plans of action or from accepting any firearms for which the license expired at its police stations or at any other place, for the sole reason that the license for the firearm expired, and that the SAPS be prohibited from demanding that such firearms be handed over to it for the sole reason that the license for such a firearm has expired, and that this order will operate as an interim interdict, pending the further determination of this application, as prayed for in paragraphs 3 to 3.4 *infra*;
3. That this matter then be postponed to the opposed motion roll for further determination in the normal course of the roll, *alternatively* with such set time limits as this Honourable Court may deem reasonable upon hearing the parties or as agreed to between the parties, for the further determination of the following relief, as prayed for by the Applicant:

3.1 That it be ordered that the period of validity of all licenses for firearms that were issued and those that will still be issued in terms of the Firearms Control Act, Act 60 of 2000, will be extended to the lifetime of the owner thereof, with due regard being had to the remaining and existing provisions of the FCA that limit the right of the owner thereof to possess the firearm,

alternatively

that by order of Court the periods as referred to in sections 24(1) and 24(4) of the Firearms Control Act, Act 60 of 2000, will be extended, in order for people that hold expired licenses to apply for the renewal thereof.

3.2 Alternatively to prayer 3.1 supra, that the First Respondent be ordered to provide a comprehensive and detailed security plan to the satisfaction of this Honourable Court to the Court, to ensure that the firearms to be collected by it, for which the licenses expired, will be safe from being lost or stolen from the SAPS;

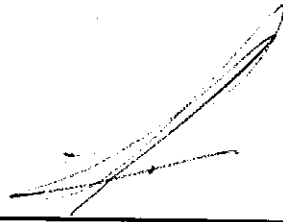
3.3 Further and / or alternative relief;

3.4 Costs on the attorney and own client scale, inclusive the cost of two counsel where so employed.

TAKE NOTICE FURTHER THAT SHOULD THE RESPONDENTS WISH TO OPPOSE THE RELIEF HEREIN, THEY SHOULD:

1. Serve their notices of intention to oppose on the Applicant's attorney of record on or before the 10th of July 2018;
2. Serve and file their opposing affidavits on or before 15h00 on Thursday 14 July 2018.

Dated at Johannesburg on this the 5 July 2018



LARRY MARKS ATTORNEYS

APPLICANT'S ATTORNEYS

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C/O OLTMANS ATTORNEYS

49 Eleventh Street

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Tel (072) 210-0430

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Ref Mr Henry Oltman

TO:

1. THE REGISTRAR OF THE HIGH COURT

Vermeulen Street

Pretoria

AND TO:

2. THE NATIONAL COMMISSIONER /

ACTING NATIONAL COMMISSIONER

OF THE SOUTH AFRICAN
POLICE SERVICES

Address: Wachthuis, 7th Floor
229 Pretorius Street
PRETORIA

Received a copy this theJuly 2018

3. THE MINISTER OF POLICE

231 Pretorius Street
756-7th floor Wachthuis Building
PRETORIA
0002

4. SAPS LEGAL SERVICES

3rd Floor Presidia Building
Corner of Paul Kruger and Pretorius Streets
Pretoria

4.1 Copy to Brigadier Slabbert

4.2 Copy to Brigadier van der Walt

4.3 Copy to Colonel DeKamper

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5. THE STATE ATTORNEY, PRETORIA

Salu Building

316 Thabo Sehume Street

Pretoria

ATTENTION : Mr. N. Govender

AS SERVICE ADDRESS FOR 1st and 2nd Respondent

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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GUN OWNERS OF SOUTH AFRICA ("GOSA")

Applicant

And

THE NATIONAL COMMISSIONER OF POLICE1st Respondent**THE MINISTER OF POLICE**2nd Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

Paul Oxley,

Do hereby make oath and state that:



1. I am an adult male, and I depose to this affidavit in my capacity as the Chairperson of Gun Owners of South Africa ("GOSA") and I am duly authorised to make this affidavit in support of this application to Court as further appears from the resolution signed by the GOSA Exco members, attached hereto as annexure "PO1".
2. The facts deposed to by me in this affidavit fall within my personal knowledge unless the contrary is stated or appears from the context and are both true and correct to the best of my belief. Where I make submissions on legal aspects I do so with the insight that I have gained because of intensive ongoing consultations with our legal advisors.
3. I am a qualified and SAPS - accredited firearms training provider and I have been involved in the firearms industry for more than 30 years. I am a keen sport shooter and I have obtained and maintained *bona fide* and later dedicated sport shooter status from the time that I was at school. I also manage a sport shooting club that functions under the auspices of a SAPS – Accredited Sport Shooting Association. Furthermore, I am the owner of a firearms dealership.
4. In addition to the above, I have been actively engaged in firearms organizations in South Africa since 1985, when I was present at the meeting where SAGA (South African Gunowner's Association) was formed.

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5. I therefore submit that I have more than 30 years of experience in dealing with the subject matter of the facts involving the Firearms Control Act, Act 60 of 2000 ("FCA"), that I now place before this Court.

Locus Standi

THE APPLICANT

6. GOSA is a voluntary organisation without a profit motive that was formed in 2004 and is not connected to any political party. It has the following mandate:

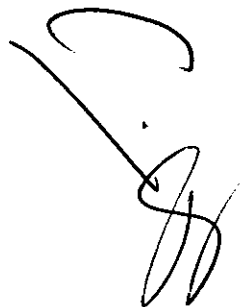
"To ensure that the Central Firearms Register ("CFR") of the South African Police Services ("SAPS") sticks to its mandate;

To promote transparency in firearms legislation;

To ensure equal treatment before the law for its members in the context of firearms legislation;

To ensure reasonable and rational (firearms) licensing requirements;

To ensure the transparent and even application of the FCA;

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To monitor the CFR and to lobby the authorities to ensure that they adhere to their deliverables as prescribed by the FCA;

To lobby members of Parliament and interest groups continually to ensure that GOSA delivers on its mandate;

To deliver rational and impassioned argument with a sound legal basis to national government in the interest of protecting the rights of firearm owners;

To provide clear interpretation of the FCA and related Acts as and when required;

To challenge injustice in court when required to protect the rights of our members;

To constantly enhance the public image and perception of firearm owners;

To challenge inaccurate and misleading reporting in the media on firearms related matters;

To be THE voice for the rights of firearm owners in South Africa."

7. The Applicant has a legal persona as can be seen from the constitution that is attached hereto as annexure "PO2".

8. The Applicant has vast experience in the field of firearm licensing and the practical implementation of the current licensing system. Further detail of this experience is set out in annexure "PO3" hereto.

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9. The Applicant currently has 40 000 members and has seen substantial growth in membership numbers over the past three years.

The Respondents

10. The First Respondent is the National Commissioner of Police.

11. Section 123 of the FCA stipulates that the National Commissioner of Police, is the Registrar of Firearms.

12. The First Respondent is accordingly responsible for the effective and efficient functioning of the Central Firearms Registry ("CFR"), and for exercising control over the office of the CFR and the staff thereof and must take legal responsibility for their actions and conduct.

13. The First Respondent is also the nominated and nominal official in terms of the Institution of Legal Proceedings against Certain Organs of State Act, Act 40 of 2002, who should receive notice of the institution of legal proceedings against the South African Police Services or any of its members, acting in their official capacity. Furthermore, in terms of section 11(2)(g) of the South African Police Service Act, Act 68 of 1995, the National Commissioner shall perform any legal act or act in any legal capacity on behalf of the (South African Police) Service.

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14. The Second Respondent is the Minister of Police who is the political head of the Police Services of South Africa. The Minister of Police (formerly known as the Minister for Safety and Security) is the minister in the Government of South Africa with political responsibility for the Department of Police, including the South African Police Service, the Independent Police Investigative Directorate, and the Civilian Secretariat for Police (That has a *de facto* influence over the contents of legislative amendments to the FCA).

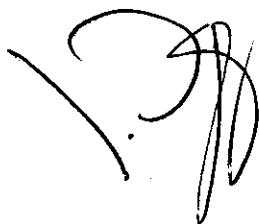
Jurisdiction

15. The first and second Respondents are both situated within the area of jurisdiction of this court, and all members of the South African Police Services ultimately reports to the First Respondent.

Urgency

16. This matter is urgent for the following reasons:

17. It is a matter of individual life and death for those individuals and security companies (including their staff and the people who rely on their protection) with expired licenses because the SAPS indicated that those firearms should be handed in for destruction.

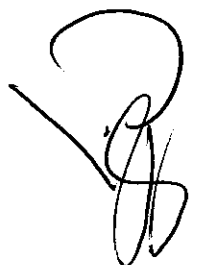
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The affected people will therefore be unable to defend their lives or those of others under their protection, under these circumstances.

18. This is a matter of National Security and there is a clear and pressing danger to the security of the state and all its citizens if the Court does not take the necessary measures as provided for and explained herein and also restore order and certainty. I submit that when it comes to removing self-defense firearms from hundreds of thousands of people, that the consequences will cause societal upheaval, chaos and risks lawlessness.

19. It is a matter of "national importance", in line with the remarks of the learned Prinsloo J in his judgment that will be referred to again in this application, and in a certain way, it is a recurrence of the events that played out before this Honourable Court in June 2009, and this has now happened again, because of the First and Second Respondents having done nothing to prevent this situation from happening again.

20. It is a repeat of the situation that the learned Prinsloo J described where *"...the applicant and other concerned role players have been in constant contact with the authorities over a long period. Some of their important representations went unanswered"*.

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21. It concerns a substantial portion of the citizens of South Africa directly – it appears that about 450 000 licensees and those that are reliant on their firearms for protection, are directly affected by expired firearms licenses.

22. Chaos is currently reigning regarding firearms for which the licenses expired and the public is desperately seeking answers and guidance, and order and clarity is urgently needed from this Court, in lieu of such clarity coming from the First and Second Respondents. As appears from the annexures that are attached as “PO4”, several of what appears to be draft directives with instructions to the public emanating from lower ranking SAPS members have surfaced in the media. The contents of these directives are a cause for concern, because:

22.1. It appears that they were distributed by lower ranking members of the SAPS without sanction by the First Respondent;

22.2. It appears that they were working documents / drafts that should not have been distributed;

22.3. The plans that are stated in those documents are patently “full of holes” relating to the taking of proper measures for the safekeeping of the firearms;

22.4. The aforesaid documents do not set out any plan regarding the safekeeping of an estimated 60 million cartridges that go with the 450 000 firearms, and indeed, there is no practical way of keeping the ammunition safe, as ammunition, unlike

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firearms, do not have serial numbers. It appears that the SAPS may not have considered this reality and the impact thereof;

22.5. The SAPS do not have the capacity to process an additional 450 000 firearms safely through the compulsory ballistic testing that needs to be conducted in terms of the provisions of the FCA. In our own experience it takes between 16 months to three years or more for a single firearm to go through such processes in cases where our members have defended their own lives with firearms, and such firearms are then sent for ballistic testing. The effect of this will be that 450 000 firearms will remain in existence for an extended period. It will be years – or decades even, before the processes are finalized;

22.6. There is no indication that the SAPS have the required safekeeping facilities as prescribed by the Regulations to the FCA, that places limits on the number of firearms that may be stored in a single safe;

22.7. According to the contents of the undated annexure “PO5” that started to surface on the afternoon of Friday 22 June 2018, the First Respondent per paragraph 6.1 indicated that risk assessments had not yet been performed and in paragraph 6.4 that police stations should still be identified with the necessary resources, however in paragraph 7 the First Respondent indicates that firearms should be received by the SAPS;

22.8. In the same document the First Respondent indicates that three police stations are already disqualified from accepting firearms, and the implication is that there may be more. The reason for the police stations already being disqualified is

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because they have displayed inadequate security having been recently relieved of several firearms in their care by criminals.

22.9. In paragraph 6.3 of the document the First Respondent indicates that additional human resources capacity (personnel) should be made available from other departments in the SAPS – the implication of this is that the operational capacity of the SAPS will be reduced even further during a time when the SAPS is already struggling to cope with very high levels of serious and violent crime and civil unrest that are increasing in frequency;

22.10. Misinformation is being spread with impunity as a result of the poor communication by the SAPS, a general lack of clarity exists.

22.11. The First Respondent has continued to fail to exercise his discretion in terms of the provisions of section 28(6), read with sections 28(1) and 27 of the FCA, to extend the period of the validity of firearm licenses. This continued failure has now resulted in an immediate and national crisis.

23. The Second Respondent has continued to fail to introduce much needed amendments to the FCA, to make it a sensible and workable piece of legislation. In particular, the Second Respondent has failed to introduce legislative amendments to extend the period of validity of licenses for firearms, in order to do away with the very provisions that could be the single biggest driver behind the practical failure of the FCA, ever since its introduction. The Second Respondent also failed to introduce amendments to the legislation to allow for administrative fines for late renewal as was intended in

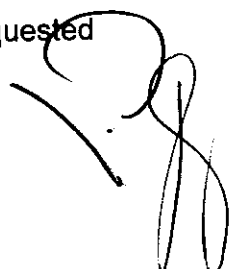
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the bill that was published in 2015. This has now resulted in an immediate crisis of national importance.

24. SAPS officers and officials are acting on their own devices (on "frolics of their own") and are contradicting the orders and position of the leadership of the SAPS, and without clear leadership and communication from the SAPS, the rights of the public are being irreparably prejudiced.

25. Some SAPS officers have started with the process of the taking in of firearms with expired licenses from the public, without a proper or any final plan being in place to ensure the integrity of the operation, in order to avoid those 450 000 firearms and the associated ammunition (at an estimated 60 000 000 cartridges at an average of 150 cartridges per firearm) falling into the wrong hands, as has happened on a large scale on the previous occasions when people handed in firearms to the SAPS at the time that the FCA came into operation, and ever since then.

26. Some SAPS officials, including the National Spokesperson of the SAPS, have issued statements to the press, to the effect that people should start handing in their firearms with expired licenses, and have been threatened with prosecution if they fail to do so, even though GOSA and the SAPS Legal team are still in the process of discussions on the topic, after GOSA was invited by the SAPS to engage with the SAPS on the issue. This invitation was directed to me personally on 14 June 2018 at the meeting of the Parliamentary Portfolio Committee on Police ("PPCOP"), where I was requested

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by Genl. Masemola to request the legal advisors of GOSA to get in touch with the Legal Advisors of the SAPS, to discuss the situation and specifically before a directive was sent out by the First Respondent.

27. Pursuant to this, GOSA's legal advisors contacted the legal advisors of the SAPS on the same day, and have sent them our initial submissions, as appears from annexure "PO6". The First Respondent was included in this correspondence.

28. In addition to this, our supporting documentation was also sent to the legal advisors of the SAPS, on the same day. The supporting documents are attached hereto as annexures "PO7".

29. A provisional date was agreed on for a meeting between the GOSA's legal advisors and those of the SAPS for Tuesday 19 June.

30. This date was changed at the request of the SAPS to Friday 22 June 2018.

31. The meeting took place on Friday the 22nd of June 2018. The legal advisors of the SAPS requested GOSA's advisors to provide them with a memorandum of the submissions that GOSA raised at the meeting.

32. GOSA complied with this request and the memorandum that is attached hereto as annexure "PO8" was sent to the legal advisors of the SAPS on Monday 25 June 2018,

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before 08h00. The First Respondent was included in this correspondence. In order not to make the papers too voluminous, I humbly request this Court to read the contents of this memorandum herein as if specifically incorporated in the text of this affidavit.

33. The Legal Advisors for the SAPS confirmed receipt of the submissions on the 25th of June 2018.

34. On Thursday morning the 28th of June 2018, our members referred the Notice / Directive that they found on the gate of their farm in the Thabazimbi district to us. This notice is attached hereto as annexure "PO9". Our legal advisors in turn referred this notice to the legal advisors of the SAPS.

35. On Friday the 29th of June 2018 it came to our knowledge that the official spokesperson of the SAPS, one Vishnu Naidoo, was reported as having informed the press that our representations were rejected by the SAPS, and he informed the public to hand their firearms in for destruction, as appears from annexure "PO10".

36. This has apparently happened, despite:

36.1. The SAPS not having responded to our legal advisors or having informed us of their views thereon;

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- 36.2. The clear request to the SAPS that forms part of the confirmation of the submissions dated 25 June 2018, that if the submissions would not be accepted, that we should endeavor to agree on the suspension of any further directives being issued, and that the process of the taking in of the firearms with expired licenses shall be stayed, pending an urgent application that we would then launch. We also suggested to the SAPS that for purposes of good order and in the spirit of constructive cooperation, we can then agree on the time periods for the exchanges of court papers between us;
- 36.3. Correspondence to us by the SAPS dated 2 July 2018 that states that they are still considering our submissions.
37. The SAPS have already embarked on a process of the taking in of the relevant 450 000 firearms (in some cases however people were turned away from police stations on the premise that they did not have storage capacity), despite the fact that they are not ready and in a position to safely do so, as will clearly appear from what is stated *infra*, and despite the fact that GOSA has made alternative proposals to the SAPS, under circumstances where the SAPS from their last correspondence to us, dated 2 July 2018, indicated that they are still considering it.

Chronology

38. The FCA, Act 60 of 2000, that was introduced into law in 2004:

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*"MEDIA STATEMENT BY THE SAPS DIVISIONAL COMMISSIONER,
CRIME PREVENTION: DIVISIONAL COMMISSIONER WILSON
MAKHUBELA: 27 June 2004*

*STATEMENT REGARDING THE IMPLEMENTATION OF THE FIREARMS
CONTROL ACT, 2000 - ACT 60 OF 2000*

The Minister for Safety and Security has announced that the Firearms Control legislation will be implemented on 1 July 2004. Since the announcement, many rumours have surfaced regarding the implementation of the Firearms Control legislation. These rumours have led to false and misleading information being published in the media.

The South African Police Service has been preparing for the implementation of the Firearms Control Act and Regulations and I am convinced that we are able and ready to implement the Act. The preparation for the implementation included the establishment of a structure for Designated Firearms Officers, the appointment and training of these officers and equipping the offices with technology and other resources to deal with all aspects relating to the licencing of firearms. We have started with the accreditation of training institutions and shooting ranges, hunting associations, official institutions, and other businesses.

I want to set the record straight by providing the correct information on the implementation of the Firearms Control legislation.



...

** The renewal process will be preceded by a comprehensive communication drive. Firearm owners are encouraged to obtain the correct information from the SAPS.*

** I want to ensure all that the South African Police Service is fully capable to implement the Firearms Control Act, 2000 and that we aim to provide the best service possible.*

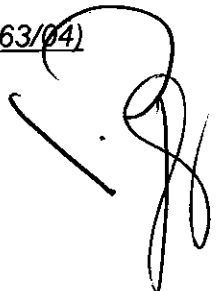
...

Enquiries : Snr. Supt. Andrew Lesch, 082 779 8710"

38.1 Is the successor to the Arms and Ammunition Act 75 of 1969, and departs from the aforesaid Act in two notable ways:

38.1.1 An introduction of a scheme of standardized and prescribed compulsory processes and procedures to be followed to ensure that only people who are fit and proper to possess firearms, should be able to receive licenses to possess such firearms.

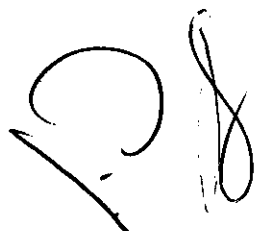
38.1.2 We believe that inspiration for the introduction of this scheme can be found in judgments such as the case of the Minister of Safety and Security v Pedro Souze De Lima (Supreme Court of Appeal 63/04)

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in terms whereof it was held that the SAPS should take what amounts to *reasonable* measures that people who are unfit to possess firearms, do not receive licenses for firearms.

38.1.3 An introduction of a legislative regime that limited the period of validity of a license to possess a firearm, whereas the previous licenses were valid for the lifetime of the licensee, with the proviso that it could have been revoked under certain circumstances. This was passed into law despite the warnings that were sounded at the time:

We do not believe that it is feasible to relicense approximately four million firearms every five years. Even if this process is staggered, it would not be possible to carry out the detailed investigations necessary to give real effect to the requirements of the proposed Bill. Anything less than giving full attention to each application for renewal would negate the stated purpose of drafting this Bill. This would require a central bureaucracy of significant proportions. It would also tie up the resources of the police at local level, who would be tasked with doing the groundwork of processing these renewals.

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Hansard, 9 Nov 2000, page 2994

38.1.4 Before the introduction of the FCA, it appears that more than 380 000 members of the public either made objections or provided other submissions to the bill, but the FCA was nevertheless introduced in 2000, and came into effect from 2004, without the SAPS being in a state of readiness and having the capacity to implement and to administer it, despite their assurances to Parliament at the time.

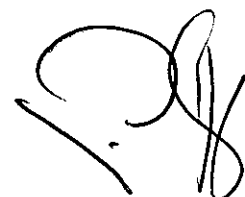
38.1.5 The FCA required that all people with existing licenses for firearms (that were issued under the provisions of the previous Act) to apply for new licenses.

38.1.6 It ultimately so happened that some people waited for up to eight years or longer before their applications for new licenses to replace their existing licenses were finalized, despite the target date of 90 days that can be gleaned from the provisions of Section 24 and directives of the SAPS to this effect.

38.2 This context is important because:

38.2.1 It shows that the SAPS never had the capacity to deal with the re-licensing of firearms that were already licensed;

38.2.2 It shows that the SAPS gave grossly incorrect assurances to parliament on the matter;

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38.2.3 It shows that the SAPS never treated the issue of relicensing seriously;

38.2.4 It created an impression with the public that the system is inoperable and the provisions relating to the compulsory re-licensing were redundant and it will be done away with;

38.2.5 This perception (legitimate expectation) was strengthened by the report by the Public Protector No 10 2006/2007:

"Public Service should try and reduce or eliminate administrative burdens when planning and delivering services"

"All state institutions and servants, including the SA Police Service, were continuously obliged to perform in an effective and efficient manner. All state institutions and servants were obliged to properly implement and adhere to the principles contained in the Batho Pele White Paper".

39. June 2009

39.1 The Case of the South African Hunters and Game Conservation Association v the Minister of Police in which judgment was given in June 2009, where it was noted by the Civilian Secretariat of Police that the SAPS (Respondents) "could not give any justification for the limitations". The learned judge further found that:

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"the legislature should have taken into account the available administrative facilities and should not have designed a transitional arrangement which cannot be implemented by the officials of the respondent. The lack of administrative facilities appears to be uncontested on the papers. I was reminded that the applicant pointed out that the respondents committed unlawful public administration by employing procedures which are ultra vires the empowering legislation. This was also not contested;

39.2 A letter of suspension having been issued against the former head of the CFR, at the end of 2010, alleging:

- A backlog of more than 1 million applications and renewals;*
- Favouritism in the issuing of licenses;*
- failure to put a rational system in place;*
- an environment of corruption within the CFR;*
- directing the head of the CFR to hand his official firearm in.*

40. A legislative amendment in 2011 to the effect that the period of the validity of certificates of competence was extended;

41. 2009

The acceptance by the SAPS for the period between 2009 to February 2016 of a situation in terms of which owners of firearms for which the licenses expired, could apply for a renewal of the license if they so wished, as is allowed for by the



provisions of Section 28(6) read with sections 28(1), 24(1) and 24(4), even after the expiry date of the license, until Commissioner Phalane in February 2016 gave different orders to the effect that the SAPS will not accept renewal applications after the date of expiry of the licenses;

42. November 2010

A report by the Second Respondent dated 2 November 2010, that refers to cases where a single firearm was incorrectly licensed to two individuals, and where the SAPS stated that the backlogs in renewal applications coupled with the irregularities and issuing of firearm licenses under the FCA, *"raises serious questions regarding the integrity of the new database system"*;

43. March 2011

43.1 The PPCOP heard a briefing on the safeguarding of state firearms as many were being reported as lost or stolen. For example, in December 2010 the Committee had visited one police station where 87 firearms had been stolen. The briefing made it known that **20 000 firearms** in the safeguarding of the police, had been stolen. A board of inquiry was being set up to investigate firearm losses to determine causes and implement corrective measures.

43.2 The PPCOP commented that there was a high rate of ill-discipline among SAPS members and noted the inadequate training. Members felt strongly about the fact that SAPS Members lost firearms and were not punished. They commented that the number of stolen firearms contributed to the high

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rate of violent crime. They asked about allegations that policemen sold their firearms and then reported them stolen. They felt that the role of the board of inquiry was not clearly defined and the presentation itself had lot of inconsistencies.

<https://pmg.org.za/committee-meeting/12685/>

44. August 2012

At Berea police station, more than 80 firearms could not be accounted for; about 100 were believed to be missing from Greenwood Park and Umbumbulu; and 50 from uMlazi.

<https://www.iol.co.za/dailynews/saps-gun-records-in-shambles-1357226>

45. October 2012

"Cape Town - Cops are hiring out their guns to criminals, Western Cape police commissioner Arno Lamoer admitted on Wednesday. Speaking at the Cape Town Press Club, Lamoer said all police firearms were now recorded on a database and if a weapon was used during a crime it could be traced to the officer. [Spent] cartridges can be linked to firearms even if the serial number has been removed, he said. Lamoer said 87 police officers were arrested in the past financial year for selling drugs to gangsters and taking part in armed robberies. Of these, 20 had been fired. The cases for the rest were still in court. His admission comes after criminologist Liza Grobler's groundbreaking research highlighted collusion between gangs and the police. According to police statistics, 159 police-issue guns were



reported as lost or stolen over three years. However, it is not only official guns that are passed on to criminals. According to Grobler, corrupt police officers made firearms disappear from evidence stores, and these are sold to gangsters. Lamoer said fighting gangs and substance abuse were among the police's priorities. On average, they arrested 30 people a week for possession of illegal firearms, some of which were not registered and others registered as stolen...

In a written provincial parliamentary reply to MPL Mark Wiley, Community Safety MEC Dan Plato said that of the 159 lost or stolen firearms 50 were recovered, although many had had their serial numbers filed off and could not be identified as police-issue. Mitchells Plain recorded 11 missing guns, Nyanga eight and Delft and Cape Town nine each. Grobler's thesis, which exposed police links to gangs, showed collusion between police officers and gangs before raids, how they seized and resold drugs and were on the payrolls of gang leaders. On reports that Nyanga cluster commander Jeremy Veary had threatened to shoot armed gangsters, Lamoer said the police would protect any resident and the police if their lives were in danger. Veary reportedly also said the gang war in Hanover Park had nothing to do with a fight over drug turf - there were 122 parolees in the suburb, freed early by Zuma. Wiley said self-defence was an acknowledged and defensible reason for drastic action and gangsters had shown repeatedly they had little regard for human life. The police had the right and the power to use deadly force. Wiley said the facts needed to be weighed against

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Zuma's remarks when he announced the amnesty. Zuma said no prisoner, parolee or probationer who was guilty of aggressive, sexual, firearm or drug offences would be released and people who are declared dangerous criminals would also not be released. The DA in the Western Cape would like to know, how is it then possible that this crime has been committed and who is going to be held accountable, Wiley said. Cape Argus October 4 2012 at 09:23am By Lynette Johns

https://www.crimestatssa.com/news_detail.php?id=36

46. May 2014

*"Guns involved in a shooting have gone missing from the police **ballistics testing centre in Toti.***

The seven firearms, some belonging to Metro Police, disappeared from the centre and it is believed police officers were involved in the theft as the weapons were signed out.

The case, which involved a shooting in Lamontville, is now in serious threat of being thrown out of court if the weapons are not found."

<https://southcoastsun.co.za/38092/guns-go-missing-from-toti-ballistics-office/>

47. July 2014

"South Africa's police force is perceived to be the most corrupt of the country's government departments – this perception has been reinforced by



various studies, including one conducted by the Human Sciences Research Council in 2012, and Transparency International's 2013 Global Corruption Barometer, Now, it has received a new blow in the form of a scandal involving possibly corrupt policemen diverting weapons and ammunition to criminals.

This follows the highly publicized raid ten days ago on a house in Norwood, which contained a large arms cache.

This is how the Times reports the matter:

A massive firearms scandal unfolding in the Johannesburg Magistrate's Court is expected to lead to a wide-scale investigation involving corrupt policemen supplying arms and ammunition to criminals.

Thousands of weapons were surrendered to the police during the **firearms amnesty of 2009** and were **earmarked for destruction**.

On Monday last week, police raided the house of elderly Ukrainian couple Emma Shmukler-Tishko, 65, and her husband Mark, 62, and seized 112 assault rifles, handguns, commercial explosives and detonators stored in a backroom.

Prosecutor Talita Louw told the court yesterday that among the recovered weapons were guns that should have been destroyed during the amnesty period. She said that an R1 rifle handed in at the Roodepoort police station, in April 2010, during the amnesty, was among

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the weapons confiscated from at the couple's house in Norwood, Johannesburg.

"In May, the same rifle was officially taken out of the storeroom for destruction. It is not known how the same firearm was found in the possession of the applicants," she said.

Louw said investigators were checking the serial numbers of other firearms handed in at police stations across the country. "There are several firearms that have visible serial numbers but are not reflected as stolen on the firearm registration system. They are still registered and have ownership."

She said many of the other confiscated arms were, according to police records, state-registered. "The only inference that one can make is that there is more to this case than meets the eye. 'Investigations are under way to determine how these firearms left the custody of the police."

Emma Shmukler-Tishko, who suffers from multiple sclerosis, was granted R5000 bail. She, together with her husband, and Malawian domestic worker Endi Nkhoma, 26, face charges of dealing in, and possession of, prohibited and unlicensed firearms, and dealing in, and possession of, ammunition and explosives.

The latest revelation has enraged Martin Hood, of the SA Gunowners' Association, who said it was accepted that police stations were "porous" and that exhibits were stolen or sold from police stations.

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"It is obvious that the police do not have proper control of firearms in their storerooms. Are police corrupt in the handling of firearms? – totally," said Hood.

He revealed that a pistol, handed in for destruction at Tugela Ferry police station, in KwaZulu-Natal, was used in the killing of a Gauteng Spar supermarket manager.

Police strongrooms not as strong as they should be:

Hawks spokesman Captain Paul Ramaloko said the investigation of the Norwood arms cache had been widened "after certain facts came to light".

"If it's proved that these weapons were meant to be destroyed as part of the firearms amnesty, we will hold [the police officers involved] accountable. Wherever the investigation leads us, we will go," he said.

Investigators are trying to establish what crimes had been committed with the seized weapons.

A policeman involved in the registration of firearms said: "The police allegedly behind this could, if found guilty, be responsible for murder or other violent crimes. There are meant to be strict controls around police exhibit [stores] and strongrooms where weapons handed in or recovered are kept."

He said that only police station commanders and strongroom clerks were allowed access to the guns in their keeping.

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"There is a critical failure around the safeguarding of the strongrooms. People who handed in guns for destruction did so thinking the police would destroy them but these promises have not been kept."

He said weapons earmarked for destruction had to be destroyed.

"There is no way around this," the police source said."

<http://www.corruptionwatch.org.za/weapons-disappearing-from-police-custody/>

48. August 2014

-The proceedings before the PPCOP during August 2014, where the First Respondent confessed that:

--Provinces failed to conduct quality checks;

--DFO's failed to conduct section 102 investigations to assess whether people were fit to possess a firearm;

--Detectives failed to close dockets;

--Detectives failed to ensure that lost / found firearms were circulated within a specific time;

--detectives failed to submit identity numbers for suspects / accused persons for the purpose of declaration of unfitness and did not file them properly;

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--ports of entry failed to submit monthly returns pertaining to import / export permits;

-- THERE WERE IMPROPER CONTROL OF FIREARMS HANDED IN AT POLICE STATIONS;

--THERE WERE SHORTAGE OF HUMAN, PHYSICAL AND LOGISTICAL RESOURCES;

--there were shortages of personnel to conduct compliance inspections at dealers, gunsmiths and manufacturers;

--The SAPS lacked resources, specifically, computers, printers, fax machines, vehicles and stationary such as photocopying paper and toner in order to be effective in their administration of the FCA;

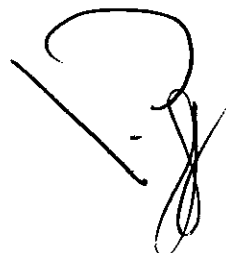
--a new building had to be obtained;

--two brigadiers, two colonels, three lieutenant colonels were charged with offences relating to their work at the CFR;

--It was noted that when the committee went on oversight visits, it took hours to locate firearms in the SAPS 13 stores;

--It was noted by the committee that firearms that were handed in for destruction by the public to the police then re-surfaced at crime scenes;

--The SAPS legal advisors confessed that there had been 108 legal cases against the CFR and that there were no grounds or proper reasons for the SAPS to oppose these applications;

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--The Committee members noted that "since keeping records, that SAPS lost over 13 000 firearms";

--The First Respondent replied that "Project no 1448", driven by the National Commissioner and Minister, was to ensure that SAPS did not have members with criminal records".

(Emphasis added)

49. October 2014

49.1 The proceedings before the PPCOP during October 2014, from which it appeared that:

--more than half of the gun licensing applications that were processed by the SAPS was not available for audit by the auditor – general;

--The Directorate of Priority Crimes Investigation ("Hawks") were investigating the "botched" Firearms Control System" that then already costed R412 million;

49.2 17 October 2014

"Pressure is mounting on the police to sort out problems with a R400 million firearms control system, ten years after the contract to develop it was signed with Pretoria-based company Waymark Infotech.

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*In its successful bid for the contract in 2003, Waymark proposed an IT system which would enable the police to track firearms and identify the ownership, identity and history of a firearm "anywhere anytime". In addition to this "technical solution", Waymark proposed skills development to ensure that police personnel are trained to use the system. **Waymark's tender estimated the system would cost R42 million.***

The Firearms Control Act of 2000 requires that the National Police Commissioner establish a "Central Firearms Register". The deliverables expected from Waymark –a database and document processing system to manage the firearms register– are noted in the contract signed with the police and correspond closely to the legislated requirements for the Central Firearms Register.

According to the Auditor-General's performance audit report for 2012/13, the contract, signed in September 2004, set the price for the system at around R93 million. This is more than double the estimate in the tender. The contract also set the deadline for the system handover at 5 July 2006.

But between March 2005 and February 2007, addenda to the contract show that the deadline was pushed back multiple times. The cost of the system also escalated to about R412 million, of which R343 million has been paid according to the Auditor-General.

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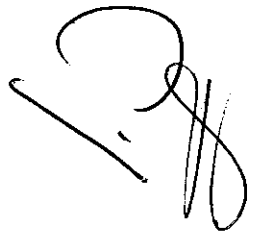
In 2012, the police suspended dealings with Waymark and launched an internal investigation into the contract. Yet it remains unclear whether this investigation was ever completed. The reasons for the ballooning costs and delays associated with the contract also remain a mystery.

Last month, more than a year after Cape Town-based NGO Ndifuna Ukwazi lodged a Promotion of Access to Information Act (PAIA) application, the police handed over the contract documents for the development of the firearms control system. But details of the additional costs have been blanked out and some pages have been removed.

The Auditor-General's report pointed to the contract's escalating cost and missed deadline and "provided a solid foundation for holding civil servants and private corporations accountable," said Ndifuna Ukwazi founder Zackie Achmat.

"Unfortunately, the report did not name the officials involved or the company that benefitted from the police's tender for a firearm control system," he said.

"When we were denied access to this information, information that should be in the public sphere, Ndifuna Ukwazi lodged a PAIA application."

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He said the omission of details of the costs involved, even after the PAIA application was successful, was "unethical and unconstitutional".

Waymark, whose website describes it as a black economic empowerment company, specialises in developing IT systems for election and voters' roll management.

In a number of recent elections elsewhere in Africa, Waymark's involvement has been mired in accusations of poll rigging and corruption. In 2005, Waymark's contract with the Zanzibar Electoral Commission to revise the voters roll was scrapped after the island's governor, Ali Juma Shamuhuna, accused the company of having bribed officials to get the contract. Last year, Guinean opposition parties cried foul over Waymark receiving a contract to handle the country's voters roll.

Asked for an update on the internal investigation, for an explanation on the delays and ballooning costs and whether any part of the system has been handed over to the police, Waymark's Joel Mpshe declined to comment, saying that the company was in "legal discussions" with the police about the contract.

"We are thus not at liberty to discuss the matter as it may jeopardise those discussions and any disclosure will have future legal implications for both parties," he said.

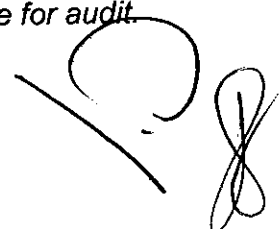
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Police spokesman Lieutenant General Solomon Makgale did not respond to GroundUp's queries.

Problems with the police's Central Firearms Registry have been in the spotlight since the arrests of three police officers, who worked at the registry, in June. They are accused of using the registry's computer system to issue gun licences corruptly. Ralph Stanfield, the nephew of late Cape Flats drug lord Colin Stanfield, and two other people based in Cape Town were also arrested for alleged involvement in the licensing syndicate. The case against these six will resume next year in the Cape Town Magistrates' Court.

In the wake of the arrests, the police were called before Parliament's police portfolio committee to account for the shortcomings at the Central Firearms Registry. Their slideshow presentation identified challenges such as shortages in staff, skills and IT equipment. It also confirmed that electronic filing and databases were not being used, resulting in large volumes of paperwork being generated. This "inefficiency" in record keeping of applications for firearm licences is noted by the Auditor-General in the police's annual report for 2013/14.

In the report, the police claim that 96% of more than 250,000 firearm related applications were finalised. Yet, the Auditor-General notes that he could not confirm the reported number of licences processed because 54% of the application forms were not available for audit.

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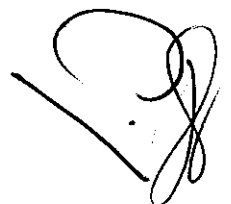
A September visit by the portfolio committee to the Central Firearms Registry confirmed that it was in disarray. The committee identified "poor IT systems", outdated databases and was "appalled" by the paperwork stacked in the Central Firearms Registry's corridors. Police top management was told to "speed up its plans for a consolidated information technology system and a clean firearms database".

Committee member Pieter Groenewald said that he would raise the issue of the stalled Waymark contract with National Police Commissioner Riah Phiyega at a meeting between the police and the committee next week.

"The registry is in a shambles and the correlation between this and the non-delivery of a system that has already cost hundreds of millions of rand needs to be discussed as a matter of urgency," he said.

"The dysfunctionality of the system lends itself to corruption. What's especially concerning is that this type of corruption can have potentially deadly consequences.

https://www.groundup.org.za/article/r400-million-firearms-control-system-shambles_2359/

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'G' shape followed by a series of loops and a final flourish.

The proceedings before the PPCOP on 3 June 2015, where reports were made of members of the SAPS hiring out firearms to criminals from the SAPS 13 stores;

51. July 2015

"At least 214 firearms were either lost or stolen from the Mpumalanga police force with the last three financial years as confirmed by the office of the Provincial Police Commissioner"

<https://witbanknews.co.za/47779/over-200-firearms-have-been-lost-by-mpumalanga-police/>

52. August 2015

"6 602 firearms have been lost or stolen from the police in the last five years.

A total of 3 576 firearms stolen and another 3 026 reported lost between January 2009 and June 2014. KwaZulu-Natal was the biggest culprit with its police force losing 1073 firearms and with 835 being stolen. Second on the list for lost firearms was Mpumalanga (592), followed by the Eastern Cape (360) and Gauteng (352). At the police HQ in Pretoria, 352 firearms were lost."

<https://www.thesouthafrican.com/over-6600-firearms-have-been-lost-or-stolen-from-the-south-african-police-in-the-last-five-years/>

September 2015



In September 2015, Vearey and Jacobs proposed in an information note to police commissioner Riah Phiyega that Operation Impi should be extended for another three years to trace the other Prinsloo weapons and to overhaul the Central Firearms Registry (CFR). Vearey said: "These acts of organised criminality have fundamentally compromised the systems integrity of our CFR.

Indications are that recurring corruption is now institutional. It is apparent that the CFR and their personnel are central to the perpetuation of serious criminality and resultant organised crime."

But Phiyega had problems of her own and never approved the extension of Operation Impi. Three weeks after receiving Vearey's note, she was suspended pending a commission of inquiry into her fitness to hold office. She was replaced as acting national commissioner by Lieutenant-General Khomotso Phahlane. He never approved the extension of Operation Impi either. Neither did anyone in the police top command congratulate the Operation Impi team for the conviction of Prinsloo and the arrests of his accomplices.

The President's Keepers, Jacques Pauw

53. February 2016

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*"Acting National Commissioner Khomotso **Phahlane** issues a directive to the effect that people are **no longer** allowed to renew their firearm licenses after the expiry thereof **as was allowed before** the directive was issued.*

Thousands of gun owners who have submitted late applications to renew their expired licenses could be in for a nasty surprise because the police have recently been issued with a directive to stop accepting late renewals, says Westlake lawyer Damian Enslin.

Mr Enslin said gun owners had a lot more to worry about than backlogs at the license renewal department: on Wednesday February 3, SAPS acting National Police Commissioner General Kgomo~~ts~~o Phahlane introduced a new directive on the late renewal of gun licenses, which, Mr Enslin claimed, had only come to the attention of various firearm bodies on Monday February 8.

He said the SAPS had previously accepted late license renewals but would now no longer do so. This, he said, had been decided without consulting firearm groups and other stakeholders. He argues this is in contravention of the constitution. He said the new directive would affect about 120 000 people who had filed late applications to renew their firearm licenses."

<https://www.southernsuburbstatler.co.za/news/firearm-licence-renewal-hold-up-5008036>

A copy of the directive is attached hereto as annexure "PO11".

54. July 2016



Colonel Chris Prinsloo pleaded guilty to the theft of more than 2000 firearms from SAPS safekeeping facilities and distribution thereof to criminal gangs in the Western Cape specifically.

55. March 2017

More than 30 firearms stolen from SAPS 13 store in Peddie, Eastern Cape:

<https://www.iol.co.za/news/cache-of-30-guns-stolen-at-peddie-police-station-8198982>

56. April 2017

<https://www.dispatchlive.co.za/news/2017-04-14-dimbaza-cop-on-the-run-with-guns/>

57. May 2017

57.1 *"The Inkatha Freedom Party believes that the case of the nine missing guns at the uMkhomazi Police Station, is the result of an inside job.*

National Chairman of the IFP, Blessed Gwala, has called upon the KwaZulu-Natal provincial government to conduct a thorough investigation into how those guns went missing, strongly suggesting that criminals in that province were getting the assistance of law enforcement authorities.

Gwala explained that there was plenty reason to be suspicious about the manner in which these guns went missing.



"There must be a thorough investigation because according to the reports it is alleged that this is an inside job as there was no break in," said Gwala on Sunday."

<https://www.sabreakingnews.co.za/2017/05/28/nine-police-firearms-go-missing-ifp-thinks-it-was-an-inside-job/>

57.2 *The theft of 2,500 police guns is still being investigated as well as over 1,100 cases of murder and 1,500 of attempted murder, all linked to the sale of the guns. Prinsloo was tracked down and arrested in 2015 as part of the Western Cape anti-gang unit's "Operation Combat". The small team of detectives were led by Major-General Jeremy Veary, deputy provincial commissioner for detective services, and Major-General Peter Jacobs, the Western Cape Crime Intelligence boss.*

Soon after Phahlane assumed the position of acting National Commissioner, Veary and Jacobs, both seasoned and respected leaders in the province, were sidelined and demoted. Veary and Peters were moved from their management positions to the Cape Town and Wynberg policing clusters respectively. Both officers are currently challenging the demotions in the Labour court.

<https://www.enca.com/opinion/sa-s-interregnum-and-the-fight-for-the-soul-of-saps>

58. July 2017

Umkomaas

<https://southcoastherald.co.za/210295/multiple-firearms-stolen-umkomaas-saps/>

58. July 2017

Mthatha

<https://www.dispatchlive.co.za/news/2017-07-24-13-firearms-stolen-from-mthatha-cop-station/>

59. July 2017

The judgment by the Honourable Tolmay J to the effect that certain provisions of the FCA were declared to be unconstitutional in that the learned judge found it to be unconstitutional and irrational for the FCA to discriminate against people whose licenses have expired, and to not afford to them the same opportunities to dispose of their firearms, when compared to a situation where a person may have been found to be incompetent to own a firearm, where the FCA allows him to dispose of the firearm within 60 days, and where he could then for instance sell the firearm to a firearms dealer. The Honourable Tolmay J (paragraph 6 of the judgment) remarked that "it points to an acknowledgement by the Minister that the Act poses serious problems and should be amended...in the light of that, the Minister's opposition to this application is rather perplexing...The papers attest to a narrative of a chaotic and dysfunctional system of licensing and administration of firearms. Despite various meetings, workshops and summits, since at least 2010, very little



was achieved to ensure a properly functioning system. This sorry state of affairs was acknowledged by the then minister of police, who during March 2015 admitted that the CFR was "dysfunctional and in constant decay" ... the parties in these matters agreed to postpone the applications, pending this judgment. **The outcome of this case will determine whether any further litigation is necessary.** (A copy of the judgment is attached hereto as annexure "PO11")

60. August 2017

60.1 More than 30 firearms were stolen from the SAPS offices at Belville, and a police officer was arrested in connection with this case.

<https://www.news24.com/SouthAfrica/News/bellville-cop-implicated-in-alleged-theft-of-18-guns-court-set-to-hear-details-20180620>

60.2 *Just after Christiaan Prinsloo pleaded guilty to trafficking guns to gangsters but days before his sentencing, Vearey was instructed to attend a workshop for top police commanders in Paarl near Cape Town. He didn't suspect anything was wrong. In fact, Vearey and Peter Jacobs were the flavour of the month in police circles in the Western Cape.*

During a break, the head of police human resources, Lieutenant-General Bonang Ngwenya, approached Vearey and told him that he had been transferred to cluster commander of Cape Town police stations. She didn't provide any reason for the decision. Peter Jacobs was demoted to a similar position in Wynberg. Said Vearey: "It came as a shock to me. I had no indication whatsoever that there was any dissatisfaction on the part of SAPS



[the South African Police Service] with my performance. I was demoted in the sense that I moved backwards from provincial management to cluster level where I would have limited jurisdiction, powers and responsibilities." When he asked for reasons, Ngwenya said to Vearey: "The acting national commissioner will explain the reasons and rationale in the plenary sessions."

Police top command stared down the barrel in the Labour Court case and could not provide a shred of evidence to justify their decision. The taxpayer was yet again burdened with the cost of counsel to concoct a defence from the indefensible.

The President's Keepers, Jacques Pauw

61. September 2017 PPCOP

The situation continued at CFR where documents were piling up in the corridors of the CFR and committee members expressed their amazement that CFR did not predict the magnitude of the paperwork that they had to deal with as a result of the legislation.

62. September 2017

Police are keeping mum on the suspension of 14 Mitchells Plain police officers following the discovery last month that 15 state-issued 9mm pistols were missing from the station.

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Mitchells Plain cluster commander General Greg Goss suspended the officials, who include the station commander, Brigadier Cass Goolam, the visible-policing head, all the relief commanders as well all community service centre commanders.

<https://www.iol.co.za/capetimes/news/14-mitchells-plain-police-officers-suspended-over-missing-pistols-11312471>

63. October 2017

The figures provided showed that 550 guns were stolen from SAPS armouries in KZN over the last three-and-a-half years. This is more than a quarter of the total of 2 027 that were stolen from SAPS armouries around South Africa during that period.

<https://www.iol.co.za/news/south-africa/kwazulu-natal/hundreds-of-guns-stolen-from-saps-armouries-11794251>

Police have either lost or had more than 2 500 firearms stolen over the past three financial years.

Democratic Alliance shadow police minister Dianne Kohler Barnard said it was “unacceptable” and “made a mockery” of the fight against crime.

http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=49597&catid=74&Itemid=30

64. December 2017



64.1 *Durban - The Independent Police Investigative Directorate (Ipid) and the Hawks this week swooped on former acting national police commissioner Lieutenant-General Khomotso **Phahlane** and a SAPS contractor, Keith Keating, who was recently fingered in an alleged tender scandal.*

*The Mercury reported last week that Keating's company, Forensic Data Analysts (FDA), has been the sole supplier to the SA Police Service - through IT company Sita - of a firearm permit system and software as well as forensic equipment worth around **R5.7 billion**, since 2010.*

<https://www.iol.co.za/news/south-africa/kwazulu-natal/hawks-probe-former-top-cop-12311544>

64.2 The CFR overspend its approved budget of R20 million for the period 2016 to 2017 by R140 million, as appears from annexure "JW1" hereto.

65. January 2018

GOSA applies to the SAPS in terms of PAIA to provide the data on its capacity and relating to the impact that the continuous re-licensing scheme has on its ability to perform its functions in terms of PAIA as appears from annexure "PO12".

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A R5 rifle and two empty magazines were stolen in a robbery at the Eden Park police station, south of Johannesburg, in the early hours of Thursday morning.

Gauteng police spokesperson Brigadier Mathapelo Peters said two men walked into the police station shortly after midnight and ordered police officers on duty in the Client Service Centre to hand over the keys to the safe.

The two men, one of whom was armed, proceeded to steal the rifle and two empty magazines.

"The suspects are alleged to have taken off in a white bakkie with a canopy, unknown registration and unknown description [or] make," Peters said.

She said Gauteng provincial police commissioner General Deliwe de Lange had ordered an urgent investigation into the circumstances which led to the robbery.

"While we are relieved that none of our members were injured during the armed robbery, it would also be important for us to establish the rationale behind their reaction/response during the commission of the crime," De Lange said.

Peters said police were appealing to the public to strengthen their partnership with law enforcement and help fight crime.

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68. April 2018

In April 2018 it was reported that at least three other police officers were arrested for the theft of the more than 2000 firearms from police safekeeping facilities

<https://www.news24.com/SouthAfrica/News/more-ex-cops-now-part-of-western-cape-guns-to-gangs-saga-20180425>

69. May 2018

"The DA in Ekurhuleni believes the number of missing firearms from the Ekurhuleni Metro Police Department (EMPD) armoury is much higher than the figure released by the MMC for community safety in March.

Three months ago, Alderman Vivienne Chauke said 14 firearms to the value of R161 000 had been lost, but Cllr Jaco Terblanche, DA member of community safety in Ekurhuleni, believes the actual figure could be closer to more than 100 missing firearms.

Up until now, the metro has refused to release the armoury report. After a heated council debate at the latest council meeting, the DA in Ekurhuleni brought an urgent motion to council, calling on Chauke to release the report.

<https://kemp-tonexpress.co.za/173528/da-questions-number-of-missing-empd-guns/>

70. June 2018



66. February 2018

The order of the Constitutional Court on 6 February 2018, where the Constitutional Court held that GOSA's application to be admitted to the proceedings before the Constitutional Court (relating to the judgment of Tolmay J) where GOSA indicated that it was of the view that the court should rather first of all consider the rationality of the scheme of re-licensing (as provided for first and foremost by section 27 of the FCA), where the relief that GOSA asked for, was according to the Constitutional Court, "...beyond the scope of the proceedings on record", as appears from annexure "PO13" hereto. This is confirmed by the fact that Tolmay J indicated that the challenge by SA Hunters could be identified as follows:

The lack of clarity pertaining to how a firearm owner, who failed to comply with the 90-day limit set out in Section 24 can rectify the situation and bring himself / herself back under a scheme of legality;

-The absence of due process pertaining to a section 24 transgression in comparison to the other classes of termination of licenses;

-The uncertainty about one should deal with a firearm if your license expired due to effluxion of time, with specific reference to how, when and where one can surrender it; and the fact that no provision is made for surrender for value."

67. March 2018

<http://ewn.co.za/2018/03/08/2-firearms-used-in-ngcobo-police-massacre-stolen-from-saps-branches>



She further asked for anyone with information about the robbery, or the identities of the suspects, to approach the police.

"Police are subsequently appealing to members of the public to... come forward with information that could assist in identifying and apprehending the suspects who continue to undermine the law and the authority of the state," she said.

<https://www.news24.com/SouthAfrica/News/eden-park-police-station-robbed-r5-rifle-stolen-20180607>

71. June 2018

71.1 The judgment of the Constitutional Court, as appears from annexure "PO14".

71.2 The meeting of the PPCOP on 14 June 2018, where the issue regarding the expired licenses was discussed. It was after this meeting that General Masemola extended the invitation to me for GOSA's legal advisors to meet with the legal advisors of the SAPS, and the events that transpired after that invitation, have been described in paragraphs *supra* under the heading of "urgency".

71.3

71.3.1 On the 24th of June 2018 it came to the knowledge of GOSA that the South African Arms and Ammunition Dealer's Association launched an application before this Court under case number 41415/18 against the First

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Respondent *in casu* and other respondents, including the President of the Republic of South Africa.

71.3.2 In this application the Applicant *inter alia* seeks an order for a commission of enquiry to be appointed by the State President and to be chaired by a judge of the High Court to investigate the "*South African Police Services: Central Firearms Registry for the policies and procedures of, and skills and competence of the Central Firearms Registry...*", and an order directing the SAPS to implement "*electronic connectivity as contemplated ... by the provisions of the FCA...*", to process SAP 350 (dealer stock returns) within seven days of submission of such returns by dealers, for an order interdicting the SAPS from using pre-printed reasons for refusals of license applications..."

71.3.3 In order to avoid a duplicity of paperwork, a copy of that application will be made available to this Honourable Court at the hearing hereof and the court will be referred to this application including to some of the annexures thereto in support of the statements that was made in this application, should the need arise.

The period between 2004 to date:

72. During this entire period applicants for licenses and for the renewal of firearm licenses also suffered from the following treatment by the SAPS:

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72.1 The erratic office hours of Designated Firearm Officers ("DFO's"):

72.1.1 Many DFO's were regularly deployed elsewhere, and were not in office, especially when they had to provide assistance during times of riots. They were simply not in the office to accept applications;

72.1.2 In many cases DFO's were not at work due to illness. People could therefore not submit applications;

72.1.3 Even to this day many DFO's limit their own office hours to 13h00 on Fridays and 14h30 on other days;

72.1.4 Many DFO's required that "an appointment be made" with them for the submission of the applications. Their first available date for an appointment would in many cases be after the date that the license expired.

73. In some cases people were hospitalized and could not submit their applications in time. In other cases, the deployment of SANDF soldiers was extended in foreign countries, and they could as a result of that not submit their applications in good time. All of the above situations are examples of a situation that is extremely unfair to the people who are involved. *Those who have expired licenses are not a single class of people, and in most cases are not in any way at fault for now possessing expired licenses.* It is also contrary to the assurances that were given before the FCA was passed into law, and as such, it is also another example of being a breach of the legitimate expectations on which the public are entitled to rely on:



That would give him or her a more than adequate choice of firearms to use for self-defence in terms of this Bill. This fact demonstrates conclusively that the Bill will ensure that legal gun owners are empowered to arm themselves properly against any onslaught from criminal elements. There are, accordingly, no grounds for any concern that the Bill might disarm honest citizens.

Hansard, 12 October 2000

Submissions on the rationality of the scheme of continues cycles of re-licensing

CONTINUOUS RELICENSING CYCLES

74. GOSA believes that judgments such as the judgment in *Minister of Safety and Security v Pedro Souze De Lima* (Supreme Court of Appeal 63/04) places a duty on the state to ensure that it takes *reasonable* precautions that firearms should not be licensed to individuals who are not fit to possess firearms.

75. After due consideration and with the benefit of hindsight and given our vast experience on the matter over the past more than 18 years since the FCA has been proposed and eventually written into law, we believe that the legislature has gone too far by adding a system of continuous compulsory relicensing of individual firearms to persons who have been found to be competent and whose declared competencies have not been withdrawn, as the existing provisions in the FCA already allows for the withdrawal of licenses and competency certificates and the handing in of firearms in cases where people become *unfit* to possess firearms.
76. We estimate that the CFR's capacity to fulfill its core mandate, i.e. control over firearms and ensuring that only fit and proper persons are allowed to possess firearms, can be increased by an estimated 7.5 times, if only the relicensing scheme is done away with. (Further detail appears from the PAIA application that is attached hereto as annexure "PO12")
77. Conversely, we have every reason to believe that if compulsory relicensing is not done away with it will lead to the collapse of the entire licensing system and that it will progressively become more and more difficult and indeed ultimately impossible, for the CFR to fulfill its functions in terms of the FCA, these being:

*To establish a comprehensive and an effective system of firearms control;
and to provide for matters connected therewith.*

PREAMBLE

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WHEREAS every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources;

AND WHEREAS the adequate protection of such rights is fundamental to the well-being and social and economic development of every person;

AND WHEREAS the increased availability and abuse of firearms and ammunition has contributed significantly to the high levels of violent crime in our society;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights;

Chapter 1: Introductory Provisions

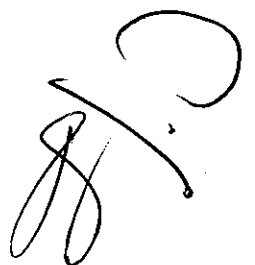
Purpose of Act

The purpose of this Act is to—

(a) enhance the constitutional rights to life and bodily integrity;

(b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;

(c) enable the State to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms;

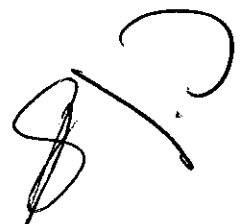
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(d) establish a comprehensive and effective system of firearm control and management; and

(e) ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.

(Emphasis added)

78. GOSA submitted a request in terms of the Promotion of Access to Information Act ("PAIA request") to the SAPS in order to obtain the raw data on the current status of the Firearms Control System and to be able to perform projections as to what the impact of the relicensing scheme will be on the future sustainability of the system.
79. This request was sent to the SAPS on or about the 5th of January 2018, after an initial draft was prepared on the 18th of December 2017, which was the result of consultations between myself and one of our attorneys and counsel and with the further assistance of some of the GOSA volunteers. This draft was debated further between GOSA's executive and its lawyers during the period 18 December 2017 and 5 January 2018. A copy of this PAIA request is attached hereto as annexure "PO12" and I request this court to read the contents thereof into this affidavit as if specifically incorporated herein.
80. I humbly submit that the implications of this evidence will be shocking in the sense of where the system is heading if indeed the SAPS makes it available which it has refused to do up to now (based on patently spurious reasons which is reminiscent

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of the obstruction that the public and their representatives continuously must deal with when dealing with the CFR) as appears from annexures "PO14" hereto.

81. At the date of the signing of this affidavit, the SAPS have however not yet provided an answer to this PAIA request or provided us with some of the requested data, despite subsequent enquiries that were not responded to at all.
82. We have no doubt that this data that the SAPS have refused to disclose, regarding the functioning of the CFR, will provide this court with overwhelming evidence to prove the point that the relicensing duties imposed upon the CFR have had a progressively debilitating effect on the ability of the CFR to administer the FCA.
83. We submit that this perspective will become even more evident to all parties and to this Honourable Court when our actuaries eventually get the opportunity to use the raw data to perform the future projections.
84. As such, and since the litigation has now started for which this information was needed, we ask that the information that was requested as set out in our PAIA request be incorporated in this application *in casu*, and we therefore now request the SAPS to make this information available in their answering affidavit hereto, in order for this Court to be able to be properly informed of the truth and the facts of the situation.
85. In our estimate a simple calculation shows that if there are 2 700 000 licenses in the system and they need renewing every 2, 5 or 10 years (depending on the section in the FCA in terms of which the license was issued), the SAPS workload relating to licenses will be increased by between 5 and 15 times. (This is if the



lifespan of licensed individuals is taken as 50 years and businesses as 30 years). We submit that the SAPS are already overworked and struggles to find time for more pressing concerns. A case in point is that the centralized dealer's database is yet to become operational, some 14 years after the FCA came into effect:

Firearms Control Act, 2000 (Act No. 60 of 2000)

Firearms Control Regulations, 2004

Chapter 5 : Licences issued to particular categories of persons

Part 2 : Dealers

Establishment of centralised dealer's database

(1)

The Registrar must establish and maintain a central dealer's database which is linked and can interface with the electronic network connectivity of workstations of dealers as contemplated in regulation 38.

(2) The central dealer's database must contain—

(a)

the information and supporting documents submitted by an applicant on the prescribed form under regulation 13 regarding a competency certificate, dealer's licence, authorisation, renewal or copy thereof, as well as, the relevant information in respect of the suspension or termination thereof;

(b)

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the information on a competency certificate, licence, authorisation, permit and a renewal or copy thereof, that were issued or refused as a result of an application; and

(c)

the details and information submitted by a dealer in respect of the acquisition, transfer and disposal of a firearm or ammunition effected under the Act.

Firearms Control Act, 2000 (Act No. 60 of 2000)

Firearms Control Regulations, 2004

Chapter 12: General provisions

110. Offences and penalties

(1)

1. Any person who contravenes or fails to comply with any provision of these regulations shall be guilty of an offence.

86. We submit that in effect the continuous cycle of renewals creates a situation similar to the initial administrative nightmare brought about by the introduction of the FCA.
87. We submit that the compulsory obligation to renew licenses is unworkable and that it is irrational for the Registrar not to extend the period of validity of licenses, not only because it places the entire licensing system in jeopardy, but also for the following reasons:

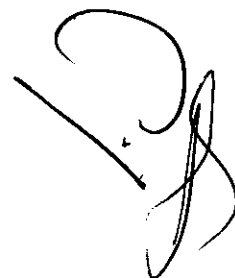
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88. The provisions are irrational and superfluous:
- 88.1 The provisions of Section 10(2), 102, 103, 104, 106, 146 already exist. In terms of these provisions only competent (fit and proper) persons may own firearms. Should a person become unfit to possess a firearm (either by order of court or because of an enquiry by the Registrar) those firearms must be disposed of in terms of the provisions of the FCA. Furthermore, businesses are required to keep registers and the SAPS have a duty to inspect it monthly. Any holder of a license is by law also required to inform the SAPS if his situation has changed;
- 88.2 Where licenses have been issued in terms of section 13 and 14 for self-defense and the holder of a license has proved his need for a firearm to protect his life or that of his family, given the ongoing crime statistics in South Africa it seems unlikely that that need is going to change for the better.
- 88.3 In cases that are governed by section 15 (occasional sport shooting and hunting), the legislature has already accepted that the license holder will use his firearm 'on occasion'. It is difficult to understand why the license holder should have to keep justifying the continued occasional use of his firearms for sport or hunting.
- 88.4 In the case of licenses issued in terms of section 16 (dedicated hunting and dedicated sport shooting), legislature is already in place: Every license holder in terms of this section, needs to be a member of a SAPS-accredited organization which is required by law to submit annual returns to the Registrar confirming the dedicated status of its members. It follows that should a member not maintain his dedicated status it will be forfeited and the license for the applicable firearm will be

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revoked, in accordance with the FCA regulations. This is a yearly "check" and there is no reasonable justification for placing the entire system at risk by effectively reintroducing the FCA with continuous cycles.

- 88.5 The same applies to licenses issued in terms of section 17 (collectors).
- 88.6 Regarding licenses issued in terms of section 20 (business purposes) and for Dealers, Gunsmiths and Manufacturers, the FCA and Regulations requires the holders of these licenses to submit monthly returns and to keep their registers updated. It also requires the SAPS to inspect those registers and license holders on a regular basis. Section 146 requires the license holders to notify the SAPS if they cease to do business, or if their circumstances change. Consequently, there is no practical need for these institutions to continue submitting re-licensing applications every couple of years or even annually as it currently stands in some cases.
- 88.7 The relicensing legislation affects the quality of life of the citizens of South -Africa as it impacts negatively on the ability of the police force to discharge their duties effectively.
89. In the premises GOSA submits that the actual issue at hand has currently not being addressed before the courts or by the Registrar out of his own violation despite all the hundreds of cases against the SAPS relating to the issue of the administration of the CFR and that GOSA brings a different perspective to the matter and presents a proposal that has not been considered yet.

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90. The process that GOSA had to go through to reach this conclusion should be seen in the context of GOSA's continuous hands-on involvement in trying to resolve daily practical service delivery issues with the SAPS on behalf of its members.
91. In our mind the root cause of a significant amount of the problems that we as an organisation in our assistance to our members experience with the CFR is that it is overburdened by the compulsory relicensing scheme and is therefore unable to properly and efficiently fulfil its mandate.
92. All parties and role players appear to agree that the system is and always has been dysfunctional. This is evident from the many judgments handed down by the High Court against the CFR and the SAPS ever since the FCA came into being more than a decade ago. It is general knowledge that there are many instances of people who have waited for as long as eight years or more for their new licenses to arrive after the FCA came into operation. Those same firearms were previously licensed in terms of the Arms and Ammunition Act 75 of 1969 and the mayhem that has been in existence ever since the FCA was introduced, was not present during the time of the previous Act.

Relief sought

AD PRAYER 1 & 2:

93. The interim interdict

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93.1 I submit (and further argument to this effect will be advanced on behalf of GOSA at the hearing hereof) that from the common law it flows that the Court has inherent jurisdiction to grant *pendente lite* relief to avoid injustice and hardship. I submit further that an inherent power of this kind is a salutary power which should be jealously preserved and even extended where exceptional circumstances are present and where, but for this power, a litigant would be remediless, as is the case here.

93.2 Clear / *prima facie* right

93.2.1 The Applicant has a clear / *prima facie* legal right to just administrative action that includes the rights that arise from a legitimate expectation that the authorities would have disposed of a system which they on previous occasions admitted to as not having the capacity to administer (the provisions of the FCA as they still stand) and because they previously before this Court conceded that the relevant limitations have no justification.

93.2.2 This legitimate expectation was created as a result of the following events / circumstances:


93.2.3 The concessions by the SAPS that they did not have the capacity to administer the system;

93.2.4 The concession by the SAPS at the time of the case before the honourable Prinsloo J that the limitations could not be justified;


93.2.5 A legislative amendment that came into operation in 2011 in terms of which the period of validity of *competency certificates* was extended;

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- 93.2.6 The fact that the SAPS (up to February 2016) accepted applications for the renewal of licenses and approved them even though the licenses expired. This is an important consideration as the impression and expectation was created that the relevant 90-day period was extended as can be justified through the application of section 24(1) read with section 24(4), 28(6) and 28(1). For the SAPS to now hold otherwise will be tantamount to a situation of entrapment and deceit and they are bound to the impressions that they created also as a result of the principles of *estoppel*;
- 93.2.7 The recent conduct of the SAPS is therefore tantamount to the rescinding of the previous message that the SAPS signaled to the courts, parliament and the public on the matter too and becomes relevant here in the protection of a procedural or substantive interest that is being threatened.
93. I submit that the reliance of the public on these representations was reasonable as the representations were made verbatim to both the courts and parliament. It would be deceitful of the SAPS to now take the position that the public was not being misled on the matter.
94. The Applicant acting on behalf of its members and also for the greater good of the public and the country, have a clear right and in fact a duty to approach this Court and to do everything in its power to see to it that:
- 94.1 Logic, reasonableness and rationality can prevail, and that the validity of licenses be extended;

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- 94.2 That proper safeguards be put in place if the court is of the view that the 1st Respondent cannot be forced to extend the period of the validity of licenses, or to accept applications for licenses after 90 days before they expire, to ensure that the security of the state and its people will not be compromised in the process.
95. The Applicant and the broader public have a legal right to reasonable administrative action and decisions being taken.
96. The Applicant must have a well-grounded basis for believing that irreparable harm will result if the interdict is not granted:
- 96.1 I submit that irreparable harm will result when:
- 96.1.1 Up to 80 % (the SAPS indicated that about 80% of the expired licenses relates to section 13 which deals with self-defense – this 80% does not include the firearms that are needed by security companies to protect the guards when assets such as cash – in – transit operations and people are being looked after) of the 450 000 people are suddenly being disarmed and consequently unable to effectively protect themselves against violent and deadly attacks by criminals, under situations where the Registrar found them to have a need for a firearm for self-defense. As such, I am of the firm view that the availability of licensed firearms to the public and security companies plays an important role in the stability of the country.
- 96.1.2 There are clear indications that the SAPS do not have the capacity to safeguard those firearms and those firearms are liable to be robbed, stolen or lost at large scale as appears from what has been set out *supra* under the heading “Chronology”.



97. If the system is left as it is, and in particular if the relicensing scheme is left in place, and if the Registrar is not now forced to extend the period of validity of licenses, in order to free the SAPS up to the point where it has more capacity to:

97.1 Administer the provisions of the FCA itself;

97.2 Rather focus on the relatively small portion of criminal elements, instead of focusing on the broader portion of the community and engage in meaningless exercises where mountains of paperwork are merely being created without any benefit at all;

97.3 Spend its available resources on the fight against crime where the levels of violent crime have become critical;

-the entire country and all its citizens will suffer irreparable harm.

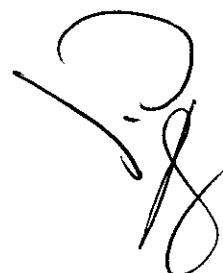
98. Balance of convenience

98.1 I submit that balance of convenience favours the Applicant and those affected people with expired licenses. In this matter the prejudice to the Applicant is greater, and the balance favours the Applicant.

98.2 As a matter of fact, I submit that the Respondents will also be in a much worse place if the relief that the Applicant requests, is not granted.

98.3 This is because:

98.3.1 The reality is that they do not have the capacity to process the 450 000 firearms and estimated 60 million rounds of ammunition either safely or at all;

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98.3.2 The security situation in the country will become totally impossible to manage if ordinary citizens and security companies are effectively left defenseless (in South Africa the security industry employs 3 times more security guards than the staff of the SAPS and the internal security situation is therefore heavily reliant on the operational capabilities of the security industry).

98.3.3 The remaining operational capabilities of the SAPS will be better spent on operational duties instead of forever being engaging the broader public in what amounts to mountains of paperwork being created with no real benefit;

98.3.4 There is no alternative remedy available to the Applicant.

99. I submit that this court ultimately has the power to strike down legislation which is either purposeless, impossible to comply with, or which is counter to the purpose of the legislation such as the provisions in question. Consequently, I submit that even before it becomes necessary for the court to strike the legislation down, this court has the power to force the Registrar to "do the right / logical / rational thing" and to order the Registrar to exercise its discretion as prayed for.

100. As such, there is currently no alternative remedy that is realistically available to the Applicant than what is proposed here.

101. It will become an exercise in futility if all the people who are affected would in theory now being allowed to apply for new licenses for new firearms to be purchased by them or for temporary authorisations to either possess the same firearms or replacement firearms. Such a situation will place so much strain on the already overburdened system that it will fail at once. Some people also simply do not have

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the financial means to replace the firearms or to go through the application process again. I submit that the FCA should never be allowed or to be interpreted to give rise to absurd results, and I submit that the interpretation that is presented namely that the re-licensing provisions should now be done away with by the Registrar, will have the result that the FCA stands a chance of being workable.

AD PRAYER 2:

Directing that the SAPS as represented herein by the 1st and 2nd Respondents be prohibited from implementing any plans of action or from accepting any firearms for which the license expired at its police stations or at any other place for the sole reason that the license for the firearm expired, and that the SAPS be prohibited from demanding that such firearms be handed over to it, and that this order will operate as an interim interdict, pending the order of the court as prayed for in paragraphs 3 to 3.4 infra.

102. I submit that this order is necessary and that it flows from what has been stated above.

AD PRAYER 3:

That this matter then be postponed to the opposed motion roll for further determination in the normal course of the roll, alternatively with such set time limits

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as this Honourable Court may deem reasonable, for the further determination of the following relief, as prayed for by the Applicant:

103. I submit that this will provide sufficient opportunity for the Respondents to state their case and provide an alternative perspective, if indeed they will be opposing the relief as prayed for in this application.

AD PRAYER 3.1

That it be ordered that the period of validity of all licenses for firearms that were issued and those that will still be issued in terms of the Firearms Control Act, Act 60 of 2000, will be extended to the lifetime of the owner thereof, with due regard being had to the remaining and existing provisions of the FCA that limit the right of the owner thereof to possess the firearm,

alternatively

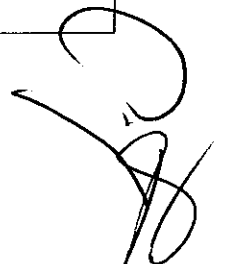
that by order of Court the periods as referred to in sections 24(1) and 24(4) of the Firearms Control Act, Act 60 of 2000, will be extended, in order for people that hold expired licenses to apply for the renewal thereof.

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104. I submit that the First Respondent has the discretion to extend the period of validity of the licenses referred as referred to in section 27 of the FCA, when read with the provisions of section 28(6) and 28(1).

TABLE
PERIOD OF VALIDITY OF LICENCE OR PERMIT

Section number	Type of licence or permit	Period of validity
13	Licence to possess firearm for self-defence	Five years
14	Licence to possess restricted firearm for self-defence	Two years
15	Licence to possess firearm for occasional hunting and sports-shooting	10 years
16	Licence to possess firearm for dedicated hunting and dedicated sports-Shooting	10 years



16A	Licence to possess a firearm for professional hunting	10 years
17	Licence to possess firearm in private collection	10 years
18	Permit to possess ammunition in private collection	10 years
19	Licence to possess firearm, and permit to possess ammunition, in public collection	10 years
20	Licence to possess firearm for business purposes: Business as game rancher and in hunting	10 years
20	Licence to possess firearm for business purposes: Business other than as game rancher and in hunting	Five years

(Section 27 substituted by section 18 of Act 28 of 2006 with effect from 10 January 2011)

28. Termination of firearm licence

(1) A licence issued in terms of this Chapter terminates -



- (a) upon the expiry of the relevant period contemplated in section 27,
unless renewed in terms of section 24;
 - (b) if surrendered by the holder of the licence to the Registrar;
 - (c) if the holder of the licence becomes or is declared unfit to possess a
firearm in terms of section 102 or 103; or
 - (d) if it is cancelled in terms of this Act.
- (2) The Registrar may, by notice in writing, cancel a licence issued in terms of
this Chapter if the holder of the licence -
- (a) no longer qualifies to hold the licence; or
 - (b) has contravened or failed to comply with any provision of this Act or
any condition specified in the licence.

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(3) A notice contemplated in subsection (2) may only be issued if the Registrar has -

(a) given the holder of the licence 30 days' notice in writing to submit written representations as to why the licence should not be cancelled; and

(b) duly considered any representations received and all the facts pertaining to the matter.

(4)

(a) If a notice contemplated in subsection (2) is issued, the former holder of the licence must dispose of the firearm in question through a dealer or in such manner as the Registrar may determine.

(b) The disposal must take place within 60 days after receipt of the notice.

(5) If the firearm is not disposed of within 60 days, it must be forfeited to the State and the former holder of the licence must surrender it immediately at such place and in such manner as the Registrar may determine.

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- (6) **Any period contemplated** in this section may be extended by the Registrar on good cause shown.

(Commencement date of section 28: 1 July 2004)

(Emphasis added)

- 104.2 The First Respondent has not exercised this discretion, under circumstances where he should have done so, under all the circumstances of this case. I submit that under all the circumstances of this case, this case is a proper and indeed an exceptional case, where the Court can then make this decision, that the First Respondent should have made.
105. I submit that the provisions of section 28(6) clearly are broad enough to sustain this interpretation, if one has regard to:
- 105.1 The use of the word "any";
- 105.2 The use of the word "period";
- 105.3 The use of the word "contemplated";
- 105.4 The fact that section 28 as a whole refers directly back to section 27 and section 24;
- 105.5 The fact that section 28 (6) also refers back to sections 24(1) and 24(4) which states that:

24. Renewal of firearm licences

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- (1) The holder of a licence issued in terms of this Chapter who wishes to renew the licence must at least 90 days before the date of expiry of the licence apply to the Registrar for its renewal.
- (2) The application must be -
 - (a) accompanied by such information as may be prescribed; and
 - (b) delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant's business is, as the case may be.
- (3) No application for the renewal of a licence may be granted unless the applicant shows that he or she has continued to comply with the requirements for the licence in terms of this Act.
- (4) If an application for the renewal of a licence has been lodged within the period provided for in subsection (1), the licence remains valid until the application is decided.

(Commencement date of section 24: 1 July 2004)

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106. It appears to have been the interpretation that the Registrar afforded to the relevant sections when it allowed people to apply for the re-licensing of their firearms even after the licenses expired, before Acting Commissioner Phahlane issued a "directive" during February 2016, shortly after having taken office, where the opposite position was taken.
107. I therefore submit that the discretion to extend any period contemplated in section 28 is applicable to both sections 27 and 24, and in the case of section 24, the discretion has already been exercised and people were granted licenses on this basis, and people indeed formed the legitimate expectation that a new acting Commissioner would not by the stroke of a pen do an immediate about-turn on such an important issue, and in the process take their rights away and criminalize them, and leave them vulnerable in not being able to defend themselves, where they were found to be in need for a firearm to defend their lives with.
108. I furthermore submit that although it would be permissible for the Court to compel the Registrar to exercise its discretion in terms of section 28(6) read with sections 28(1) and 24(1) and 24(4), and despite the fact that this is indeed claimed in the alternative to an order in terms of which the Registrar exercises his discretion in terms of Section 28(6) read with section 28(1) and 27, that it would at this point in time make more sense for the court to order the latter, because:
- 108.1 The practical effect of such an order will be better aligned to the achievement of the purpose of the FCA, being the institution of a reasonable



system that enables the SAPS to exercise *effective* control over firearms, as a result of their increased capacity that will flow from being able to concentrate on the criminal elements, instead of concentrating on the processing of vast amounts of paperwork that emanates from the engagement between the SAPS and the masses of people against whom no wrongdoing is even suspected;

108.2 As stated above, it will increase the operational capacity of the CFR by an estimated 7.5 times;

108.3 It will allow the SAPS to focus on its core duties, something that is desperately needed in the light of the extremely high levels of crime in South Africa that seems to be on the increase;

108.4 It will allow the masses of those affected people to come back into a situation of lawfulness, whereas they have been criminalized by the inconsistent and arbitrary application of a dysfunctional law because of a different approach that have been taken by a different Commissioner of Police.

109. I further submit that good cause has been shown to exist because:

109.1 The SAPS have already conceded that the limitations cannot be justified;

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109.2 The SAPS have already conceded that they do not have the capacity to administer the system as it now stands;

109.3 The history of the inability of the CFR to administer the system as it now stands speaks for itself and appears clearly from the detail that has been provided *supra*.

AD PRAYER 3.2

Alternatively to prayer 3.1 supra, that the First Respondent be ordered to provide a comprehensive and detailed security plan to the satisfaction of this Honourable Court to the Court, to ensure that the firearms to be collected by it, for which the licenses expired, will be safe from being lost or stolen from the SAPS;

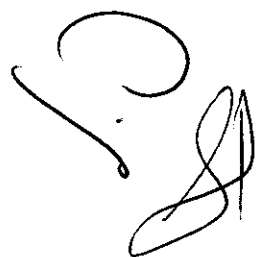
110. I submit that the situation as described under the heading "chronology" requires of the Court as the last institution that can form a safeguard to be satisfied that the security of the state will not be compromised if indeed the SAPS are allowed to take the relevant firearms and ammunition into its custody. This is because the SAPS could not perform this function adequately up to this point, despite the oversight from parliament.

AD PRAYER 3.3

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Further and / or alternative relief;

111. Despite this wide nature of this relief as claimed for, I should specifically mention to this Honourable Court that senior counsel for the Respondents has at the hearing before the Constitutional Court on 7 February 2018, in his closing arguments, suggested that it would be competent for the SAPS to issue temporary authorisations in terms as provided for in terms of Section 21 of the FCA, to the affected individuals, under the circumstances of the matter. I have noted that the Constitutional Court did not refer to this submission in its judgment, and I submit that the matter is therefore still open for consideration, as it appears to me that the Constitutional Court focused on the Constitutionality of certain aspects and portions of Section 24 and 28, *vis-à-vis* each other.
112. The SAPS have also at the hearing before the Constitutional Court and in their heads of argument indicated and undertaken that people with good excuses for having firearms with licenses that lapsed, will be allowed to make representations to the Registrar, as the SAPS indicated that "*lex non cogit ad impossibilia*". I attach an extract of the relevant heads of argument hereto as annexure "PO15". This appears to be in line with the legal position as it was before the directive of Acting Commissioner Phahlane dated February 2016. It however appears that the SAPS have now not followed through with this undertaking, and many people are being left stranded and liable to arrest and prosecution as a result of this, and at the same time, they are being intimidated by the SAPS in handing their firearms in for



destruction. This situation is intolerable and I respectfully request this Court to take the decisive action as prayed for herein.

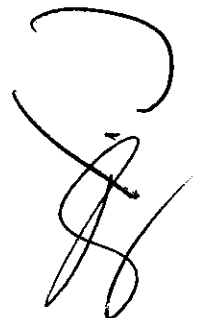
AD PRAYER 3.4

Costs on the attorney and own client scale, inclusive of the costs of two counsel where so employed.

113. I submit that the history of this matter speaks of a constant battle by the citizens of this country against:

113.1 Continuous maladministration and intentional obstruction by the relevant authorities, despite the bringing of hundreds of court applications against the CFR, and despite the issues being pointed out by the PPCOP, for many years on end, without any improvement, and despite of the fact that the SAPS informed the Committee of the latest "turnaround strategy", basically on each occasion, and the continuous need for the public to use their own funds to engage with the SAPS in matters where "there are no grounds for defense by the SAPS";

113.2 Continuous examples of involvement in cases of serious criminality by the members of the SAPS;

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113.3 The continuous failure by those people who was in office as the Registrar of Firearms (National Commissioners of Police) to have effective control over the CFR or to exercise their discretions evenly, predictably, properly and fairly;

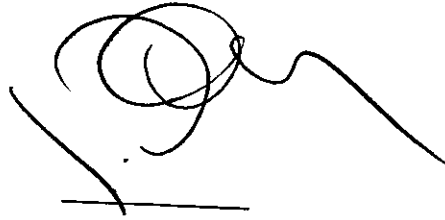
113.4 The continuous failure by those who occupied the office of the Second Respondent to see to it that sensible amendments be introduced to the FCA, especially after having conceded that the specific limitations that forms the subject matter of this application cannot be justified, as far back as 2009 as is evident from the judgment of Prinsloo J.;

113.5 The failure by those who occupied the office of the First Respondent to, under the circumstances, exercise their discretion and to extend the period of validity of licenses.

114. I submit that this matter is one of public interest and that the Applicant should not be left out of pocket that will result from a cost order on a party – and – party or an attorney – and – client scale.

In the premises I request the Court to grant the relief as prayed for.

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DEPONENT

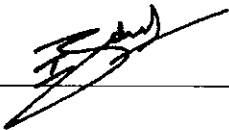
I HEREBY CERTIFY THAT the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at 11000 on this the 5 JULY 2018, the Regulations contained in the Government Notice No R1258 of 21 July 1972, as amended and Government Notice R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Commissioner of Oaths
Ex officio
City of Johannesburg
Councilor Ward 72
137 Daisy Street
Gauteng
Johannesburg

MANDATE AND RESOLUTION

It is hereby resolved by the Executive Committee (Exco) of Gun Owners of South Africa (GOSA), a voluntary organisation not for gain, that it authorises Mr. Paul Oxley in his capacity as chairperson of the organisation, to represent GOSA in these proceedings before this Honourable Court, and to do all such things and sign all affidavits and to provide instructions to the attorney of record and counsel herein on behalf of GOSA.



Gugu Bohali (Vice Chairman North)



Montenique Booley



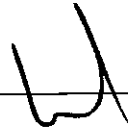
Ric McNamee



Bryan Mennie



Gideon Joubert (Vice Chairman South)

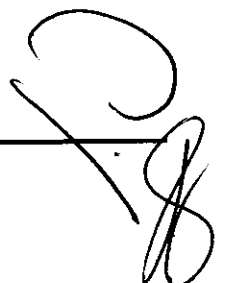


Wouter de Waal



Rudi Coetzee

Date:



CONSTITUTION OF
GUN OWNERS OF SOUTH AFRICA

ARTICLE I – IDENTIFICATION

Section I Name

The name of the organisation shall be Gun Owners of South Africa (GOSA), hereinafter referred to as "the Organisation". It is a non-profit firearm rights organisation.

Section II Legal Status

The Organisation, in its own name, shall be capable in law of suing and of being sued and of acquiring, holding and alienating property, movable and immovable.

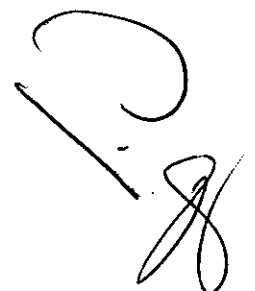
ARTICLE II – PURPOSE

Section I Purpose

The purpose of the Organisation shall be to campaign for the advancement and protection of the rights of all lawful firearm owners in the Republic of South Africa. Our intent is to rally support from all sectors of the public and media (Nationally and Internationally) and to expose the Firearm Control Legislation for what it is: poorly researched, analyzed and unconstitutional legislation, based on untruths, infringing on South Africans' fundamental/basic human rights.

We are committed to work towards the repeal of the Firearms Control Act 60 of 2000 and to ensure that fair and equitable legislation is formulated that will benefit all law abiding South Africans.

The goals of the Organisation shall be:



- To protect, represent, and advance the interests of all lawful firearm owners in the Republic of South Africa.
- To promote firearm ownership in South Africa by engaging Government and Non-Government Organisations.
- To affirm the rights of all people within South Africa to own and bear arms.

ARTICLE III – MEMBERSHIP

Section I Membership

Any citizen or legal resident of the Republic of South Africa is eligible for membership of the Organisation. Members shall ensure compliance with the Organisation's Code of Conduct, and all members and their membership status shall be governed by the content of the Constitution as set out.

Section II Removal of Membership

Membership of any member of the Organisation (including ExCo members) may be revoked by a two-thirds majority vote of the members in good standing present at any special general meeting called for this purpose. No vote on suspension or revocation of membership may be taken unless at least fourteen (14) days notice in writing shall have been given to the member / official of the reasons for his/her removal and of the time and place of the special meeting at which such ballot on his/her removal is to be taken. At such

special meeting the member shall be given a full hearing. Any member may be suspended or have his membership revoked for any cause deemed detrimental to the Organisation, by way of a two-thirds majority vote of present members at any special general meeting called for this purpose.

ARTICLE IV – MEMBERSHIP FEES

Section I Dues

No member of the Organisation, in arrears, shall be eligible to enjoy any of the privileges or benefits offered by this Organisation. Membership dues shall be payable annually in advance and period of membership shall be for twelve calendar months from the date of payment of annual membership dues, the amount and recurrence of which shall be determined by the ExCo.

Section II Categories of Membership

Individual Membership. Ordinary membership of the Organisation will be on either an annually renewable or lifetime basis. Ordinary members are accepted after having paid their respective fees.

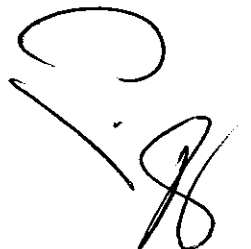
Corporate Membership. Business entities that comply with criteria set down by the Executive Committee from time to time may be awarded corporate membership.

ARTICLE V – OFFICERS

Section I Eligibility and Roles of Officers

The officers of the Organisation shall be as listed below; who acting together shall constitute the Executive Committee (ExCo). They shall be elected by a majority vote, by ballot, of the members in good standing at the AGM of the organisation. They shall hold office for two years or until successors are elected, whichever may be sooner. Their period of office may only be extended for longer than two years with the approval of a properly constituted AGM or Special General Meeting. All officers must be 21 years of age or older.

The ExCo will be composed of the following officials, and shall each serve a two (2)- year period of office:

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- a. Chairman
- b. Secretary.
- c. Treasurer.
- d. Director Administration.
- e. Director Marketing and Sponsorships
- f. Co-opted Member (s). Identified and appointed by ExCo as required.

The function of rotating chairperson shall be performed by one of the ExCo members duly appointed by a majority of the ExCo members on a year to year basis.

The ExCo has general supervision and control of all the activities of the Organisation.

The ExCo may enter into agreements with other organisations and individuals to further the objectives of the Organisation. The ExCo functions and conducts its business on the basis of consensus and majority vote.

Resignation by any officer must be submitted to the ExCo in writing.

A vacancy in the ExCo may be filled by a majority vote of the remaining members of the ExCo and the official thus selected will serve as a full member of the ExCo until the first

AGM or Special General Meeting at which time this post will be filled by election. However, if more than one vacancy simultaneously exists, a special meeting of the Organisation shall be called and new officials shall be elected to fill the vacancies.

Section II Responsibilities

The ExCo shall have the following powers:

- 1) The ExCo shall exercise control over the funds and affairs of the Association in general.
- 2) The ExCo shall have the power to amend, add to or repeal the Rules, subject to approval by a Meeting through a majority vote.



- 3) The ExCo shall have the power to amend, add to or repeal the Rules where they have a bearing on the general administration of Association affairs: Provided that notice shall be given of such Rule amendments prior to the next Meeting.
- 4) The ExCo shall have the following further powers:
 - (a) To suspend or expel Members from the Association; (b) To establish links between the Association and any other organized body, such association or co-operation as the Board may think proper in the interests of the Association; (c) To authorize the establishment of branches of the Association (d) To receive, hold and administer all donations, bequests or endowments of property of any description which may be given to the Association; (e) To provide premises and other facilities for meetings and other purposes of the Association; (f) To exercise its discretion in order to grant exemptions to the provisions of the Rules in exceptional circumstances and subject to such conditions it may deem fit.
- 5) A special meeting of the ExCo may be called at any time by the Chairman or failing him/her, the Secretary or Treasurer, and shall be so called at the written request of at least three (3) members of the ExCo.
- 6) Except in cases of emergency, at least twenty-one (21) days' notice of a meeting of the Board shall be given by the Secretary to each Board member at his/her registered address.
- 7) Four (4) members of the ExCo shall form a quorum.
- 8) At all meetings the Chairman, or in his/her absence the Secretary, shall be Chairperson; in the absence of both, a Chairperson shall be elected from among the members present.
- 9) All questions that may come before any meeting of the ExCo shall, in the case of a difference of opinion, be decided by the majority of the members present at that meeting.
- 10) Minutes of all resolutions and proceedings of meetings of the ExCo shall be appropriately recorded.
- 11) The office of the ExCo shall be at such place as the ExCo may from time to time decide.
- 12) The ExCo shall have the following powers:
 - (a) to prescribe the form to be used, and the procedure to be adopted by applicants for admission to the Organisation, and to prescribe the form of declaration to be signed by applicants;
 - (b) to prescribe the form of Proof of Membership of the Organisation; (c) to do all such other things as are, in the opinion of the ExCo, incidental or conducive to the performance of the duties or the exercise of the powers given it in these Rules and the Constitution.
- 13) Responsibilities of the ExCo: (a) The ExCo shall control the financial affairs of the Organisation. (b) The ExCo shall keep a register of all Members of the Organisation; (c) The ExCo shall have custody of the seal of the Organisation.

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14) The ExCo may, whenever it thinks fit, call a Special Meeting. A Special Meeting shall also be called by the Secretary within nine (9) weeks of receipt by him/her of a written request, signed by not less than ten percent of the voting members of the Organisation, stating the purpose Meeting: Provided that the request may be withdrawn by all members whose names appear on the written request.

ARTICLE VI – DISBURSEMENT OF FUNDS

The Treasurer shall have charge of all funds, membership dues, and other income of the Organisation and place the same in such bank or banks as may be approved by the ExCo.

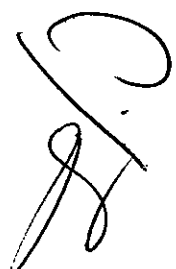
All income, whether cheques or cash shall be deposited as above and may not be directly credited to any petty cash amount held or to any third party.

Such money shall only be withdrawn and for the payment of such bills the ExCo have approved. The Treasurer shall keep accurate account of all transactions and render a detailed report with vouchers at any meeting of the ExCo when requested and an annual report to the Organisation at its Annual General Meeting.

The Treasurer may maintain a petty cash amount for payment of day to day office administration expenses, such amount will be accounted for as above and the total amount of cash and/or vouchers on hand at any time may not exceed a sum authorised by majority ExCo decision. A detailed petty cash expenditure report with vouchers submitted and approved at any meeting of the ExCo shall authorise the withdrawal of a sum equal to the total of the approved vouchers in order to restore the petty cash amount held to the approved level.

No salaries, directors fees, donations, subsidies, gifts or honorariums may be paid to any person, member or official from Organisation Funds unless such has been authorised in terms of a budget previously presented to and approved by a majority vote of a properly constituted AGM or Special General Meeting.

Real expenses incurred by officials and other members in execution of GOSA business may be reimbursed subject to authorisation by a majority ExCo decision and such expenditure must be detailed in the annual financial report tabled for approval during the AGM.



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Such ExCo authorisation must also be in terms of a budget estimate previously presented to and approved by a majority vote of a properly constituted AGM or Special General Meeting.

Any property or asset acquired by the Organisation shall remain the property of the association, and shall be recorded in an asset register and may only be disposed of in a manner approved by a majority ExCo decision. Responsibility for the management thereof shall rest with the Treasurer.

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A BRIEF SUMMARY OF GOSA'S EXPERIENCE IN THE FIELD OF FIREARMS LICENSING

Gun Owners South Africa (abbreviated to GOSA) is a firearms rights and advocacy group in the Republic of South Africa. It was founded on 26 January 2004 by Abios Khoele, Charl van Wyk, Pieter van Wyk, Juan de Greeff, Martin Hedington, Dr. Richard Wesson, Peter Moss, and Thomas Eastes.

GOSA is the most diverse firearms group in South Africa, on levels ranging from race, gender, and religion, to political affiliation and income levels. GOSA's membership is on public display on its Facebook page.

One of the founding members of GOSA, Charl van Wyk, was a congregant at the St. James Church in Cape Town when the St. James Church Massacre happened. Azanian People's Liberation Army (APLA) militants attacked the church with automatic rifles and a grenade. Van Wyk was armed with a five-shot snub nosed revolver at the time, and returned fire, prompting the attackers to flee. The death toll stood at eleven, and an injured count of fifty-eight when the chaos ended.

In 2011, the South African homicide rate started a gradual climbing trend, and in 2013, revelations of corruption at the Central Firearms Registry had emerged.

By 2015, GOSA introduced mechanisms of moving towards a professionally organised organisation, including a paid membership structure and benefits such as legal financial insurance against firearm discharge under legal circumstances.

With the start to 2017 GOSA was able to afford a small complement of full time staff, allow the funding of more travelling expenses for official business (such as flights between Pretoria and Cape Town, where the capital and parliamentary

precinct are based respectively), a new website, and put a presence with a permanent stand at the Huntex firearms and hunting expo in Gauteng and the Eastern Cape.

In the year from January 2016 until December 2017, Facebook membership had grown from just shy of 21 000 members, to 35 000.

Political activity

GOSA is not associated with any political parties or candidates and opts instead to engage and lobby directly with political entities willing to engage.

On the other hand, within this sphere GOSA is diametrically opposed to the disarmament of law abiding citizens and organizations, such as GFSA, which promote that agenda.

GOSA's organisational structure also includes numerous volunteers who operate and advocate for GOSA with no remuneration.

DINOKENG BIG FIVE GAME RESERVE CASE

GOSA made its services available to the DINOKENG GAME RESERVE MANAGEMENT ASSOCIATION NPC in September 2015 upon the request of the aforesaid organisation because of the fact that the anti-rhino poaching unit of the said game reserve at that time had already been waiting for 15 months for the licenses for the ranger's rifles to be approved, this under circumstances where the rhinos in its area were being slaughtered and where the lives of the unarmed rangers were being threatened.

GOSA's appointed lawyers assisted the said game reserve which ultimately resulted in an urgent application before the North Gauteng High Court under case number 67409/2015. The case was decided in favour of the game reserve, the court confirming an agreement that was reached with the SAPS in terms of which the said



game reserve received their licenses within three days from the date of the hearing of the urgent application.

INDIVIDUAL ISSUES FOR THE PERIOD SEPTEMBER 2015 TO DATE

GOSA was then approached by about one thousand five hundred individuals and several institutions that included three other game reserves, who also faced similar challenges with compromised service delivery from CFR, viz. that on average the waiting time for the approval of license applications for those individuals that requested assistance was in the region of nine months, and for the finalization of appeals it was more than two years.

About five hundred of those individuals had been refused firearm licenses based on specious reasons.

GOSA then created structures to assist these individuals. They called for help from a team of lawyers who assisted the public, (on a purely pro bono basis at first), in taking these issues up with the SAPS. In addition, GOSA also sent a delegation consisting of two attorneys, counsel and myself to meet with the then acting National Commissioner of the SAPS, Genl. K. Sitole. Because of this meeting, Genl. Sitole created structures and channels within CFR and designated certain officials with whom the GOSA attorneys could engage on these matters. These structures are currently still in place although their efficacy has at times been less than adequate. Taken over the entire period our experience has been that issues of compromised service delivery are becoming more and more of a problem.



MORE LITIGATION

Towards the end of 2016 there was another surge in refusals of license applications based on specious reasoning. Two of those applicants approached GOSA who then assisted them with their appeals to the Firearm Appeals Board. These appeals were also refused. GOSA then assisted the two individuals concerned with review applications under North Gauteng High Court case numbers 95449/2016 and 95450/2016 respectively. In both these cases the SAPS settled the matter a day or two before the hearings, conceding the merits of the applicants' cases.

Because of GOSA's intervention and the results that were obtained in these applications, the CFR changed its position regarding the type of competency certificate needed for specific types of firearms. It issued a new directive relating to the matter at hand, after which the spate of irrational refusals stopped.

Towards the end of November 2017 GOSA was again approached by one of its members whose license had been refused for irrational and blatantly incorrect reasons. This member lodged an appeal with the Firearms Appeals Board which was also refused without good reason. GOSA assisted this member and issued papers under North Gauteng High Court case number 83775/17. This matter was settled by the SAPS in March 2018 and the Applicant received his license.

DAY TO DAY ASSISTANCE TO ITS MEMBERS FROM THE PERIOD SEPTEMBER 2015 TO DATE

During this period GOSA received requests from its 40 000 members daily. Over the period September 2015 to date GOSA's small legal team has assisted more than 2 500 individuals and organisations with their service delivery problems regarding their license applications and appeals. In December 2017, GOSA had to appoint full



time personnel to attend to the helpline that was established to assist its members with their various issues, including issues of a legal nature.

CONTINUOUS INTERACTION WITH SAPS / CFR

GOSA also from time to time has direct interaction with the SAPS, one example being a meeting with Maj. Genl. Bothma and the Commanders of the Western Cape SAPS (Firearms Division) in June 2017 in Bellville, Cape Town to resolve certain issues between local firearm dealers and the relevant Firearms Division of the SAPS. Because of the constructive nature of the meeting and the proposals that were made by Maj. Genl. Bothma on the one hand and GOSA's representatives (including two attorneys, counsel and myself) on the other, many issues were resolved between the parties and plans were formulated to address other issues of mutual concern.

GOSA also continuously plays a role at the level of the Parliamentary Portfolio Committee on Police relating to issues affecting its members. I personally attend all the meetings in Cape Town in this regard on behalf of GOSA. In addition, we have also participated in several radio talk shows.

In the premises, I submit that GOSA is by far the most represented and representative organisation with an active membership base in South Africa. One of its core purposes is to speak on behalf of the estimated 3 000 000 individual firearm license holders in South Africa when it comes to matters relating to the interpretation and execution of the FCA. As such, I humbly submit that GOSA has a duty to provide this honourable court with any information it can which is pertinent to this matter.

It is my humble submission that GOSA is in a position to give a different and perhaps useful perspective on the issues before this Honourable Court.

