



Submission on the Green Paper on Policing 2013

**African Policing Civilian Oversight Forum
20 July 2013**

Contact:

Sean Tait

Coordinator

African Policing Civilian Oversight Forum (APCOF)

E: sean@apcof.org.za

P: 082 852 5772

W: www.apcof.org.za

About the African Policing Civilian Oversight Forum (APCOF)

The African Policing and Civilian Oversight Forum is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF takes the view that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community. APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004 as a coalition of police oversight bodies and practitioners in Africa. APCOF was registered in 2006 as a not-for-profit Company (section 21) under South African Company law and subsequently as a Trust in 2012. APCOF's Secretariat is based in Cape Town, South Africa.

The objectives of APCOF are to:

- Create and sustain public confidence in police
- Develop a culture of human rights, integrity, transparency and accountability within the police
- Promote a good working relationships between the police and the community
- Promote good working conditions in the police

APCOF works on a range of issues such as:

- Promoting fair treatment of citizens by police agencies within the continent
- Exchange of information and better practices among oversight bodies
- Campaigning for the establishment of police oversight bodies in countries where they do not currently exist
- Campaigning for improved resource allocation
- Standard setting for policing and civilian policing oversight bodies in Africa
- Promoting better working conditions for police officials
- Encouraging and supporting the formation on regional networks to promote the issues of police reform.

Introduction

1. The African Policing Civilian Oversight Forum (**APCOF**) welcomes this opportunity to provide a submission to the Civilian Secretariat of Police (**the Secretariat**) on the Green Paper on Policing (the **Green Paper**) published in Gazette 36570 on 18 June 2013.
2. This submission provides the Secretariat with recommendations that we believe will strengthen the Green Paper in order to provide greater clarity and focus for a policy framework for policing that will ultimately guide the future of policing in South Africa generally, and the development of police specific legislation, specifically.
3. The scope of this submission is focussed on the need to clearly articulate a vision for policing South Africa that aligns with agreed government policy and vision for promoting safety in South Africa as articulated in the National Development Plan Vision for 2030 of 11 November 2011 (**the NDP**)
4. The submission argues for a robust consultation process which will provide opportunity to actively engage South Africans in the development of policing.

Consultation

5. The potential of the Green Paper to serve as a catalyst for a national dialogue on policing is premised on creating opportunity for substantial national dialogue on policing in South Africa.
6. APCOF acknowledges the extension for comment on the Green Paper to 31 July 2013, and the process of provincial consultations. However we do not believe this provides sufficient opportunity for effective consultation on the Green Paper both in terms of the time-frames allowed for consultation and the lack of investment in publicising consultations and generating public awareness.

Contextualisation of Policing in South Africa

7. The Green Paper provides a critical opportunity to all South Africans to reassert the principles of democratic policing in South Africa following significant events and developments in policing since the 1999 White Paper on Safety and Security. Since 1999, there have been fundamental shifts in the policing environment. These include:
 - Increased role of private security and non-state actors in policing;
 - Developments in community partnership approaches with the advent of Sector Policing and Community Safety Forums;
 - Changes to South African Police Service's (**SAPS**) administrative arrangements through doing away with the areas and introducing clusters;
 - Shifts in the role and function of the Secretariat and the Independent Police Investigative Directorate (**IPID**);
 - The disbanding of certain specialist units within SAPS;

- South Africa's shifting profile of crime;
 - The emergence of new communities following growing migration to South Africa;
 - Exposure of South Africans to high level and endemic corruption within the SAPS;
 - The crisis to our systems of accountability following the acquittal of the accused in the Andries Tetane murder trial; and
 - The crisis in public order management and police use of force following the Marikana massacre.
8. APCOF is concerned that the Green Paper does not provide sufficient evidence based research on the current state of policing crime and insecurity in South Africa. This is exacerbated by a lack of referencing. In this regard we attach a comprehensive bibliography released by the Institute of Criminology on policing research in South Africa as **Annexure A**.
9. APCOF recommends that the Secretariat undertake thorough and evidence-based research on the state of policing , and that this research form the basis of policy decisions.

Impact of Crime

10. APCOF believes the discussion on the impact of crime in the Green Paper is selective, particularly in the superficial discussion on crime and globalisation.
11. The Green Paper misses the opportunity to address the significant challenges of migration. Concerns around the poor policing of xenophobic violence, the over-policing of migrant communities, and the corruption that pervades policing of migrants, is well documented.
12. The Green Paper also fails to address the opportunities and challenges in policing other communities, including notably the Lesbian Gay Bisexual Transgender and Intersex (**LGBTI**) communities.
13. Effectively, policing the increasing diversity of South African society will require new skills in language and diversity that have not been previously prioritised in SAPS.
14. APCOF recommends that skills and sensitivities required to police diverse communities should be established within a vision for the SAPS as an organisation that will be able to grow and adapt to the changes South African demographics.

The National Development Plan

15. The Green Paper fails to fully adopt the agreed government vision as set out in the National Development Plan.
16. By failing to embrace this vision, the Green Paper avoids and, at times, contradicts the NDP in the areas of:
- Demilitarisation;
 - The need for an Integrated approach to safety and police developed Safety Plans that deal with risks;
 - Community participation;

- Codes of conduct;
- Strengthening the Internal disciplinary environment;
- Establishing a National Police Board;
- Appointing the National Commissioner on a competitive basis; and
- Strengthening performance monitoring.

17. APCOF recommends that the Green Paper be revised to align with the vision for policing contained in Chapter 12 of the NDP, and to align with a more comprehensive project of promoting safety in South Africa as articulated in the Constitution, the Reconstruction and Development Plan, the National Crime Prevention Strategy, and the 1999 White Paper on Police.

Building Safety Communities

18. APCOF believes community safety should be promoted through a combination of law enforcement and crime prevention approaches. While we recognise that the Green Paper on Policing will be followed by a Green Paper on Safety and Security and therefore that the Green Paper on Policing focuses on the policing environment closure, we submit that the synergy between policing and safety must be maintained.

19. Contrary to the statements in the Green Paper, APCOF holds the view that the National Crime Prevention Strategy (**NCPS**) was not only hampered by the assignment to SAPS of responsibilities beyond its control, but also by:

- Locating the NCPS within SAPS through the absorption of the Secretariat into SAPS and thus divesting other departments of the responsibility;
- Failing to commit to the long terms investment and planning required for crime prevention to show impact; and
- Re-orientating SAPS strategy away from the NCPS to Crime Combating.

20. The policy direction spelled out by the Green Paper continues to run the danger of putting the SAPS on a trajectory which has run parallel to National Policy since 1999, and evidence by:

- The discarding of the long-term National Crime Prevention Strategy in favour of a police led short term crime combating strategy;
- The inability of the 1999 White Paper to find traction within SAPS;
- The change from a Ministry of Safety and Security to a Ministry of Police; and
- The re-introduction of military ranks that had been rejected in the 1994 transformation of the SAPS from its Apartheid past.

21. APCOF recommends that the vision and the detail of the Green Paper speak more clearly to the need for an integrated approach to safety.

Democratic Policing

22. APCOF welcomes the commitment expressed in the Green Paper to Democratic Policing.

23. However, we recommend that the Green Paper should more clearly articulate a vision for police.
24. In the absence of this agreed vision, there are several anomalies and contradictions to the vision of policing throughout the Green Paper. For example:
- APCOF believes that the articulation of policing as an institution of governance on pg 4 of the Green Paper is incorrect. It is both dangerous and divisive to govern through crime. Rather, the police should be viewed as an institution of the democratic state which has the specific task of detecting and investigating crime, upholding the constitution and protecting democracy; and
 - The Police should not operate “between” the constitutional framework and legal mandate as set out on pg 17 but rather “within” the constitutional framework and legal mandate.
25. APCOF recommends that a vision for democratic policing should be clearly established in the Green Paper, and include:
- A police unequivocally in service of society rather than the state;
 - Protected from undue political interference;
 - Transparent and accountable;
 - Assured of adequate and secure funding;
 - Its personnel are representative of the communities they serve;
 - Police members are skilled, professional and can perform effectively and efficiently across the organisation;
 - Integrity management is a central function of the police administration; and
 - Police members are treated respectfully and rewarded equitably.

A Learning Organisation

26. APCOF does not agree that the SAPS should not be viewed as an organisation in continuous transformation. This notion perpetuates instability and insecurity.
27. APCOF recommends the SAPS must position itself as learning organisation and, at every level, seek to improve its systems of monitoring, evaluation, feedback and learning based on empirical research and knowledge.
28. APCOF recommends that in this regard the formalised partnerships be developed with Universities and research organisation to facilitate improved access to research. (Further see points 42 and 43)

Partnership

29. The Green Paper fails to produce a coherent vision of partnership. Rather, it simply juxtaposes various manifestations of partnership, such as Community Police Forums, Sector Forums and Community Safety Forums.

30. The system of partnership characterised by Community Police Forums, Sector Forums and Community Safety Forums Village committees and street committees has developed organically and, at various times, resulted in duplication, confusion and conflict. This cannot continue.
31. APCOF recommends that the Green Paper set out a clear and coherent architecture of police community partnership.
32. APCOF further recommends that this system of partnership should reintroduce a dedicated system of lay visits to police detention facilities to assess adherence to procedural safeguards and conditions of detention.

Use of Force

33. APCOF believes that the recent amendment to Section 49 of the Criminal Procedure Act may be subject to a Constitutional Court challenge in its potential violation of the right to life and its variance with international law.
34. APCOF recommends that the Green Paper avoid the use of the phrases like "Use of Force is sanctioned to achieve the constitutional mandate" and "be guided by policy and regulation". Rather, APCOF recommends that the Green Paper refer to use of force as sanctioned to protect life and must be guided by the law.

Single Police Service

35. APCOF does not believe there is a Constitutional imperative for a single police force and that any issues of co-operation can be addressed within the current operational arrangements between the SAPS and Municipal Police.
36. APCOF recommends that this chapter be excluded from the Green Paper and replaced with a chapter that addresses the values, norms and fundamental principles required for effective partnership between the multiplicities of policing bodies, including private.

Militarisation

37. APCOF believes that the reintroduction of military ranks is an outward and visible sign of a creeping militarisation of the SAPS.
38. The military rank system exposes the SAPS to the potentially seamless transfer between military and police personnel as evidenced by drawing personnel from the military to fill the ranks of the Tactical Responses Teams.
39. APCOF recommends the Green Paper unequivocally reject this trend, including through the return to civilian ranks.

Crime Information

40. APCOF believes that access to up-to-date crime information is essential for the development of partnership.
41. APCOF recommends that the Green Paper clearly articulate the importance of regular accessible crime information made available from the police to the public.
42. Further APCOF believes that unnecessary bureaucratic limitations to building collaborative research partnerships between the SAPS and the research community inhibits the organisation from being able to operate from a position of knowledge.
43. APCOF recommends the Green Paper address the need for effective streamlined environment for research partnership.

Training

44. APCOF welcomes the recognition and importance given to training.

However, APCOF notes a significant gap in police basic training is in people skills and the ability of the police to perform in:

- facilitating requests for assistance and responding to the community;
- handling witnesses and victims;
- working with community groups;
- problem solving;
- ethical conduct;
- equal treatment; and
- human rights standards.

45. APCOF recommends that the skills noted above be prioritised as a core and substantial component of police training.
46. Further, APCOF recommends special attention be paid to training for Station-level mentoring. This is the cornerstone to the current approach to training. Mentoring is a skilled environment and as such, appropriate training is needed for mentors, their competence must be tested, and there must be rigorous and regular assessment of the charges in their care.

Crowd Management

47. APCOF recommends that training for public order police be prioritized and provided on a regular basis to members of all ranks. We also recommend that there be a clear policy document that is

devised, agreed upon, circulated, and aligned with the training curriculum. We further recommend that there be consideration of a return to the Belgium model of crowd management.

48. To support more effective public order management, a fortified public order police unit must be equipped with adequate and effective less-than-lethal equipment. APCOF strongly believes that the primary function of the POP unit must be crowd management, not crime prevention. All members of the POP unit must have regular in-service training in crowd management, and negotiation training, for crowd management, must be provided to all commanders in the unit. Proper equipment, and training that accompanies it, must be provided for the recording of all crowd management events
49. The Regulation of Gatherings Act is critical to the peaceful management of any gathering or demonstration. APCOF recommends its effectiveness in the management of gatherings and assemblies must be assessed and reviewed particularly in circumstances where either the police or the local authority may be the subject of the demonstration.

Cluster System

50. The Cluster system has replaced the area system.
51. APCOF recommends that the Green Paper set out this new node of administration within the police in anticipation of further regularisation in law. This must include administration role functions, accountability and management.

Corruption

52. APCOF welcomes the SAPS decision to re-establish an internal anti corruption unit.
53. APCOF recommends that the Green Paper reiterate this need.

National Commissioner

54. APCOF believes the tasks assigned to the National Commissioner to focus the resources and activities of the SAPS on the following major policing priorities including:

- Improving capacity for criminal investigation, crime intelligence and forensics;
- Improving crime prevention through targeted visible policing; and
- Improving service delivery.

are short-term and inappropriate for a policy document, and blurs the line between policy oversight and operational independence.

55. APCOF recommends that the Green Paper address the competitive appointment of the National Commissioner as agreed in the National Development Plan, and the competency expected of the person required to fill the position.

56. APCOF recommends the Green Paper set out the broad need for, function and composition of the Police Board as proposed in the NDP, to guide the incorporation of the Board in future Police legislation.
