

2023 Control Measures to Curb Violence and the Security Services

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Abstract

This article discusses the most important court decisions and measures that dealt with violence and the security services in South Africa in 2023. It discusses, among others, the 2023 crime statistics that continue to underline South Africa as a violent society. It indicates, for example, that violent crimes increased while violent protests decreased during the reporting period. Despite the destruction of firearms, violent crimes still include the use of firearms. The article also deals with new measures to curb gender-based violence. It further introduces the newest amendments providing more clarity with regard to the beneficiaries of the educational financial aid regulations issued in terms of the Promotion of National Unity and Reconciliation Act 34 of 1995. The Draft National Policing Policy, rural safety and the rising number of civil claims against the police services are also discussed. The article further discusses the Correctional Services Amendment Bill [B14-2023] and the General Intelligence Laws Amendment Bill [B40-2023], that give effect to judgments of the Constitutional Court that declared some of the provisions of the original acts unconstitutional. The General Law (Anti-Money Laundering and Combating of Terrorism Financing) Amendment Act 22 of 2022 increased the penalties for offences committed in terms of this Act. This article discusses the most important 2023 measures and court decisions in relation to crime statistics and violent protests, national unity and reconciliation, security services (police services, correctional services, defence and intelligence services), arms and ammunition, gender-based violence and terrorism.

Keywords: crime statistics; violent protests; national unity and reconciliation; security services; arms and ammunition; gender-based violence; terrorism

Introduction

Violence and violent behaviour continued to be a challenge in 2023. Like in previous years, it has impacted on everyone in South Africa, having implications for all dimensions of being a resident in the country. This article is aimed at providing an overview of the diverse and numerous developments that took place in South Africa in 2023 within the broad framework of violence and violent behaviour.

The Global Organised Crime Index 2023 ranked South Africa seventh in the world, third in Africa and first in Southern Africa (Global Initiative 2023). The Index is a multi-dimensional tool that assesses the level of criminality and resilience to organised crime in 193 countries along three key pillars — criminal markets, criminal actors and resilience. The Index refers to human trafficking, drugs and arms trafficking as major issues (McCain 2023b). It seems that organised crime is one of the reasons for the increase in murder cases (Bruce 2023). Bus attacks became more prominent during this period (McCain 2023a). In Elsies River in Cape Town, the community resorted to building a wall to keep criminals out of their area (Anon 2023a).

The main thrust of the Crime Index also resonated in the annual crime statistics. There had been a general increase in violent crime, while violent protests decreased somewhat in the reporting period. It is hoped that the Draft National Policing Policy and its eventual implementation may address some of these issues. However, the safety of communities generally and rural communities specifically; and the lack of a budget to address these issues, are recurring issues. Rather disconcertingly, claims against the police — the force that is there to support and protect communities — have increased, as illustrated in *Minister of Justice and Constitutional Development v Pennington*.¹

Whereas urgent new needs and demands have emerged, the lingering implications of apartheid are still being dealt with. The work of the Truth and Reconciliation Commission continues in the sense that victims of gross human rights violations and their descendants qualify for bursaries. Unfortunately, the unconstitutionality finding of measures promulgated to deal with and prevent human rights violations, remains an obstacle to fully implementing the project of a constitutional democracy — a project that was closely linked to the work of the Truth and Reconciliation Commission.

As mentioned earlier, developments occurred in a broad spectrum of areas and dimensions, including correctional and intelligence services, the defence force and generally, the regulation of weapons and firearms. Within the arena of correctional services, the Correctional Services Amendment Bill [B14-2023] introduced measures to ensure the independence of the Judicial Inspectorate for Correctional Services. This development was necessitated to give effect to the Constitutional Court judgment in *McBride v Minister of Police*.² Also part-and-parcel of correctional services is the

1 [2023] ZASCA 51 (14 April 2023).

2 2016 (2) SACR 585 (CC); 2016 (11) BCLR 1398 (CC).

functioning of Parole Boards. In the reporting year, a number of judgments were handed down dealing with Parole Boards and corresponding decisions.

Security services were also impacted on in the reporting period. The State Security Agency stands to be dissolved once the General Intelligence Laws Amendment Bill [B40-2023] is introduced. The Bill clarifies the functions of Foreign Intelligence services vis-à-vis Domestic Intelligence Services. Following a Constitutional Court decision,³ the bill also introduces oversight over the Signal Intelligence Service and bulk surveillance activities.

Given the increase in violence generally, various measures were put in place in an attempt to ameliorate the effects of violence. Two developments emerged in particular: the deployment of the defence force to assist with inland security on the one hand and further scrutiny of firearms control, on the other. Unfortunately, regarding the latter, the crime statistics have shown that despite the continued destruction of firearms, the use of firearms remains a problem in violent crime. In a court case,⁴ the court nonetheless stated that despite minimum sentences, the personal circumstances of the accused have to be taken into account.

Closer to home, gender-based violence and violence involving children were attended to specifically. The President's Gender-Based Violence Response Fund (established in 2021) has already allocated funds to deal with the scourge of gender-based violence. The Domestic Violence Act 116 of 1998 was amended to include the introduction of an electronic database of all protection orders. The Domestic Violence Amendment Act 14 of 2021 added, among others, additional acts that constitute domestic violence, such as elderly abuse and exposing children to domestic violence. Provision is also made for the issuing of monitoring notices.

While physical violence and the combatting thereof was prominent in the reporting period, actions and conduct that could promote terrorism financing were furthermore dealt with. In this regard the penalties for offences introduced by the General Law (Anti-Money Laundering and Combating of Terrorism Financing) Amendment Act 22 of 2022 were increased, indicating the seriousness of the challenges of international terrorism in the current world (Doxsee, Palmer and McCabe 2024).

This article discusses the most important 2023 measures and court decisions in relation to crime statistics and violent protest, national unity and reconciliation, security services

3 *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC* 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC).

4 *S v Gumbi and Others* [2023] ZAKZPHC 65 (15 June 2023).

(police services, correctional services, defence and intelligence services), arms and ammunition, gender-based violence and terrorism.⁵

Crime Statistics

The Ministry of Police published a pre-release crime statistics release calendar for the financial year 2023/2024, indicating when the information will be published. Four quarters were identified for purposes of the release of the crime reports. Each report covers a three-month period starting April 2023 to 31 March 2024 (SAPS 2023). The crime statistics will be discussed in comparison with the relevant quarter in the previous year, 2022/2023, followed by unpacking the released crime statistics for the first three quarters covering April 2023 to December 2023, as these are the only released and accessible statistics to the public at large in 2023.

The crime statistics for quarter four were scheduled to be released on 17 May 2024 (SAPS 2023), but this did not happen. The release of crime statistics is a matter of public interest and safety where such an unreasonable delay has a detrimental impact on the relevance and credibility of the crime statistics. Releasing the crime statistics for a specific quarter is a factor to consider with respect to the state of crime and safety in South Africa, which may prompt individuals to take responsibility for their own safety and adopt preventative measures depending on their resources (Whitfield 2024). A recent example of individuals and communities taking responsibility for their own safety would be the crime-prevention wall built by the Elsie River residents in order to keep criminals out of their communities (Yuku 2023, Anon 2023a).

Questions arose as to why the statistics were not timeously released. It was averred that it could have been due to the scheduling of the national elections on 29 May 2024, which were twelve days behind the schedule.

Generally, the released crime statistics are grouped into two categories, namely community-reported serious crimes and crimes detected as a result of police action. Community-reported serious crimes consist of contact, contact-related, property-related and other serious crimes. Due to the unavailability of the crime statistics for the fourth quarter as well as the annual report, the community-reported serious crimes and crimes detected as a result of police action will be employed to canvas the crime situation over the three quarters (SAPS 2023).

During the first quarter, contact crimes as a category recorded an increase in the reported number of incidents with the exception of specific murder (3.1%) and sexual offences (2.0%), which decreased somewhat. Contact crimes increased by 4,8%, indicative of 6 891 more incidents reported. A decrease in contact-related (1.6%) and property-related (4.5%) crimes was further reflected during this period. More crime was detected due to

5 The article focuses on the most important measures and cases of 2023 and do not pretend to be a complete update in this regard.

police action (13.9%). This may be partly attributed to the use of intelligence and the visibility of the police, which make a significant contribution to making communities safer. The community reported serious crimes recorded an increase of 2.2% during the first quarter in comparison to the same period last year (SAPS 2023).

Quarter two of 2023/2024 covers the period from July to September 2023. This period reflected an overall increase of 2.1% or 3 391 more reported incidents compared to the previous year. Similar to the first quarter, murder (0.8%) and sexual offences (1.5%) were the only specific contact crimes to show a decrease in the reported incidents. Contact-related crimes (1.6%) and property-related crimes (4.1%) decreased compared to the same period in the prior year. The decrease was on par with the statistics for the first quarter. In respect of crime detected due to police activity, an increase of 13.1% was recorded in respect of the prior year, but in line with the increase for quarter one. The second quarter recorded a (0.5%) decrease in comparison to the prior year for all the community reported serious crimes. This also signifies a slight decrease in the statistics recorded for the first quarter (SAPS 2023).

Quarter three covers October to December 2023. During this period, contact crimes increased by 3.8% in comparison to prior year. Similarly to quarter one and two, more incidents of contact crimes were reported. Only sexual offences as a specific contact crime recorded a decrease of (1.7%) in the reported incidents during this period. The downward trend for contact-related and property-related crimes extended to the third quarter as was the case for the first and second quarter. Crimes detected as a result of police activity increased by 10.8% during this quarter. This double-digit increase in incidents is in line with the first and second quarters. Quarter three restored the upward trend for community reported serious crimes with an increase of 1.5% in comparison to last year (SAPS 2023).

Based on the crime statistics available for the three quarters, violent crimes in South Africa have seemingly increased. Murder, attempted murder, rape, assault with an intent to cause grievous bodily harms also recorded an increase in the third quarter. Inferring from the trajectory of the statistics discussed above, all indications suggest that the fourth quarter statistics will emulate quarters one to three statistics (SAPS 2023).

Concerns remained that the South African Police Services (SAPS) did not budget for the implementation of the Rural Safety Strategy of 2019 (SAPS 2019) and that rural communities, farmers and farm workers were accordingly not properly protected (Visser 2023). The Independent Police Investigative Directorate (IPID) Amendment Bill [B21–2023] was served before parliament to address the unconstitutionality of some of the Act's provisions, as discussed in (see the discussion below under Security Services, specifically Police Services and General Safety).

The National Assembly approved the National Prosecuting Authority Amendment Bill [B29–2023] in December 2023 and it was sent to the National Council of Provinces for

approval.⁶ This Bill creates, amongst others, an investigating directorate against corruption, that will/must investigate “serious, high-profile or complex corruption or commercial or financial crime.”⁷ It further describes the powers and functions of the investigators that must be appointed in the directorate. The amendments will hopefully assist the National Prosecuting Authority (NPA) in future to deal more swiftly with allegations of corruption and by implication, organised crime.

Violent Protests

The analysis of the protests statistics suggested that a regular occurrence thereof would be expected in 2023. After low statistics for protests in the two preceding years, the pre-COVID-19 numbers for the occurrence of protests returned in 2023. The constant nature of protest brings to the fore certain dangers and risks which are more often than not, difficult to monitor and curb. These are inclusive of the violent nature of the protest, where injuries, death and damage to private and public infrastructure are prominent (Allan 2023). Protest action may commence as peaceful, but the possibility of violence remains prevalent.

The National Education, Health and Allied Workers Union (NEHAWU) initiated a public sector strikes on 6 March 2023 where it demanded a 10% salary increase across the sector. The strikes lasted for several days. The strikes were violent and included major disruptions, intimidation and assault of staff at some hospitals (Mabubela 2023).

The Economic Freedom Fighters (EFF) embarked on a National Shutdown on 20 March 2023. This was aimed at the resignation of President Cyril Ramaphosa as well as the ending of the rolling loadshedding experienced by the country. National fears of potential violence and businesses being looted prompted the preparedness and readiness of the SAPS as well as the South African National Defence Force (SANDF) to respond to the occurrence of violence and looting. Several incidents of violence were reported in Limpopo and Gauteng with reports of burning tyres in KwaZulu-Natal and the Western Cape (Tshivhase *et al.* 2023). Several other reports of sporadic violence, intimidation and attacks on busses were noted. In response to the public violence, intimidation, damage to critical infrastructure, theft as well as attempted looting, the National Joint Operational and Intelligence Structure (NATJOINTS) confirmed that about 550 people were arrested during the National Shutdown (South African Government News Agency 2023).

National Unity and Reconciliation

The financial assistance for basic education to victims of serious transgressions of human rights in terms of the Promotion of National Unity and Reconciliation Act 34 of

6 Clause 5, amending section 7.

7 Clause 7, inserting section 19D.

1995 has been increased.⁸ The 2014 regulations in relation to assistance to victims for higher education have been replaced.⁹ Higher education includes continuing education and training at a college or higher institution whether part-time, full-time or distance education.¹⁰ The regulations provide for additional support to students with disabilities.¹¹ Only a victim, relative or dependant may apply for assistance.¹² Victims are persons the Truth and Reconciliation Commission identified as such.¹³ A relative or dependant can be a parent or someone who has parental responsibility for the victim, someone married to the victim (by customary, religion and any law), the children of the victim (including adopted children) or any person for whom the victim has a customary or legal duty to support. The committee could also identify other persons who are dependent on the victim at the time of its operation.¹⁴ In order to apply a person must meet the criteria and requirements of the regulations, including, amongst others, that the funding is paid for the first undergraduate degree only. If a person enrolls for distance education, accommodation is not paid, and no funding is provided for additional courses.¹⁵ Regulations 7 to 10 describe the amounts for which a person may apply, while regulation 11 sets time limits for the support. In the case of first-time applicants, the household income or the fact that the household is vulnerable is taken into account.¹⁶ Students enrolled under the 2014 regulations will be allowed to complete their studies and the new regulations will not apply to them.¹⁷ Chapter 7 sets out the obligations of beneficiaries. The regulations provide for the appointment of financial officers, audits, rules how payments must be made and introduce other more rigorous control measures.¹⁸

Security Services

Police Services and General Safety

A Draft National Policing Policy identifying the challenges and opportunities for the effective policing was published for comment in November 2023.¹⁹ The challenges include, amongst others, the high levels of inequality and crime in the country, criminality and corruption, the public's lack of trust in the SAPS, members of the SAPS, low morale, negligence, lack of discipline, as well as barriers to report crimes, lack of cooperation between community safety forums (or lack thereof) and the police and the

8 GG 48428 of 14 April 2023 GN R3290.

9 GG 38157 of 3 November 2014 GN R852 repealed by GG 48067 of 17 February 2023 GN R3060 (referred to as GN R3060).

10 Regulations 1 and 3 GN R3060. Students cannot apply for both NFSAS and this fund.

11 Chapter 4 GN R3060.

12 Regulation 2 GN R3060.

13 Regulation 1 GN R3060.

14 Regulation 1 GN R3060.

15 Regulation 4 GN R3060.

16 Chapter 5 GN R3060. A vulnerable household is defined in reg 1.

17 Regulation 33 GN R3060.

18 Chapters 2 and 8, reg 31–32.

19 GG 49603 of 3 November 2023 GN 4029.

slow progress of modernising the SAPS. The proposals for improvement include the creation of a professional policy force that undertakes quality policing, efficient and effective service delivery, ensure trust between the police and the community and to build a “strong and ethical leadership, management and governance architecture.” This policy was welcomed, as the Minister of Police revealed that more than 7 000 members of the SAPS are charged with serious crimes (Mkhwanazi 2023), civil claims increased to R873 million over the past two year (Hussain 2023), while the Gauteng Premier appointed crime prevention wardens who seemingly did not receive proper training (Heywood 2023). The 2023 budget for VIP protectors is above the budget allocated to the Directorate for Priority Crime Investigation (Hawks) which is disconcerting (Matisonn 2023).

The IPID Amendment Bill [B21–2023] was served before the Parliamentary Committee. The State Law Advisor refused to certify the Bill’s constitutionality due to clause 4 of the Bill that did not give effect to the Constitutional Court’s 2016 judgment in *McBride v Minister of Police*²⁰ pertaining to “the structural and operational independence of the IPID” (PMG 2023a). The committee approved an amended clause 4 to ensure that a panel assists the Minister to identify candidates for the appointment of the executive director and then nominate such person to the Parliamentary Committee, that has to confirm or reject the nomination. The director must be appointed for seven years, which is not renewable.²¹ The Bill also prescribes the qualifications of the director, who must “be independent, impartial and must exercise its powers and functions without fear, favour, prejudice, or undue influence.” The Directorate may also investigate any deaths caused or incidence of rape by a member of SAPS or a member of a municipal service, whether on or off duty.

In *Minister of Justice and Constitutional Development v Pennington*²² the appellant raised a special plea that the respondents’ claims had prescribed. The respondents were arrested in 1991 on charges of fraud and forgery, but were acquitted of those charges in 1992.²³ In 1994, the first respondent was again arrested and was released on bail before the criminal proceedings took place on 3 April 1995. The first respondent was convicted on 2 June 1997 and sentenced to a term of imprisonment on 17 November 1997. An appeal was noted and on 18 June 2015 the high court set aside the first respondent’s convictions and sentences. Summons was issued in June 2016, claiming that they suffered damages for a series of wrongs committed by the State in relation to the 1995 arrest and the long delay in having a hearing and it was ultimately successful.

The special plea of prescription was directed at the 1994 arrest and the prosecution that was finalised in 1998. The argument was that the claims had prescribed as the summons was only issued in June 2016, which was more than three years after the alleged

20 2016 (2) SACR 585 (CC); 2016 (11) BCLR 1398 (CC).

21 B21A-2023.

22 [2023] ZASCA 51 (14 April 2023).

23 See for full detail paras 3–9.

unlawful conduct relied on.²⁴ The high court dismissed both the plea of prescription and the plea of non-joinder.²⁵

Counsel conceded that claims against the Minister of Police could not be sustained.²⁶ Nor could claims against the Minister of Home Affairs proceed. While the claim against the Minister of Justice was viable in principle, the question was whether that claim had not prescribed.²⁷ With respect to the latter, despite providing summaries, the cause of action was not identified by the respondents.²⁸ Nowhere was a concise statement of facts pleaded.²⁹

Regarding prescription, a debt became due when the creditor or claimant acquired a complete cause of action for its recovery. That was the entire set of facts which a plaintiff needed to prove to succeed.³⁰ On the most generous construction for the respondents, by the time the respondents issued summons on 17 June 2016, the respondents' claim had prescribed more than a year earlier. The appeal was thus upheld and the order of the high court set aside.

While there might have been merits in the application, strict timelines must be complied with, for good reason. There are numerous claims against the State, in its different guises and formats. Those claims have to be processed speedily. It would ultimately not benefit society as a whole when such claims will remain viable indefinitely.

Correctional Services

The escape of Thabo Bester from the Mangaung Correctional Facility made headlines in 2023 (Pheto 2023). The Minister of Justice and Correctional Services indicated that escapes are the exception rather than the rule by stating “In the last financial year, out of an inmate population of 157 056, a total of 27 inmates escaped, which represents a percentage of less than 0.017%” (Lamola 2023).

In November 2023, both the National Assembly and the National Council of Provinces approved the Correctional Services Amendment Bill [B14–2023].³¹ The Bill followed the Constitutional Court's finding that some of the sections of the Correctional Services

24 Paragraph 10.

25 Paragraph 13.

26 Paragraph 15.

27 Paragraph 16.

28 Paragraphs 16–17.

29 Paragraph 18.

30 Paragraph 20.

31 The President signed the Correctional Services Amendment Act 14 of 2023 in 2024, see GG 40429 of 3 April 2024.

Act 111 of 1998 are unconstitutional.³² The Bill aims to amend the Correctional Services Act³³ to provide more independence to the Judicial Inspectorate for Correctional Services, and to add the definitions of “head of the remand detention facility”, “torture” and “sexual violation.”³⁴ An inmate who is subject to segregation or restraint must be informed of his or her right to appeal to the Inspecting Judge.³⁵ On request of the judge, the head of the correctional centre or the head of the remand detention centre, must provide all information in this regard.³⁶ Section 95D is inserted into the main Act in order to provide for the department’s reporting obligations to the inspecting judge, relating to, amongst others, deaths on inmates, segregation and the use of restraints, use of force, assaults by both inmates and correctional officials, torture, cruel, inhuman or degrading treatment, sexual violations, hunger strikes, attempted suicides and escapes. Hopefully the new amendments will provide better protection for inmates.

During the reporting period, interesting judgments were handed down dealing with Parole Board concerns. *Moodley v Minister of Justice and Correctional Services*³⁷ dealt with a review and setting aside of the Parole Board’s decision. This was the second time the Parole Board’s impugned decision was before the court. The first time there was insufficient record before the court. Currently the record was complete, but indicated an incompetent parole hearing, for the following reasons: Mr Moodley’s legal representative was only permitted to present pre-prepared written presentations, could only assist during breaks and was hindered in asking questions; the Chairperson treated the legal representative in a high handed and belligerent manner and generally acted in an unfair and unreasonable fashion and finally, one of the Parole Board members slept through the major part of the parole hearing, impacting negatively the voting that took place.³⁸ In this light the court was satisfied that Mr Moodley did not get a fair parole hearing.³⁹

Whether a review was the next appropriate step or whether the avenue provided for in section 75(8) of the Promotion of Administrative Justice Act⁴⁰ (PAJA) had to be pursued, was dealt with next. The court concluded that said section 75(8) approach was not within the purview of the incarcerated, but was the prerogative of the Minister. It

32 *Sonke Gender Justice NPC v President of the Republic of South Africa* 2021 (3) BCLR 269 (CC). Sections 88A(1)(b) and 91 were declared unconstitutional and the Department had 24 months to correct the position.

33 GG 48670 of 26 May 2023 GN 3474.

34 “Sexual violation” has the same meaning as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and “torture” has the same meaning as the definition in the Prevention of Combating and Torture of Persons Act 13 of 2013.

35 Amendments to sections 30 and 31 of the Correctional Services Act.

36 Sections 30(7) and 31(5) of the Correctional Services Act.

37 [2023] ZAGPJHC 114 (13 December 2023).

38 See paras 8–14.

39 Paragraph 14.

40 3 of 2000.

was thus not an internal remedy that had to be exhausted before review proceedings could be embarked on.⁴¹

Next to be decided was whether the court ought to substitute the Parole Board's decision or whether it should be referred back for reconsideration, but by a differently constituted Board.⁴² Section 8 of PAJA provides for the substitution of a Parole Board's decision in certain instances, including where the court is in a good position and thus as qualified as the original authority to make the decision.⁴³ Having regard of the facts and circumstances the court was not convinced it was in the best position to make the necessary decisions: it did not have all the information necessary because, amongst others, the Parole Board failed to explore all the evidence before it, as was reflected in the record.⁴⁴

There was no time pressure as Mr Moodley was serving a life sentence. A further attempt at a parole hearing would thus not cause unjustifiable delay.⁴⁵ The court referred the matter back for reconsideration, but before a differently constituted Parole Board.

The decision highlights that a fair process is necessary — not only for the applicant, but also for the victim's family. It is critical that all affected persons are involved in a dignified, equitable process.

The *Boshego v The Correctional Supervision and Parole Board*⁴⁶ dealt with the calculation of time periods for purposes of special parole concessions. In 2019, a special remission of sentences for certain categories of incarcerated offenders was announced. The remission of sentences, up to 24 months, was intended to and did in reality impact on the eligibility of certain offenders for parole and the release of some offenders on parole earlier than the offenders would have been entitled to. At issue was the relevant date: persons who qualified would arise on or before 26 April 2025. The applicant submitted that the minimum detention period would expire on 1 March 2025, but according to the respondents' calculation, it would only expire on 26 February 2026, which fell outside the relevant date.⁴⁷

The Corrections Supervision Committee advised the applicant that she qualified for the special parole dispensation, but the Parole Board averred that the committee had erred in calculating the minimum detention period and found that the applicant would after all, not qualify.⁴⁸

41 Paragraph 18.

42 Paragraph 20.

43 Paragraph 21.

44 Paragraphs 23–24.

45 Paragraph 25.

46 Paragraph [2023] ZAGPPHC 409, 40175/2021 (7 June 2023).

47 Paragraphs 8–14.

48 Paragraph 23.

The court was satisfied that the remission of sentence period had to be deducted from the full incarceration period, prior to the applicable minimum detention period being determined.⁴⁹ The court concurred with the approach followed by the applicant and the committee and that the Parole Board erred in its calculation. The decision taken by the Parole Board was consequently set aside.⁵⁰

The court would be interfering with the decision of the Parole Board in determining whether or not to grant a convicted offender parole.⁵¹ The Parole Board was, however, ordered to consider the applicant's parole application afresh, given the minimum detention period was confirmed.⁵²

Defence and Military

The Minister of Defence authorised the deployment of members of the South African National Defence Force (SANDF) to assist the SAPS with the prevention and combating of crime. That is under Operation PROSPER that was initiated from 16 December 2022 to 16 March 2023. A code of conduct for this specific operation was also published.⁵³ The Code states, *inter alia*, that the SANDF may only act in declared hotspots, cannot investigate crime, but may protect national key points and critical infrastructure, amongst others. They may not fire warning shots, but may act in self-defence, protect the public and members of the SAPS "where life is threatened and/or where there is an imminent threat of serious injury or destruction of property." All live firing must be reported. They must further "always treat the public with respect and human dignity, and exercise a high level of tolerance and restraint." Parliament and no longer the Department of Justice and Correctional Services, must budget for the expenses of the Investigating Judge.⁵⁴

The Draft Military Veterans Pension Regulation, 2023 was published for comment.⁵⁵ The final regulations were published in October 2023.⁵⁶ Only military veterans and their widows, widowers and dependants can apply for the pension. They must reside in South Africa.⁵⁷ A dependant is "any person who is legally or factually dependent on the

49 Paragraph 38.

50 Paragraphs 40, 42.

51 Paragraph 45.

52 Paragraph 46.

53 GG 47920 of 27 January 2023 GN 2958.

54 Section 91 of the Correctional Services Act.

55 GG 48469 of 25 April 2023 GN 3340.

56 GG 49442 of 2 October 2023 GN R3949.

57 Regulation 4(2). The reference to widows and widowers as well as the residential requirement were not included in the draft regulations.

military veteran for support and maintenance.”⁵⁸ The final regulations make specific mention of orphans, which was not included in the draft regulations.⁵⁹

A “military veteran” is defined in the Military Veterans Act 18 of 2011 and must be listed in the National Military Veterans database.⁶⁰ If the veteran receives a pension or a social grant, he or she may only apply for a top-up.⁶¹ The pension benefit must be calculated in terms of the Social Assistance Act 13 of 2004 adjusted by a multiplier of 2.5. After the death of the veteran, the widow, widower or qualifying dependant may receive 50% of the benefit, except if they already receive a state pension exceeding the amount.⁶² The regulations furthermore describe the procedure for application for a benefit as well as provide for appeal measures.⁶³ It enabled the payment of the pensions, after a long wait (Anon 2023b). It is reported that the Department of Defence lost R167 million to fraud and corruption (Pijoos 2023) and it is hoped that the new regulations will prevent future capture of the pension fund.

National Security and Intelligence

The Minister in the Presidency responsible for state security announced that it is busy to dissolve the State Security Agency based on the recommendations of the Judicial Commission of Inquiry on State Capture (Anon 2023c). In order to achieve this, the General Intelligence Laws Amendment Bill [B40–2023] was introduced in November 2023.⁶⁴ The eventual Act will, amongst others, amend the National Strategic Intelligence Act 39 of 1994, the Intelligence Services Act 65 of 2002 and the Intelligence Oversight Act 39 of 1994 (Memorandum to the Bill). The idea is to clearly distinguish the functions of a Foreign Intelligence Service that will deal with the gathering of information in relation to international threats to national security and a Domestic Intelligence Agency that will be responsible for domestic counter-intelligence identifying threats to national security within South Africa. The South African National Academy of Intelligence (SANAI) is re-established as a training centre. The “Presidential High Level Review Panel on State Security Agency, White Paper on Intelligence and the International Benchmark Studies” informed the proposed amendments (Memorandum to the Bill). The functions of the South African Intelligence Agency are described in more detail.⁶⁵

58 Regulation 4(3).

59 Regulation 5(3).

60 Regulation 4(1)–(2).

61 Regulation 4(4).

62 Regulation 5. This regulation was amended from the proposed draft regulation.

63 Regulation 6–7.

64 GG 49717 of 14 November 2023 GN 4067; GG 49730 of 16 November 2023 GN 4095.

65 Clause 2(b) replacing section 2(b) of the National Strategic Intelligence Act 39 of 1994.

The Signals Intelligence Centre will in future gather intelligence through foreign signals and communication platforms only.⁶⁶ The amendments further follow the High Court and Constitutional Court's judgments in *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC*,⁶⁷ where the High Court stated "The bulk surveillance activities and foreign signals interception undertaken by the National Communications Centre are unlawful and invalid," as it is not authorised by law.⁶⁸ The Bill now provides for bulk surveillance of foreign signals but with oversight by a retired judge and two bulk interception specialists.⁶⁹ The Bill furthermore now defines specifically "threat to national security."⁷⁰ The Free-Market Foundation warned against the misuse of the intelligence and other legislation to create an authoritarian state, where broad definitions could have unintended consequences (Van Staden 2023). Following the *AmaBhungane* case, the Regulation of Interception of Communications and Provision of Communication-related Information Bill [B28–2023] was drafted and approved by the National Council of Provinces in December 2023. The eventual Act will, amongst others, improve judicial oversight and provide measures to protect journalists and legal practitioners in the case of surveillance.

Arms and Ammunition

The destruction of firearms in terms of Firearms Control Act 60 of 2000 continued.⁷¹ However, the last decade showed an increase for applications for firearms as people felt there is a need to take their personal protection in their own hands (Brederode 2023).

The *S v Gumbi and Others*⁷² dealt with sentencing and relevant legislation setting out minimum sentences for certain offences. Four accused were before the court for using firearms to commit a robbery, firing indiscriminately and also firing at members of the police force, with the intention to kill.⁷³ With reference to the Firearms Control Act 60 of 2000 the court was not compelled to impose the minimum sentence on the counts of robbery with aggravating circumstances and could impose a lesser sentence if substantial and compelling circumstances existed.⁷⁴ These circumstances are not set out

66 Clause 2(c) inserts section 2B in the National Strategic Intelligence Act.

67 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC); *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services* [2019] 4 All SA 343 (GP); 2020 (1) SA 90 (GP); 2020 (1) SACR 139 (GP).

68 Paragraph 165, confirmed in paras 22, 126–135 of the Constitutional Court case.

69 Proposed section 2B of the National Strategic Intelligence Act.

70 Clause 1, inserting definition in s 1 of the National Strategic Intelligence Act.

71 GG 48682 of 1 June 2023 GN 3477; GG 49817 of 4 December 2023 GN 4145.

72 [2023] ZAKZPHC 65 (15 June 2023).

73 See for background paras 2–4.

74 Paragraph 11.

in legislation, but are left to the courts to determine. What is clear is that courts could not lightly and for flimsy reasons depart from prescribed minimum sentences.⁷⁵

The court forthwith considered each of the four convicted persons' ages, personal, family and education backgrounds.⁷⁶ The impact of the aggravated robbery on the persons in the store as well as the members of the police force, was further considered.⁷⁷ Whether the persons showed remorse or attempted to explain why they did what they did, was further taken into account by the court.⁷⁸ Having regard for all of the above, the court confirmed that the cumulative effect of the sentences imposed had to be just.⁷⁹ Each of the four convicted persons was thereafter sentenced to sentences spanning 23 years, 20 years, 26 years and 23 years respectively. The judgment is useful in setting out the in-depth analysis and consideration that goes into sentencing in relation to the use of firearms and that it is an important role that courts have to fulfil, responsibly.

Domestic and Gender Violence

On 24 April 2023, National Instruction 7 of 1999 to the Domestic Violence Act 116 of 1998 was published to provide clear directions to police officers on how to respond to a complaint of domestic violence in order to comply with the obligations imposed on them and as set out in the Act. A notice of revision of above instruction was published on 4 May 2023.⁸⁰ The Domestic Violence Amendment Act 14 of 2021 (hereafter the Amendment Act)⁸¹ amended the Domestic Violence Act with effect from 14 April 2023. Most sections came into effect on 14 April 2023 — except for section 6A. The insertion of section 6A provided for the “integrated electronic repository for domestic violence protection orders.”

The Amendment Act provides for significant changes to its predecessor. Important and notable changes are expanding the definition section to include definitions and interpretations. Another notable change is the inclusion of additional acts of domestic violence. These include spiritual abuse, elderly abuse, coercive and controlling behaviour, exposing a child to domestic violence and unauthorised entry into a complainant's workplace or place of study.

Some of the procedural amendments allow complainants of domestic violence to apply electronically for protection orders. According to section 4(1)(bb) of the Amendment Act, any complainant has the right to apply for a protection order on an *ex parte* basis by submitting the application electronically to the court's jurisdictional electronic

75 Paragraph 12.

76 Paragraph 15 and further.

77 Paragraph 17.

78 Paragraphs 19–20.

79 Paragraph 21.

80 GG 48517 of 4 May 2023 GN 3364.

81 14 of 2021, GG 48419 of 14 April 2023 Proc R117.

address (email). This significant amendment provides that complainants no longer have to physically go to court to apply for the protection order. In itself, it seeks to alleviate the challenges some complainants may face in an urgent situation (Fasken 2023).

In the same vein, the Amendment Act now provides for a “domestic violence safety monitoring notice.”⁸² Where the complainant and the respondent share a joint residence, the complainant can apply for this simultaneously with the protection order or while waiting for a final protection order to be granted. This can be submitted electronically. The notice, if granted by the court, will order the station commander of a police station servicing the area where the complainant resides to direct a member of the SAPS under their command to contact the complainant or visit the joint residence of the complainant and the respondent on regular intervals.⁸³ The notice also allows the SAPS to use reasonable force to overcome any resistance during visits to the joint residence.⁸⁴ This is one of the most significant amendments to the Act as it gives the complainants some comfort, knowing that they will be contacted on a regular basis. Although this process sounds great in theory, the practical implications of this process will test the State’s resource availability.

The principle of the best interest of the child is not lost on the amendments made. The Amendment Act provides for a child (minor) to apply for a protection order without the assistance or consent of a parent, guardian or any other person.⁸⁵ The Amendment Act also makes it mandatory to report acts of domestic violence perpetrated against children, the disabled and the elderly. The Amendment Act provides for an investigation by the Family Advocate or designated social worker to determine if a child requires care and protection.⁸⁶ The amendments also provide for the substitution of “undue hardship may be suffered” with the “complainant is suffering or may suffer harm.”⁸⁷

Other amendments include but are not limited to the issue of a warrant of arrest simultaneously with the interim protection order, remaining on file until served on the respondent. If there is a reasonable belief that immediate action is necessary to prevent harm to the complainant, the court may address these applications outside ordinary hours.

It is clear the amendments seek to simplify the application of a protection order. It also provides for additional processes and platforms to apply for protection orders to alleviate the challenges for complainants. Expanding the definition of abuse will also give a wider scope of protection to complainants. As indicated above, the effect of the

82 Section 4A.

83 Section 4A (7)(a)–(c).

84 Section 4A (7)(c).

85 Section 4(4).

86 Section 5 (1A)(a).

87 Section 5 (2)(b)(ii).

amendments will depend on the effective execution by the role players, specifically the clerk of the court and the South African Police Service.

In response to the 2018 Total Shutdown Movement, the Presidential Summit on Gender-based Violence and Femicide (hereafter GBVF) committed the State to action, whereafter the National Strategic Plan (NSP) on GBVF was developed and launched on 30 April 2020 (Anon 2023e).⁸⁸ As an interim bridging mechanism to accelerate action to address gender-based violence and femicide until the Council on GBVF was established, the GBVF Response Fund 1 was established.⁸⁹ Since its launch by President Cyril Ramaphosa in February 2021, the fund has allocated R69 million to more than 160 community-based organisations (Anon 2023e).⁹⁰

Terrorism

The Minister of Justice and Correctional Services, by notice in the Government Gazette, increased the penalties for offences introduced by the General Law (Anti-money Laundering and Combating of Terrorism Financing) Amendment Act 22 of 2022 (Anon 2023d).

Conclusion

South Africa is celebrating three decades of a constitutional democracy but is still dealing with the aftermath of crimes committed and approaches endorsed prior to a new constitutional dispensation. In this regard further regulations had been put in place to deal with, *inter alia*, financial assistance for victims of the Truth and Reconciliation process. While some redress is still needed and indeed attended to, current concerns and challenges have remained as well. Legislative measures that have been in place for many years are seemingly either ineffective or unconstitutional. Following constitutional judgments being handed down, legislative amendments had been put in place to address these findings of unconstitutionality. A lot of effort, time and expense have thus been put towards attending to matters that should have been in place already. Apart from fixing shortcomings and lacunae a host of new measures had also been drafted to address emerging challenges and concerns. In this regard, various new measures had been added to the arsenal already employed in an attempt to make South Africa a more law-abiding and safe country.

While a lot of activity had occurred, it is unfortunate that South Africa still has a long way to go before people will be safe — there is not a dimension of South African life and daily existence that is not impacted on by violence and criminality: transport to and from home, work and school is impacted on given that bus attacks have increased markedly; rural societies are under threat; urban areas are burdened by increased violent

88 <https://gbvfresponsefund1.org/governance/reports/integrated-annual-report/>

89 <https://gbvfresponsefund1.org/governance/reports/integrated-annual-report/>

90 <https://gbvfresponsefund1.org/governance/reports/integrated-annual-report/>

crime statistics; home life is impacted on by ever-present gender-based violence; protection and police services employed to protect and safeguard are often involved in crimes themselves and businesses and livelihoods in both formal and informal contexts are threatened by crime syndicates and organised crime. Citizens and the populace have made their concerns known and have voiced their dissatisfaction, often by way of protests and unrest. Unfortunately, this avenue of critique has added to the general stance of violence and discontent.

It is imperative that envisaged new measures, including the new Draft National Policing Policy and increased budgeting for police and protection services make a definite and real impact. All role players — the legislature, courts, protection services and the citizenry — are integral in the critical project of making South Africa a safe place to live in — not only at a national level, but more importantly, on an individual and household level as well.

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