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Parliamentary oversight of the police in South Africa: Lessons and opportunities

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Introduction

This paper discusses the development of the South African National Assembly Portfolio Committee on Police (the Portfolio Committee, or the Committee) and both the challenges and opportunities presented by the Committee's police oversight role. Drawing on the author's experience as the former Chairperson of the Portfolio Committee on Police, this paper provides insights into how parliamentary oversight can be strengthened, and how the relationship between the South African National Parliament and the South African Police Services (SAPS) can be improved.

The Members of Parliament (MPs) who comprise the Portfolio Committee do not execute their oversight mandate in isolation. Rather, oversight is a conscious collaboration between various role-players including MPs, parliamentary research support staff, other state entities, and the deliberate and measured involvement of civilian bodies within the police and criminal justice sectors.

This paper opens with an analysis of Parliament's oversight mandate, including its powers and obligations. It examines the mandate and minimum obligations of the Portfolio Committee, the evolution of the Portfolio Committee, and developments, which informed how it now conducts its business. The challenges faced by the Portfolio Committee in conducting oversight over the police are highlighted. Several observations are made on the need for the Committee to take cognisance of the international environment within which modern policing takes place and its role in ensuring implementation of regional and continental agreements.

The role of civil society as a key partner in police oversight is assessed. The paper discusses the methods of engagement and various aspects that should be considered in realising successful civil society engagement with the Portfolio Committee on Police.

Parliamentary oversight

Oversight is a constitutionally-mandated function of Parliament and of the national and provincial legislatures. Parliamentary oversight, as prescribed by the Constitution of the Republic of South Africa, 1996 (the Constitution), is directed at 'scrutinising and overseeing' executive and administrative action.¹

Since 1994, Parliament has aligned its work to complement the structure of the Cabinet, manifesting in a committee system that mirrors executive portfolios and state departments.

The Portfolio Committee is responsible for conducting oversight over the Minister of Police and the following departments under the Minister's control:

- SAPS
- Civilian Secretariat of Police (CSP)
- Independent Police Investigative Directorate (IPID)
- Private Security Industry Regulating Authority (PSIRA)
- Directorate for Priority Crime Investigation (DPCI), commonly known as the 'Hawks', which reports independently to Parliament through the Portfolio Committee.

These five entities are required by law to report to the Portfolio Committee on their annual budget, their five-year strategic plan, their annual performance plan, their quarterly financial reports and their Annual Report. The Portfolio Committee in turn reports to Parliament on its findings and recommendations.

Oversight is aimed at improving the way that government departments and entities conduct themselves and the quality of the service they deliver to the citizens of South Africa. With regard to the police, the Committee works to ensure that the police exercise their mandate within the parameters of the law and within their allocated budget.

The oversight function of Parliamentary committees requires both a strategic and structured approach. The committees play a key role in the development and implementation of the Constitution and legislation, and the approval and oversight of budget spending.

A structured and coordinated approach requires an understanding of performance assessment and the linkages between budgets, plans and spending. Oversight visit reports, and information gathered by researchers and civil society amongst others, are key tools to enhancing this function as reflected in the recently introduced Budget Review and Recommendations Reports (BRRR)² which guide the work of the Committee.

The basic oversight instruments that the Portfolio Committee uses are:

- Annual budget votes.
- Performance targets presented with the budget and as contained in strategic and annual plans.
- Quarterly financial statements reported to the National Treasury.
- Audit reports contained in the Annual Reports, including financial and performance-related information.
- Investigation reports.
- Compliance reports in terms of legislation, such as the six-monthly Domestic Violence Reports required in terms of the Domestic Violence Act, 116 of 1998.
- Oversight visits to police stations and police facilities such as the Central Firearm Registry.
- Dedicated oversight meetings on topical issues.

Evolution of the Portfolio Committee on Police: 1994–2014

A number of changes have been made to improve the effectiveness of the oversight conduct by the Portfolio Committee over the past 20 years of democracy.

The committee agenda

Scrutinising the performance of five entities within a defined parliamentary programme creates a significant time and capacity burden for the Committee. To address these demands, extended days and working hours, especially during budget and annual report oversight periods, have become the norm by the Fourth Parliament. For example, until 2009 the Portfolio Committee dealt with SAPS' budget in one day, but now budget hearings are conducted over four days.

Research capacity

In conducting oversight, a Portfolio Committee relies on information received from the very body that it must oversee. The result is that the body under scrutiny has the power to influence the type and quality of information it provides to the Committee. The Committee's ability to verify the accuracy of the information is difficult given issues of access and capacity.

During the early years of democracy, only one Committee researcher and one Committee secretary supported the Portfolio Committee. The Committee researcher was responsible for a cluster of committees. In-depth research, while important, was an almost impossible task.

Over the years the Committee's research capacity has increased, and the utilisation of the researchers and their research products has evolved and improved significantly. By the inauguration of the Fourth Parliament, the Portfolio Committee was supported by a Committee secretary, two dedicated Committee researchers and a content advisor.

The Committee researchers' written briefs include critical analyses and evaluations of documentation submitted to it, and have become part of the Committee's expected output.³ The increased research capacity means that researchers can now evaluate and critically analyse all documents prior to their presentation to the Committee by state departments. These research briefs include contextualisation of information by, for example, analysing the Annual Report in the light of the budget, annual performance plans and quarterly spending, and highlighting areas of strength, weakness and deviation. Accordingly, Committee Members are better empowered to interact with the information in a meaningful manner.

By the Fourth Parliament, the researchers were well established as an essential part of the Committee's work. The Committee's programme includes scheduled sessions for the researchers to verbally brief the Committee. In practice, this often means that, prior to meetings between the Portfolio Committee and SAPS, Committee Members will meet with the researchers.⁴ During these briefings, the researchers summarise their findings, highlight any shortcomings, contradictions and achievements, as well as identifying possible questions to be put to the SAPS or the Department by the Committee. The Committee will also use the opportunity to strategise its approach going into the meeting.

These verbal briefings by the researchers play an important part in ensuring the effective oversight functioning of the Portfolio Committee on Police. The briefings allow the Committee to prepare for the meeting. They also serve as a political equaliser: after a briefing by the researchers, Members are often united in their focus on the pertinent issues, rather than being dominated by opposing political discussion.

Enhanced research capacity also means that the Committee can proactively request in-depth research projects. In practical terms, when the Portfolio Committee identifies an area of concern, research can be completed on the issue before parties are called to appear before the Committee.

An example of this proactive work was the research undertaken on suspected corruption in the building environment within the SAPS. A sub-committee of the Portfolio Committee was established. As a result, various critical documents were identified and analysed. Scrutiny of service providers, which were identified as successful bidders, revealed that what was thought to be a number of different companies was actually one company operating under various names. By reviewing the minutes of the bid specification committee and the bid adjudication committee, it was revealed that, in some instances, the same people who designed the bid specifications served on the bid adjudication committee, contrary to the requirements of the Public Finance Management Act, Act 1 of 1999 (the PFMA). This proactive research also revealed that stations built under the management of the SAPS took longer and cost significantly more than those projects managed by the Department of Public Works.

The Portfolio Committee exposed potentially serious corruption within the SAPS building environment (which now forms part of an on-going investigation by the Special Investigation Unit (SIU)). In addition, the SAPS were forced to rethink its approach of assuming building responsibilities, which is the domain of the Department of Public Works.⁵

Monitoring tools

In 2005, the former Portfolio Committee on Safety and Security (predecessor of the current Portfolio Committee on Police) identified a need to develop a standardised monitoring tool for the Committee's oversight visits to police stations.

The Station Monitoring Tool (the Tool) needed to be adaptable, so that changing priorities of the Portfolio Committee could be incorporated. The Tool had to provide for:

- Effective oversight by the Portfolio Committee over policing at station level.
- The capturing, evaluation and proper utilisation of valuable information gathered at police stations.
- Comparison of police stations visited by establishing uniform measurements when visiting police stations.
- The gathering and capturing of independent information that could be used when interacting with the SAPS.
- Identification of successes and problems between stations and provinces.
- Strengthening the institutional memory of the Portfolio Committee in so far as it provides a reference point when a station is revisited in order to measure progress.
- Comparison of SAPS grading of stations with the findings of the Portfolio Committee's visit.
- Practical examples that the Committee could use during interactions with the SAPS management in order to question claims made by management or to illustrate Committee findings.
- The monitoring of implementation of legislation by the SAPS at station level.

The Station Monitoring Tool was developed jointly with policing experts and officially adopted by the National Assembly, which formalised its status. It was developed in the format of a questionnaire that is used during oversight visits to police stations and was made available to all police stations through the Minister of Police.

The Tool is divided into four sections: station management; community service centre; station operational components; and service delivery perceptions. Each are discussed in detail below.

Section 1: Station management

Section 1 focuses on general station management issues and includes the physical condition of the station, specifically:

- Accessibility and visibility of the station.
- Physical condition of the station.
- Training and experience of the Station Commander.

- Demographic profile of the area that the police station serves.
- Crime profile of the area.
- Training requirements of the station, including whether the station has field training officers.
- How well the station orders and national instructions are communicated to members of the SAPS working at that station.
- General infrastructure and satellite offices.
- Stakeholder interaction such as relationship with unions and the Community Policing Forums.

Section 2: Community Service Centre

Section 2 focuses on the Community Service Centre (CSC) of a police station. The CSC is of particular importance as most community members' engagement with police stations is limited to the CSC. This section includes the following:

- The implementation of policy and legislation (including the Domestic Violence Act, the Child Justice Act, the Firearms Control Act and the Second Hand Goods Act).
- General staffing and personnel issues such as vacancies, leave and absenteeism.
- Disciplinary and grievance procedures, including interaction with the Independent Police Investigative Directorate (IPID) and public complaints.
- The state of vehicles and vehicle availability at the station.
- Availability of operational equipment such as bulletproof vests, handcuffs, torches etc.

Section 3: Station operational components

Section 3 focuses on the operational components of the station and includes the following:

- An intensive focus on the Detective Branch of a station including: Branch Commander's qualifications and experience; the facilities available to the detectives, their training standard, vehicles, caseloads; case management; missing dockets; the use of informants; crime scene management; and the relationship with first respondents, Correctional Services and the courts.
- The holding cells, including the general conditions of cells; whether there are children in cells; adherence to the '48 hours and charged' policy; inspection of cell registers; deaths in custody and escapes from police custody.
- General crime prevention activities.
- The inspection of SAPS 13 Stores (evidence stores) and the registers, focusing on proper marking of evidence exhibits and adherence to National Instructions.
- The state of archive stores.
- Specialised units.
- The implementation of sector policing.

Section 4: Service delivery perceptions

Section 4 records the impressions and experience of the public at the station. This is done by asking relevant questions to members of the public regarding the general impression of the police in the area and the quality of the service that they received.

Since 2005, the Portfolio Committee has successfully used the Station Monitoring Tool to conduct oversight visits at police stations across the country and now has almost ten years' worth of station-level performance data at its disposal.

The Portfolio Committee uses this tool in both announced and unannounced visits to police station, and it facilitates the collection of independent information that can be properly collated, analysed and applied in the oversight work conducted by the Portfolio Committee.

The Tool has also been used by provincial legislatures across the country and by the Select Committee on Security and Constitutional Affairs (now renamed the Select Committee on Security and Justice) in the National Council of Provinces and has had the additional benefit of:

- Increasing the capacity for oversight as the Members of the Provincial Legislatures whom serve on the police committees use the same tool and information used in Parliament.
- Standardising oversight, by Members of Parliament (the National Council of Provinces and the National Assembly) and the Provincial Legislatures.
- Enabling other Members of Parliament (those who were not serving on the Portfolio Committee on Police), to conduct oversight at the police stations in their constituencies using the Station Monitoring Tool as a guide.

Parliament and civil society

Over the years, the level of involvement of civil society in the work of the Portfolio Committee on Police has increased. In the past, the interaction between the Committee and civil society was infrequent. However, this interaction has since evolved to a point where it is more formalised and forms part of the Committee's programme and point of reference. Civil society is now a recognised partner of the Portfolio Committee.

Benefits of partnership

The partnership between civil society and the Portfolio Committee is not always based on agreement, but always on mutual respect and the realisation that there are mutual benefits of partnership, which include:

- Providing government departments, including the SAPS, with the additional incentive to enhance its own efficiency in service delivery and in spending.
- Increased transparency.
- Fostering an improved understanding of budget and policy decisions.
- Enhancing accountable and democratic government.
- Positively impacting on the responsiveness of government to the needs of citizens.

Provision of additional and independent sources of information

The Portfolio Committee on Police recognises that civil society has much to contribute to the Committee in terms of providing additional sources of independent information. Furthermore, civil society interacts with the SAPS (and the broader public) differently to the Committee, and therefore provides an alternative perspective that can enrich the work of the Committee.

In preparation for budget hearings, the Committee sets aside two working days. The first day is used for briefings by the researchers and the second day provides an opportunity for civil society organisations to brief the Committee on the SAPS budget, including how it is allocated and whether it adequately reflects policing priorities. Organisations making use of this consultation opportunity come from a range of sectors, including academia, trade unions in the policing environment and Non Governmental Organisations (NGOs).

However, input by civil society organisations is not limited to the budget. The Committee has also called for inputs on specific subjects such as the implementation of the biannual reporting requirements in terms of the Domestic Violence Act, 116 of 1998.

Apart from enriching the perspective of members of the Committee, these engagements also provide opportunities for interaction between parliamentarians as legislators and organised civil society. During these interactions, the Committee often encourages stakeholders to make suggestions on how issues can be addressed and situations improved.

Increasing civil society engagement

The following are suggestions to improve the level of engagement of civil society in Parliament:

- **Written submissions:** The Portfolio Committee will call for written submissions on any aspect of its work through advertisements in the media. However, an active and effective civil society will not wait for these – they will be aware of the Committee's programme. They will use that knowledge to prepare and to proactively make written submissions to the Committee.
- **Oral submissions:** This remains the most effective way for civil society to interact with the Portfolio Committee on Police. Substantial written submissions are normally followed up by oral submissions. In a written submission, civil society organisations should indicate their willingness to make an oral submission to the Committee. When making an oral submission, civil society has an opportunity to explain and expand on the written submission. Importantly, it allows the members of the Portfolio Committee on Police to pose questions of clarity, and engage with presenters.
- **Personal engagement:** Although one-on-one interaction between civil society and Members of the Portfolio Committee is time-consuming, the effectiveness of this method of engagement should not be underestimated.

All Portfolio Committees of Parliament have key Members who have influence on the Committee. Identifying these Members is the first step and requires a regular civil society presence in Portfolio Committee meetings.

If civil society organisations or individuals can establish a relationship with these influential Members and support a specific agenda, the organisation or individual has a voice in the Committee. The manner of interaction with these Members is important. Members must never feel compromised, and engagement should be based on solid arguments and evidence. Civil society engagement and information should be empowering and convincing by demonstrating the advantages that it brings to improved service delivery.

- **Sustained engagement:** Members of the Portfolio Committee must know the civil society organisations. This can be achieved by civil society inviting Portfolio Committee Members to seminars, conferences or workshops, or make newsletters and publications available to Members. Civil society organisations should also have a presence in the meetings of the Portfolio Committee, which demonstrates commitment and is key to building a relationship.

Removing obstacles for effective participation by civil society

By giving attention to the following aspects of the Portfolio Committee's work, obstacles can be avoided and the effectiveness of interaction between civil society and the Portfolio Committee can be dramatically improved:

- **Understand the Policy Process:** Civil society's understanding of the policy-making process will ensure that civil society engages with the right people at the right time during the process. For example, policy leads to legislation. A practical example of this is the development of the White Paper on Policing expected in 2015. This will form the basis of all future legislation dealing with the South African Police Service. Those civil society organisations that involved themselves in the consultation phase of the drafting of the white paper have a better chance of influencing the policy as well as future legislation.
- **Understand the legislative process:** As with the policy-making process, civil society organisations should inform themselves of the legislative process to ensure that their engagement is relevant and can have impact. For example, civil society input at a time where the Portfolio Committee has already agreed on something will have less impact than making an input at the beginning of the process when the Committee can take submissions into consideration during their deliberations on issues.

Understanding the legislative process also means understanding constraints under which law-makers operate, including budget limitations and government capacity. If civil organisations do not demonstrate an understanding, or refuse to acknowledge constraints, it impacts negatively on their ability to influence, and affects their legitimacy as Committee stakeholders.

- **Provide evidence:** Civil society organisations should adopt a creative and constructive engagement with the Committee on the complex parliamentary terrain where there are many competing interests.

When civil society organisations make a submission to the Portfolio Committee on Police, they should always attempt to provide evidence to support their view. When evidence is provided it positively impacts on the legitimacy of the civil society organisation, whom the Committee will consider a source of expertise, and adds weight to its arguments.

Evidence does not have to be academic in nature, but it is important that evidence is collected in a legitimate, rigorous and systematic way. It is important that civil society organisations know when to present what evidence – in some instances anecdotes may be appropriate, while in others case studies and statistics are required.

The evidence should be presented in such a format that can assist the Committee members to identify the problem, its causes and possible solutions.

Systemic evidence often reflects the daily reality, and this evidence can assist the Portfolio Committee in monitoring the implementation of strategies and in assessing performance. Systemic evidence can also improve the oversight over service delivery of the SAPS.

- **Relevance:** Civil society organisations should take into account the reality of budgetary constraints and the political context to ensure the relevance of their submissions. The submission should also have a clear policy position, be focused, and include evidence where required.
- **Provide alternatives:** Submissions should provide the Committee with constructive alternatives or suggestions.
- **Communication:** The manner in which civil society communicates and interacts with the Portfolio Committee or its individual Members is a critical factor in successful engagement. Communication should be accessible, it should be digestible and it must be timeous. If civil society organisations rely on written communications alone, they have less chance of being successful. Members of the Portfolio Committee on Police fight an ongoing paper battle and civil society must be aware of the time and schedule constraints of members. To the extent possible, communications should be made in person.

Some of the best and most meaningful interactions take place informally following presentations during Committee sessions. Members of civil society organisations can take up issues with individual Members of the Portfolio Committee on Police during breaks of the Committee. Often those civil society organisations that stay beyond their own presentation and observe the entire consultation process make the biggest impact, as they have followed the development of arguments and observed the thought patterns of Committee members.

- **Networking:** Civil society organisations should not only network with Members of the Portfolio Committee on Police but also with each other. Organisations are encouraged to seek like-minded organisations that hold a similar view and to encourage others to participate in the processes allowed for by Parliament. Repetition solidifies the argument.

Civil society organisations can also interact with political parties outside of the Parliamentary process in an attempt to influence the policies of these parties. In the run-up to elections, all political parties developed manifestos. This is the ideal time to begin engagement on promotion of civil society organisations' programme.

- **Strategy:** The interaction between Committee Members and civil society organisations should be mutually respectful. Engagement should be informative and discussions should be convincing and avoid becoming needlessly argumentative.

Other government departments as critical oversight partners

Like all government department and organs of the state, SAPS does not operate in isolation. The departments and organs that interact with SAPS include National Treasury, the Department of Public Service and Administration, the Office of the Auditor General and the Department of Monitoring and Evaluation in the Presidency.

The Portfolio Committee interacts and receives briefings from these entities prior to its annual oversight activities such as the quarterly financial reports (specifically from National Treasury), and before Annual Report hearings (the Office of the Auditor General). The Portfolio Committee on Police also requests evaluation on SAPS from the Department of Monitoring and Evaluation.

When necessary, the Portfolio Committee also tries to refer issues to relevant departments to ensure that those best suited can deal with issues that cannot be resolved by the Committee. For example, when the Portfolio Committee was provided with information about an irregular appointment at senior level in the SAPS, it referred the matter to the Public Service and Administration Board, who conducted a full investigation and found that the appointment was indeed illegal.

The Civilian Secretariat of Police is another department with direct responsibility for SAPS. Over the last few years, the Portfolio Committee has encouraged and reminded the Civilian Secretariat of Police of their monitoring and evaluation responsibility in terms of the Constitution and its enabling legislation, the Civilian Secretariat of Police Act, 2 of 2011. It is therefore crucial that the Secretariat keeps the Committee abreast of the work that it does, but at the same time is aware of the issues that the Portfolio Committee raises as matters of concern. During the last two years, the contribution by the Civilian Secretariat of Police has improved and has begun to inform the work of the Portfolio Committee on Police.

An example of this interaction is the Portfolio Committee's reports on its oversight visits to police stations, which raised concerns regarding the management and control of SAPS 13 Stores (evidence stores). As a result, the Monitoring and Evaluation Directorate in the Civilian Secretariat of Police prioritised its evaluation of the stores. The subsequent report from the Civilian Secretariat of Police corroborated the evidence and findings of the Portfolio Committee and made recommendations to address the management and control issues.

Collaboration between the Portfolio Committee and the Civilian Secretariat for Police is also important given the Secretariat's responsibility for the development of policy and advice to the Minister. Recommendations made by the Portfolio Committee should influence policy direction and should therefore be noted and considered by the Secretariat.

The Independent Police Investigative Directorate is also directly engaged in the oversight of the SAPS, with a focus on investigation of police criminality. IPID grapples with many challenges, including the need to make recommendations or findings that can result in the change of standing orders and behaviour in the police. Findings at this stage are very much limited to criminal prosecutions, and

insufficient attention is being given to broader institutional recommendations. The Committee can play an important role in tracking the resolution of systemic problems if these are brought to its attention.

International and regional instruments dealing with oversight

The Portfolio Committee on Police monitors compliance with international and regional agreements affecting the SAPS; however, the application of this mandate by the Committee is weak. Legislation that implements conventions and treaties is drafted to instruct that Parliament, through the Portfolio Committee on Police, be regularly informed of compliance, and the Committee in turn reports to Parliament on compliance. However, this reporting requirement does not extend to many soft law instruments impacting on policing, such as the *Southern African Regional Police Commissioners' Cooperation Organisation (SARPCCO) Code of Conduct for Police*, or the *African Commission on Human and Peoples' Rights (ACHPR) Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detentions*.⁶

International law and soft law are an important aspect of the legal framework of South Africa, and Parliament should adopt a more robust role to track progress in implementation.

The Civilian Secretariat of Police and the IPID should also be made aware of relevant international instruments. The Civilian Secretariat of Police's Monitoring and Evaluation Directorate is an important oversight structure that can be tasked with monitoring the extent of awareness, implementation and adherence to international and continental and regional instruments with regard to the frontline of policing.

The Department of Monitoring and Evaluation in the Presidency should also be encouraged to include monitoring international continental and regional instruments within their business.

Parliament's relationship with bodies such as SADC, the African Union and the ACHPR can be further improved by including structured obligations for the representatives attending to report back to the relevant Committee/s in Parliament.

The South African Police Service Act is still based on the interim Constitution of South Africa. A major review of the Act, also to bring it in line with the final Constitution, is underway. The review of the Act provides an ideal opportunity to enact the oversight by Parliament of ratifications and the implementation of international agreements and treaties by the SAPS. Currently there is no legal requirement on the SAPS to report on the implementation of these.

Challenges facing effective police oversight by the portfolio committee

Notwithstanding progress over the past 20 years, effective oversight continues to be impeded by factors such as the availability of support staff, in-depth understanding and knowledge of the multiple entities overseen, budget constraints and capacity.

Administration

The Parliamentary programme determines what opportunities the Portfolio Committee has to conduct oversight.

One of the biggest challenges facing the Portfolio Committee on Police is that of time allocated within the Parliamentary programmes to conduct thorough and meaningful oversight. It is not possible for the Committee to effectively deal with a R76 billion SAPS budget or annual report of an almost 200 000-strong organisation within a limited period of time. It is also not possible, nor is it desirable, to prioritise only one of the five entities above the other. This is especially so because the work and

success of the one is so closely linked to, and impacts on, the other. Serious consideration needs to be given to the structure of the Parliamentary agenda versus recess and constituency periods.

Every committee of Parliament requires high-quality minutes and Committee Reports to capture the discussions and information and to provide for an effective record of the work of Committees. The Committee's support staff directly impact on this aspect of the effectiveness of a Committee and require continuous development to stay informed of issues. Likewise, the level of knowledge of the individual Members of Parliament serving on the Portfolio Committee is key to effective oversight.

Access to information

The oversight work conducted by the Portfolio Committee on Police results in recommendations or requests for further information from the entities. Parliamentary systems to monitor the implementation of such recommendations or requests for further information are not sufficient and, as a result, proper follow-up or monitoring of implementation is weak.

The use of administrative bureaucracy frustrates and delays access to information or responses to parliamentary questions and are a challenge to effective oversight. As with many other organs of state, the Portfolio Committee is not immune to the manipulation of bureaucracy to stall or delay the interrogation of an issue. Commitment and tenacity are then required. Nonetheless, it remains difficult to determine whether full access to all relevant information has in fact been made available. The Member of the Executive plays an important role in facilitating access to information.

Budget scrutiny

Although legislation is now in place to make it possible for Parliament to change a Department's budget, the effective implementation and the exercising of this power still needs to come to fruition. In the absence of the full implementation of this power, the Portfolio Committee has engaged with National Treasury on certain findings and financial concerns and has made recommendations with clear budgetary implications. National Treasury has taken many of these recommendations into consideration, and they have been reflected in subsequent budgets as well as in modified National Treasury processes.

Political will

Political will remains the single most critical element for effective oversight. Party-political dynamics also impact on the oversight work of the Portfolio Committee. The proportional representative system means that Members are elected on their party's ticket and therefore represent their party's agenda. This can result in members elevating political considerations ahead of robust oversight (which can potentially cause political embarrassment). Furthermore, oversight can be compromised when Members of a political party use information opportunistically in the interest of narrow party politics. This compromises the credibility of the Portfolio Committee and can damage the relationship of trust amongst Members on the Committee as well as between the Portfolio Committee on Police and the management of the SAPS. If the Portfolio Committee can unite across party political lines, it will improve the effectiveness of the Committee.

However no matter how robust the oversight conducted by the Portfolio Committee on Police its effect is questionable if it does not bring about change in behaviour. Consequence of non-implementation of findings or recommendations by the Portfolio Committee are required to close the oversight circle.

Conclusion

The challenges faced by the Committee in striving for stronger oversight can be addressed in part through effective collaboration with the many entities with whom the Committee interacts.

The parliamentary capacity to conduct oversight can be enhanced by empowering the provincial legislatures' committees on police (within their constitutional mandates) to conduct oversight in a

complementary manner that reinforces the oversight conducted in the National Assembly and the National Council of Provinces.

Determining priorities for the year for the Portfolio Committee on Police will help focus the work of the National Assembly Committee and that of the Provincial legislatures.

The partnerships that exist between the Portfolio Committee and civil society organisations can be strengthened and new partnerships should be developed and nurtured.

If civil society organisations increase and broaden their interaction with the political parties represented in Parliament, with the Portfolio Committee on Police, and with individual Members on the Portfolio Committee of Police, a common understanding and shared focus can develop.

Members of Parliament serving on the committees that oversee the police should be empowered to understand the police and be given the skills and tools to facilitate oversight.

Effective political oversight of the SAPS is not negotiable. Given the special powers provided by law to SAPS, it is both necessary and justified. Oversight that improves the way in which the police conduct themselves will create trust and respect for the police. Trust and respect will create a better relationship between the police and the community and contribute to a safer society.

Endnotes

- 1 Constitution of the Republic of South Africa, Act 108 of 1996, Chapter 4, Section 42 (3).
- 2 See Money Bills Amendment Procedure and Related Matters Act, 9 of 2009.
- 3 For example, Mbadlanyana, T (2013) *Salaries and staff complement in the Communication and Training Programme of PSIRA*; van Zyl-Gous, N (2013) *Analysis and summary Civilian Secretariat of Police 2012/13 Annual Report*; van Zyl-Gous, N (2013) *Organizational Restructuring of the SAPS: September 2013*.
- 4 For example, the meeting held on 9 October 2013 to discuss the 2012/2013 Annual Report of the South African Police Service was preceded by a presentation by the researcher highlighting key areas of concern.
- 5 Portfolio Committee Meeting Minutes: 2 September 2010.
- 6 Other relevant treaties, guidelines codes and frameworks South Africa has agreed to and which apply to their environment include the *ACHPR Guidelines on the Prevention and Combatting on Torture and Cruel and Inhumane Treatment*, *The Robben Island Guidelines* and the *Southern African Development Community (SADC) Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation*, and which now contains a dedicated police sector.

Bibliography

- Dissel A & Tait S (2011) *Implementing the Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO) Code of Conduct*. African Policing Civilian Oversight Forum, Cape Town
- Dissel A & Frank C (Eds) (2012) *Policing and Human Rights: Assessing southern African countries' compliance with the SARPPCO Code of Conduct for Police Officials*. African Policing Civilian Oversight Forum, Cape Town
- Strategic Indicative Plan of the Organ on Politics Defence and Security Cooperation, Southern African Development Community, 5 August 2010
- Guidelines on police arrest, conditions of police custody and pre trial detention in Africa, The Luanda Guidelines, African Commission on Human and Peoples Rights, 8 May 2014
- Constitution of the Republic of South Africa Act, 108 of 1996
- Public Finance and Administration Act, 29 of 1999
- South African Police Services Act, 68 of 1995
- Independent Police Investigative Directorate Act, 1 of 2011
- Civilian Secretariat of Police Act, 2 of 2011
- Private Security Industry Regulatory Authority Act 56 of 2001
- Domestic Violence Act, 116 of 1998
- Minutes of the meeting of the Portfolio Committee on Police, 2 September 2010, Parliamentary Monitoring Group
- Parliamentary tool on police station oversight visits, 31 August 2005: adoption of tool

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Annelize van Wyk was the immediate past Chairperson of the Portfolio Committee on Police. Her service on the Police Portfolio Committee goes back to 1994 when she served on the Standing Committee on Public Safety in the Gauteng Legislature and since 1999 she served on the Portfolio Committee on Police in the National Assembly. She also served as the Whip of the Committee. Other Committees that she served on is the Joint Standing Committee on Defence, the Portfolio Committee on Home Affairs and various Ad Hoc Committees in the Security Environment.

ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) 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 believes 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 and 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, and its Secretariat is based in Cape Town, South Africa.

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