

## **Substantive areas of police reform: Developing a new policing reform agenda**

**Melanie Lue Dugmore**

### **Introduction**

Against a framework for democratic policing, this paper provides the reader with an accessible overview of the extensive policing reform agenda in South Africa over the democratic period. Mindful of the still-pending review of the South African Police Act, it provides a summary of some of the key issues that should be considered.

The paper addresses substantive reform in the following thematic areas:

- The protection of human rights and demilitarisation, with particular emphasis on public order policing;
- Independence and operational autonomy of policing institutions and oversight bodies; and
- Police responsiveness, efficiency and professionalism.

This forms the basis for revisiting outstanding police reform imperatives that should be addressed in an agenda for change. The recommendations proposed in this paper are not new. They have been consistently addressed by judicial commissions of inquiry, task teams, parliament, the Ministry of Police and by the police themselves.

Given the vast range of reform initiatives, including those pertinent to areas such as systems and logistics management, democratic policing principles were used as a lens to focus the study on those areas of reforms relevant to the interaction between police and civilians.

David Bayley identifies two essential features of policing in a democracy: responsiveness and accountability.<sup>1</sup> A democratic police service 'responds to the needs of individuals and private groups

as well as the needs of government', 'is organised to be responsive downwards' and is 'accountable to multiple audiences through multiple mechanisms'.<sup>2</sup>

The police in a democracy are expected to adhere to a clear normative framework encompassing the following principles:<sup>3</sup>

- Police must give top operational priority to responding to the needs of individuals and groups (including the marginalised and vulnerable);
- Police must be accountable to the law rather than government (this includes all laws international and domestic, criminal and administrative);
- Police must protect human rights and particularly those rights necessary for the protection of unfettered political activity (and the protection of democratic freedoms such as the right to protest);
- Police should be transparent in their activities; this includes the areas of operations, budget and policy matters;
- Police must adhere to high standards of conduct and professional service;
- Police should be subject to regular scrutiny through both internal and external systems – from within the service, from government, civil society, parliamentary institution and independent external oversight mechanisms; and
- Police should be representative of the community they serve.

In addition, police rights should also be respected, including:

- Being subject to fair conditions of employment and pay;
- Having just, procedurally fair, transparent disciplinary systems;
- Receiving skills development and training for professional development; and
- Operating in a working environment that addresses the intrinsic risks associated with law enforcement.

## 1. Methodology

Mindful of the many enquiries, processes and comments made on policing in South Africa over the past 20 years,<sup>4</sup> this paper balances accessibility with the need for detail. The methodology focused primarily on a desktop literature review of South African police reform, supplemented by key informant interviews. A wide range of material was included in the review.

Commissions of inquiry are an important mechanism of oversight of the police. Initiated by the Executive,<sup>5</sup> they are presided over by a judge and are quasi-judicial in nature, giving greater credibility to the process and outcome of the inquiry.

The commissions of inquiry discussed in this paper are indicative of some of key challenges facing the police. The findings and recommendations of these commissions also provide important insight into areas of police reform requiring further attention.

The following commissions of inquiry are discussed in this paper:

- The Goldstone Commission of Inquiry, 1991–1994;
- The Khampepe Commission of Inquiry, 2005;
- The Khayelitsha Commission of Inquiry, 2012; and
- The Marikana Commission of Inquiry, 2012.

The paper refers to the key policy directives since 1994, namely:

- The National Crime Prevention Strategy 1996;<sup>6</sup>
- The White Paper on Safety and Security 1998;<sup>7</sup>

- The National Development Plan 2030;
- The White Paper on Police 2016; and
- The White Paper on Safety and Security 2016.<sup>8</sup>

The paper reviews two judgements of the Constitutional Court: *Helen Suzman Foundation vs. President of the Republic of South Africa and Others* and *McBride vs. Minister of Police and Another*. These judgements emphasise important principles regarding operational autonomy of policing institutions and the independence of police oversight bodies.

The paper notes recent concluding observations by the United Nations Human Rights Committee and the African Commission in respect of policing in South Africa.

## 2. Policing in South Africa

Developments in policing in post-1994 South Africa can be organised into four main periods. A snapshot provides a useful contextual background to the discussion on reform initiatives.

### **1995–1999: Amalgamation and demilitarisation of apartheid police agencies**

The focus on policing during the early years of democracy was dominated by the transformation of the former South African Police (SAP) from its apartheid past and included the rationalisation of the SAP and the ten homeland police agencies. The transformation agenda was focused on issues of transparency, efficiency and community policing:<sup>9</sup>

Our emphasis on a demilitarised approach to policing is not limited to changing the symbols of militarisation which currently pervade the police organisation – for example, the ranks, insignia and vehicles. Changes to the organised military structure must be accompanied by changes to the culture of the organisation. Changing the police culture is perhaps one of the most significant challenges facing the new government.<sup>10</sup>

The philosophy of change from police ‘force’ to police ‘service’ was accompanied by the establishment of community police forums aimed at improving police legitimacy and fostering community acceptance of the South African Police Service (SAPS). The 1998 White Paper on Safety and Security (1999–2004) reflected this agenda:

We have come a long way in meeting our initial objectives. We have ... succeeded in laying the foundation for making this police service accountable and community-oriented. This was achieved by, amongst other things, the demilitarisation of the rank structure of the new police service.<sup>11</sup>

Another important development during this period was the establishment of the Independent Complaints Directorate, an independent oversight agency responsible for investigating incidents of misconduct and criminality by members of the police.

### **2000–2008: Crime combating and restructuring**

In April 2000, the National Crime Combating Strategy was launched with a focus on strategic priorities and two approaches (geographical and organised crime – Operation Crackdown).<sup>12</sup>

This period was characterised by further restructuring, including the closing down of a number of specialised units in the SAPS. A declining commitment to implementing the vision of community policing was evident, as well as a shift towards a more aggressive law enforcement approach. The tone and language of senior officials and politicians became more aggressive, for example, in the use of terminology such as ‘war on crime’ and encouragement of the use of excessive force to combat crime. This was accompanied by a 300% increase in incidents of police brutality, with the number of incidents rising from 416 in 2001 to 1 844 in 2010.<sup>13</sup>

Legislative changes during this period saw a review of provisions of section 49 of the Criminal Procedure Act 51 of 1977 (as amended), finalised in 2012, which extended the range of police use of lethal force.<sup>14</sup>

### **2009–2011: Reconstruction and remilitarisation**

From 2009, a process of remilitarisation of the SAPS gained momentum.

In March 2010, Minister Mthethwa announced new police ranks, noting that:

We have taken a stance as this Government of fighting crime and fighting it tough. The rank changes are therefore in line with our transformation of the Force, not only in terms of a name change but change in attitude, thinking and operational duties ... This should not be misinterpreted as merely the militarisation of the police but as part of our new approach of being fierce towards criminals, while lenient to citizens' safety and maintaining good discipline within the Force ... For us to achieve these and other objectives there are certain steps we have undertaken to ensure we win this war ... This is a people's war against criminals. For any Force to discharge its tasks effectively there needs to be a commander because wars are led by commanders.<sup>15</sup>

The new National Commissioner of Police, Bheki Cele, echoed similar sentiments, writing to police commanders in March 2010 that:

The objective to become a force in the fight against crime and the maintenance of discipline and the upliftment of morale within the police are high on [the] agenda. The introduction of a new rank structure will ensure the realisation of the department's objective to become a force in the fight against crime, it should facilitate the enhancement of discipline, instilling public confidence and the upliftment of morale within the police ranks.<sup>16</sup>

### **2012–present: Demilitarisation and professionalisation**

The approval of the National Development Plan (NDP) in 2012 and its integration into the Medium-Term Strategic Framework (2014–2019) – government's programme of action for the electoral period – sees an effort being made to return to the values of the earlier period with the call for demilitarisation and professionalisation of the police.

There was a commitment to re-establish specialised 'crime-fighting units':

As part of the Back to Basics strategy, the Ministry of Police will establish special units to deal with drugs and related transnational crimes as well as violence and the proliferation of firearms in our society. The two [new] units are the South African Narcotics Enforcement Bureau and the National Bureau for Illegal Firearms Control and Priority Violent Crime. The units will fall under the Directorate for Priority Crime Investigations (DPCI), commonly known as the Hawks.<sup>17</sup>

The NDP proposed a range of measures to address police professionalism, including:

- Establishing a National Policing Board comprising multisectoral and multidisciplinary expertise to set standards for recruitment, selection, appointment and promotion;
- Appointing a selection panel to interview candidates for national commissioner and senior positions, which would make recommendations to the president for appointment based on objective criteria;
- Competency assessments of all officers;
- A code of professional and ethical police practice;
- Training and testing members on their understanding of the code;
- Sanctions for non-compliance with the code; and
- Integration of the code of conduct into disciplinary regulations and performance management systems.<sup>18</sup>

The period also saw new legislation coming into effect to strengthen police oversight. The Independent Police Investigation Directorate Act No. 1 of 2011, and the Civilian Secretariat for Police Act No. 2 of 2011.

Underlying the last decade of the policing in South Africa, however, has been an ongoing crisis in police leadership, epitomised by the successive removal of a third national police commissioner for misconduct. Meanwhile the fourth and current acting national commissioner is under investigation by the Independent Police Investigation Directorate (IPID) for corruption.<sup>19,20</sup>

### **3. Protection of human rights, demilitarisation and public order policing**

#### ***Goldstone Commission 1991–1994***

The Goldstone Commission of Inquiry was appointed by President FW de Klerk in 1991, during the transition period, when South Africa was characterised by high levels of police brutality and political unrest and the police were perceived as illegitimate by the majority of South Africans. An important focus of the Goldstone Commission was on public order policing and the depoliticisation of the police environment. The commission investigated incidents of public violence and intimidation prior to the 1994 elections in South Africa.<sup>21</sup>

As part of its inquiry the Goldstone Commission announced the appointment of a multinational advisory panel to examine the policing of public demonstrations in May 1992. The panel made a series of recommendations, including 'new training for police officers in public relations, communication and the use of non-lethal equipment to control demonstrations' and 'legislative changes [to] be implemented to facilitate the holding of peaceful demonstrations, transferring authority to impose conditions on demonstrations from police to local magistrates and suggesting appropriate criteria.'<sup>22</sup>

As part of the work of the panel, Dr Peter Waddington's review of the Boipatong massacre criticised the SAP:

calling their response to the attack and subsequent investigation 'woefully inadequate' and 'incompetent'. He found serious shortcomings in command and control and in contingency planning. The police ignored the main conclusion of the report, which was that 'the SAP is an unaccountable police force'.<sup>23</sup>

The Waddington report noted the following failures on the part of the police:

- Insufficient command and control of patrolling officers and response to incidents in the Boipatong area.
- A lack of effective intelligence and resultant contingency planning.
- Unstructured investigative procedures, which inhibit the gathering of evidence.
- The lack of committed community relations and awareness with all the relevant role players who could assist in both maintaining the peace and investigating crime.<sup>24</sup>

A key output of the Goldstone Commission was the formulation of a Draft Bill on the regulations of gatherings, which provided a new legal framework and entrenched the right of all persons to peaceful protest and assembly.

#### ***Status of implementation***

The Regulations of Gatherings Act 205 of 1993 was enacted in January 1994. While enjoying a high level of prestige early on, the Act has recently been challenged by public interest groups both in terms of certain provisions and the manner in which it has been executed.<sup>25</sup> Areas of contention have included the following:

- Concerns regarding municipalities' interpretation of provision for notification which, it is argued, has been construed as obtaining 'permission' to exercise the constitutional right to protest;
- Provisions relating to use of force by the police in protection of property; and
- The administration of regulations by municipal authorities, which, it is argued, act as gatekeepers by requiring applicants to seek permits to protest.

More recent incidents (as exposed in the Marikana Commission of Inquiry, discussed below) highlight the continued deficiencies in the manner in which the police execute their functions in public order contexts 12 years after the challenges identified by Goldstone and Waddington.

### ***Marikana Commission 2012***

The Marikana Commission of Inquiry, led by retired Judge Ian Farlam, was established on 23 August 2012 to inquire into the tragic events at Lonmin Mine in Marikana between 11 and 16 August 2012, which led to the deaths of 44 people (34 as a result of SAPS action). The report of the commission was handed over to President Zuma in March 2015 and released to the public on 25 June 2015.

The Marikana Commission (also called the Farlam Commission) again drew attention to challenges within the public order policing environment mentioned above, but also raised additional critical issues regarding operational and management inefficiencies within the SAPS. As Newham notes, the Marikana Commission provides valuable insights into the workings of police management, and the improvement of senior leadership in the SAPS is a precondition for improvement of policing in South Africa.<sup>26</sup>

Key findings and recommendations of the Marikana Commission with respect to policing are discussed below.

### *Leadership*

The commission recommended that steps be taken in terms of section 9 of the SAPS Act to inquire into the fitness of police leadership (National Police Commissioner Riah Phiyega and North West Police Commissioner Zukiswa Mbombo) in respect of their conduct in attempting to mislead the commission:

The leadership of the police, on the highest level, appears to have taken the decision not to give the true version of how it came about that the 'tactical option' was implemented on the afternoon of 16 August and to conceal the fact that the plan to be implemented was hastily put together without [public order policing] inputs or evaluation.<sup>27</sup>

### *Investigation of use of force and failure to render medical assistance*

With respect to the events of 16 August 2012, the commission recommended investigation by the Director of Public Prosecutions to determine criminal liability of members of the SAPS involved in events at the sites where the massacre occurred (known as scene 1 and 2).<sup>28</sup>

With regard to scene 1 and with regard to those members of the South African Police Services, who in firing shots at the strikers may have exceeded the bounds of self and private defence and the delay in conveying medical assistance to scene 1, and with regard to scene 2, with regard to issues of command and control, the failure to stop the operation after scene 1 and the possible liability of senior officers in the South African Police Services, the shooting of strikers by various members of the South African Police Services: (a) In terms of paragraph 5 of the Commission's terms of reference, the Commission refers the circumstances surrounding the injuries and deaths of all persons at scene 1 and 2 to the Director of Public Prosecutions of the North West Province, to exercise his powers in terms of section 24(1)(c) of the National Prosecuting Authority Act 32 of 1998, to supervise, direct and co-ordinate a specific investigation into the events at scenes 1 and 2.<sup>29</sup>

### *Public order policing*

The commission deliberated on public order policing, noting its inadequacies<sup>30</sup> and recommended:

- Banning the use of R5 and automatic weapons:

The use of R5 or any automatic rifle is clearly untenable, not only because of the Constitutional imperatives, but also because the effects seen at Marikana are just too disturbing and devastating for South Africa even to contemplate any recurrence.<sup>31</sup>

- The appointment of a panel of experts to investigate public order policing matters. The panel was to be comprised of:

Senior officers of the Legal Department of the SAPS together with senior officers with extensive experience in Public Order Policing and specifically including independent experts in Public Order Policing, both local and international, who have experience in dealing with crowds armed with sharp weapons and firearms as presently prevalent in the South African context.<sup>32</sup>

The functions of the panel were to:

- (a) Revise and amend Standing Order 262 and all other prescripts relevant to Public Order Policing;
  - (b) Investigate where [Public Order Policing] methods are inadequate, the world best practices and measures available without resorting to the use of weapons capable of automatic fire;
  - (c) Having done so, to implement a training programme where all Public Order Policing members are extensively and adequately trained in such measures and methods; and
  - (d) Consider and advise on the recommendations made by Mr Robert David Bruce and Amnesty International.
- 9) In addition to the above, the experts have made detailed and far reaching recommendations. We recommend that the abovementioned panel investigate and determine the suitability of each of the recommendations to the South African situation, and, where found to be apposite, to authorise and implement such recommendations, and to ensure that adequate and appropriate prescripts, protocols and training are put into place to give urgent effect to those decisions.
- 10) The Commission has heard evidence of uncertainty as to the exact roles to be played when tactical units are deployed together with Public Order Policing Units in instances of crowd control. It is specifically recommended that the abovementioned panel pay particular attention to the lacunae in the standing orders and prescripts and identify, revise and amend the relevant protocols with clearly defined roles for each tactical unit.
- 11) It is recommended that the abovementioned panel be constituted as soon as possible to enable urgent attention to be directed to these recommendations.<sup>33</sup>

### *Demilitarisation and professionalisation of the police*

The commission urged that the recommendations of the National Planning Commission in respect of demilitarisation of the SAPS and professionalisation of the police be implemented 'as a matter of priority'.<sup>34</sup>

### *Control over operational decisions*

The commission recognised the role of consultation with the Executive in large and special operations, but noted that 'that the Executive should only give policy guidance and not make any operational decisions and that such guidance should be appropriately and securely recorded'.<sup>35</sup>

It recommended that 'in Public Order Policing situations operational decisions must be made by an officer in overall command with recent and relevant training, skills and experience in Public Order Policing'.<sup>36</sup>

### *Police equipment*

The commission recommended that:

- All radio communication be recorded and preserved and that:

Plans for Public Order Policing operations should identify the means of communication which SAPS members will use to communicate with each other ... A protocol should be developed and implemented for communication in large operations including alternative mechanisms where the available radio system is such that it will not provide adequate means of communication.

- The adequacy of training in use of equipment be reviewed:

The SAPS should review the adequacy of the training of the members who use specialised equipment (e.g. water cannons and video equipment), and ensure that all members who may use such equipment are adequately trained to do so.

- SAPS helicopters be equipped with functional video cameras.
- The process of procurement, servicing and training of equipment be reviewed:

The SAPS should review the procurement, servicing and training processes which have had the result that expensive equipment purchased by the SAPS cannot be used, either adequately or at all.<sup>37</sup>

### *Obligation to render medical aid to those who are injured*

The commission addressed SAPS failure to provide first aid to those who are injured and recommended that:

- 1) In operations where there is a high likelihood of the use of force, the plan should include the provision of adequate and speedy first aid to those who are injured.
- 2) There should be a clear protocol which states that SAPS members with first aid training who are on the scene of an incident where first aid is required, should administer first aid.
- 3) All police officers should be trained in basic first aid.
- 4) Specialist firearm officers should receive additional training in the basic first aid skills needed to deal with gunshot wounds.<sup>38</sup>

### *Accountability*

The commission addressed the issue of strengthening the culture of accountability in the SAPS and accountability mechanisms such as IPID:

- 1) Where a police operation and its consequences have been controversial requiring further investigation, the Minister and the National Commissioner should take care when making public statements or addressing members of the SAPS not to say anything which might have the effect of closing the ranks or discouraging members who are aware of inappropriate actions from disclosing what they know.
- 2) The standing orders should more clearly require a full audit trail and adequate recording of police operations.
- 3) The SAPS and its members should accept that they have a duty of public accountability and truth-telling, because they exercise force on behalf of all South Africans.
- 4) The staffing and resourcing of IPID should be reviewed to ensure that it is able to carry out its functions effectively.
- 5) The forms used by IPID for recording statements from members of the SAPS should be amended so as to draw the attention of the members concerned to the provisions of



section 24(5) of the IPID Act and thereby encourage them to give full information about the events forming the subject of an IPID investigation without fear that they might incriminate themselves.<sup>39</sup>

### *Status of implementation*

The announcement of an intention to establish the panel of experts recommended by the Marikana Commission was made by the Minister of Police in September 2015. The terms of reference of the panel have yet to be made public. The time frame in which the panel should finish its work is 15 months.<sup>40</sup>

In January 2016 the minister announced the appointment of panel members<sup>41</sup> and elaborated on the functions of the panel:

[T]he panel should review public order policing; analyse international best practice; revise and amend standing procedures and orders; investigate the adequacy of public order policing methods; and explore the use of other available tools and equipment for use in 'non-lethal or less force environments', among other aspects of the report.<sup>42</sup>

Reporting to parliament on 21 September 2016, the minister described the scope of the work of the panel of experts as follows:

- Recommendations with regard to public order policing;
- Recommendations of the Planning Commission;
- Control over operational decisions;
- Police equipment;
- First aid; and
- Accountability.<sup>43</sup>

However, delays in progress and lack of transparency of the panel have been subject to criticism.

The United Nation's Human Rights Committee, in consideration of South Africa's International Covenant on Civil and Political Rights (ICCPR) report, expressed concern at the 'numerous reports of excessive and disproportionate use of force by law-enforcement officials in the context of public protests, which resulted in loss of lives' and regarding 'the slow pace of the investigation into the Marikana incident, including with respect to the criminal responsibility of members of the South African Police Service'.<sup>44</sup> The committee also called on South Africa to:

- (a) Expedite the work of the Ministry of Police Task Team, and the Panel of International Experts in implementing the recommendations of the Farlam Commission of Inquiry, revise laws and policies regarding public order policing and the use of force, including lethal force by law enforcement officials, to ensure that all policing laws, policies, and guidelines are consistent with article 6 of the Covenant and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- (b) Take all necessary measures, particularly in terms of training and equipment to prevent law enforcement and security forces from using excessive force or using lethal weapons in situations that do not warrant recourse to such force;
- (c) Ensure that prompt, thorough, effective, independent and impartial investigations are launched into all incidents involving the use of firearms and all allegations of excessive use of force by law enforcement officers.<sup>45</sup>

The Portfolio Committee on Police noted in August 2016 that a great deal still needs to be done to implement the recommendations of the Marikana Commission.<sup>46</sup> Similar concerns have been voiced by non-governmental organisations in South Africa.<sup>47</sup>

The SAPS, appearing before the Portfolio Committee, indicated that a new head had been appointed for public order policing and that budget allocations had been made to purchase and integrate radio communication devices in the next financial year, as well as long-range acoustic devices, as recommended by the Marikana Commission as key to maintaining and preserving adequate radio communications during public order incidents.

#### **4. Independence and operational autonomy**

A key component of policing in a democratic state is independence and operational autonomy of police institutions. Police must as such be accountable to the rule of law and exercise their functions independently without fear, favour or prejudice.

##### ***Khampepe Commission 2005***

The Khampepe Commission of Inquiry was appointed in 2005. The focus of the commission was on the closure in 1999 of the Directorate of Special Operations (DSO), known as the 'Scorpions', which had been an independent organised crime and corruption unit located within the National Prosecuting Authority (NPA). Its functions included the investigation of high-level corruption and organised crime. However, after challenges to the legality of the mandate of the DSO, given the strained relations that developed between the Scorpions and the SAPS and allegations of abuse of power for politically motivated investigations, President Thabo Mbeki appointed a commission of inquiry on 1 April 2005 to inquire into the mandate and functions of the DSO.<sup>48</sup>

The Khampepe Commission of Inquiry released its report on 3 February 2006<sup>4</sup> and drew attention to issues of institutional independence of investigating agencies. Despite the commission's findings, the executive and legislature dismantled the DSO, relocating its function to the SAPS.

The Khampepe Commission report is relevant to the discussion on police reform, as the principal reasons for the establishment of the DSO were the perceived incapacity of the SAPS to investigate high-level priority crime, the requirement of independence and the need for operational autonomy.<sup>50</sup>

The SAPS made submissions to the commission arguing that the DSO was a temporary measure and that the SAPS had since transformed into a professional and effective police service able to deliver on the mandate to investigate organised crime:

On the whole, the SAPS did not seek to seriously challenge the submissions made by other principal stakeholders in regard to the initial rationale for the establishment of the DSO within the NPA. Instead it contended that the establishment of the DSO was a temporary measure resultant upon a 'loss of confidence in the crime combating capacity of the Police, specifically those units dealing with priority crimes'. The SAPS argued that it had subsequently rid itself of the corrupt elements within its structures and was therefore able to effectively tackle organised crime.

The SAPS further argued that it had since become successfully transformed into a professional efficient and effective police service which is regarded as a world leader in various areas of policing. It further submitted that it was able to meet responsibilities in respect of priority crimes and was more able to deal with any complicated, complex and sophisticated investigation. In this regard, it referred to the excellence of its criminal records system, forensic science services and the relevant expertise acquired by its organised crime unit.<sup>51</sup>

The SAPS further argued that its investigators were 'well trained and equipped to deal with the type of cases and investigations, which the DSO does.'<sup>52</sup>

Key findings of the Khampepe Commission relevant to the current discussion include the following:

- There was nothing unconstitutional in the DSO sharing its mandate with the SAPS;<sup>53</sup>
- The DSO's mandate was not unconstitutional and did not conflict with section 199(1) of the Constitution.<sup>54</sup>
- The rationale for the establishment of the DSO remained and arguments that a decline in crime levels had removed the rationale for its establishment were without substance;<sup>55</sup>
- The consensus for a new, fresh and comprehensive approach to challenges presented by organised crime (new methodologies in the form of multidisciplinary structures) were still relevant.<sup>56</sup>
- On the issue of tensions between institutional bodies the commission called for action to be taken against the leadership:

The institutional tensions that are explained by the personalities that head these institutions are regrettable in the extreme. Drastic yet propitious measures need to be taken to ensure that the constitutional duties and functions of these structures serve the purpose for which the legislature has created and entrusted on them. It may be necessary for the land or parliament to mete out a reprimand as a mark of displeasure, for the poignant conduct displayed by those heading these profoundly significant institutions.<sup>57</sup>

The commission noted further that:

It is undesirable that the DSO and its sister law enforcement agencies adopt a competitive relationship towards each other. My understanding of the responsibility of the executive arm of government is to have a common purpose in the enforcement of the laws of the nation.<sup>58</sup>

Reinforcing the importance of effective and efficient strategies to tackle organised crime, the commission noted the importance of cooperation:

The inexorable quest for an effective and efficient strategy to tackle organised crime must run like a golden thread through the whole tapestry of the law enforcement/prosecutorial and intelligence structures. The attainment and maintenance of that efficacy lies with the law enforcement/prosecutorial structures cooperating and coordinating their activities closely with one another as well as with the requisite statutory intelligence structures.<sup>59</sup>

#### *Status of implementation*

Notwithstanding the findings of the Khampepe Commission regarding the constitutionality and location of the DSO, the ANC resolution to disband the DSO was implemented and announced in parliament on 12 February 2008 by then Minister of Safety and Security Charles Nqakula.<sup>60</sup> The disbandment of the unit and establishment of a new unit in the SAPS were facilitated by legislative amendments in the form of the SAPS Amendment Bill, 2008 and the NPA Amendment Bill, 2008 which paved the way for establishment of the Directorate of Priority Crime Investigation (DPCI) – a separate unit in the SAPS in terms of Section 17L of the SAPS Act (as amended).

The newly established DPCI (nicknamed the 'Hawks') has been subject to scrutiny, and its ability to carry out its mandate without fear, favour or prejudice questioned.<sup>61</sup> The integrity of the current head of the Hawks, Lieutenant-General Mhandazo Ntlemenza has also been under examination.<sup>62</sup> The dissolution of the DSO and the independence of the DPCI have been subject to a protracted five-year court battle in the Glenister judgments (discussed below).

These challenges call into question the effectiveness of current mechanisms aimed at securing the independence of the DPCI and the impact of the DPCI Judge, who is the head of the Complaints Unit. Retired Judge Essa Moosa was appointed to this position in October 2013. The Complaints Unit was established in terms of Section 17L of the SAPS Act (as amended); however, the unit only became fully functional in the 2015/2016 financial year, with two offices (one in Cape Town and Pretoria).<sup>63</sup> The mandate of this unit is to provide an oversight role over the DPCI and is responsible for investigation of complaints from members of the Hawks and against members of the Hawks. Complaints fall into two categories:

- Category 1: 'A complaint by any member of the public, in terms of section 17L(4)(a), who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by Directorate (HAWKS)'; and
- Category 2: 'A complaint by a member of the Directorate (HAWKS), in terms of Section 17L(4)(b), who can provide evidence of any improper influence or interference whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation.'<sup>64</sup>

In the DPCI presentation to the Portfolio Committee on Police in November 2016, the committee discussed concerns regarding the performance of the Complaints Unit.

Challenges highlighted included:<sup>65</sup>

- The fact that the Complaints Unit did not have original powers to institute an investigation of its own accord:

The Office could not out of its own initiative institute any investigation – this was strictly limited to complaints by members of the public where rights were violated and evidence of such violation was provided and members of the Hawks who would also need to provide evidence of improper influence or interference on an investigation. The mandate of the Office was thus limited in terms of this specific scope. The lack of protections for members of the Hawks to report complaints of influence or interference in investigations;

- The burden of the onus being placed on the complainant to produce evidence of violation of a right(s);
- The lack of authority to enforce recommendations:

With the enforcement powers, Mr Moosa explained that the Office was obligated to report recommendations or findings on an investigation to the Minister but the Office could not enforce its findings. This did not motivate the complainant to lay complaints with the Office because findings could not be enforced; only referred to the Minister. Performance issues noted were the low number of complaints dealt with:

[O]f all reports sent to the Minister there was no recommendation for action to be taken – 10 of the 15 complaints were unsubstantiated. Where there was a case, five referrals were made, for example, a case of assault sent to IPID, a case of bribery referred to the anti-corruption unit and another referral to the office of the National Commissioner of Police. Overall with the reports sent to the Minister there was no recommendation for action to be taken against a member of the Hawks.

No cases had been referred to the NPA during this period.

It is further noteworthy that the DPCI Judge himself raised concerns regarding the efficacy of this unit:

Mr Moosa too had thought about that in terms of whether the Office should instead amalgamate with IPID in terms of extending powers to include investigating cases from members of the Hawks. It could also avoid the question of duplication of resources.<sup>66</sup>

Notwithstanding this report by the Complaints Unit, IPID indicated its investigations into allegations against the Hawks were ongoing.<sup>67</sup>

The Portfolio Committee on Police has recommended that the SAPS commence discussions with the National Treasury to establish the DPCI programme as a separate budget vote in order to further strengthen the operational independence of the unit<sup>68</sup> and that the issue of the powers of the DPCI Judge be considered in future amendments to the SAPS Act.<sup>69</sup>

### **Decisions of the Constitutional Court**

Two important decisions of the Constitutional Court have pronounced on the importance of core principles underlying democratic policing, giving validity to efforts to address police transformation. These cases highlight the importance of operational autonomy from executive and political interference as a key to securing the independence of policing institutions.

#### *Helen Suzman Foundation vs. President of the Republic of South Africa and Others*

The judgment in *Helen Suzman Foundation vs. President of the Republic of South Africa and Others; Glenister vs. President of the Republic of South Africa and Others [2014] ZACC 32* is the final instalment in a series of court cases involving the DPCI brought by businessman Hugh Glenister.

In *Glenister vs. President of the Republic of South Africa and Others 2011 (3) SA 347 (CC) (Glenister II)*,<sup>70</sup> the Constitutional Court declared Chapter 6A of the SAPS Act 68 of 1995 to be unconstitutional and invalid to the extent that it failed to secure an adequate degree of independence for the state's anti-corruption unit, the Directorate for Priority Crime Investigation (DPCI). The Constitutional Court, however, suspended the declaration of invalidity for 18 months for parliament to remedy the constitutional defects in the 2008 SAPS Act.

The Chief Justice noted, 'Ultimately therefore, the question is whether the anti-corruption agency enjoys sufficient structural and operational autonomy so as to shield it from undue political influence.'<sup>71</sup>

The court cited with approval a report on specialised anti-corruption institutions by the Organisation for Economic Co-operation and Development:<sup>72</sup>

Independence primarily means that the anti-corruption bodies should be shielded from undue political interference. To this end, genuine political will to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive anti-corruption strategy. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the structural and operational autonomy that is important, along with a clear legal basis and mandate for a special body, department or unit. This is particularly important for law enforcement bodies. Transparent procedures for appointment and removal of the director together with proper human resources management and internal controls are important elements to prevent undue interference.<sup>73</sup>

However, after the promulgation of the SAPS Amendment Act, the Helen Suzman Foundation challenged the legislation in *Helen Suzman Foundation vs. President of the Republic of South Africa and Others; In Re: Glenister vs. President of South Africa and Others (23874/2012, 23933/2012) [2013] ZAWCHC 182 (14 October 2013)*<sup>74</sup> on the basis that the SAPS Amendment Act did not remedy the constitutional defects identified by the Constitutional Court in *Glenister II*.

The Western Cape High Court found that certain provisions of the Act were unconstitutional and granted applicants leave to apply to the Constitutional Court for an order of confirmation. The Constitutional Court judgment in *Helen Suzman Foundation vs. President of the Republic of South Africa and Others* arose after the Helen Suzman Foundation approached the Constitutional Court for the confirmation of the declaration of the constitutional invalidity of several sections of the SAPS Amendment Act, and for leave to appeal against the decision not to declare invalid other sections of the Act whose constitutionality was challenged. The application was joined with that of Glenister, who sought leave to appeal against the order dismissing his challenge of the constitutionality of locating the DPCI within the SAPS, and provisions of the Act (Chapter 6A) establishing the DPCI. Glenister also applied for leave to appeal against the order striking out additional evidence, the punitive costs order against him and the failure to award him costs for the successful Helen Suzman Foundation application.<sup>75</sup>

The Constitutional Court took issue with the minister's 'untrammelled power to axe the National Head of the anti-corruption entity' and the power to make policy guidelines inconsistent with

independence.<sup>76</sup> Handing down judgement on November 2014, the Constitutional Court found certain provisions of the SAPS Act 68 of 1995, as amended, inconsistent with the Constitution and declared invalid and deleted from the date of the court's order.<sup>77</sup>

*McBride vs. Minister of Police and Another*

In *McBride vs. Minister of Police and Another* (CCT255/15) [2016] ZACC 30 (6 September 2016),<sup>78</sup> Robert McBride challenged his suspension by the Minister of Police as the executive head of IPID and applied to the Constitutional Court for confirmation of the order of the Gauteng Division of the High Court to declare invalid provisions of the IPID Act 1 of 2011 which authorised the Minister of Police to suspend and to take disciplinary steps to remove the executive director from office.

Parliament was provided with 24 months from the date of the order to rectify the defects in legislation. The court declared the decision of the Minister of Police to suspend McBride from his position as executive director of IPID and to institute the disciplinary inquiry against him as invalid and set it aside:

Central to this application is the crisp question: whether, in the light of the applicable statutory framework, IPID enjoys adequate structural and operational independence, as envisaged by section 206(6) of the Constitution, to ensure that it is effectively insulated from undue political interference.<sup>79</sup>

Citing the judgement of the Gauteng High Court, the Constitutional Court noted key international instruments relied upon by the court:<sup>80</sup>

[The United Nations Convention against Corruption] calls for independent bodies or persons (specialised in combating corruption through law enforcement) that can 'carry out their functions effectively and without any undue influence' (article 36). For this, the independent body should have complete discretion in the performance or exercise of its functions and not be subject to the direction or control of a minister or any other party. In principle, it should give an account after its work has been performed when it reports to parliament (rather than the executive).<sup>81</sup>

The Council of Europe's Commissioner for Human Rights' *Opinion on the Independent and Effective Determination of Complaints Against the Police* (2009), similarly found that:

'An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body . . . should form a pivotal part of such a system.'<sup>82</sup>

The AU Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa, 2006, calls upon State Parties 'to establish independent civilian policing oversight mechanism[s]'. In relevant part, the AU Resolution reads:

'[A]ccountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing the rule of law and assisting in restoring public confidence in police.'<sup>83</sup>

The Constitutional Court also relied on the reasoning of the High Court:

The High Court found that the independence of IPID is expressly guaranteed and protected under section 206(6) of the Constitution, which is 'significant and decisive'. Furthermore, the High Court reasoned that, given that IPID performs overlapping anti-corruption functions with the DPCI, it must be afforded at least the equivalent protections that the Constitution requires for the DPCI. In *Glenister II*, this Court found that the independence of the DPCI was an implicit constitutional requirement, flowing from section 7(2) of the Constitution and the threat to South Africa posed by endemic corruption. The High Court found that inasmuch as the DPCI is independent despite there being no express constitutional entrenchment of its independence, by parity of reasoning 'the effect of the constitutional entrenchment of the independence of IPID is that the operational and structural independence of IPID must be at least as strongly protected as that of the DPCI'.<sup>84</sup>

The High Court went further to hold that IPID's constitutionally guaranteed independence requires more stringent protection. This is because, unlike the DPCI which is situated within SAPS, IPID is institutionally and functionally independent from SAPS. Another reason presented by the High Court as to why the principles pronounced in *Glenister II* extend to IPID is that, having found that the DPCI requires adequate independence from Executive interference in that case, it would be subversive of IPID not to afford it the same level of independence as the DPCI. As IPID has oversight and accountability responsibilities over the DPCI, affording the DPCI adequate independence without doing the same for IPID appears to be self-defeating. In this regard, the High Court held that IPID's oversight role over the DPCI would be compromised and might create room for political interference to seep through and render the DPCI's independence nugatory.<sup>85</sup>

Crucially, the High Court held that section 6(3)(a) and 6(6) of the IPID Act, sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act and regulation 13 of the IPID Regulations are inconsistent with section 206(6) of the Constitution. This was based on the fact that the impugned sections do not provide for parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director and that they afford the Minister unilateral powers and the sole discretion to terminate the Executive Director's tenure. Furthermore, the Minister is entitled to discipline the Executive Director on the same basis as any head of department in the public service, without any special oversight or protection. The High Court found that this amounts to inadequate security of tenure for a national head of an independent body investigating police misconduct, including corruption. Hence it declared the impugned sections inconsistent with section 206(6) of the Constitution and invalid.<sup>86</sup>

The Constitutional Court further noted the impact of the offending provisions on public confidence:

To my mind, the cumulative effect of the impugned sections has the potential to diminish the confidence the public should have in IPID. As the *amicus curiae* emphasised in its submissions, both the independence and the appearance of an independent IPID are central to this matter. The manner in which the Minister dealt with Mr McBride demonstrates, without doubt, how invasive the Minister's powers are. What exacerbates the situation is that he acted unilaterally. This destroys the very confidence which the public should have that IPID will be able, without undue political interference, to investigate complaints against the police fearlessly and without favour or bias. IPID must therefore not only be independent, but must be seen to be so. Without enjoying the confidence of the public, IPID will not be able to function efficiently as the public might be disinclined or reluctant to report their cases to it.<sup>87</sup>

The Constitutional Court confirmed the order of invalidity of the High Court.<sup>88</sup> Parliament did not institute proceedings against McBride, who returned to work as executive director of IPID on 19 October 2016.

## **5. Police responsiveness, efficiency and professionalism**

Police responsiveness and professionalism in service and conduct are core guiding principles of democratic policing. This section discusses policing policy initiatives that have sought to address both these principles. It also discusses the lack of responsiveness to community needs, professionalism and inefficiency of the SAPS demonstrated by the findings of the Khayelitsha Commission.

### ***National Development Plan***

In 2010, President Jacob Zuma appointed a National Planning Commission to develop a national vision and development plan for South Africa.<sup>89</sup> The National Development Plan (NDP) was approved on 6 September 2012 by the Cabinet. The NDP is integrated into the Medium-Term Strategic Framework (MTSF) – a comprehensive strategic framework for implementation by government departments for the 2014–2019 electoral period. Government departments are required to align their strategic plans and annual performance plans with this framework.<sup>90</sup>

Chapter 12 of the NDP identifies five priorities to achieve a crime-free South Africa:

- Strengthen the criminal justice system;
- Make the police service professional;
- Demilitarise the police;
- Increase rehabilitation of prisoners and reduce recidivism; and
- Build safer communities using an integrated approach – achieving long-term, sustainable safety by addressing the fundamental cause of criminality, mobilising state and non-state capacities and resources at all levels and citizen involvement and co-responsibilities.<sup>91</sup>

The chapter identifies the following focus areas for policing:<sup>92</sup>

- Strengthening the criminal justice system by the implementation of the recommendations of the *Review of the South African Criminal Justice Systems*;
- Making the police service professional by linking the police code of conduct and code of professional police practice to the promotion and disciplinary regulations, and using a two-track system of recruitment to attract competent, skilled professionals; and
- Demilitarising the police and restoring a culture that will instil discipline and a professional ethos.

#### *Status of implementation*

Progress and actual implementation of the recommendations in respect of policing have been slow, notwithstanding the adoption of the NDP by the Cabinet in 2012 and their integration into Outcome 3 of the MTSF, the White Papers on Police and Safety and Security, and the SAPS and CSPF Strategic Plans.

The delay in implementation of these recommendations was raised as a concern by civil society and the Portfolio Committee on Police in May 2015:

The Committee expressed concern about the perceived lack of specific interventions planned by the SAPS to realise the recommendations made in the NDP. The SAPS lists various activities, but that the activities do not seem to form part of a broader implementation plan.<sup>93</sup>

Concerns raised by the Portfolio Committee included the recruitment process, promotions and the lack of a clearly defined implementation plan on the demilitarisation process of the SAPS.<sup>94</sup>

In September 2015, the Minister of Police announced the intention to establish a Transformation Task Team under the leadership of the Deputy Minister of Police, which would include the national police commissioner, senior police officers and a group of local and international experts; as well as the setting up of a second panel of experts as recommended by the Marikana Commission.<sup>95</sup>

The Transformation Task Team was launched on 15 August 2016 and will operate until 31 July 2019 with the possibility of extension. The Minister of Police tabled the first progress report to the Portfolio Committee on Police on 21 September 2016, in which the following issues were addressed:<sup>96</sup>

- The mandate of the Task Team is aligned to the NDP vision of professionalising and demilitarising the SA Police Service (SAPS) by:

Reviewing all the SAPS/Department of Police's policies, National Instructions, Standing Orders and operational standards that detriment and negate the police officers' working environments, their living conditions, their career progression and their dependents' livelihoods when the police officers either retire or pass on.

- Functions include benchmarking of best practices at both local/domestic and international institutions.



- Deliverables include an audit and review model to be accustomed to the SAPS's transformation requirements as per the NDP.
- The audit and review of policies, national instructions, standing orders and operational standards of the SAPS.

The following aspects of the SAPS Act would be reviewed and amended:

- Entry salary levels of police officers;
- Career progression and promotion policies;
- The SAPS Employee Health and Wellness Programme (EHP) to align it to the National Framework of EHP;
- The Pension and Occupational Compensation Fund of the SAPS to suit the special needs of the law enforcement institutions; and
- National instruction on placements transfers, transporting and accommodating of police officers.

Members of the Portfolio Committee have, however, expressed concerns regarding the composition of the Transformation Task Team, noting that:

[T]oo many members of the Task Team were from within the internal policing environment and the potential this had to produce a closed-thought system. Members wanted to know if a reference group would be used to scrutinise what came out of the Transformation Task Team to ensure quality assurance.<sup>97</sup>

### ***White Paper on Policing 2016***

The White Paper on Policing<sup>98</sup> was adopted by Cabinet in April 2016. It represents a change from its predecessor – the 1998 White Paper on Safety and Security – in two primary respects. Firstly, it separates the police-focused policy from the broader safety and security focus contained in a separate White Paper on Safety and Security. Secondly, it provides an enabling framework for civilian oversight and aligns the police service to the rest of the public service.

The focus of the paper is on the core areas of policing and law enforcement aimed at reducing crime and building safer communities. The White Paper gives expression to the five NDP priorities for policing. The approach to policing articulated in Chapter 2 is grounded on building legitimacy and trust through a demilitarised police service, community-centred policing, adherence to human rights principles and accountability.

Chapter 3 focuses on building a professional police service and addresses the following:

- Qualities needed in a police officer (integrity, diversity);
- Specialised policing functions;
- Access to information;
- Modernising the police;
- Capacity development; and
- Regulatory enablers for professionalism.

Chapter 4 sets out the framework for a professional police service – a single police service and delivery of essential policing services.

Institutional arrangements are covered in Chapter 5, which deals with the institutional architecture required for democratic policing. It addresses the SAPS, Civilian Secretariat for Police, IPID, and the roles of provincial and local government in respect to policing.

Chapter 6 discusses the process of implementation of the White Paper, including a phased implementation, review and amendment of legislation and regulations, the roadmap to a single police service, a process of monitoring and evaluation, and the relationship with the White Paper on Safety and Security.

### ***Khayelitsha Commission 2013***

The Khayelitsha Commission of Inquiry was established in 2013 by the premier of the Western Cape. She appointed former Constitutional Court judge, Catherine O'Regan, and former head of the NPA, Advocate Vusi Pikoli, to investigate allegations of inefficiency at three Khayelitsha police stations, as well as the alleged breakdown of the relationship between the Khayelitsha community and members of the SAPS.<sup>99</sup>

The Khayelitsha Commission provided insight into the acute challenges faced by the SAPS at the three police stations and made a series of recommendations to address service delivery challenges. It highlighted 'a range of systemic and overlapping reasons' for the inefficiencies in policing at the three Khayelitsha police stations, including:<sup>100</sup>

- Management in the SAPS at station level, cluster level and provincial level was poor;
- Absence of effective systems to limit corruption within the SAPS was one of the contributing factors to the breakdown in the relations between the SAPS and the community of Khayelitsha;
- None of the three Khayelitsha police stations produced regular or comprehensive crime pattern analyses or crime threat analyses; consequently, such analyses were not discussed in Station Crime Combating Forum (SCCF) meetings, and therefore the deployment of personnel was not taking place in terms of National Instruction 3 of 2013;
- The system of crime intelligence was not functioning according to SAPS national guidelines at any of the three Khayelitsha police stations;
- Crime intelligence was poorly handled at the three police stations as a result of the crime intelligence officer (CIO) and senior management at the SCCF not fully understanding the role of the CIO or the way in which crime intelligence should be used to inform intelligence-led policing;
- There were no established guidelines for patrols of informal neighbourhoods, and by and large, these did not seem to take place in Khayelitsha;
- Many crimes reported to the three Khayelitsha police stations and the Family Violence, Child Protection and Sexual Offences Units (FCS) were not investigated properly or at all;
- The quality of detective services at the three police stations was close to a crisis point;
- Crime-scene management in Khayelitsha was often not in accordance with the prescribed protocol, partly because of environmental difficulties but also because of the lack of basic equipment and training; and
- Management at the three police stations, the cluster office and the FCS Unit was ineffective.

The commission made a number of recommendations, including:<sup>101</sup>

- Every police station in Khayelitsha should adopt a community policing commitment in consultation with local residents;
- The SAPS should adopt a procedural justice model for policing in Khayelitsha:

[I]n which SAPS acknowledges that the manner in which policing is performed is important to building a relationship of trust with members of the public, and that accordingly, SAPS will take steps to ensure that every interaction between a member of SAPS and a member of the public will be respectful of the rights of the member of the public; that policing strategies will be assessed to ensure that they are procedurally just; and that SAPS will treat its own members fairly and with respect.<sup>102</sup>

- The establishment of monitoring and oversight team to address inefficiencies at the three police stations and the FCS Unit;

- Change in the management process for leadership of the cluster;
- Police stations and the FCS Unit should develop a 3–5-year strategic plan to address inefficiencies and the breakdown in relations between the community and the SAPS in Khayelitsha;
- A strategic review of detective services at all stations and the FCS unit;
- The provincial commissioner to issue guidelines for visible policing of informal neighbourhoods;
- A review of the SAPS system for determining theoretical human resource requirement of police stations and urgent reallocation of human resources to the three police stations;
- The SAPS to take steps to improve the relationship between the SAPS and the community by strengthening Community Policing Forums (CPFs), using community-based mediation initiatives to resolve disputes, recruiting reservists and publishing station level crime statistics;
- A review of human resource practices, such as SAPS members' ability to speak isiXhosa, proper implementation of the Performance Enhancement Process, improvement of discipline of SAPS members, accelerated process of leadership appointment, access to Employee Health and Wellness Programme, Recruitment;
- A revision of the station performance chart to ensure that it contains external measures of public confidence in the SAPS, and reduces its weighting of crime reduction targets;
- The need for a strategy for dealing with vengeance killings and vigilante attacks, including proper recording of such incidents;
- The establishment of a multisectoral task team on youth gangs;
- The establishment of a provincial task team to survey community attitudes to unlicensed liquor outlets to address policy formulation;
- A series of recommendations to improve the policing of domestic violence complaints;
- The use of information technology and related matters;
- Strengthening of the handling of complaints by IPID (understaffing of IPID and recruitment of investigators);
- The use of CCTV cameras;
- Improvements to the physical infrastructure at police stations; and
- Addressing the backlogs in national chemical laboratories in Cape Town.

The commission also made the following recommendations to improve the governance of oversight:

- The Civilian Secretariat for Police at national and provincial level should take an active role in monitoring the three police stations and the FCS Unit;
- A memorandum of understanding between the Department of Community Safety (DOCS) and the SAPS should be entered into to facilitate DOCS carrying out its constitutional mandate;
- The memorandum of understanding should address regulation of police station visits by DOCS, the investigation of complaints of police inefficiency by DOCS, the role of DOCS in relation to CPFs and neighbourhood watches; and
- DOCS and the SAPS should collaborate on specific challenges, including youth gangs, alcohol abuse and school safety.

Whilst the focus of the commission was on Khayelitsha, the commission identified systemic issues relevant to policing across the country. It also drew attention to the social context within which policing occurs.<sup>103</sup> Dixon compares the Khayelitsha Commission with the approach of Lord Scarman in the inquiry into the Brixton disorders in London in April 1981 (which he notes goes beyond that of Judge O'Regan), and raises the key issue as to whether it is possible to achieve genuine and sustainable policing reform if the social and economic conditions under which policing occurs remain unchanged.

The findings of the Khayelitsha Commission are consistent with the concerns and critiques raised by the Portfolio Committee on Police over an extended period of time. Parliamentary oversight visits conducted across the country confirmed similar challenges prevail at many (a majority) of police stations throughout the country.<sup>104</sup>

### *Status of implementation*

The majority of the recommendations (13 out of 20) made by the commission fell within the purview of the SAPS. The failure of the national Minister of Police to endorse or respond to the recommendations of the commission is viewed as a real challenge to implementation.<sup>105</sup>

The following concerns have been raised:

- The human resource allocation of police to the three Khayelitsha police stations remained below the national average of police to population ratio (which is 1:358): Harare – 1:826, Khayelitsha – 1:569, Lingeletu West – 1:440; and
- The workloads of detectives operating in Khayelitsha are higher than the commission's proposed ratio of detective to docket (in the region of 1:40 and at most 1:50): Harare – 1:79, Khayelitsha – 1:67, Lingeletu West – 1:127.

Outstanding issues noted for the SAPS include:

- Revision of the SAPS theoretical human resource requirement for police stations and reallocation of resources to Khayelitsha;
- Revision of the station performance chart;
- Physical infrastructure at police stations and new Makhaza police station; and
- The SAPS has yet to sign or agree to a memorandum of agreement in respect of governance and oversight arrangements.

Progress was, however, reported in the following:

- The establishment of a coordinating committee to oversee and report on progress in implementing the recommendations;
- The establishment of the Khayelitsha Joint Forum at community level with subcommittees on youth gangs, women and children, and substance abuse;
- The establishment of a monitoring and oversight team – the premier and the national police commissioner resolved to establish a task team.
- DOCS is working with CPFs to build capacity and has developed an Extended Public Partnership Improvement Plan;
- A memorandum of understanding has been signed between all CPFs;
- A cluster safety plan has been developed as part of the Policing Needs and Priorities Process, which looks at strengthening the role of CPFs;
- The establishment of an Alcohol Harms Reduction Game Changer; and
- DOCS continues to conduct inspections at police stations.

## **6. International treaty bodies**

Challenges in the policing environment in South Africa have also been recognised by international treaty bodies in their responses to South African reporting. This further confirms and emphasises critical reform needs.

### ***International Covenant of Civil and Political Rights***

The United Nations Human Rights Committee in consideration of South Africa's most recent International Covenant on Civil and Political Rights (ICCPR) report (March 2016) urged South Africa:

[T]o strengthen its efforts to improve conditions of detention by taking practical measures to, inter alia ... Reduce overcrowding, particularly through the promotion of alternatives to detention, the loosening of bail requirements, and the revision of arrest quotas as indicators of police performance, and by ensuring that bail determinations are made promptly and that persons on remand are not kept in custody for an unreasonable period of time.<sup>106</sup>

The committee further noted concerns regarding:

[C]hallenges faced by some of these oversight bodies in terms of budget limitations, lack of institutional independence from supervised government departments, and limited mandates and powers. The Committee notes the State party's intention to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but it is concerned about the absence of independent and sustained monitoring of places of deprivation of liberty other than prisons (arts. 2, 6 and 7).<sup>107</sup>

And urged South Africa to:

[E]nsure that all oversight bodies are institutionally independent, adequately funded and equipped with the necessary powers and functions to deal with complaints and investigations promptly and effectively, hold authorities accountable, and facilitate access by victims of human rights violations to an effective remedy ... [and] to speed up the preparations for the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and should establish a system for the regular and independent monitoring of all places of detention, as well as a confidential mechanism for receiving and processing complaints lodged by persons deprived of their liberty.<sup>108</sup>

### ***African Charter on Human and Peoples' Rights***

The African Commission on Human and Peoples' Rights, in its concluding observations,<sup>109</sup> urged South Africa to make use of the commission's *Guidelines on Conditions of Arrest, Police Custody and Pre-Trial detention in Africa*<sup>110</sup> to deal with the challenges of arbitrary arrests and pre-trial detention.

The commission further noted its concerns regarding conditions in police custody and called on South Africa to:

- Provide statistical data in its next periodic report relevant to the prohibition of torture and ill-treatment, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment;
- Ratify the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) and establish the National Preventive Mechanism envisaged under OPCAT;
- Fully comply with the commission's guidelines and measures for the prohibition and prevention of torture, cruel, inhumane or degrading treatment or punishment in Africa (Robben Island Guidelines);<sup>111</sup> and
- To continue to ensure human rights training for the police and other law enforcement officers.<sup>112</sup>

## **7. Responding to challenges**

This section examines the SAPS's own assessments, acknowledgement and responses to the challenges facing the institution, as well as their proposed remedial action. These are supplemented by the response of the Portfolio Committee on Police, which draws attention to areas of non-compliance and delayed implementation.

### ***SAPS Policy Advisory Council***

As early as 2007–2008 the SAPS Policy Advisory Council identified systemic challenges within the police environment. During this time it conducted inspections at 858 (77%) of 1 116 police stations and other units in the SAPS and made the following findings.

About command and control, and discipline:

2006/2007: There is a general lack of command and control within the Police Service at local level. Resultant poor levels of discipline and high levels of corruption are of serious concern

2006/2007: general level of discipline is poor

2007/2008: many of the problems of the police are the direct result of a breakdown in command and control and a lack of supervision in certain areas. In most instances poor service delivery, maladministration, ill-discipline and corruption have at its core the lack of supervision and control.<sup>113</sup>

About detectives:

2006/2007: the Detective Service is being neglected in terms of focus and resources. Many Station Commissioners simply leave the Detective Service to 'carry on' on its own. There is little or no support given. Detectives generally have the worst accommodation and least resources.

2006/2007: Many Branch Commanders are incompetent. ... commanders and supervisors lack skills, experience, commitment, dedication and discipline.

2006/2007: Docket inspections ... in many instances are not done in accordance with required standards and policies.<sup>114</sup>

About inspections:

2006/2007: The system of inspections in the Police is totally inadequate. The National Inspectorate was also found wanting and is clearly not focused correctly nor functioning optimally.

2007/2008: at some stations proper inspections from ... provincial and national level have not been conducted for long periods (years). At most stations regular inspections are not done

2007/2008: It is seldom or ever that a full inspection is done. Sufficient appropriate capacity to manage and do inspections properly does not seem to exist at any level.<sup>115</sup>

This indicates that as early as 2007/2008, the SAPS was aware of the challenges it faced, and further, that interventions have either been limited or ineffectual given the persistence of these challenges.

### ***SAPS Detective Service***

The Detective Dialogues held in September 2012 by the Portfolio Committee on Police further highlighted challenges impacting the SAPS:

- Corruption: The SAPS acknowledges various challenges regarding corruption in the Service ...
- Caseloads: The heavy caseloads of detectives lead to short cuts being taken, to the detriment of investigations.
- Resources: The detective environment is not sufficiently resourced in terms of personnel, computers, laptops, cellular phones and vehicles.
- Quality of investigations: ... must be improved.
- Discipline: The SAPS acknowledges that the general discipline of detectives need[s] to be addressed.
- Training: The challenges faced regarding the training of detectives especially in courses such as the Basic Learning Programme, were acknowledged.<sup>116</sup>

The Portfolio Committee expressed concern regarding:

- Lack of career paths for detectives;
- The demoralising effect of corruption; and
- Lack of effective management at station, unit and branch level.<sup>117</sup>

At the end of 2015, the Minister of Police approved the 'Enhancing the Quality and Functioning of the SAPS Detective Service' policy, which was handed over to the acting national commissioner for implementation. This policy is accompanied by a turnaround strategy for the Detective Service, which the Civilian Secretariat for Police (CSP) conducted with six divisions of the SAPS. The SAPS is in the process of developing an implementation plan to roll out the policy.

### ***SAPS Police Inspectorate***

A more recent report from the SAPS Inspectorate Indaba in 2015 notes the following concerns about the effectiveness, efficiency and quality of service delivery by the SAPS:

- Members on reliefs are not managed according to Standing Orders
- Quality of statements is generally poor
- Excessive caseloads [and] investigation of some cases is substandard
- Investigating officers do not comply with instructions from detective commanders and/or requests from public prosecutors
- Crime scenes are not managed properly
- Crime intelligence products such as CTA and CPA do not have a standardised format and their content differs from station to station
- CIOs are unable to explain the purpose of a properly constituted Station Intelligence Profile and its importance for policing<sup>118</sup>

The lack of reporting on the work and impact of the SAPS Inspectorate in SAPS annual reports raises concerns of the diminished role of the inspectorate and the calibre of police officials deployed to this unit.

### ***SAPS Back to Basics approach***

The SAPS most recent response to address these challenges is reflected in its Back to Basics programme.

Acting National Commissioner Lt Gen JK Phahlane indicated the SAPS's intention to introduce a Back to Basics approach, which is reflected in the SAPS 2016/2017 Annual Performance Plan:

'Back-to-basics' policing is premised on the uncompromising implementation of key policing practices, including enhanced police visibility, which implies more police officers in uniform and increased patrols in vehicles, on horseback and on foot, thereby minimising opportunities for crime to be committed. The 'back-to-basics' approach also requires the thorough and responsive investigation of every crime that is reported to the SAPS and the efficient use of all resources supporting the investigation of crime. The optimal use of crime intelligence in support of proactive and reactive policing is a key feature of this approach ... In essence, the 'back-to-basics' approach does not require police officers to do anything which is foreign to them. It simply requires every member to do what he or she has been trained to do, namely the basics of policing, irrespective of where they have been deployed or what they have been deployed to do.<sup>119</sup>

The rationale for the Back to Basics programme emanates from:

- Challenges identified in the 2014/15 Victim of Crime Survey regarding public perception of crime, underreporting of crime, perceptions of crime and safety, and levels of satisfaction with the police;
- Persistent areas of underperformance by the SAPS, noticeable in management of service terminations and incidents leading to civil claims against the police;
- Challenges in the visible policing environment, including serious crime, crimes against women and recovery of stolen state-owned firearms;
- Low detection rates in serious crime, contact crimes and crimes against women and children, poor conviction rates and low levels of trial-ready dockets.<sup>120</sup>

The programme focuses on the development of recovery plans targeting specific areas of underperformance, including detective services, visible policing and service terminations, to achieve enhanced organisational performance.<sup>121</sup>

### ***Visible Policing Recovery Plan***

#### *Crime reduction*

- Prioritise the top 20% of stations responsible for serious crime.
- Detailed crime threat analyses to drive targeted interventions.
- Crime intelligence in support of proactive and reactive interventions.
- Deter crime through proactive policing focusing on information and intelligence-based crime prevention.
- Focused interventions to address the 'Contributors to Crime', i.e. gang conflict, firearms, drugs, vehicles.
- Intelligence-based reactive interventions to disrupt crimes in progress, e.g. cash-in-transit robberies.
- Victim support in each serious crime.
- 'Paint it Blue' – police visibility operations at prioritised high-crime areas, e.g. shopping malls
- Integrated operations with relevant role players, e.g. metro police, traffic.
- Analyse and combat the displacement of serious crime across stations, clusters and provinces.
- Policing incidents of public disorder.
- Optimal utilisation of specialised policing capacities, e.g. tactical response teams.

#### *Service delivery*

- Consulted service delivery charters.
- Improved reaction times (alpha, bravo and charlie complaints).
- Quality statement-taking (A1 statements).
- Effective crime scene management (first responder).
- Implementation of sector policing (where relevant).

#### *Internal functioning*

- Optimise availability and utilisation of personnel.
- Reorganisation of the Station Crime Information Officer and Crime Information Management Centres.
- Combat criminality in SAPS (including corruption and fraud).
- Effective exhibit management (SAPS 13 Stores).
- Address climate and culture (command and control/discipline and conduct/employee health and wellness).
- Police safety.

### ***Detective Service Recovery Plan***

- Improve and measure the investigation and management of case dockets.
- Implement measures to continuously update the system to capture actual performance (avoid annual spike).
- Conduct docket age analysis (as at 1 November 2015) to inform management of individual case dockets.
- Assess docket allocation methodology (for the first and second quarters of 2015/16) to match case complexity with detective experience/expertise.
- Verify wanted/cancelled suspects list, including purifying addresses of wanted suspects, tracing and arrest.
- Verify the manner of closure of case dockets as undetected and withdrawn to determine whether dockets were correctly closed/further investigation is required.



- Determine timelines for investigating categories of crime (standard resolution rate per crime type).
- Effective management of crime scenes.
- Effective management of exhibits.
- Optimise the utilisation of forensic evidence and leads.
- Ensure the taking of buccal samples (all persons arrested) by authorised persons.
- Develop a system solution to determine case docket links based on forensics-based leads, e.g. one suspect linked to 10 distributed dockets.
- Effective management of bail applications to improve performance.
- Track and trace dismissed appeals.
- Reintroduce a uniform investigation capability to reduce the workload on detectives.
- Addressing/activating relevant stakeholders that detectives require within the investigation value chain.
- Operationalise the Organised Crime Threat Analysis (OCTA).

### ***SAPS Organisational Structure Recovery Plan***

- Establish an organisational structure that is responsive to current policing challenges and demands.
- Reorganise and strengthen operational capacity in terms of core operational responsibilities – policing and crime detection.
- Establish synergy driven by the ‘Back to Basics’ approach.
- Develop organisation-specific solutions to address policing demands.
- Initiate interventions to address areas of persistent underperformance and non-compliance.
- Ensure continuous assessment of levels of performance and compliance.
- The structure has been consulted, approved and the appointment of personnel has commenced.

### ***Emerging priorities identified***

#### *Organisational environment*

- Implement transformation and institutional reform initiatives (professionalisation and demilitarisation).
- Enhance police safety to mitigate murders and attacks on police (members and facilities).
- Enhance performance management and accountability (progressive discipline/consequence management).
- Enhance leadership by establishing a leadership charter.
- Enhance data integrity in identified areas (cross-cutting).
- Review combined assurance approach.
- Establish an organisational structure that is responsive to current policing challenges and demands.
- Determine the research agenda in support of policing.
- Turnaround of key areas of underperformance:
  - Police officer health and wellness capability;
  - Service terminations; and
  - Focused interventions to down-manage civil claims by addressing the causes of action.

#### *Performance environment: Visible policing*

- Review frontline service delivery programme, focusing on:
  - The professional police that the people of South Africa expect;
  - SAPS service points as the face of service delivery;
  - Service excellence; and
  - Partnerships with communities towards a safer South Africa.
- Enhance accessibility through Mobile Community Service Centres and partnerships through opportunity with tribal authorities and the Post Office for the establishment of service points.

- Crime prevention focus areas:
  - Serious crime impacting on farms and smallholdings;
  - Drug trafficking; and
  - Taxi violence.
- Sustained visibility.
- Implement Farlam Commission recommendations:
  - Public order police training and resourcing; and
  - Focused intervention – North West public order police capability.
- Intensify crime awareness campaigns at schools.
- Ensure adequate police detention facilities.
- Reconnect with citizens to strengthen grassroots partnerships towards creating a safer South Africa through a collaborative, consultative approach to the core functions of policing.
- Optimise operational capacity (reduce idling time).

#### *Detective Service*

- Revamp the Criminal Justice System (CJS) Master Plan to ensure integrated implementation of CJS 7-Point Plan.
- Establish specialised units focusing on drug-related crime, taxi violence and firearms.
- Enhance utilisation of investigative aids:
  - Forensic leads;
  - DNA Database – taking of buccal samples; and
  - Results of trial – update.
- Operational deployment of detectives:
  - Working hours;
  - Number of detectives; and
  - Allocation of case dockets, including matching experience to categories of crime.
- Managing high-profile investigations/crime scenes (communications/media).

## **8. Developing a police reform agenda**

The task of creating a democratic policing agenda in South Africa and within the SAPS is incomplete because the recommendations of the various inquiries and policy prescripts have not been implemented. Whilst some progress has been made in the development of a legal and policy framework that supports a human rights complaint policing model, implementation of policy and strategies remains a problem.

The review so far reveals a lack of implementation of key recommendations into areas where policing problems have been identified. In addition, there are identifiable gaps in the legal and policy framework which required addressing. Development of a reform agenda for policing should be guided by a comprehensive review of all the requirements of democratic policing.

This is borne out in recent concerns raised by the Portfolio Committee on Police (a key institution responsible for holding the police accountable), which demonstrate low levels of police compliance with key policy prescripts and delays in implementing key findings on police reform.

### ***Recommendations of the Portfolio Committee***

During its Budgetary Review Recommendation Report hearings in October 2015, the Portfolio Committee adopted five recommendations to improve police professionalism and conduct:

1. The Committee recommends that the South African Police Service (SAPS) continue with its plan to demilitarise the service through training and professionalisation and determine the budget of such processes over the medium term and provide the Committee with a report.

2. The Committee recommends that the SAPS proceed with the professionalisation of the service and that it provides the Committee with a report on the processes and timelines it will follow to achieve this ministerial priority.
3. The Committee recommends that the SAPS complete its planning for demilitarisation and provide the Committee with a project plan and timelines for its implementation.
4. The Committee supports the establishment of an independent panel of experts on transformation in the SAPS and the Transformation Task Force led by the Deputy Minister in furtherance of the implementation of the Farlam Commission recommendations.
5. The Committee recommends that the SAPS develop action steps to reduce and limit the budgeted amounts for civil claims against the police.

Mr Beukman [Chairperson] said that the Committee expects quarterly reports from Police Management on these recommendations. He added that the full implementation of the recommendations contained in the National Development Plan (NDP) is critical to ensure that a culture change of demilitarisation takes place and relations between the police and community are improved.<sup>122</sup>

The Portfolio Committee recommendations indicate areas of non-compliance and poor implementation. These areas and the SAPS's response are discussed in more detail below.<sup>123</sup>

#### *Demilitarisation of the SAPS*

The SAPS should continue with its plan to demilitarise the police service and to determine the budget of such processes.

The SAPS indicated that it had held a research colloquium on demilitarisation on 20–21 November 2014<sup>124</sup> and that the Human Resource Development Division of the SAPS initiated a second research project to obtain clarity on the concept of demilitarisation, to be completed by March 2017. The CSP also conducted a research project on demilitarisation and completed the White Paper on Policing, which addresses issues of police demilitarisation.<sup>125</sup>

#### *Effective management control over stations*

The SAPS should provide the Portfolio Committee with a revised strategy to ensure effective management control over stations and clusters stations by provincial commissioners.

The SAPS has implemented a Cluster Station Management Framework focusing on performance at cluster and station level. It also indicated its intention to standardise the performance plans of commanders who report to cluster and station commanders for 2016/17.<sup>126</sup>

#### *Strengthening the police inspectorate*

The SAPS should prioritise the amendment of Standing Order 6 and a new inspection tool to ensure better compliance at station level with prescripts, regulations and standing orders.

Standing Order 6 was reviewed and submitted to the Portfolio Committee.

#### *Reduction in civil claims against police*

The SAPS should address police misconduct by reducing civil claims against the police.

The SAPS submitted a report on strategies to reduce contingent liabilities to the Portfolio Committee. One such strategy was to cascade the organisational performance indicator down into the performance plans of all managers, including provincial and station commanders.<sup>127</sup> The SAPS has yet to elaborate on this strategy and how as a consequence management would be able to address the unlawful actions of SAPS members and as such reduce civil claims.<sup>128</sup>

#### *Resource allocation plan*

The SAPS should provide the Portfolio Committee with a copy of the National Demographic Plan that is to be integrated with station profiles to review the fixed establishment.

This plan was submitted to the Portfolio Committee.<sup>129</sup>

#### *Turnaround strategy*

The SAPS should provide the Portfolio Committee with its turnaround strategy to increase the detection rate for serious crimes and crimes against women and children.

This strategy was submitted as part of the management intervention strategy.<sup>130</sup>

#### *Retention strategy for detectives*

The SAPS should provide the Portfolio Committee with its retention plan for detectives.

The SAPS indicated that it was developing a career path strategy and had appointed a remuneration specialist to review the plan.<sup>131</sup>

#### *Needs analysis on detectives*

The SAPS should provide the Portfolio Committee with a needs analysis on the number of detectives.

The SAPS submitted an analysis report indicating that an additional 2 483 detectives were required.<sup>132</sup>

### ***Recommendations in respect of strengthening oversight***

Developing a 'professional, well-resourced and highly skilled police service',<sup>133</sup> able to discharge its constitutional mandate, requires not only a close examination of the internal policing environment, but also an assessment of the effectiveness of oversight arrangements (including systems facilitating meaningful public and community engagement and accountability).

The Khayelitsha and Marikana commissions highlighted the impact that the lack of professionalism in the SAPS has on the execution of core policing functions at station level and in public order police operations, respectively.

The Khayelitsha Commission identified reasons for the breakdown of the relationship between the police and the community and made key recommendations on strengthening the role of communities, as well as provincial and national secretariats in monitoring and holding the SAPS accountable. Similarly, the NDP and the White Paper on Safety and Security advocate greater engagement by civil society and communities in policing, through strengthening the mechanisms for community engagement and participation.

The Khayelitsha and Marikana commissions also called into question the effectiveness of IPID in investigating complaints against the police and called for strengthening the capacity of this institution.

The Khayelitsha Commission identified weaknesses in internal management systems and a lack of capacity and resourcing in police stations. Similarly, the Marikana Commission recommended a series of interventions within the policing environment and endorsed the recommendations of the NDP in respect of professionalisation of the police.

#### *Civilian Secretariat for Police*

- There is a need to strengthen the capacity of the CSP at both national and provincial level, to enable it to discharge its oversight functions. The secretariats play a critical role in monitoring police performance and holding the SAPS accountable.
- The CSP and provincial secretariats need to:
  - Develop monitoring systems and ensure that they are aligned and functional;
  - Address areas of underperformance; and
  - Comply with policy and legal prescripts.

- Memorandums of understanding with the SAPS need to be put in place to facilitate inspections, sharing of information and compliance with reporting obligations.

#### *Independent Police Investigation Directorate*

- IPID investigators need to be resourced and capacitated to improve the quality and time frames of investigations.
- Legislative changes are required to clarify the relationship between the Ministry of Police and parliament in light of the judgement in *McBride vs. Minister of Police and Another*.

#### *Directorate of Priority Crime Investigation*

- The limited powers to initiate investigations and enforce recommendations, as well as the lack of capacity of the DPCI Judge Office, need to be addressed in future legislative amendments.
- Clarity is further required regarding the mandate of the DPCI in relation to IPID.

#### *Community mechanisms for engagement*

- Community policing forums and community safety forums need to be capacitated, resourced and supported to perform oversight and monitoring functions.
- Communities need to be integrated into systems for monitoring police performance and conduct.

#### *Parliamentary oversight*

- The Portfolio Committee on Police should have a standing inventory of outstanding recommendations and non-compliance issues by the SAPS, IPID and the CSP so that they can be monitored and tracked.
- Non-compliance with targets and time frames should be escalated to the Minister of Police, who should be held accountable for poor performance.

#### *SAPS internal environment*

- The National Police Inspectorate and its provincial divisions need to be capacitated to conduct inspections and follow up inspections at police stations, police units, clusters and provincial offices.
- The inspectorate should compile quarterly reports, which should be integrated into SAPS performance management systems.
- The reports of the inspectorate further need to be integrated into quarterly and annual reporting frameworks.
- Managers at all levels should be held accountable for failure to implement or take remedial action on recommendations and findings of the inspectorate.

#### *Professionalisation of the SAPS*

- The recommendations of the Khayelitsha and Marikana commissions and the NDP in respect of professionalisation of the police need to be implemented.

### ***Recommendations of the National Development Plan***

#### *Code of conduct*

- The code of conduct should be integrated with human resources systems.
- There should be proper enforcement of consequences for non-adherence by police members.
- The police code of conduct and code of professionalism should be linked to promotion and disciplinary regulations to ensure enforcement and sanctions.
- A professional code of ethics dealing with police functions should be developed.
- There needs to be training and testing of police members in the application of professional ethics.

#### *Establishing a National Policing Board*

- A National Policing Board with multisectoral and multidisciplinary expertise should be established with responsibility for:
  - Setting standards for recruiting, selecting, appointing and promoting police officials and police officers.

- Developing a professional code of ethics.
- Analysing the professional standing of policing, based on international norms and standards.

#### *Selecting for excellence and professionalism*

- All officers should undergo a competency assessment and be rated accordingly.
- Officers who do not meet standards should not be promoted or appointed to a higher level until the required level of competency is met.
- A two-stream system of recruitment should be implemented:
  - The basic stream should allow for recruitment of non-commissioned officers who could progress through training and gain competence from experience through objective testing against standards, and to reward experience and competence.
  - Non-commissioned members should be supported and mentored by commissioned officers.
  - In the officer stream, commissioned officers should be selected on criteria and standards set by a professional body.
  - Direct recruitment to the officer stream should be based on set criteria followed by further training and testing for candidate officers. Officers should only be commissioned when all criteria were met.
- The national commissioner and deputies should be appointed on a competitive basis through a selection panel (with appropriate expertise) established by the president. Clear and objective criteria should be established.

#### *Training for professionalism*

- Training should strengthen the capacity and standing of detectives.
- Specialised units with highly trained and professional police officers should be re-established.
- Officers should be deployed according to crime patterns and trends.
- Officers should be available to direct operations, investigate crime and supervise staff outside office hours.

#### *Civilianising the police*

- The SAPS must be demilitarised.
- There should be an assessment of police culture.

#### **Recommendations in respect of White Papers**

The recommendations of the NDP are integrated into the White Paper on Policing and in the current mandate of the Transformation Task Team.

- A clear programme of action for implementation of these policy prescripts must be developed to guide and monitor implementation.
- The Transformation Task Team needs to urgently develop a programme of action with a clear time frame and deliverables. This should be monitored by the Portfolio Committee for Police and the Department of Planning and Monitoring Evaluation (DPME).
- The programme must address all recommendations of the NDP, including the establishment of a police board and the demilitarisation and professionalisation of the SAPS.

#### *Accountability*

It is necessary to address the challenges faced by the SAPS through effective consequence management. Non-compliance with legislative prescripts and instructions results in inconsistent service delivery at station level, as well as increases in incidents of misconduct leading to increasing civil claims. Staff must be held accountable for misconduct. This requires an institutional support system with a viable legal system to deal with corruption and to adjudicate administrative violations.<sup>134</sup> The review of the SAPS Act needs to ensure that such gaps are addressed.

The Ministry of Police and the SAPS have embarked on a number of initiatives discussed above, i.e. the Transformation Task Team, Back to Basics and the Detective Turnaround Strategy. There needs to be greater accountability and transparency in these processes.

The White Papers on Policing and Safety and Security provide a clear framework for a new policy framework for policing in South Africa. The challenges arising from lack of implementation of the new paradigm contained in the National Crime Prevention Strategy and the White Paper on Safety and Security must be avoided at all costs.

Further developments include the establishment of the panel of experts charged with the development of a programme for implementation of the recommendations of the Marikana Commission.

- Monitoring and reporting frameworks within the SAPS need to be strengthened.
- Managers need to be held accountable through enforcement of national instructions, standing orders and disciplinary sanctions.
- Policing strategies such as the Back to Basics approach and the Detective Turnaround Strategy should:
  - Be accompanied by action plans with clear time frames and deliverables;
  - Clarify responsible parties; and
  - Be supported by monitoring and evaluation frameworks to assess impact.
- The Back to Basics approach needs to integrate the recommendations of the NDP by recognising the impact of socialisation and not just assuming that police members know the basics of policing.
  - Police members should be properly assessed on their knowledge of the basics of policing.<sup>135</sup>
  - Training should address any gaps and ensure integration of human rights into current and new training curricula.
- Implementation frameworks for the White Papers on Safety and Security and Policing need to be put in place as soon as possible. These need to be monitored by the Portfolio Committee on Police and the DPME.
- The White Paper on Safety and Security needs to be championed and driven at the highest level, i.e. the Presidency.
- The Portfolio Committee on Police needs to scrutinise the terms of reference and programme of action of the panel of experts and monitor deliverables of this committee through regular reporting by the Ministry of Police.
- There needs to be greater transparency and opportunities for engagement with civil society in deliberations by the panel of experts. The public needs to be kept apprised at all times of progress in achievement of deliverables.

### ***Recommendations in respect of international treaties***

#### *Pre-trial detention*

South Africa is party to international, continental and regional instruments. The SAPS needs to ensure that it stays abreast of international developments and should implement recommendations and guidelines of these bodies into SAPS strategies and practice.

The Luanda Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa<sup>136</sup> and the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>137</sup> require that police agencies put into place mechanisms to monitor conditions in police custody.

The Luanda Guidelines address the framework for arrest (grounds for arrest, procedural safeguards of suspected and arrested persons) and custody (procedural and substantive safeguards for persons in police custody) to ensure accountability and improvement of coordination between criminal justice institutions.

OPCAT requires states to put in place systems to monitor places of custody through National Preventive Mechanisms.

- Conditions of detention in South Africa should be assessed against the standard articulated in the Luanda Guidelines.

- The SAPS should develop an implementation plan to address key areas identified in the Luanda Guidelines, including:
  - Appropriate training of law enforcement officials;
  - Mechanisms to deal with vulnerable groups;
  - Developing and implementing systems to ensure effective management of detainees, i.e. screenings, registers, cell inspections, adequate physical infrastructure of holding facilities and transportation of detainees;
  - Data collection and access to information;
  - The use of force and of firearms;
  - Strengthening the accountability architecture of the SAPS both internally and externally;
  - The development and implementation of a system for monitoring places of police custody.

#### *Use of force by police officials*

Increasing incidents of police brutality raise critical questions about the legislative and policy framework governing the use of force by police officials when executing their duties. A review of the current provisions in Section 49 of the Criminal Procedure Act and the Regulations of Gatherings Act questions the standards articulated for use of lethal force in the context of fleeing suspects and the protection of property.

- The legal framework governing the use of force needs to be reviewed and aligned to human rights standards.
- Police training in respect of the use of force and firearms needs to be reviewed. This needs to extend beyond the scope of public order policing and include a focus on all police officials and all contexts in which police perform their duties.
- The review of the standing order on the use of force needs to be accompanied by a programme of action articulating how it will be rolled out and implemented. This action plan should be monitored and tracked, and also be integrated into performance management systems to ensure compliance.
- Review mechanisms need to be put in place to address incidents of excessive use of force.

## **9. Conclusion**

This review of interventions in police reform indicates that many of the systemic problems undermining police efficiency and performance remain unaddressed. These problems have been identified and are well documented, as evident from the inquiries and interventions into policing over the last two decades. There has been a range of policy directives prescribing new reform interventions, but the extent of implementation of the findings and recommendations of these processes has been problematic. This raises key questions regarding the barriers impacting on effective implementation.

In order for South Africa to comply with its international and domestic prescripts it must align its police reform agenda within a framework of democratic policing. Oversight mechanisms –governmental, legislative, judicial, civil society and community – need to hold the SAPS accountable to this reform agenda.

The development of a coherent and comprehensive agenda of police reform with well-articulated activities, time frames and responsibilities will assist stakeholders in monitoring levels of compliance and tracking progress in implementation. It is hoped that the areas of reform identified in this paper will contribute to such a process.



## Sources

### Articles and books

Bruce D & Neild R 'The police we want: A handbook for oversight of police in South Africa' Centre for the Study of Violence and Reconciliation in association with the Open Society Foundation for South Africa and the Open Society Justice Initiative (2005). Available at [https://www.opensocietyfoundations.org/sites/default/files/Handbook\\_\\_full\\_t.pdf](https://www.opensocietyfoundations.org/sites/default/files/Handbook__full_t.pdf)

Bayley D '*Changing the guard: Developing democratic police abroad*' Oxford, Oxford University Press (2006)

Botha R & Visser J 'Forceful arrests: an overview of section 49 of the Criminal Procedure Act 51 of 1977 and its recent amendments' (2012) *Potchefstroom Electronic Law Journal* 2012 PER 26

De Kok A & Van der Spuy E 'Inquiries into policing 1910 to 2015' *SA Crime Quarterly* No 53 Institute for Security Studies (October 2015)

Dixon B 'Making further inquiries Policing in context Brixton and Khayelitsha' *SA Crime Quarterly* No 53 Institute for Security Studies (October 2015)

Du Plessis A & Louw A 'Crime and Crime Prevention in South Africa: 10 Years After' *Canadian Journal of Criminology and Criminal Justice* (April 2005)

Kanyegirire A 'Investigating the Investigators' *SA Crime Quarterly* No 24 Institute for Security Studies (June 2008). Available at <http://reference.sabinet.co.za/document/EJC47616>

Newham G 'Avoiding another Marikana Massacre: Why police leadership matters' *SA Crime Quarterly* No 53 Institute for Security Studies (October 2015)

Rauch J 'Changing step: crime prevention policy in South Africa' in Pelsler E ed., *Crime Prevention Partnerships*, Pretoria, Institute for Security Studies (2002). Available at <https://issafrica.org/uploads/PREVENCHAPTER2.PDF>

### Reports and presentations

Burger J 'Some Perspectives on Change & Restructuring in the Saps' Presentation to ISS Seminar (19 May 2016). Available at <https://issafrica.s3.amazonaws.com/site/uploads/2016-05-19-SAPS-Shake-Up-Presentation.pdf>

Burger J 'Identifying and Fixing Major Inadequacies in the SAPS' (28 October 2015). Available at <https://issafrica.s3.amazonaws.com/site/uploads/6th-Crime-Conf-2015-Presentations/014-Johan-Burger.pdf>

Human Rights Committee 'Concluding observations on the initial report of South Africa' CCPR/C/ZAF/CO/1 (27 April 2016). Available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsowwsSwFehBWX2ZjedBh4%2F811AqGyl2MTdng6xdE8vcB81uWeU1SfkzAjkFApm4n4sVMY4cvhDsmlt3UuCiWMpSKAPdJOaa%2BhTfv%2FQXEkwx>

Human Rights Watch 'Human Rights Development Report' (1993). Available at <https://www.hrw.org/reports/1993/WR93/Afw-09.htm>

SAPS Presentation to ISS Seminar 'SAPS shake-up: how policing is being improved in South Africa' (19 May 2016) Pretoria. Available at <https://www.issafrica.org/events/saps-shake-up-how-policing-is-being-improved-in-south-africa>

Stone C & Ward H 'Democratic Policing: A Framework for Action'. Available at [http://archive.vera.org/sites/default/files/resources/downloads/stone\\_ward.pdf](http://archive.vera.org/sites/default/files/resources/downloads/stone_ward.pdf)

### Commission reports

'Khampepe Commission of Inquiry Report'. Available at <http://www.thepresidency.gov.za/docs/reports/khampepe>

'Khayelitsha Commission Report'. Available at [http://www.khayelitshacommission.org.za/images/towards\\_khaye\\_docs/Khayelitsha\\_Commission\\_Report\\_WEB\\_FULL\\_TEXT\\_C.pdf](http://www.khayelitshacommission.org.za/images/towards_khaye_docs/Khayelitsha_Commission_Report_WEB_FULL_TEXT_C.pdf)

'Marikana Commission of Inquiry Report'. Available at <http://www.thepresidency.gov.za/medialib/downloads/downloads/Full%20Report%20of%20the%20Marikana%20Commision%20of%20Inquiry.pdf>

'Report of the inquiry into the police response to, and investigation of, events in Boipatong on 17 June 1992' (1992) Pretoria, Government Printer. Available at <http://www.historicalpapers.wits.ac.za/?inventory/U/collections&c=AK3342/1/9077>

'Waddington Report' (1992) Available at <http://hpra-atom.wits.ac.za/atom-2.1.0/index.php/waddington-report-on-investigation-into-events-at-boipatong-submitted-to-goldstone-commission-of-inquiry-and-police-reaction>

### **Parliamentary reports**

Beukman F National Assembly Budget Vote Debate 'Police Budget Vote: Back-To-Basics at SAPS Gets Nod of Approval' Insession Vol. 16 No 3 2016. Available at [http://www.parliament.gov.za/live/content.php?Item\\_ID=9055](http://www.parliament.gov.za/live/content.php?Item_ID=9055)

'Farlam Commission recommendations implementation by Ministry of Police' Portfolio Committee on Police (21 September 2016). Available at <https://pmg.org.za/committee-meeting/23311/>

Minutes of the Portfolio Committee on Police 'Farlam Recommendations implementation by Ministry of Police; Railway, Gangs and Radio-control specialised units; SAPS transformation task team, with Minister & Deputy present'; and Presentation of the SAPS Transformation Project Progress Report (21 September 2016). Available at <https://pmg.org.za/committee-meeting/23311/>

Minutes of the Portfolio Committee on Police (21 September 2016). Available <https://pmg.org.za/committee-meeting/23311/>

Minutes of the Portfolio Committee on Police (13 October 2016) PMG Civilian Secretariat for Police 2015/16 Annual Report; CSP 2015/16 Annual Report. Available at <https://pmg.org.za/committee-meeting/23421/>

Presentation by Directorate for Priority Crime Investigation on its 2015/16 Annual Report to Portfolio Committee on Police (2 November 2016). Available at <https://pmg.org.za/committee-meeting/23586/>

Report of the Portfolio Committee on the 2015/16 Budget Vote 23, ATC150511: Annual Performance Plan and 2014-2019 Strategic Plan of the Department of Police (SAPS) (7 May 2015). Available at <https://pmg.org.za/taled-committee-report/2380/>

Research Unit 'Analysis of Past Committee Recommendations by the Portfolio Committee on Police' (October 2016).

Research Unit Analysis of 2015 BRRR Recommendations.

### **Annual reports**

'Civilian Secretariat for Police 2015/16 Annual Report'. Available at [http://pmg-assets.s3-website-eu-west-1.amazonaws.com/161013CIVILIAN\\_AR.pdf](http://pmg-assets.s3-website-eu-west-1.amazonaws.com/161013CIVILIAN_AR.pdf)

'SAPS 2016/17 Annual Performance Plan'. Available at [http://www.saps.gov.za/about/stratframework/strategic\\_plan/2016\\_2017/annual\\_performance\\_plan\\_2016\\_2017.pdf](http://www.saps.gov.za/about/stratframework/strategic_plan/2016_2017/annual_performance_plan_2016_2017.pdf)

### **Court cases**

*Helen Suzman Foundation vs. President of the Republic of South Africa and Others; Glenister vs. President of the Republic of South Africa and Others [2014] ZACC 32*. Available at <http://www.saflii.org/za/cases/ZACC/2014/32.pdf>

*Glenister vs. President of the Republic of South Africa and Others 2011 (3) SA 347 (CC)*. Available at <http://www.saflii.org/za/cases/ZACC/2011/6.html>

*McBride vs. Minister of Police and Another (CCT255/15) [2016] ZACC 30*. Available at <http://www.saflii.org/cg-bin/disp.pl?file=za%2Fcases%2FZACC%2F2016%2F30.html;query=%20McBride#disp2>

### **International instruments**

'Guidelines on Conditions of Arrest, Police Custody and Pre-Trial detention in Africa' (2014). Available at [http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines\\_arrest\\_police\\_custody\\_detention.pdf](http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines_arrest_police_custody_detention.pdf)

'Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (18 December 2002). Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

## **Legislation**

Civilian Police Secretariat Act 2 of 2011  
Constitution of the Republic of South Africa 1996  
Criminal Procedure Act 51 of 1977  
Independent Police Investigation Directorate Act 1 of 2011  
Prevention of Public Violence and Intimidation Act 139 of 1991  
Regulation of Gatherings Act 205 of 1993  
South African Police Service Act 68 of 1995

## **Policy documents**

National Crime Prevention Strategy 1996. Available at <https://issafrica.org/crimehub/uploads/National-Crime-Prevention-Strategy-1996.pdf>  
White Paper on Police 2016. Available at [http://www.policesecretariat.gov.za/downloads/bills/2016\\_White\\_Paper\\_on\\_Policing.pdf](http://www.policesecretariat.gov.za/downloads/bills/2016_White_Paper_on_Policing.pdf)  
White Paper on Safety and Security 1998. Available at [http://www.policesecretariat.gov.za/downloads/white\\_paper\\_security.pdf](http://www.policesecretariat.gov.za/downloads/white_paper_security.pdf)  
White Paper on Safety and Security 2016. Available at <http://www.saferspaces.org.za/uploads/files/2016-WPSS.pdf>

## **Media articles**

Africa News Agency 'IPID to investigate Hawks boss Ntlemeza for perjury over Booysen affidavit' (30 March 2016). Available at <http://mg.co.za/article/2016-03-30-ipid-to-investigate-hawks-boss-ntlemeza-for-perjury-over-booysen-affidavit>  
Bateman B 'Panel of Experts to Study, Implementation Marikana Commission of Inquiry Recommendations' (24 January 2016). Available at <http://ewn.co.za/2016/01/24/Panel-of-experts-to-study-and-implement-Marikana-Commission-of-Inquiry-recommendations>  
Beukman F 'Media Statement Committee Chairperson Mr Francois Beukman' *Parliament RSA* (26 October 2015). Available at <http://www.gov.za/speeches/committee-recommends-professionalisation-police-service-26-oct-2015-0000>  
De Vos P 'A Problematic limitation on the right to freedom of assembly' (6 October 2011). Available at <http://constitutionallyspeaking.co.za/a-problematic-limitation-on-the-right-to-freedom-of-assembly/>  
EWN News 'Hawks question IPID process in SARS "hostage" situation' *Eyewitness News* (28 October 2016). Available at <http://ewn.co.za/2016/10/28/hawks-find-it-odd-that-ipid-officer-was-asked-to-give-statement-after-being-charged>  
Ground Up 'How Constitutional are the regulations on public gatherings?' Available at [http://www.groundup.org.za/article/how-constitutional-are-regulations-public-gatherings\\_3133/](http://www.groundup.org.za/article/how-constitutional-are-regulations-public-gatherings_3133/)  
Isaacs L 'Police committee: Farlam recommendations yet to be implemented' *Eyewitness News* (31 August 2016). Available at <http://ewn.co.za/2016/08/31/Police-committee-Farlam-recommendations-yet-to-be-implemented>  
Madiya T 'Courts may reveal roots of Gordhan/Hawks battle – analyst' *News 24* (11 October 2016). Available at <http://www.news24.com/SouthAfrica/News/courts-may-reveal-roots-of-gordhanhawks-battle-analyst-20161011>  
Merten M 'Nhleko plans to transform SAPS' IOL (3 September 2015). Available at <http://www.iol.co.za/news/crime-courts/nhleko-plans-to-transform-saps-1909854>  
Nicholson G 'Riah Phiyega finally on the ropes – what about the others?' *Daily Maverick*. Available at [www.dailymaverick.co.za/article/2016-12-05-riah-phyiega-finally-on-the-ropes-what-about-the-others/#.WEbYxqJ96-o](http://www.dailymaverick.co.za/article/2016-12-05-riah-phyiega-finally-on-the-ropes-what-about-the-others/#.WEbYxqJ96-o)  
Petersen T 'Panel of experts to help implement Farlam Commissions findings' *News 24* (24 January 2016). Available at <http://www.news24.com/SouthAfrica/News/independent-panel-of-experts-to-help-implement-farlam-commission-findings-20160124>

Roelf W 'South Africa's Scorpion crime fighters to be disbanded' *Reuters* (12 February 2008). Available at <http://www.reuters.com/article/us-safrica-scorpions-idUSL1223114320080212>

Sole S & Evans S 'Cloud over new Hawks boss ignored' *Mail & Guardian* (16 October 2015). Available at <http://mg.co.za/article/2015-10-16-00-cloud-over-new-hawks-boss-ignored>

Tait S 'Marikana panel faces being discredited' *Business Day* (14 October 2016). Available at <http://www.businesslive.co.za/bd/opinion/2016-10-14-marikana-panel-faces-being-discredited/>

Thamm M 'Police minister gifts Hawks a R1.4bn nest egg, but will it guarantee independence?' *Daily Maverick* (29 April 2016). Available at <http://www.dailymaverick.co.za/article/2016-04-29-police-minister-gifts-hawks-a-r1.4bn-nest-egg-but-will-it-guarantee-independence/#.WBHZveF943g>

Western Cape Government 'Media Statement: Khayelitsha Commission of Inquiry Progress Update' (29 August 2016). Available at <https://www.westerncape.gov.za/news/media-statement-khayelitsha-commission-inquiry-progress-update>

### **Websites**

Office of the DPCI Judge Website. Available at <http://www.dpcijudge.gov.za/?q=content/our-mandate>

South Africa.info. Available at <http://www.southafrica.info/business/economy/policies/ndp-080814.htm#.Vj3MvGQrLR0#ixzz3qnbVRXmk>

### **Speeches**

President J Zuma 'Changes to National Executive and SA Police Service' (12 June 2012). Available at <http://www.thepresidency.gov.za/pebble.asp?relid=6204>

## **Abbreviations and acronyms**

BRRR	Budgetary Review and Recommendations Report
CIO	Crime Intelligence Officer
CPF	Community Policing Forum
CJS	Criminal Justice System
CSP	Civilian Secretariat for Police
DPCI	Directorate of Priority Crime Investigation
DOCS	Department of Community Safety
DSO	Directorate of Special Operations
EHP	Employee Health and Wellness Programme
FCS	Family Child Protection and Sexual Offences Units
ICCPR	International Covenant on Civil and Political Rights
IPID	Independent Police Investigation Directorate
NDP	National Development Plan 2030
NPA	National Prosecuting Authority
MTSF	Medium-Term Strategic Framework
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment
SAPS	South African Police Service
SCCF	Station Crime Combating Forum

## Endnotes

- 1 Stone C & Ward H 'Democratic Policing: A Framework for Action' Available at [http://archive.vera.org/sites/default/files/resources/downloads/stone\\_ward.pdf](http://archive.vera.org/sites/default/files/resources/downloads/stone_ward.pdf) Accessed 11 November 2016; see also Bayley D (2006), 'Changing the guard: Developing democratic police abroad', Oxford University Press.
- 2 Stone & Ward, 3.
- 3 Bayley D (2001) cited in Bruce & Neild (2015: 16); Bayley (2006), 'Changing the guard'; Bruce D & Neild R (2005), 'The police that we want: A handbook for oversight of police in South Africa', Centre for the Study of Violence and Reconciliation in association with the Open Society Foundation for South Africa and the Open Society Justice Initiative. See also Commonwealth Human Rights Initiative (2005) 'Police Accountability: Too Important to Neglect, Too Urgent to Delay', New Delhi; Bruce D (2007) 'Good Cops? Bad Cops? Assessing the South African Police Service', *SA Crime Quarterly* No 21.
- 4 For a detailed review of inquiries into policing see De Kok A & Van der Spuy E 'Inquiries into policing 1910 to 2015', *SA Crime Quarterly* No 53, Institute for Security Studies (6 October 2015) for a comprehensive review.
- 5 Section 84(2)(f) of the Constitution of the Republic of South Africa of 1996 makes provision for the President to establish a commission of inquiry; and section 206(5) provides that a province may appoint a commission of inquiry into any complaints of police inefficiency or a breakdown in relations between the police and any community.
- 6 Available at <https://issafrica.org/crimehub/uploads/National-Crime-Prevention-Strategy-1996.pdf>.
- 7 Available at [http://www.policesecretariat.gov.za/downloads/white\\_paper\\_security.pdf](http://www.policesecretariat.gov.za/downloads/white_paper_security.pdf).
- 8 Available at <http://www.safterspaces.org.za/uploads/files/2016-WPSS.pdf>.
- 9 S Mufamadi Media Statement (25 May 1994), cited in Burger J 'Some Perspectives on Change & Restructuring in the SAPS' (19 May 2016) Available at <https://issafrica.s3.amazonaws.com/site/uploads/2016-05-19-SAPS-Shake-Up-Presentation.pdf> Accessed 29 October 2016. See also National Development Plan (NDP), 355.
- 10 S Mufamadi (20 Sept 1994), Minister in Draft Policy Document on Change, cited in Burger (2016).
- 11 White Paper on Safety and Security, cited in Burger (2016).
- 12 See Burger (2016) for further discussion.
- 13 Burger (2016).
- 14 For a full discussion see Botha R & Visser J 'Forceful arrests: An overview of section 49 of the Criminal Procedure Act 51 of 1977 and its recent amendments' (2012) *Potchefstroom Electronic Law Journal* 2012, 26.
- 15 Minister N Mthethwa (11 March 2010), cited in Burger (2016).
- 16 B Cele, National Commissioner of Police (31 March 2010) Letter to SAPS Commanders, cited in Burger (2016).
- 17 President J Zuma, State of the Nation Address (18 February 2016), cited in Burger (2016).
- 18 NDP 2030.
- 19 G Nicholson 'Riah Phiyega finally on the ropes – what about the others?' 5 December 2016, *Daily Maverick* Available at [www.dailymaverick.co.za/article/2016-12-05-riah-phyiega-finally-on-the-ropes-what-about-the-others/#.WEbYxqJ96-o](http://www.dailymaverick.co.za/article/2016-12-05-riah-phyiega-finally-on-the-ropes-what-about-the-others/#.WEbYxqJ96-o) Accessed 6 December 2016.
- 20 Speech by President J Zuma 'Changes to National Executive and SA Police Service (12 June 2012). Available at <http://www.thepresidency.gov.za/pebble.asp?relid=6204> Accessed 6 December 2016.
- 21 Available at <http://www.historicalpapers.wits.ac.za/?inventory/U/collections&c=AK3342/I/9077> Accessed 27 October 2016.
- 22 Human Rights Watch 'Human Rights Development Report' (1993) Available at <https://www.hrw.org/reports/1993/WR93/Afw-09.htm> Accessed 12 November 2016.
- 23 Human Rights Development Report (1993).
- 24 Waddington Report (1992), 43 Available at [http://www.groundup.org.za/article/how-constitutional-are-regulations-public-gatherings\\_3133/](http://hpra-atom.wits.ac.za/atom-2.1.0/index.php/waddington-report-on-investigation-into-events-at-boipatong-submitted-to-goldstone-commission-of-inquiry-and-police-reaction; 'Report of the Inquiry into the Police response to, and investigation of, events in Boipatong on 17 June 1992' (20 July 1992), Pretoria, Government Printer.</a></li><li>25 See also Groundup 'How Constitutional are the regulations on public gatherings?' <a href=) and 'A Problematic limitation on the right to freedom of assembly' Available at <http://constitutionallyspeaking.co.za/a-problematic-limitation-on-the-right-to-freedom-of-assembly/>.
- 26 Newham G 'Avoiding another Marikana Massacre: Why police leadership matters' *SA Crime Quarterly* 53 (October 2015).
- 27 Marikana Commission of Inquiry Report, 515, Available at <http://www.thepresidency.gov.za/media/lib/downloads/downloads/Full%20Report%20of%20the%20Marikana%20Commission%20of%20Inquiry.pdf>.
- 28 *Ibid.*, 546.

- 29 Ibid., 545–546.
- 30 Ibid., 547.
- 31 Ibid., 549.
- 32 Ibid., 549.
- 33 Ibid., 549–550.
- 34 Ibid., 551.
- 35 Ibid., 551.
- 36 Ibid., 551.
- 37 Ibid., 552.
- 38 Ibid., 552–553.
- 39 Ibid., 553–554.
- 40 Merten M 'Nhleko plans to transform SAPS (3 September 2015) *IOL* Available at <http://www.iol.co.za/news/crime-courts/nhleko-plans-to-transform-saps-1909854> Accessed 26 October 2016.
- 41 Bateman B 'Panel of Experts to Study, Implementation Marikana Commission of Inquiry Recommendations' (24 January 2016) Available at <http://ewn.co.za/2016/01/24/Panel-of-experts-to-study-and-implement-Marikana-Commission-of-Inquiry-recommendations> Accessed 26 October 2016.
- 42 Petersen T 'Panel of experts to help implement Farlam Commissions findings' *News 24* (24 January 2016) Available at <http://www.news24.com/SouthAfrica/News/independent-panel-of-experts-to-help-implement-farlam-commission-findings-20160124> Accessed 26 October 2016.
- 43 Farlam Commission recommendations implementation by Ministry of Police, Portfolio Committee on Police (21 September 2016) Available at <https://pmg.org.za/committee-meeting/23311/>.
- 44 Human Rights Committee 'Concluding observations on the initial report of South Africa' (7–31 March 2016), para. 26.
- 45 Ibid., para. 27.
- 46 Isaacs L 'Police committee: Farlam recommendations yet to be implemented' *Eye Witness News* (31 August 2016) Available at <http://ewn.co.za/2016/08/31/Police-committee-Farlam-recommendations-yet-to-be-implemented> Accessed 26 October 2016.
- 47 Tait S 'Marikana panel faces being discredited' *Business Day* (14 October 2016) Available at <http://www.businesslive.co.za/bd/opinion/2016-10-14-marikana-panel-faces-being-discredited/>.
- 48 Kanyegirire A 'Investigating the Investigators' *SA Crime Quarterly* No 24 (June 2008) Institute for Security Studies Available at <http://reference.sabinet.co.za/document/EJC47616>.
- 49 'Khampepe Commission of Inquiry Report' Available at <http://www.presidency.gov.za/docs/reports/khampepe/part1.pdf> Accessed 26 October 2016.
- 50 Ibid., p. 8.
- 51 Ibid., p. 21, paras 8.14–8.15.
- 52 Ibid., p. 90, para. 38.9.
- 53 Ibid., p. 39, para. 12.4.
- 54 Ibid., p. 38, para. 12.1.
- 55 Ibid., p. 23, para. 9.7.
- 56 Ibid., p. 24, para. 10.2.
- 57 Ibid., pp. 46–47, para. 16.1.
- 58 Ibid., p. 47, para. 16.2
- 59 Ibid., p. 112, para. 53.
- 60 Roelf W 'South Africa's Scorpion crime fighters to be disbanded' *Reuters* (12 February 2008) Available at <http://www.reuters.com/article/us-safrica-scorpions-idUSL1223114320080212> Accessed 27 October 2016.
- 61 Tham M 'Police minister gifts Hawks a R1.4bn nest egg, but will it guarantee independence?' *Daily Maverick* (29 April 2016) Available at <http://www.dailymaverick.co.za/article/2016-04-29-police-minister-gifts-hawks-a-r1.4bn-nest-egg-but-will-it-guarantee-independence/#.WBHZveF943g> Accessed 27 October 2016.
- 62 Sole S & Evans S 'Cloud over new Hawks boss ignored' *Mail & Guardian* (16 October 2015) Available at <http://mg.co.za/article/2015-10-16-00-cloud-over-new-hawks-boss-ignored> Accessed 27 October 2016.
- 63 Presentation by Directorate for Priority Crime Investigation on its 2015/16 Annual Report to Portfolio Committee on Police (2 November 2016) Available at <https://pmg.org.za/committee-meeting/23586/> Accessed 12 November 2016.

- 64 Office of the DPCI Judge Website Available at <http://www.dpcijudge.gov.za/?q=content/our-mandate> Accessed 12 November 2016.
- 65 Presentation by Directorate for Priority Crime Investigation on its 2015/16 Annual Report to Portfolio Committee on Police (2 November 2016).
- 66 Ibid.
- 67 'IPID to investigate Hawks boss Ntlemeza for perjury over Booysen affidavit' *Africa News Agency* (30 March 2016) Available at <http://mg.co.za/article/2016-03-30-ipid-to-investigate-hawks-boss-ntlemeza-for-perjury-over-booysen-affidavit>; 'Hawks Question IPID Process in SARS "Hostage" Situation' *EWN News* Available at <http://ewn.co.za/2016/10/28/hawks-find-it-odd-that-ipid-officer-was-asked-to-give-statement-after-being-charge>.
- 68 Beukman F National Assembly Budget Vote Debate 'Police Budget Vote: Back-To-Basics at SAPS Gets Nod of Approval In session vol. 16 no 3 2016' Available at [http://www.parliament.gov.za/live/content.php?Item\\_ID=9055](http://www.parliament.gov.za/live/content.php?Item_ID=9055) Accessed 29 October 2016.
- 69 Presentation by Directorate for Priority Crime Investigation on its 2015/16 Annual Report to Portfolio Committee on Police (2 November 2016).
- 70 *Glenister vs. President of the Republic of South Africa and Others* Available at <http://www.saflii.org/za/cases/ZACC/2011/6.html> Accessed 28 October 2016.
- 71 Ibid., para. 121.
- 72 'Specialised Anti-corruption Institutions: Review of Models' Available at: <http://www.oecd.org/dataoecd/7/4/39971975.pdf> Accessed 28 October 2016.
- 73 *Glenister vs. President of the Republic of South Africa and Others*, paras 119 and 188.
- 74 *Helen Suzman Foundation vs. President of the Republic of South Africa and Others* Available at <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAWCHC/2013/182.html&query=%20Helen%20Suzman%20Foundation> Accessed 28 October 2016.
- 75 *Helen Suzman Foundation vs. President of the Republic of South Africa and Others*, para. 7 Available at <http://www.saflii.org/za/cases/ZACC/2014/32.pdf> Accessed 27 October 2016.
- 76 Ibid., paras 89, 96, 97.
- 77 Ibid., para. 5: (a) The words 'in accordance with the approved policy guidelines' as contained in section 16(2)(h) and (3).  
 (b) Section 17CA (15) and (16).  
 (c) The words 'subject to any policy guidelines by the Minister and approved by Parliament' in section 17D(1)(a).  
 (d) The words 'selected offences not limited to' and 'and' in section 17D (1) (aA).  
 (e) Section 17D(1)(b).  
 (f) Section 17D(1A) 4. (g) The '(2)' in section 17DA (1) and the whole of section 17DA (2).  
 (h) Section 17K (4), (7) and (8).
- 78 *McBride vs. Minister of Police and Another* Available at <http://www.saflii.org/cgi-bin/disp.pl?file=za%2Fcases%2FZACC%2F2016%2F30.html;query=%20McBride#disp2> Accessed 19 January 2017.
- 79 Ibid., para. 8.
- 80 Ibid., para. 34.
- 81 Ibid., footnote 41.
- 82 Ibid., footnote 42.
- 83 Ibid., footnote 43.
- 84 Ibid., para. 15.
- 85 Ibid., para. 16.
- 86 Ibid., para. 17.
- 87 Ibid., para. 43.
- 88 Ibid., para. 44.
- 89 On 15 August 2012, the NDP was given to the president and deputy president following a consultation. *South Africa.info* Available at <http://www.southafrica.info/business/economy/policies/ndp-080814.htm#.Vj3MvGQrLR0#ixzz3qnbVRXmk> Accessed 7 November 2015.
- 90 Ibid.
- 91 NDP, 385.
- 92 Ibid., 387.

- 93 ATC150511: Report of the Portfolio Committee on the 2015/16 Budget Vote 23, Annual Performance Plan and 2014–2019 Strategic Plan of the Department of Police (SAPS) (7 May 2015) Available at <https://pmg.org.za/tailed-committee-report/2380/> Accessed 26 October 2016.
- 94 Report of the Portfolio Committee on the 2015/16 Budget Vote 23.
- 95 M Merten 'Nhleko plans to transform SAPS' *IOL* (3 September 2015) Available at <http://www.iol.co.za/news/crime-courts/nhleko-plans-to-transform-saps-1909854> Accessed 26 October 2016.
- 96 Minutes of the Portfolio Committee on Police 'Farlam Recommendations implementation by Ministry of Police; Railway, Gangs and Radio-control specialised units; SAPS transformation task team, with Minister & Deputy present'
- 97 Ibid.
- 98 Civilian Secretariat for Police *White Paper on Policing 2016* Available at [http://www.policesecretariat.gov.za/downloads/bills/2016\\_White\\_Paper\\_on\\_Policing.pdf](http://www.policesecretariat.gov.za/downloads/bills/2016_White_Paper_on_Policing.pdf).
- 99 'Khayelitsha Commission of Inquiry Report' Available at <http://www.khayelitshacommission.org.za/final-report.html> Accessed 9 February 2017.
- 100 Ibid.
- 101 Ibid.
- 102 Ibid., xxv.
- 103 Dixon B 'Making further inquiries: Policing in context Brixton and Khayelitsha' *SA Crime Quarterly* No 53 (October 2015).
- 104 A Van Wyk, former chairperson of the Portfolio Committee on Police (5 December 2016).
- 105 'Media Statement: Khayelitsha Commission of Inquiry Progress Update' (29 August 2016) Western Cape Government Available at <https://www.westerncape.gov.za/news/media-statement-khayelitsha-commission-inquiry-progress-update> Accessed 28 October 2016.
- 106 Human Rights Committee 'Concluding observations on the initial report of South Africa' CCPR/C/ZAF/CO/1, p. 6, para. 31 (27 April 2016) Available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsowwsSwFehBWX2ZjedBh4%2F811AqGyl2MTdng6xdE8vcB81uWeU1SfkzAjkFApm4n4sVMY4cvhDsmlet3UuCiWmpSKAPdJOaa%2BhTfv%2FQXEkw>.
- 107 Ibid., p. 3.
- 108 Ibid., p. 3.
- 109 'Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa' (20th Extra-Ordinary Session 9–18 June 2016, Banjul).
- 110 'Luanda Guidelines' (2014) Available at [http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines\\_arrest\\_police\\_custody\\_detention.pdf](http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines_arrest_police_custody_detention.pdf).
- 111 'Concluding Observations and Recommendations', para. 53.
- 112 Ibid., para. 54.
- 113 J Burger 'Identifying and Fixing Major Inadequacies in the SAPS' (28 October 2015) Available at <https://issafrica.s3.amazonaws.com/site/uploads/6th-Crime-Conf-2015-Presentations/014-Johan-Burger.pdf> Accessed 27 October 2016.
- 114 Ibid.
- 115 Ibid.
- 116 Ibid., citing Lt Gen Godfrey Lebeya, at the time Deputy National Commissioner: Crime Detection.
- 117 Burger (2015).
- 118 Ibid.
- 119 SAPS 2016/17 Annual Performance Plan, vii Available at [http://www.saps.gov.za/about/stratframework/strategic\\_plan/2016\\_2017/annual\\_performance\\_plan\\_2016\\_2017.pdf](http://www.saps.gov.za/about/stratframework/strategic_plan/2016_2017/annual_performance_plan_2016_2017.pdf) Accessed 29 October 2016.
- 120 SAPS Presentation to ISS Seminar 'SAPS shake-up: how policing is being improved in South Africa' (19 May 2016), Pretoria Available at <https://www.issafrica.org/events/saps-shake-up-how-policing-is-being-improved-in-south-africa>.
- 121 Ibid.
- 122 Media Statement by Committee Chairperson Mr Francois Beukman (26 October 2015) Available at <http://www.gov.za/speeches/committee-recommends-professionalisation-police-service-26-oct-2015-0000>
- 123 Research Unit 'Analysis of Past Committee Recommendations by the Portfolio Committee on Police' 6 October 2016.
- 124 Report not publicly available.
- 125 Media Statement by Committee Chairperson Mr Francois Beukman, 2.



- 126 Ibid., 2–3.
- 127 Ibid., 4.
- 128 Ibid., 4.
- 129 Ibid., 4.
- 130 Ibid., 6.
- 131 Ibid., 7.
- 132 Ibid., 7.
- 133 As advocated by the NDP.
- 134 Research Unit Analysis of 2015 BRRR Recommendations, 11.
- 135 Ibid., 12.
- 136 'Luanda Guidelines' (2014) Available at [https://www.unodc.org/documents/congress//background-information/NGO/Open\\_society\\_foundation/The\\_Luanda\\_Guidelines.pdf](https://www.unodc.org/documents/congress//background-information/NGO/Open_society_foundation/The_Luanda_Guidelines.pdf).
- 137 'Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.





## ABOUT THE AUTHOR

Melanie Lue Dugmore has worked in the criminal justice sector for over 25 years. Commencing her career in civil society, she worked on the transformation of the then South African Police Force, focusing on institutional transformation, building accountability systems, and capacitating police and oversight institutions. She has held positions in key transitional and transformation structures including the Transitional Executive Council and Truth and Reconciliation Commission, and has worked in local government and a chapter nine institution. She currently works as an independent consultant focusing on social justice and human rights.

## ACKNOWLEDGEMENTS

The author would like to acknowledge the valuable inputs and assistance of Sean Tait.

## 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.

## CONTACT APCOF

African Policing Civilian Oversight Forum  
Suite 103–105A, Building 17  
Waverley Business Park  
Wyecroft Road  
Mowbray 7925  
South Africa

Tel: +27 21 447 1818  
Fax: +27 21 447 0373  
Email: [info@apcof.org.za](mailto:info@apcof.org.za)



OPEN SOCIETY FOUNDATION FOR SOUTH AFRICA

*The opinions expressed in this paper do not necessarily reflect those of the African Policing Civilian Oversight Forum (APCOF). Authors contribute to the APCOF Policy Papers series in their personal capacity.*

© APCOF 2017  
Designed and typeset by COMPRESS.dsl

[www.apcof.org.za](http://www.apcof.org.za)

