SASSOCIATES ATTORNEYS

30 July 2021

Our Ref: Mr Hood/md/M068804 (R6)

THE SECRETARY OF POLICE

ATTENTION: MR ALVIN RAPEA

PER E-MAIL: Phumudzo.rapea@csp.gov.za

Dear Mr Rapea

RE: <u>DEADLINE 3 AUGUST 2021 - FIREARMS CONTROL</u>

<u>AMENDMENT BILL 2021</u>

- 1. Please indulge me in addressing you informally.
- 2. As you are well aware, I represent a number of the major role players within the security industry, sport shooting, hunting and firearm dealing sectors.
- 3. You are also aware that I was attorney of record on behalf of SAAADA and CHASA in an urgent application to obtain an extension for the submission of objections by virtue of the fact that the Secretariat/South African Police Services had not answered various

t: 011 234 7520

f: 086 249 7485

requests for access to information. You personally reached out to me telephonically to discuss concerns I had raised.

- 4. Your department has still not answered a number of requests for access to information.
- 5. The first, original requests for access to information of the 31st of May 2021, have not been answered in as much as the following questions have not been answered: question 8, 11, 12 and 13.
- 6. You have also not answered the writer's letter of the 20th of July 2021, copy attached as Annexure "A", and the writer's e-mail of the 28th of June 2021, copy attached as Annexure "B".
- 7. Your Mr Rapea is well aware of the extremely strong sense of dissatisfaction amongst the pro-firearm organisations as well as many individuals that they were not party to any of the processes that lead up to the finalisation of the Amendment Bill, emanating from your office.
- 8. Major stakeholders were excluded, including those who have financial or commercial interests in firearm ownership as well as accredited sport shooting and hunting associations, professional bodies such as the Professional Firearm Trainers Council and The Professional Hunters Association of South Africa and civil society in general.
- 9. It is apparent from your report that it is ideologically biased, one sided and does not represent the views of society in general.

- 10. I remind you that two recent comprehensive surveys were conducted *inter alia* by Gun Free South Africa and by Carte Blanche and which produced the following results.
 - a) Gun Fee South Africa: 92% of respondents indicated that they would be safer if their partner had a firearm.
 - b) On Carte Blanche, over 90% of respondents indicated that they did not think that the scrapping of firearm licences would result in a safer society.
- 11. It is clear from these most recently conducted surveys that your proposed set of amendments does not reflect the views of society in general, in respect of private firearm ownership.
- 12. You based your report on outdated research (22 years old in some instances) and where authors of such "research" have disavowed the interpretation placed upon it by Gun Free South Africa and your office.
- 13. It is clear that the drafters of your report include, and by way of example, representatives of the Firearms Appeal Board who should not be involved in policy making, because they are an appellate body created by statute. The conflicts of interest that arose from Advocate Shandu and Mr Abraham Mongwe in the consultation and drafting process seem to have escaped all of your comprehension.
- 14. It is clear I would respectively suggest that you fail to comply with and have exceeded the mandate that you have as an organ of state in terms of The Civilian Secretariat for Police Service Act 2 of 2011.

- 15. It is also clear over and above the bias on one-sidedness of your report, that the persons who drafted the report have deliberately or at the very least inadvertently misinterpreted statistical data and have drawn incorrect conclusions from the Wits School of Governance Report, which does not support the Firearms Control Amendment Bill, even though you allege that the amendments are, partially at least, based on such report.
- 16. I do not propose to set out in detail why the bill is flawed, other than to state that you cannot create rights and then take them away 20 years after they were created, without consultation, and in circumstances where vour drafting team has understanding of the Firearms Control Act and firearms ownership.
- 17. You cannot blame firearm owners for the general state of disarray of the governance of this country and in particular for the poor performance of the South African Police Services for which you are responsible for monitoring and reporting. A recent press report is attached, the first from the Daily Maverick as Annexure "C". This deals with the conduct of the National Commissioner not complying with his statutory duties.
- The second report, from ISS Daily, dated 28 July 2021, as 18. Annexure "D", gives frightening details about how many senior policemen we have and how few operational junior members there are of SAPS and how politically compromised the senior appointment process is. It details how undisciplined the police are. This is your responsibility to monitor and remedy.

- 19. You have failed in your mandate. The state of the South African Police Services, as evidenced by the recent rioting and attempted coup, have shown a complete lack of preparedness and ability on the part of the South African Police Services to comply with its mandate.
- 20. You have known about the failure of the South African Police Services to comply with this mandate since at least October of 2018, because the current National Commissioner of Police (whom you are supposed to supervise and monitor) submitted to Parliament that the South African Police Services cannot comply with their mandate.
- 21. Your failure to consult organisations who have a direct and material interest in firearm ownership, and your reliance on and extensive consultations with organisations such as Gun Free South Africa and the Chairperson of the Appeal Board, Advocate LC Shandu, demonstrate to the writer that your report is fundamentally subjective and flawed.
- 22. If you are a true democrat, and if you subscribe to the basic principles contained in our Constitution (Act 108 of 1998, as you should know), I suggest to you that it is obvious that this process must stop immediately, and that you must publically acknowledge that you have failed in your mandate to properly consult and derive draft legislation that takes into account the viewpoints of all stakeholders and which process accommodates all stakeholders constitutional rights and concerns. You should recommence this

process with proper consultation with bodies that are actual stakeholders as opposed to listening to allegedly civil rights organisations that lack membership and representivity and that are driven by foreign agendas, which undermine the sovereignty of the South African Constitution and the rights of its individual citizens.

- 23. If you are a true democrat, and if you subscribe to the basic principles of our Constitution (and the writer believes that fundamentally you are a decent, democratic person) then you will call a halt to the process of the Firearms Control Amendment Bill of 2021, and you will open your arms and your office to stakeholders of all shape, sizes and beliefs and that we will sit down and work on the real problems of the Firearms Control Act such as the lack of capacity, competence and ability of the Central Firearms Registry and the members of the Appeal Board to do what the Firearms Control Act requires, and in a proper constitutional manner.
- 24. You should examine the type of court orders that have been granted against The Minister of Police and the Appeal Board, in order to determine (as if you already do not know) what the faults are in the administration of the legislation as it currently is, and how the legislation needs to be implemented and ultimately amended to give effect to the aims and objectives of the Firearms Control Act.
- 25. If you do not do so, not only will you be failing in your duties and responsibilities as set out in Act 2 of 2011, but you will also be failing in your personal and representative capacity to uphold the Constitution and you will face a myriad of complaints and even litigation relating to your conduct.

I urge you to do the right thing before it is too late. Stop the 26. process and open your office to proper consultation with legitimate stakeholders.

Yours faithfully,

maktin@mjhood.co za

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MJ Hood SASSOCIATES

20 July 2021

Ref: M Hood/rm/S0782 /C0410

THE SECRETARY OF POLICE
MR ALVIN RAPEA
PER EMAIL: Peter.Makhetha@csp.gov.za
Phumudzo.Rapea@csp.gov.za

and

COLONEL AMELDA CROOKS
NATIONAL DEPUTY INFORMATION OFFICER
SOUTH AFRICAN POLICE SERVICES
PER E-MAIL: crooksa@saps.gov.za

Dear Sir / Madam

RE: REQUEST FOR ACCESS TO INFORMATION

THE SOUTH AFRICAN ARMS AND AMMUNITION DEALER'S ASSOCIATION ("SAAADA") AND THE CONFEDERATION OF HUNTING ASSOCIATIONS OF SOUTH AFRICA ("CHASA")

- 1 As you are aware, we act on behalf of SAAADA and CHASA.
- With reference to the Report of the Committee on Firearms Control and Management in South Africa 2016, please would you provide our clients with the following information.
 - 2.1 Who were the members of the Committee? (this has already been requested of you in an informal communication that you

- have not acknowledged dated the 26th of May 2021, a copy **attached**).
- 2.2 Could you also please provide us with data upon which you based your conclusion in your press release where you stated self-defence use of firearms occurs "very seldom." What is the statistical data that you have used to come to this conclusion?
- 2.3 With reference to the report, please provide us with the data for the conclusion drawn on page 19 of the report which states:

"in 2000, a handgun was used in 92 per cent of murders; and it remains at this level throughout the 14 years."

- 2.4 Please provide us with a copy of the Gun Free South Africa Briefing 5 of 2015, and the Gun Free South Africa Briefing 3 of 2015 referred to on page 19 of the same report.
- 2.5 Please provide us with a copy of the Altbekker Report referred to on page 37, the Jaynes Report referred to on page 54 of 2012 and which is also referred to on page 55.
- 2.6 Please would you provide us with details of what security companies owns "machine guns" and how many and please provide us with information of the "variety of other firearms" that security companies own.
- 2.7 Please provide us with copies of all the footnotes referred to in the entire report because they do not appear to have been attached.
- 2.8 With reference to page 85 of the report, please advise in what respect the implementation of the Act: "have been outsourced to private entities as indicated above".
- 2.9 Please provide us with the report prepared by the Civilian Secretariat for Police Task Team referred to on page 113 of the report to the Committee and: "other reports produced on the Central Firearms Registry."
- 2.10 With reference to page 121 of the report, please give us the: "empirical research indicates countries with a strong national firearms legislated framework have low levels of crime in general and almost no violent crime."

- 2.11 What countries are these?
- 2.12 A copy of the work-study of the 17th of March 2011 conducted by the Civilian Secretariat for Police.
- 2.13 And finally with reference to the endnotes attached at the back, more specifically footnote 7 which states:

"there is little difference between a fully automatic and a semi-automatic military assault rifle from a public safety perspective: a fully automatic AK-47 fires 200 rounds in 2.4 seconds; semi-automatic Norinco AK-47 takes 4.7 seconds for the same number of rounds."

- 2.14 Where did this information come from?
- We thank you for your assistance.

Yours faithfully

M J HOOD & ASSOC

martin@mjhood.co.za

<u>Encl.</u>

Rizwaana Mohamed

From:

Mariette Duncan

Sent:

Monday, 28 June 2021 09:20

To:

'Phumudzo.rapea@csp.gov.za'

Subject:

S0785 - Firearm Control Amendment Bill

Dear Sirs,

The above amendment bill refers.

With reference to your firearm committee report the writer has perused the report and cannot ascertain which individuals participated in the formulation of the report as committee members.

Could you please provide the writer with a list of persons who participated in the compilation of the report, and what organisations such persons represented?

This request is addressed to you informally, but in the event that you require a formal access to information request, please advise per return of your requirement to do so, and the writer will arrange to submit one.

With reference to your press release, can you please amplify and explain why you stated that self-defence use of firearms occurs "very seldom"?

What data did you use to come to this conclusion?

Again, should you require a formal request for access to information, please indicate such requirement and the writer will arrange a request to be submitted.

Yours faithfully,

Martin Hood Partner



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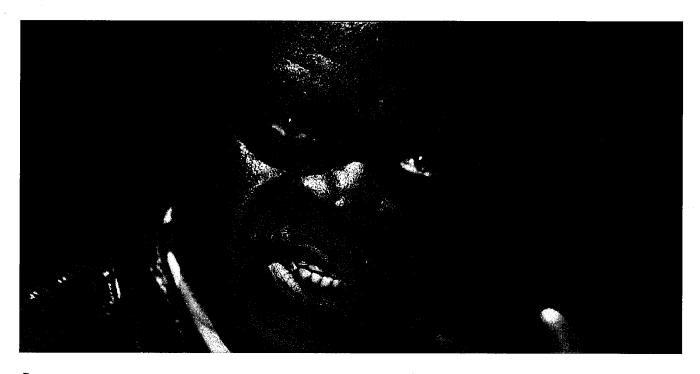
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R45M NASREC ANC GRABBER DEAL

Appeal court confirms Khehla Sitole's 'breach of duty' – his job as head of SAPS now untenable

By Marianne Thamm • 29 July 2021



🖸 National Police Commissioner General Khehla Sitole. (Photo: Gallo Images / City Press / Leon Sadiki)

A week before South Africa was engulfed in flames, the Supreme Court of Appeal in Bloemfontein dismissed SAPS National Commissioner Khehla Sitole's appeal against a high court judgment that he and two other members of top police management had breached their duties.

Marianne Thamm

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It was a judgment not made public on 30 June when it was handed down, resulting in the SAPS, at the height of the violence that tore across KZN and Gauteng, being led by a man who has been found to be politically deeply compromised.

The lack of preparedness of the country's security cluster after the arrest of Jacob Zuma has left more than 300 dead and an economy deeply damaged by days of organised looting, murder and mayhem.

A scathing judgment, handed down on 13 January 2021 by Judge Norman Davis in the Gauteng High Court, found that Sitole and his two deputies, Francinah Vuma and Lebeoana Tsumani, had placed the interests of the governing party, the ANC, ahead of those of the country.

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The national commissioner will have a hard time convincing anyone now that he is fit to lead SAPS for the benefit of all South Africans. Sitole was appointed by Zuma in 2017, a month before the Nasrec conference.

For three years Sitole, Vuma and Tsumani refused to hand over documentation relating to grabber procurement (https://www.dailymaverick.co.za/article/2021-03-03-sitole-and-fellow-top-police-brass-in-breach-of-statutory-obligations-court-finds-in-r45m-nasrec-grabber-scandal/) to the Independent Police Investigative Directorate (Ipid).

"Rather than comply with their statutory duties as police officers willing to contribute to the investigation of crimes, they sought legal assistance and on this basis thwarted Ipid's investigation," Davis later said, dismissing a 3 February attempt by the trio to appeal against the original judgment.

On 30 June 2021 the Supreme Court of Appeal, before Justices Malcolm Wallis and Nolwazi Mabindla-Boqwana, finally put the matter to rest.

"The application for leave to appeal is dismissed with costs on the grounds that there is no reasonable prospect of success in an appeal and there is no other compelling reason why an appeal should be heard."

The ruling will most certainly affect the continued presence of Sitole, Vuma, who is Deputy National Commissioner of Support Services and Tsumani, Deputy National Commissioner, Crime Detection (Detectives, Crime Intelligence and Forensic Services) at the helm of SAPS.

The argument by all three top cops to the court that there had been an unspecified threat to national security had nothing to do, said Davis, with the manner in which the grabber was procured irregularly at a highly inflated price.

The documents Ipid sought for more than three years related to the attempted unlawful procurement by Crime Intelligence (CI) in December 2017, a few days before the ANC's elective conference, of the grabber from I-View, a company that was in business rescue at the time. CI procured other materials from I-View in two other matters amounting to a collective estimated R100-million.

The then acting head of CI, General Bhoyi Ngcobo, who had recently been appointed to the position by then-president Jacob Zuma, has also been implicated with Sitole, Vuma, Tsumane and Bo Mbindwane, "special adviser" to then minister of police Fikile Mbalula, in pushing for the procurement.

The top cops had insisted that the information was classified and that none of them had "any legal authority to furnish information that was classified until such time that the Head of the office of the Department that classified the said information has declassified it".

Judge Davis ruled this argument was "untenable and ignores the duties imposed by law" on those implicated.

Davis said Ipid had resorted to the magistrates' court "in frustration" and as a result of the fact that Sitole, Vuma and Tsumane "were already failing their duties".

"Absolutely no attempt", said Davis, had been demonstrated by any of the applicants to comply with the Ipid Act, adding that the "classification issue was clearly used as a shield or a smokescreen to hide behind from any enquiry".

Writing to Sitole on 12 February 2021, Minister of Police Bheki Cele noted that in light of the Pretoria High Court's 13 January judgment (https://www.dailymaverick.co.za/article/2021-01-19-saps-embarked-on-procurement-before-2017-nasrec-conference-to-protect-and-benefit-the-anc-and-not-south-africa-court-finds/), communication had been received "from the Presidency".

"In respect of the recent High Court judgment in the matter between Vuma and others v Ipid, I have been requested by the Honourable President to respond to certain issues in respect of the judgment," wrote Cele.

Cele said he had not, "to date" been briefed by the SAPS management on the outcome and the implications of the judgment for the SAPS.

Due to the "urgency and seriousness" of the matter, Cele told Sitole, "I herewith direct that you provide me with a full report on all I-View matters and the implications to the SAPS, including your own involvement and all other senior officers who were cited in the High Court judgment."

Cele also called for an inquiry into Sitole's fitness to hold office. This resulted in Sitole writing Ramaphosa pleading with him to hold off and that we would like to "explain" his "side of the story".

With this decision by the SCA, Sitole and his deputies have run out of road. **DM**

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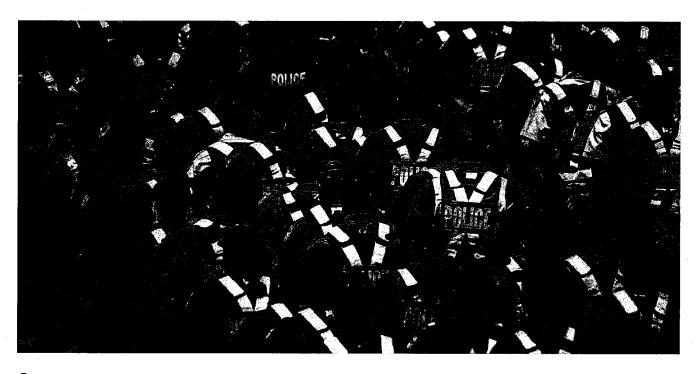
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ISS TODAY

SAPS needs freedom from interference and streamlined management to address critical failures

By Gareth Newham for ISS Today • 28 July 2021



• Members of the South African Police Service in Cape Town. (Photo: Leila Dougan)

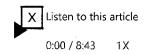
The problem within the SA police force isn't funding or expertise — it's a political one that President Ramaphosa cannot allow to fester.

Gareth Newham for ISS Today

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First published by <u>ISS Today (https://issafrica.org/iss-today)</u>

Gareth Newham, Head, Justice and Violence Prevention, ISS Pretoria.

The July attacks on South Africa's economic infrastructure exposed severe weakness in the police at a time of national crisis. Police were often missing (missing in action as thousands raided malls and shut down transport, supply chains and logistics hubs.

After President Cyril Ramaphosa announced that the "attempted insurrection" had failed, many questions remained about the inability of police intelligence and a relatively well-resourced South African Police Service (SAPS) to prevent sabotage and criminal chaos.

But will the SAPS perform better next time? Will this most recent high-profile police failure be the impetus for bold and urgent reforms in the interest of political stability and public safety?

The crisis of July 2021 should be the turning point for a vital function of the state, with its huge budget and vast human resources. It is now clear how important the SAPS' performance is to the government's ability to keep the economy, water, power, education and healthcare functioning.

Fixing the police is possible but will only happen with political recognition that a well-trained, high-functioning, ethical and accountable police service is critical to the country's success.

In a hierarchical organisation, dysfunction at the top flows steadily downwards. Successful police reform must therefore begin with a fearless assessment of SAPS' bloated police leadership. Too often political loyalty is valued over competence, and the wrong people are appointed to top positions, often without due process.

SAPS leadership has been in crisis for over a <u>decade</u>

(https://issafrica.org/crimehub/analysis/fact-sheets/saps-resourcing-and-performance-2012-2020). The post of national commissioner has been held by eight people since 2009, causing regular upheaval (https://issafrica.org/crimehub/iss-today/leadership-integrity-and-the-crisis-in-south-africas-policing), mistrust and conflict among senior police. Aggressive political interference has been enabled

(https://www.gov.za/sites/default/files/gcis_document/201807/41754gon663.pdf) by problematic SAPS Employment Regulations gazetted in 2018 that allow too much ministerial influence over top appointments, transfers and promotions.

The SAPS has almost 200 generals and more than 600 brigadiers collectively earning around R1-billion annually. It was on their watch that the police let the country down. There are many highly experienced police leaders of great integrity, and they too were let down by their less than capable colleagues.

Deadwood must be swiftly removed, the SAPS top management downsized, and police leadership positions opened up to a transparent and competitive recruitment process insulated from political interference. Only those with proven capability, knowledge, experience and integrity should be in charge of running the police. But there is no current plan (https://issafrica.org/crimehub/iss-today/south-africas-police-need-urgent-and-fundamental-reform) to achieve this, despite SAPS performance declining substantially for most of the past decade.

Police numbers will drop by a sizeable 24,000 posts over the next three years due to public sector budget <u>cuts</u> (https://www.dailymaverick.co.za/article/2021-07-13-south-africa-feels-the-sting-of-police-budget-cuts-in-wake-of-provincial-violence-and-looting/). The impact will be acute at station level, with nearly 2,000 fewer detectives and 11,000 fewer visible police officials. Yet only 15 posts will be lost at the top level of general and brigadier. This means the expensive and ineffective senior management structure largely remains while thousands of operational posts are slashed.

Another priority is to get crime intelligence working. The insurgency of mid-July should not have been a surprise as it was openly <u>promoted</u>

(https://www.dailymaverick.co.za/article/2021-07-25-meet-the-instigators-the-twitter-accounts-of-the-ret-forces-network-that-incited-violence-and-demanded-zumas-release/) by identifiable political and corrupt African National Congress (ANC) factions. The burning of trucks and closure of the vital N3 highway had happened before, in November 2020, by networks trying to stop foreign nationals from working as drivers. But crime intelligence has failed (https://issafrica.org/iss-today/south-africas-security-sector-is-in-crisis-reform-must-start-now) to dismantle these groups and support the criminal prosecution of those responsible.

With 8,000 personnel and a R4-billion annual budget, crime intelligence should be able to do more to anticipate orchestrated criminal economic sabotage. The looting and destruction of property were predictable. According to Institute for Security Studies tracking <u>data</u> (https://issafrica.org/crimehub/maps/public-violence), they tended to occur in hotspots that experience regular disruptive protests and other forms of public violence.

The high-risk areas should long have been the sites of interventions to strengthen community relations with the government, including local councillors and police. Steps to do so include a combination (https://issafrica.org/crimehub/iss-today/lessons-in-preventing-violent-protest-in-south-africa) of improved service delivery, economic development initiatives, and the building of community conflict management and early warning systems.

Next, there is an urgent need for a functioning disciplinary system in the SAPS. In an organisation with guns and power — and a vital role in a young democracy — there must be a way to maintain discipline and remove corrupt, ill-disciplined and under-performing officers.

But the SAPS internal disciplinary system has largely collapsed. Internal disciplinaries dropped 71% between 2012/13 and 2019/20. In half of the hearings, the case was withdrawn because witnesses failed to appear or evidence went missing. In only 7% of hearings do police officers get dismissed or suspended without pay.

The external police accountability agency, the Independent Police Investigative Directorate, has not performed much better. Of the 47,984 cases opened against police officials between 2012 and 2020, only 16% were referred to the SAPS for disciplinary action, with a paltry 3.2% ending in a disciplinary conviction. Only 0.4% or 194 police officials were dismissed as a result. The effect is widespread police brutality and corruption, resulting in declining public trust and support for the police.

South Africa's policing problem is not the result of too little money. In the eight years to 2020, the SAPS budget swelled 65.5% from R58.5-billion to R96.8-billion. The budget for visible policing doubled, detectives got an 85% increase and crime intelligence 91%.

But the number of serving police dropped, mostly because of automatic promotions every four years for non-commissioned officers, regardless of their performance. In 2018 and 2019, more than 42,000 police were promoted, and R1.2-billion was added to the SAPS's annual salary bill. This resulted in a 6% decrease in the number of personnel SAPS could afford between 2012 and 2020. However, police performance dropped by a far more considerable margin.

Between 2012 and 2020, roadblocks went down by 40%, the number of people searched decreased by 89%, and air support operations by 82%. Firearms recovered or confiscated declined by 52%, and the detection rate for murder fell by 38%. While the number of arrests has gone up by 46%, there are not more cases in court. Between 2011/12 and 2019/20, the number of cases with a verdict dropped by 27%.

So this is a police service not delivering bang for its buck. Police underperformance has been accompanied by an increase in crime. The number of <u>murders</u> (https://issafrica.org/crimehub/iss-today/south-africa-needs-a-murder-reduction-strategy) went up by 37% between 2012 and 2020, with reported armed robberies climbing by 43%.

Fortunately, the SAPS has a solid foundation in the many hard-working, honest people dedicated to serving their communities. Carefully crafted technical reforms could do much to improve police professionalism, performance and accountability.

The biggest obstacle is a political one. Will the ANC support an effective law enforcement agency that serves the country and all its people? Or will we continue down the well-worn path of deterioration and insecurity?

South Africa's turbulent and fragile democracy is likely to be tested again. It remains to be seen how police will perform next time. And that largely depends on the willingness of Ramaphosa and his government to act fast and make tough decisions in the interests of the country. **DM**

Gareth Newham, Head, Justice and Violence Prevention, ISS Pretoria.

Digging Deeper to Defend Truth

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Martin Dreschler 28 July 2021 at 17:12 (https://www.dailymaverick.co.za/article/2021-07-28-saps-needs-freedom-from-interference-and-streamlined-management-to-address-critical-failures/#comment-3840926)

As long as the ANC, corrupted to the core, is in charge there will be no appointments of police leadership based on merit and experience as this would result in the police actually investigating the 1000's and 1000's of corrupt ANC politicians.

Charles Parr 28 July 2021 at 19:16 (https://www.dailymaverick.co.za/article/2021-07-28-saps-needs-freedom-from-interference-and-streamlined-management-to-address-critical-failures/#comment-3841112)

The numbers in the upper ranks and crime intelligence are totally astonishing given the lack of effectiveness of the service. This requires more of a controlled forest fire than simply some pruning.

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