

The National Police Board

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Executive summary

South Africa's National Development Plan 2030 (NDP) proposes the establishment of a National Police Board (the Board). This Board will develop a Code of Ethics for the police, analyse the professional standing of the South African Police Service (SAPS) against international norms and standards, and set guidelines for the recruitment, selection, appointment and promotion of officers. Although the primary functions of the Board are police-related, the Board aims to be multi-sectoral and multidisciplinary in its composition in order to rebuild public confidence in police recruitment, as well as training and management practices, which have been rocked by recent scandals and controversies.

At a time when South Africa is debating a new White Paper on Police, a process likely to bring forth extensive amendments to the South African Police Services Act of 1995 (SAPS Act), assessing the value of the Board is an issue that cannot be delayed.

The authors of this paper welcome the proposed establishment of the Board, and recommend that its powers and functions be determined according to appropriate policy-making processes and subject to the deliberations of Parliament.

The authors believe the Board could be tasked with similar functions to the Public Service Commission. It could provide a framework of standards for a South African police service that acts in a professional manner, is staffed and managed appropriately and is professionally trained.

The NDP recommends that the Board be comprised of multi-sectoral and multidisciplinary expertise. In this regard, the Board should, at the very least, be comprised of:

- A retired judge (to serve as Chair of the Board);
- A human rights expert in the field of policing;

- A labour and human resource practitioner with strong expertise in staff development, discipline and promotion processes;
- A legal practitioner with experience in criminal law;
- A financial and resource expert;
- An experienced crime prevention expert to assist in creating an integrated approach towards crime prevention and intervention in policing;
- Representatives from civil society organisations; and
- A representative of the SAPS and Municipal Police Service (MPS).

In the spirit of the NDP, specifically its call for a competitive process in selecting a National Commissioner of Police, candidates should be open for nomination or invited to apply. The process for appointing members of the Police Board should be open and transparent.

Further, the Board should be established by an act of Parliament and allowed to determine its own rules regarding its functioning to enhance and ensure its independence. In addition, the budget of the Board should come from the National Treasury, and the Board should assume control over how funds are spent. The experience of the Judge for Directorate for Priority Crime Investigation (DPCI) and the Civilian Secretariat for Police (CSP) demonstrates that locating the budget for police within SAPS, even if only for administrative purposes, can compromise public perceptions of independence.

Accordingly, the Board should:

- Determine minimum standards for recruitment, selection and appointment of members of the SAPS and MPS and monitor the implementation thereof;
- Determine the minimum standards for promotion of members of the SAPS and MPS and monitor the implementation thereof;
- Conduct appropriate competency testing of all SAPS and MPS personnel;
- Develop a disciplinary regime for the SAPS and MPS, with clear timeframes, that deals with matters fairly and efficiently, imposes clear sanctions when infractions have occurred, and puts in place monitoring mechanisms to ensure that sanctions are implemented accordingly;
- Evaluate and benchmark all existing training programmes for the SAPS and MPS against international standards, assess their relevance to the South African situation, and determine whether the content of such programmes adhere to the Constitution; and
- Set minimum standards, criteria and competency requirements for all training programmes within the SAPS and MPS and for all trainers. This process should cover basic service training, the training of detectives, specialised training and ongoing training and must include the required competency level for a pass.

In addition, the authors believe the Board could provide the following input, on matters within the scope of its mandate:

- Criteria for human and physical resource distribution and monitoring thereof;
- Advice to the Minister of Police on budget matters relevant to its mandate;
- Recommendations on the implementation of the findings or reports from Commissions of Inquiry, such as the Khayelitsha Commission of Inquiry and the Marikana Commission of Inquiry, and recommendations from the Parliamentary Portfolio Committee on Police;
- Recommendations on the restructuring of the SAPS;
- Review concerns relevant to its mandate in all police units and units where specific concerns are raised. For example, the Board should review the current situation within Crime intelligence.

Introduction

South Africa's National Development Plan 2030 (NDP) devotes a chapter to 'Building Safer Communities'.¹ This chapter proposes a series of interventions to realign the criminal justice system

with a single set of measures and priorities, which include demilitarising the police, establishing an integrated approach to safety and security involving coordinated activity across departments, and promoting the equal protection of vulnerable groups.²

The NDP makes specific recommendations with regard to policing: professionalising the police by linking the Code of Conduct and the Professional Code of Police Practice to promotion and disciplinary recommendations; mandating oversight bodies to monitor SAPS adherence to the Professional Code of Ethics and recommend appropriate sanctions when necessary; demilitarising the police by reaffirming the underlying philosophy of community policing and acknowledging the integral role of communities in setting policing priorities and emphasising good management as a means of maintaining discipline and morale; establishing a National Police Board (Board) to set standards for recruiting, selecting, appointing and promoting police officials, to develop the Code of Ethics of the police, and to analyse the professional standing of policing against international norms and standards; conducting competency testing on all officers; and developing a two-stream system of officer and recruit training.³ In addition, the NDP recommends that the National Commissioner and Deputies be appointed on a competitive basis by a selection panel established by the president; that special attention be given to the training of detectives and specialised investigators; and that specialised units be re-established and that officers be deployed according to crime patterns.⁴

This paper explores the concept of a National Police Board. It considers the reasons why a Board is necessary, discusses the manner in which the Board should function, and matters related to the location of the Board.

Why a National Policing Board?

In the wake of allegations of poor service, underperformance, brutality, misconduct and impunity in the SAPS, its organisational structure, human resource management, and command and control practices have come under intense scrutiny.

Despite budget allocations having increased significantly, the performance of the SAPS does not align with the fiscal commitment displayed by Government. In 2002 the budget for the SAPS was R19.2 billion⁵ and in the 2013/14 budget it stood at R68.8 billion. This is an astonishing increase – and yet the SAPS continues to face fierce criticism over its lack of professionalism with manifestations in repeated allegations of corruption, misconduct and criminality. The previous Minister of Police, Minister Nathi Mthethwa,⁶ initiated an audit of criminality in the SAPS in 2011. The outcome of the audit found that 1 448 SAPS members have criminal records that include murder, rape and corruption. Despite being found guilty in a court of law, all of these police officials were still active members of the SAPS at the time of the audit. The overwhelming majority of these police officers obtained these criminal records while in the service of the SAPS.

Alongside this, there has been a justified public outcry against the public killing by the SAPS of Andries Tatane during a protest, the death of taxi driver Mido Macia after he was dragged behind a moving vehicle, and the killing of striking mineworkers at Marikana.

These events have contributed to increasing public distrust. Transparency International, in its Global Corruption Barometer 2013, found that 83% of all South Africans believed that the SAPS is the most corrupt institution, with 36% of South Africans sampled admitting to paying a bribe to the police.⁷ Statistics South Africa's Victims of Crime Survey released in December 2014 indicated that more than half of South Africans took personal measures to protect themselves, their families and property.⁸ This is a high percentage, when one considers the economic status of many South Africans. It also points to a belief by a large proportion of the public that the SAPS on its own cannot protect citizens from crime. The Victims of Crime survey revealed that only 20% of South Africans indicated that they only saw police patrolling once a month.⁹

The perception of the public has been further impacted by the very public return of the police service to a 'force'. Not only does this relate to the changing rank structure but is seen in increased military postures by the police, reinforced by leadership. As far back as 1999 the BBC reported that the South African government has declared 'war' on crime, promising no mercy for criminals and help for the police service.¹⁰

The infamous words of Susan Shabangu, then Deputy Minister of Safety and Security, at an anti-crime imbizo in Pretoria West in 2008 still ring: 'You must kill the bastards if they threaten you or the community. You must not worry about the regulations. That is my responsibility. Your responsibility is to serve and protect.'¹¹

The establishment of units such as the Tactical Response Teams (TRT) have a distinct military character both in training and in operation. The Tactical Response Unit was marred with negative reports of the use of brutal force in the town of Wesselton, Mpumalanga.¹² Part of the problem was the deployment of these units to deal with community protests, which by their very nature were not acts of criminality but defiance over poor service delivery.

Increasing use of military-styled operations in an attempt to deal with crime such as Operation Fiela have become increasingly popular. The challenge with these types of operations is that their successes are short-lived and have little lasting impact on the crime situation.

In 2014, the Khayelitsha Commission of Inquiry exposed serious problems in police service delivery.¹³ Its findings highlight various faults within the SAPS, ranging from insufficient numbers of personnel at station levels, to underwhelming levels of responsiveness given to complainants, to severely inadequate training of police members. These findings are not new and certainly not unique to police stations in Khayelitsha, as they reflect the findings made by the Portfolio Committee on Police's visits to police stations across the country.¹⁴

Most recently, the Marikana Commission of Inquiry's Report revealed extensive levels of incompetence and corruption within the SAPS, particularly attempts to withhold evidence and present false and misleading testimony before the Commission.¹⁵ In addition to concerns about the integrity of senior-level management within the SAPS, the Commission's Report also recommended that the SAPS review the adequacy of the training given to members of police who use special equipment, such as water cannons and video cameras, and that all police officers receive training in basic first aid.¹⁶ The Report further recommended that the recommendations made by the National Planning Commission, specifically with regard to the professionalisation and demilitarisation of the SAPS, be implemented as a matter of priority.¹⁷

The NDP's recommendation with respect to the police's role in building safe communities emphasises a return to the values and principles that formed the basis of the transition from the old South African Police (SAP) under apartheid to the new South African Police Services (SAPS) in the 1994 transition to democracy.¹⁸ The systems required for successful implementation of this transition from a 'Force' to a 'Service' were somewhat neglected in order to respond to shifting crime patterns over the first 20 years of democracy, a trend that has 'not garnered greater community respect for police officers', or higher levels of safety and security.¹⁹

An innovation is, however, the establishment of a National Police Board. Not only will the Board serve as a new mechanism within the developing policing architecture, its position and function establishes it as a linchpin in efforts to professionalise and demilitarise the police. In addition, the Board – if multi-sectoral, multidisciplinary and largely civilian in its composition – will create an additional critical layer of oversight and work towards rebuilding public trust in the integrity of the police.

External police oversight in South Africa

While the utility of the Board is not difficult to articulate, the notion of introducing another oversight mechanism into an already elaborate architecture requires further explanation.

A review of the police oversight landscape in South Africa mirrors systems of police oversight elsewhere in the world. The oversight system is comprehensive in so far as it involves internal control mechanisms within the police, such as the Inspectorate, and external mechanisms, such as the Independent Police Investigative Directorate (IPID), the Civilian Secretariat for Police (CSP), the South African Human Rights Commission (SAHRC), and the Office of the Public Protector (OPP), as well as the courts.²⁰ In addition, civil society organisations, political interest groups, civic movements and non-governmental organisations play another oversight role, specifically in using social media to communicate issues within the police to the population at large.

The emphasis given to the Board's roles in setting standards, specifically for recruitment and promotion of officers using a multi-sectoral and multidisciplinary approach, suggests that the Board is more closely aligned with a police service commission than an oversight body with an investigative mandate, such as the IPID or policy development and monitoring mechanisms such as the CSP.²¹

Police Service Commission

A Police Service Commission is not currently part of the South African police oversight landscape. The Police Service Commission has a specific interest in the oversight of personnel management practices for recruitment, discipline and promotion inside the department. In this regard, the underlying philosophy of a Police Service Commission is that responsibility for actions of the police must be addressed through the institution itself and that remedial action best occurs through effective and appropriate recruitment, training discipline and promotion practices.²² In recognising the need to ensure the integrity of police service practices, the Police Service Commission performs this task by conducting external oversight.

The role of the proposed Board is comparable to the role of the Public Service Commission (PSC).

The PSC is responsible for, among other things, the investigation, monitoring and evaluation of the organisation and administration of the Public Service. In addition, this mandate also entails evaluating the achievements, or lack thereof, of government programmes. The PSC also has an obligation to promote measures to ensure the effective and efficient performance of the public service and to promote the values and principles of public administration as set out in the Constitution.²³

Police service commissions in Kenya and Nigeria

Looking at other examples across Africa, the Police Service Commission of Nigeria and the Kenyan Police Service Commission are worthy of examination.

The Police Service Commission of Nigeria (NPSC) derives its powers and functions from the Constitution of the Federal Republic of Nigeria of 1999 and the Police Service Commission Establishment Act of 2001.

The NPSC has the power to appoint persons to office (other than the Inspector-General of Police) in the Nigerian Police Force, to dismiss and to exercise disciplinary control over members of the Nigerian Police Force.²⁴

In addition, the NPSC also is empowered to:

- Formulate policies and guidelines for the appointment, promotion, discipline and dismissal of officers of the Nigerian Police Force;
- Identify factors inhibiting and undermining discipline in the Nigerian Police Force; and
- Draft and implement policies for improving the efficiency and discipline of the Nigerian Police Force.²⁵

The Kenyan Police Service Commission (KPSC) derives its mandate from Article 246 the Constitution of the Republic of Kenya and from the National Police Service Act of 2011, and has a similar mandate to that of the NPSC as well as additional powers, including:

- Review all matters relating to standards or qualifications required of members of the Kenyan Police Service (KPS);
- Determine the appropriate remuneration and benefits for the KPS;
- Develop fair and clear disciplinary procedures;
- Develop policies for training and exercise oversight of training within the KPS;
- Approve training curricula and oversee its implementation;
- Investigate, monitor and evaluate the organisation, administration and personnel practices of the KPS;
- Review and make recommendations to national government regarding conditions of service, code of conduct and qualifications of officers in the KPS; and
- Monitor and evaluate the performance of the KPS.²⁶

While the Nigerian Police Service Commission and the Kenyan Police Service Commission play an important role in terms of external police oversight, each entity faces challenges and provides South Africa with important lessons to consider in going forward. In Nigeria, there are concerns regarding political bias, lack of independence in that police officers are often tasked with investigating incidents of abuse, poor cooperation between the police and the NPSC, and that the NPSC reports to the president are often not published due to concerns that their findings undermine the potential effectiveness of the NPSC.²⁷ In Kenya, with the KPSC in its infancy, tension has arisen regarding the new recruitment of police officials, which undermines the credibility of the KPSC.

Function, composition and location of the National Police Board

In order to ensure independence, the Board should be established by an Act of Parliament and be allowed to determine its own rules with respect to its functioning to enhance its independence. In addition, the budget of the Board should be derived from National Treasury.

The NDP views the National Police Board as:

- Determining minimum standards for recruitment, selection and appointment of members of the SAPS and MPS and monitor the implementation thereof;
- Determining the minimum standards for promotion of members of the SAPS and MPS and monitor the implementation thereof;
- Conducting appropriate competency testing of all SAPS and MPS personnel;
- Developing a disciplinary regime for the SAPS and MPS, with clear timeframes, that deals with matters fairly and efficiently, imposes clear sanctions when infractions have occurred, and puts in place monitoring mechanisms to ensure that sanctions are implemented accordingly;
- Evaluating and benchmarking all existing training programmes for the SAPS and MPS against international standards, assess their relevance to the South African situation, and determine whether the content of such programmes adhere to the Constitution; and
- Setting minimum standards, criteria and competency requirements for all training programmes within the SAPS and MPS and for all trainers. This process should cover basic service training, the

training of detectives, specialised training and ongoing training and must include the required competency level for a pass.

In addition, the authors believe the Board could provide the following input, on matters within the scope of its mandate:

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The NDP also proposes the Board to consist of multi-sectoral and multidisciplinary expertise. The Board could accordingly be composed of:

- A retired judge (to serve as Chair of the Board);
- A human rights expert in the field of policing;
- A labour and human resource practitioner with strong expertise in staff development, discipline and promotion processes;
- A legal practitioner with experience in criminal law;
- A financial and resource expert;
- An experienced crime prevention expert to assist in creating an integrated approach towards crime prevention and intervention in policing;
- Representatives from civil society organisations; and
- A representative of the SAPS and Municipal Police Service (MPS).

In the spirit of the NDP and its call for a competitive selection process for appointment of the National Commissioner, positions should be open for nomination or application and the process of appointing members of the Board should be transparent.

The Board should appoint its own Secretariat to deal with its daily functioning and administration and to make referrals to relevant entities. The Secretariat must also be able to commission and/or conduct its own research and be able to request other oversight bodies, such as the IPID and the CSP, to conduct reviews on its behalf. The Board should have the power to compel any requested information from the police, who must be required to comply. In addition, the Board should be able to request the police to perform internal studies or reviews.

The Board should report to Parliament. In this regard, all reports submitted by the Board to Parliament should be open and publicly available, recognising that some reports will need to be kept confidential. Further, the Board should operate in an open and transparent manner, not only for purposes of building public trust in the SAPS, but also for purposes of building trust between the Board and members of the SAPS. Finally, given the Board's responsibility with respect to directing the course of police reform in South Africa, it is imperative that the community be involved in its work, which is the approach that is reinforced and expanded upon in the NDP.

Conclusion

The Board has the potential to play a valuable and complementary role to oversight bodies given its focus on the police human resource environment and mandate to address problems in the recruitment, training and discipline processes of the police.

The appointment process for staff, from the first recruitment for basic training to the appointment of station managers, detectives and specialists, right through to the appointment of senior management positions, needs to be restored at a policy, legislative and practical level. In addition, a more robust Code of Ethics needs to be established, adhered to, enforced and monitored in connection with the Code of Conduct for police members. The NDP positions the Board as a multidisciplinary unit of expertise to work with the police in addressing what has become an urgent set of challenges.

The external character of the Board is likely to raise concerns with yet another structure amongst multiple oversight and support systems. However, the systemic problems in poor appointments, unwarranted promotions, employment of SAPS members with criminal records and the failure of the current discipline system to hold members to account has damaged public confidence in the police and demanded a need for greater scrutiny. In the same way external investigations build public confidence in the integrity of the police, such as the investigation of deaths at the hands of the police, so too can the Board re-establish confidence in the police, which strives towards professionalisation and demilitarisation as crucial aspects of South Africa's development agenda. Additionally, the Board's multidisciplinary and multi-sectoral composition can provide extensive support at the disposal of the police.

It is important to note, however, that the establishment of a National Police Board does not necessarily mean greater effectiveness within the SAPS. Issues of political will, resourcing and capacity will be key factors in determining the effectiveness of the oversight provided by the Board. Even if a successful Board is established in South Africa, the multiplicity of oversight agencies will need to be carefully managed to avoid duplication, confusion over roles, and resistance from stakeholders.

The NDP has been clear in its support for the establishment of the Board and encourages that its roles and functions be vetted through policy-making processes and subject to the deliberations of Parliament in order to identify the most appropriate strategies for South Africa going forward. At a time when South Africa is debating a new White Paper on Police, a process that is likely to result in extensive amendments to the South African Police Services Act of 1995, the establishment of the Board cannot be delayed.

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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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