

## **The South African Police Service's code of conduct: A critical review**

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### **Introduction**

In 1997 the South African Police Service (SAPS) introduced a code of conduct (Code). The Code was part of sweeping reforms in the wake of South Africa's first democratic elections in 1994 and the formation of the SAPS through a merger of apartheid's eleven police forces in 1995.<sup>1</sup> It was intended to aid the new organisation's shift from authoritarian to democratic policing and has remained in place ever since.

The SAPS Code offers what appears to be a good normative guide to democratic policing, and yet the organisation has been plagued by complaints of corruption, abuse of force, political capture and other undemocratic and unprofessional practices since its founding.<sup>2</sup>

In August 2012, the same month in which SAPS officers killed 34 striking miners at Marikana outside Johannesburg, South Africa's National Planning Commission released the National Development Plan (NDP). The NDP is a high-level, holistic policy document intended to guide all government work in a bid to meet a range of developmental goals by 2030. These include eliminating poverty, reducing inequality and growing an inclusive economy.<sup>3</sup>

Chapter 12 of the NDP, titled *Building Safer Communities*, proposes specific targets be introduced to the SAPS. It recommends that the SAPS demilitarise and that it recruit and train officials to be professional and impartial, responsive to community needs and competent in their work. It suggests that the realisation of these goals will inspire public confidence in the police.<sup>4</sup> To accomplish this, the NDP requires that the SAPS link its code of conduct and what the NDP calls a 'code of professional police practice' to promotion and disciplinary regulations. In other words, it suggests that the SAPS should develop indicators through which organisational and individual behaviour can be evaluated, with clear disciplinary and career consequences for those whose conduct is judged to be unprofessional or abusive.

Against this background, this policy paper revisits the SAPS code of conduct 20 years after its introduction and considers it against the NDP's vision for the organisation. It begins with a review

of the NDP's SAPS-related recommendations, then sketches the way the Code has been captured, presented and engaged with in SAPS annual reports and disciplinary data. It reviews parliamentary engagement with the Code recorded in minutes of meetings by the Portfolio Committee on Police and discusses SAPS disciplinary regulations in relation to the Code. It considers the Code in relation to the African Union's (AU) guidance on codes of conduct for law enforcement, and the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) code of conduct, and draws on these to critically reflect on the SAPS Code in relation to the NDP's vision. It suggests that in its current form much of the Code is difficult to enforce, and recommends that a revised or revisited Code should be easy to interpret and apply for front line SAPS officials and their supervisors.

## What is a code of conduct?

Efforts have been made at the global,<sup>5</sup> regional<sup>6</sup> and national<sup>7</sup> levels to establish normative frameworks and guidelines for democratic policing. Police codes of conduct are 'broad, imprecise and aspirational' statements<sup>8</sup> intended to help translate these normative frameworks (commitments to laws, rights and treaties) into clear principles that guide police conduct and streamline police oversight. Because few civilians and police ever engage with the details of laws and treaties informing normative frameworks, institution-specific codes help contextualise and interpret them in ways that make them easily understood and actionable to police officials.<sup>9</sup> When properly managed, police codes of conduct can shape individual officers' attitudes and police organisational culture more broadly. But for this to happen, easily understood standards of behaviour drawn from the code should be complemented by monitoring and evaluation systems that hold police organisations and individual officers accountable for their actions.<sup>10</sup>

The SAPS code of conduct printed in its 2015/16 annual report is presented in Box 1.<sup>11</sup> This is the Code that the NDP recommended the SAPS revisit.<sup>12</sup>

### ***Box 1: Code of conduct for the South African Police Service***

I commit myself to creating a safe and secure environment for all the people in South Africa by –

- Participating in endeavours aimed at addressing the cause of crime;
- Preventing all acts that may threaten the safety or security of any community;
- Investigating criminal conduct that endangers the safety or security of the community; and
- Bringing the perpetrators to justice.

In carrying out this commitment, I shall at all times –

- Uphold the Constitution and the law;
- Take into account the needs of the community;
- Recognise the needs of the South African Police Service as my employer; and
- Cooperate with all interested parties in the community and the government at every level.

To achieve a safe and secure environment for all the people of South Africa, I undertake to –

- Act with integrity in rendering an effective service of a high standard that is accessible to everybody;
- Continuously strive toward improving this service;
- Utilise all available resources responsibly, efficiently and cost-effectively to optimise their use;
- Develop my own skills and contribute toward the development of those of my colleagues, to ensure equal opportunities for all;
- Contribute to the reconstruction and development of, and reconciliation in, our country;
- Uphold and protect the fundamental rights of every person;
- Act in a manner that is impartial, courteous, honest, respectful, transparent and accountable;
- Exercise the powers conferred upon me in a responsible and controlled manner; and
- Work toward preventing any form of corruption and bring the perpetrators thereof to justice.

## The National Development Plan

Should the NDP's vision be realised, by 2030 the SAPS would be:

[W]ell-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice.<sup>13</sup>

One of the key means through which the NDP suggests this vision be achieved is by 'linking the police code of conduct and a code of professional police practice to promotion and disciplinary regulations.' It is important to note that these are two different things. The code of conduct has been in place since 1997, while a code of professional police practice, it would seem, has never been drafted. What the SAPS does have, in addition to the code of conduct, is a code of ethics and an official set of values, but it is unclear how the three relate to each other, or to the hypothetical code of professional police practice, were one drafted.

When reading the NDP, it is not always clear which recommendations relate to which of the three codes. All are discussed under the same sub-heading, 'Code of Conduct', which is introduced with the statement:

The commission recommends the professionalisation of the police by enforcing *the code of conduct and a police code of ethics*, appointing highly trained and skilled personnel, and establishing a body to set and regulate standards.<sup>14</sup>

The articles 'the' before 'code of conduct' and 'a' before 'code of ethics', suggests the former exists while the latter does not. This is incorrect. Both codes were in place at the time of the NDP's publication and remained in place in early 2017 when this report was being drafted.

NDP recommendations that seem to relate to the existing code of conduct are:<sup>15</sup>

- The SAPS Code should be integrated with its human resource systems;
- Non-adherence to the Code should have consequences for individual members;
- The Code should be included in disciplinary regulations and performance appraisals;
- All members should be provided with a copy of the Code, and should be required to sign a copy which should be kept in their personal file;
- Periodic checks should be conducted to ensure that the Code is understood and practised by all members;
- Disciplinary cases involving a breach of the Code should be dealt with as a priority; and
- Members charged with misconduct should be required to leave their station immediately until allegations are tested and cases finalised.

NDP recommendations that seem to relate to the proposed code of professional police practice are:<sup>16</sup>

- A code of professional and ethical police practice should be developed and prescribed through regulations;
- Police members should be trained and tested in its application;
- Failure to pass should lead to suspension or dismissal;
- The professional police practice code should state that the officers' fundamental duties are to the Constitution;
- It should make it clear that police officials must work to serve the community, safeguard lives and property without discrimination, protect the peaceful against violence and the weak against intimidation, and respect the constitutional rights of all to equality and justice;
- The code should also prescribe the off-duty obligation of police officials to honour the badge as a symbol of public trust;
- A body should be established to set and regulate professional standards; and
- Professionalism should be attained through enforcing the code of conduct and code of ethics.

It is unclear whether this final recommendation refers to the existing code of ethics, or to the proposed code of professional and ethical policing. Similarly, throughout the NDP's discussion on codes of conduct, professionalism and ethics, it is unclear whether the recommendation is that one code should replace the others, or whether they should exist concurrently and complementarily.

Importantly, the NDP does not call for the content of the SAPS Code to be revised, though some have interpreted it this way.<sup>17</sup> Rather, it requires that its contents be linked to disciplinary and personnel management systems. This does not mean that the NDP's authors had not intended that the existing Code be revised, only that it is unclear. If one is going to develop a new code (of professional and ethical police conduct), as recommended by the NDP, it would make sense to merge this with the existing codes, before considering any revisions. As illustrated in this paper, aspects of the SAPS Code are particularly abstract and difficult to translate into measurable indicators. It would be important for any revisions or additions to address these items.

In addition to the recommendation that the Code be linked to disciplinary regulations, the NDP recommends that oversight bodies, such as the Independent Police Investigative Directorate (IPID) or a hypothetical Policing Board, should be able to request a review of the professional ethics of an individual police official, unit or section of a police or law enforcement agency, and that mandated oversight bodies should monitor adherence to professional ethics and recommend sanctions when necessary.<sup>18</sup> Ultimately, this is what codes of conduct are good for. If the SAPS Code is not already being used to guide and evaluate police conduct, this should be addressed.

## **SAPS response to NDP recommendations**

Notwithstanding the SAPS's 2016 *Back to Basics* programme which aims to address 'discipline, and the manner in which police officers conduct themselves, as a distinctive characteristic of policing',<sup>19</sup> at the time of writing in early 2017, it was unclear what the organisation had done to substantively meet the NDP's recommendations regarding the codes of conduct, ethics or professionalism.<sup>20</sup> This may not be due to neglect, however, but rather to an organisational understanding that the SAPS already has systems in place to achieve the NDP goals. However, it is possible that the SAPS has not moved to address the NDP's recommendations other than to report that plans to do so are underway.<sup>21</sup> From 2013/2014 to 2015/2016, SAPS annual reports have made regular reference to the NDP, but few regarding the NDP's conduct-related recommendations, as illustrated in Table 1.

A number of points are worth highlighting in this table. First, annual reports published since the release of the NDP in 2012 refer to the Code at a number of different places (pages), compared to older reports, which only mention it in one section near the end.<sup>22</sup> Second, the 2011/2012 (B) report stated that the SAPS's disciplinary regulations were directly linked to the code of conduct. Were this the case, it would mean the NDP's recommendation to the same effect was redundant. Similarly, the 2010/2011 (A & B) references to the Code suggest it had already been communicated throughout the organisation – though the claim does not make it true.

Other notable elements are a 2014/2015 (E) reference to a memorandum of understanding (MOU) with the South African Human Rights Commission to monitor police conduct, and 2015/2016 (F) statements that the Code provides clear guidance on police conduct but that the organisation has not internalised it. This last claim is particularly odd because, as will be shown, aspects of the Code are anything but clear or practical. The same cannot be said of the SAPS disciplinary regulations, which are very clear. In fact, because these regulations are so clear, the SAPS might argue that a revision of the Code is unnecessary. But codes of conduct should, at least in part, be aspirational and optimistic, which disciplinary regulations are not. As will be shown, in its current form the SAPS Code is sufficiently aspirational but does not clearly define abuse of power. A revised Code should sit mid-way between the current Code and disciplinary regulations.

Table 1: References to SAPS code of conduct in annual reports since publication of the NDP (excluding disciplinary hearings)						
Year	A	B	C	D	E	F
2015/16	The transformation of the SAPS is informed by the NDP ... [and] the manner in which police officers conduct themselves is guided by the code of conduct (p. 14)	The Acting National Commissioner briefed all commanders ... on the requirements of the Constitution and code of conduct (p. 41). Advocacy campaigns regarding the Police code of conduct will be undertaken (p. 23)	The SAPS is addressing corruption through regular communication on the SAPS code of conduct and Code of Ethics (p. 247) All Cluster and Station Commanders briefed on the code of conduct (p. 44)	Each SAPS member is obliged to give a written undertaking to adhere to the principles of the code of conduct (p. 251) Fighting corruption by adhering to and communicating about the code of conduct (pp. 54, 290)	Breaches of the code of conduct are dealt with through the SAPS Disciplinary Regulations. Sanctions imposed depend on the severity of the infringement (p. 252) MOU signed with Human Rights Commission to monitor police conduct in relation to human rights (p. 15)	The code of conduct, provides a clear blueprint for police conduct ... [but] the organisation has not adequately internalised the Code (p. 262)
2014/15 <sup>23</sup>	The code of conduct will be included in the disciplinary regulations, performance appraisals and basic training programme (p. 23)	Advocacy campaigns regarding the Police code of conduct will be undertaken (p. 23)	All Cluster and Station Commanders briefed on the code of conduct (p. 44)	Fighting corruption by adhering to and communicating about the code of conduct (pp. 54, 290)	MOU signed with Human Rights Commission to monitor police conduct in relation to human rights (p. 15)	
2013/14	In basic training, officials are taught to understand the code of conduct, and must acknowledge by way of signature that they understand its content (p. 13)	Each official must give a written undertaking to adhere to the code of conduct, which guides officials' responsibilities and obligations to the public (p. 229)	Failure to comply with the code has implications, which officials understand (p. 229)	Breaches of the code of conduct are dealt with through the SAPS Disciplinary Regulations ... Sanctions imposed depend on the severity of the infringement (p. 229)		
2012/13	Fraud and corruption are addressed in part through communication about the Codes of Conduct and Ethics (p. 160)	The code of conduct provides a standard through which SAPS officials implement the SAPS's constitutional mandate (p. 195)	Focus is placed on new entrants to the organisation, who receive induction regarding the content and significance of the Code (p. 195)	Internal communication conveys how the Code links to basic policing functions (p. 195)	Where serious contraventions of the Code occurred, internal communications highlighted their harm to the official and organisation (p. 195)	
2011/12	New employees are introduced to the Code and its requirements (p. 133)	Disciplinary regulations are key to the implementation of the Code as disciplinary infringements or violations are linked directly to it (p. 133)	Disciplinary regulations, supported by the code of conduct, are positive behaviour management tools that improve professionalism and service delivery (p. 133)			
2010/11	The SAPS code of conduct was communicated to all members (p. 126)	It specifically focused on providing a policing service that is characterized by professionalism and integrity and has been included in the corporate documentation developed by the SAPS (p. 126)	The SAPS Code of Ethics was specifically included in the Strategic Plan 2010 to 2014 in order to provide a strategic platform for the continued internal and external communication of the ethical values that the SAPS subscribe to (p. 126)	The Anti-Corruption Sensitization Programme ... emphasizes the role played by the code of conduct in structuring and setting standards for the conduct of all SAPS members (p. 126)	Specific elements of the code of conduct are included in the [anti-corruption] programme, focusing on the need for the implementation of the code of conduct through the day-to-day behaviour and conduct of SAPS members (p. 126)	

## SAPS disciplinary data and regulations

Codes of conduct are not legally enforceable. As a result, they rely on broader systems of discipline and integrity management to hold officers accountable for their (mis)conduct. The South African Police Service Act (1995), through which the SAPS and its authority are constituted, empowers the minister of police to enact regulations to guide police work, including in relation to 'the issue of the Code of conduct of the Service and the upholding thereof', and for the 'recruitment, appointment, promotion and transfer of members.'<sup>24</sup> One of the clearest recommendations made by the NDP is that the SAPS codes of conduct and professional police practice be linked to its promotion and disciplinary regulations.<sup>25</sup> The simplest interpretation of this is that particular misconduct should consistently result in a corresponding sanction. Even before the NDP's publication, the SAPS's disciplinary regulations were explicitly produced for this purpose. According to the regulations themselves, their purpose is to:

- (c) ensure that supervisors and employees share a common understanding of misconduct and discipline, to –
  - (i) promote acceptable conduct in terms of the provisions of these Regulations;
  - (ii) provide a user friendly framework in the application of discipline; and
  - (iii) prevent possible arbitrary actions by supervisors towards employees in the event of misconduct.

However, there is immediately a level of ambiguity in the regulations, which state that:

[In determining guilt] the employer must assess the seriousness of the alleged misconduct after considering – (a) the actual or potential impact of the alleged misconduct on the work or the image of the Service, station, unit or component of the employee, and his or her colleagues; (b) the nature of the work and responsibilities of the employee; and (c) the circumstances in which the alleged misconduct took place.<sup>26</sup>

This is likely rational and procedurally just, but gives a disciplinary officer significant interpretative and discretionary power in the delivery of sanction, which contrasts the NDP's desire for a swift and consistent response to misconduct.

On 1 November 2016, new SAPS disciplinary regulations came into effect.<sup>27</sup> Before this date, SAPS disciplinary processes had been governed by regulations in place since July 2006.<sup>28</sup> While one might have expected the revised regulations to reflect the NDP's recommendations, they do not seem to do so. The 2016 regulations add an additional 12 offences to those of 2006, but do not link these any more clearly to the code of conduct than did the preceding regulatory offences. Again, this may not mean that the SAPS has ignored the NDP, but rather that it believes its pre-existing regulations were sufficient as a guide to proper police conduct.

Table 2 shows the number and percentage of SAPS officials charged by type of misconduct from 2011 to 2016, all based on the 2006 regulations. In an average year, the following four categories of misconduct accounted for over two thirds of all disciplinary hearings:

- Common law and statutory offences (z) (30–40%);<sup>29,30</sup>
- Failure to comply with or contravention of an Act, Regulation or legal obligation (a) (around 15%);
- Failure to carry out a lawful order or routine instruction without just or reasonable cause (i) (around 15%); and
- Being absent from work without reason or permission (j) (around 10–20%).

The first of these – common law and statutory offences – is very serious. It goes without saying that police should enforce criminal law, not break it. As with most police misconduct, it is likely that the criminal offences recorded in the SAPS's disciplinary misconduct tables represent only a small portion of the offences committed by its officials each year, which is an alarming thought.

The other three types of misconduct all relate to officials ignoring or opting out of their primary operational functions. In other words, these types of misconduct are unlikely to be reported by members of the public, but rather by SAPS commanders. In terms of securing command and control within the organisation, this is positive. However, considering that the most harmful forms of misconduct are likely those that occur either beyond managerial gaze or with managerial consent, such as torture and assault, this data suggests a lack of organisational engagement with (non-criminal) public complainants. The dangers of this disciplinary system are clear when considered in the context of the 2012 Khayelitsha Commission of Inquiry into a breakdown in relations between the community and the police. The Khayelitsha Commission was founded specifically because residents felt their complaints regarding police conduct and service were ignored by the SAPS. The information presented in Table 2 suggests this may be a national phenomenon.

Notable for the purposes of this paper is that on average roughly 2% of disciplinary hearings relate to the offence 'Contravened any prescribed code of conduct for the SAPS or the Public Service'. And yet *any* offence for which an official is disciplined is a breach of the SAPS Code, making this particular category unhelpful.

	Reason for disciplinary hearing	2015/2016		2014/2015		2013/2014		2012/2013		2011/2012	
		Total	%	Total	%	Total	%	Total	%	Total	%
a	Failed to comply with or contravened an Act, Regulation or legal obligation	566	12.7	353	14.2	491	16.5	476	15.1	425	14.7
b	Wilfully or negligently misused the finances of the state	20	0.5	11	0.4	4	0.1	14	0.4	12	0.4
c	Possessed or used the property of the state, another employee or a visitor without permission	97	2.2	67	2.7	96	3.2	71	2.2	89	3.1
d	Intentionally or negligently damaged and or caused loss of state property	164	3.7	100	4	136	4.6	137	4.3	110	3.8
e	Endangered the lives of others by disregarding safety rules and regulations	24	0.5	12	0.5	13	0.4	15	0.5	20	0.7
f	Prejudiced the administration, discipline or efficiency of a department, office or institution of the state	189	4.3	92	3.7	122	4.1	115	3.6	109	3.8
g	Misused his or her position in the SAPS to promote or to prejudice the interest of any political party	1	0.02	0	0	1	0	3	0.1	4	0.1
h	Accepted any compensation in cash or otherwise from a member of the public or another employee, for performing her or his duties without written approval from the employer	3	0.07	0	0	3	0.1	1	0	1	0
i	Failed to carry out a lawful order or routine instruction without just or reasonable cause	671	15.1	360	14.5	315	10.6	355	11.2	276	9.5
j	Was absent from work without reason or permission	469	10.6	369	14.9	569	19.1	502	15.9	390	13.4
k	Committed an act of sexual harassment	17	0.4	7	0.3	8	0.3	8	0.3	10	0.3
l	Unfairly discriminated against others on the basis of race, gender, disability, sexuality or other grounds prohibited by the Constitution	2	0.05	2	0.1	0	0	3	0.1	12	0.4

Table 2: Numbers and reasons for SAPS disciplinary hearings, 2011–2016 (cont.)											
	Reason for disciplinary hearing	2015/2016		2014/2015		2013/2014		2012/2013		2011/2012	
		Total	%	Total	%	Total	%	Total	%	Total	%
m	Performed work for compensation in a private capacity for another person or organisation either during or outside working hours, without written approval by the employer	11	0.25	10	0.4	3	0.1	3	0.1	3	0.1
o	Was under the influence of an intoxicating, illegal, unauthorised, habit-forming drug, including alcohol, while on duty	87	1.96	74	3	120	4	148	4.7	117	4
p	Conducted himself or herself in an improper, disgraceful and unacceptable manner while on duty	130	2.9	66	2.7	75	2.5	65	2.1	98	3.4
q	Contravened any prescribed code of conduct for the SAPS or the Public Service, whichever may be applicable to him or her.	97	2.2	101	4.1	65	2.2	75	2.4	47	1.6
r	Incited other employees to unlawful conduct or conduct in conflict with accepted procedure	2	0.05	0	0	0	0	0	0	0	0
s	Displayed disrespect toward others in the workplace or demonstrated abusive or insolent behaviour	61	1.4	32	1.3	53	1.8	72	2.3	49	1.7
t	Intimidated or victimised other employees	8	0.2	3	0.1	2	0.1	3	0.1	2	0.1
u	Prevented other employees from belonging to any trade union	0	0	0	0	0	0	0	0	0	0
v	Ran any money-lending scheme for employees during working hours or from the premises of the SAPS	0	0	1	0	0	0	0	0	0	0
w	Gave a false statement or evidence in the execution of his or her duties	2	0.05	4	0.2	7	0.2	5	0.2	6	0.2
x	Falsified records or any other documentation	17	0.4	10	0.4	12	0.4	13	0.4	13	0.4
y	Participated in any unlawful labour or industrial action	0	0	57	2.3	27	0.9	0	0	2	0.1
z	Committed a common law or statutory offence	1 798	40.5	747	30.1	846	28.4	1 059	33.6	1 098	37.9
	TOTAL	4 443	100	2 482	100	2 980	100	3 156	100	2 900	100

Table 2 refers only to misconduct that resulted in a disciplinary hearing. From 2012/13 to 2014/2015, there were around double the number of disciplinary sanctions issued than formal hearings held (presumably because they were defined as ‘less serious misconduct’ as per the regulations).<sup>31</sup> Table 3 presents all sanctions over the same period. Three outcome types accounted for approximately half of all disciplinary hearings from 2011/2012 to 2015/2016 – case withdrawn, not guilty, and suspended dismissal – all of which are significant.

SAPS disciplinary hearings only take place when an allegation involves what the regulations define as ‘serious’ misconduct. Whistle-blowing in police organisations can be difficult and peer protection is a long-established part of police organisational culture.<sup>32</sup> The 13% of cases that were *withdrawn* might therefore be the result of a false accuser changing their mind or a whistle blower being intimidated into withdrawing a complaint or testimony. Similarly, that 20–30% of hearings resulted in *not guilty* outcomes does not mean that a third of accused officials were not guilty of misconduct. Rather, it is as likely to indicate the difficulty of illustrating another’s guilt, even where only a balance of probability is required, as is the case in disciplinary hearings.

The outcome *suspended dismissal*, which accounted for roughly 13% of cases over the period reviewed, is bizarre. It suggests that officials were found guilty of an offence worthy of dismissal, but were allowed



to remain in their jobs provided they were not found guilty of misconduct in the six months following their hearing. Notably, this outcome has been excluded from the 2016 disciplinary regulations. As a result, while roughly 8.5% of hearings resulted in dismissals from 2011 to 2016, this may double from 2017, as those previously given suspended dismissals may be dismissed from the organisation instead.

Finally, while listed in the SAPS's disciplinary outcome tables in the annual reports, demotion is not a sanction made possible by either the 2006 or 2016 disciplinary regulations, making its inclusion in reports baffling.

**Table 3: Type and quantity of outcomes of disciplinary hearings, 2011–2016**

Outcome of disciplinary hearings	2015/2016		2014/2015		2013/2014		2012/2013		2011/2012	
	Number	%	Number	%	Number	%	Number	%	Number	%
Correctional counselling	96	2.2	151	2.9	178	2.9	150	2.6	136	2.5
Demotion	0	0	0	0	0	0	0	0	0	0
Dismissal	361	8.1	409	7.9	537	8.9	496	8.5	532	9.6
Final written warning	313	7.1	419	8.1	524	8.7	378	6.4	337	6.1
Fine	629	14.2	807	15.5	995	16.4	1 112	19	978	17.7
Suspended action	0	0	38	0.7	60	1	78	1.3	130	2.3
Suspended dismissal	539	12.2	638	12.3	664	11	791	13.5	792	14.3
Case withdrawn	622	14	756	14.5	827	13.7	507	8.7	864	15.6
Not guilty	1 378	31.1	1 266	24.4	1 467	24.2	1 641	28	1 185	21.4
Suspended without payment	55	1.2	103	2	88	1.5	51	0.9	27	0.5
Verbal warning	40	0.9	51	1	72	1.2	126	2.1	80	1.4
Written warning	398	9	560	10.8	641	10.6	531	9.1	479	8.6
<b>TOTAL</b>	<b>4 431</b>	<b>100</b>	<b>5 198</b>	<b>100</b>	<b>6 053</b>	<b>100</b>	<b>5 861</b>	<b>100</b>	<b>2 900</b>	<b>100</b>

The SAPS's Annual Performance Plan 2016/2017 notes the organisation's intent to address:

[I]nadequate command and control, ill-discipline and noncompliance [by juxtaposing this] with the SAPS's code of conduct, which provides a clear, unambiguous and uncompromising blueprint for police conduct ... the organisation has not adequately internalised the SAPS's code of conduct. The SAPS's code of conduct must permeate all policing activities, providing a practical and moral compass for all members in terms of the standard of conduct that is expected of them.<sup>33</sup>

This appears to be aligned with the NDP's vision for the SAPS. And yet, a separate Performance Information Management Framework (2016/17), which describes the indicators through which the organisation evaluates itself, makes no mention of the code of conduct.<sup>34</sup> It does, however, include the performance indicators 'Percentage of disciplinary cases finalised' and 'Percentage of independent Police Investigative Directorate (IPID) related disciplinary cases finalised'. Table 4 shows that the number of grievances resolved within 60 days dropped from 90% in 2011/2012 to 73% in 2015/2016, contrary to the SAPS's target. Without code-related targets, it may be harder than necessary for the SAPS to mainstream and institutionalise its code of conduct.<sup>35</sup>

**Table 4: Percentage of disciplinary cases finalised, 2011–2016**

	2015/2016		2014/2015		2013/2014		2012/2013		2011/2012	
	Number	%	Number	%	Number	%	Number	%	Number	%
Not resolved	299	27	323	21.8	287	19.6	199	12.7	143	9.1
Resolved	825	73	1 162	78.2	1 178	80.4	1 372	87.3	1 423	90.9
<b>Total</b>	<b>1 124</b>	<b>100</b>	<b>1 485</b>	<b>100</b>	<b>1 465</b>	<b>100</b>	<b>1 571</b>	<b>100</b>	<b>1 566</b>	<b>100</b>

The SAPS's 2016 disciplinary regulations create the following new forms of misconduct, most of which may be thought of as measures that protect the SAPS from its employees:

- (b) performs any act or fails to perform any act with the intention –
  - (i) to cause harm to or prejudice the interests of the Service, be it financial or otherwise;
  - (ii) to undermine the policy of the Service; or
  - (iii) not to comply with his or her duties or responsibilities;
- (q) accepts or demands in respect of the discharge, or the failure to discharge a function, any commission, fee, reward or favour, pecuniary or otherwise;
- (r) (i) unlawfully and intentionally partakes in the use of a narcotic drug;
  - (ii) unlawfully and intentionally partakes of liquor while on duty;
  - (iii) is under the influence of liquor whilst off duty in a public place and behaves in a manner which is detrimental to the image of the Service;
  - (iv) renders himself or herself unfit for duty or for the performance of his or her functions by the use of liquor or narcotic drugs; or
  - (v) reports for duty whilst under the influence of liquor or narcotic drugs;
- (s) (i) pretends to be ill, interned, indisposed, injured or suffering from pain; or
  - (ii) obtains or attempts to obtain exemption from duty by advancing a false or exaggerated excuse on the grounds of illness, infirmity, indisposition, injury, pain;
- (t) conducts himself or herself in an improper, disgraceful and unacceptable manner;
- (x) assaults, or threatens to assault any other employee;
- (ee) without proper authority, releases a prisoner or other person from custody or wilfully or negligently allows him or her to escape;
- (ff) uses unlawful force against a prisoner or other person in custody or otherwise ill-treats such person;
- (gg) neglects his or her duty or performs his or her functions in an improper manner;
- (hh) leaves his or her post without permission or reason;
- (ii) fails to submit his or her financial disclosure as may be required by the relevant prescripts and/or fails to disclose the required financial interests or provides false information in such disclosure; or
- (jj) fails to report an act of misconduct committed in his or her presence by his or her commander or fellow employee.<sup>36</sup>

An important but subtle change in the new regulations is that the offence '*Commits any common law or statutory offence*' (z) in the 2006 regulations has been changed to '*Is convicted of any ...*' (dd) [emphasis added]. This is significant. In disciplinary matters only a balance of probability is required for a guilty finding against an accused, while in court an offence must be proved beyond reasonable doubt, making conviction very difficult. All over the world, only a small portion of criminal offences lead to convictions. As a result, it can be expected that from 2016/2017, SAPS annual reports will show significantly fewer offences in this category, without there necessarily having been a change in the frequency of related misconduct.

Additionally, the following offences have been added to what the 2006 regulations listed in an annexure as 'Offences in respect of which suspension without remuneration may be considered' but which the 2016 regulations note as warranting 'expeditious action':

- (s) Theft;<sup>37</sup>
- (v) Sexual harassment;
- (w) Unlawful possession of the employer's property;

- (x) Any act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute or which involves an element of dishonesty; or
- (y) Any contravention of the Firearms Controls Act.<sup>38</sup>

While both 2006 and 2016 regulations are clear on what constitutes misconduct, neither dictates appropriate disciplinary action by type of misconduct, other than by providing some guidance for disciplinary officers overseeing allegations of criminal offences. Rather, both use the ambiguous terms 'less serious misconduct' and 'more serious misconduct' (2006) or 'serious misconduct' (2016). The difference between the two is that a supervisor can directly discipline an accused who admits to what the supervisor deems 'less serious misconduct',<sup>39</sup> while '(more) serious misconduct' must be expediently investigated and followed up with a disciplinary hearing 'if necessary'. Once again, the regulations allow for significant variance in interpretation. While this may be necessary to protect employee rights and appears standard in other police organisations, it may not need to be so vague.

The NDP calls for any SAPS official accused of a breach of the Code to be immediately suspended pending investigation. This is probably unreasonable in terms of labour law and untenable for an organisation as big and busy as the SAPS. The unintended consequence of such a policy might be that some members of the public or SAPS make false accusations against officials who embody the Code. However, where a prima facie case can be made against an official, it may be reasonable for the NDP's recommendation to apply.

## **Recapping the 2017 context**

In 2012, the NDP recommended that the SAPS revisit and revise its code of conduct, which was first developed in 1997. Central to its recommendations were that the SAPS enforce the code of conduct, which should be linked to disciplinary and promotion regulations. Codes of conduct play an important role in condensing and translating complex normative and legal frameworks into standards that are easily understood by police officials, managers and the public at large. In November 2016, new SAPS disciplinary regulations came into effect. A review of disciplinary data suggests that most disciplinary hearings relate to internal, rather than public, complaints.

## **African Union guidelines**

The African Union's (AU) 2014 *Guidance Note on the Development of Codes of Conduct for African Security Institutions*<sup>40</sup> offers excellent motivation and guidance for developing codes of conduct for police organisations. It provides examples of the kind of wording and indicators which the SAPS might consider if revisiting its Code and/or its application to daily police work in South Africa.<sup>41</sup> The guidance note was compiled to support the AU's Security Sector Reform (SSR) Policy Framework,<sup>42</sup> which came into effect in 2013. The SSR policy framework was created to ensure African ownership of African SSR processes,<sup>43</sup> and includes the planned development of a code of conduct for African security institutions.<sup>44</sup>

The *Guidance Note* was developed within a normative framework based on the political and legal commitments of AU member states through their ratification of international and regional treaties and national laws (e.g. South Africa's Constitution, and the United Nations' Convention against Torture). These commitments (the normative framework) compel African states to foster police organisations and officials that:

- a) support democratic governance and the rule of law;
- b) uphold, protect and respect human rights; and
- c) promote equitable and fair access to justice.<sup>45</sup>

By condensing complex normative and legal frameworks into easily understandable, measurable articles and standards, codes of conduct offer a bridge between the normative and practical aspects of policing. However, they can only have an impact if institutionalised within a police organisation and internalised by police officers. Where police adherence to the normative framework is weak, the AU suggests that development of codes of conduct should give special attention to the input of those responsible for its implementation. These people, such as police trainers and managers, are well placed to imagine how the normative framework can be implemented, monitored and evaluated.<sup>46</sup> But the *Guidance Note* also stresses that those outside of police organisations should be consulted during the formulation of codes, including civil society, political parties and the judiciary.<sup>47</sup> This helps ensure that codes are relevant and implementable and that they meet community expectations. By including a wide range of stakeholders, the AU hopes to promote 'African ownership' of codes, including ownership by police officials and the communities they serve.<sup>48</sup>

For member states to be compliant with their regional normative and legal obligations, the AU *Guidance Note* suggests the following principles should be integrated into police codes of conduct:

**a) Democratic Control**

- a. Operational priority must be given to the security needs of individuals and groups;
- b. Police must adhere to the rule of law and domestic and international normative frameworks;
- c. Police must be subject to internal and external control;
- d. Police must be accountable to government and civil society;
- e. Police must be representative of community composition and values;
- f. Police must protect and support democratic political life and human rights;
- g. Police must have transparent policies, budgets and operations;
- h. Police must adhere to high standards of professional conduct;
- i. Police must promote the rights of police as citizens and members of communities, including regarding conditions of work and pay, fair disciplinary processes, and training in support of professionalism.

**b) The Rule of Law** requires that a member state and its institutions be accountable to the law, and that the law be consistent with a state's human rights obligations. Codes of conduct based on and supported by standards for the rule of law and human rights, and on oversight mechanisms to enforce those standards. Codes should ensure that:

- a. Police and other state institutions are subject and accountable to the law;
- b. Police must be subject to a clear, human rights respecting legal framework which is applied fairly and consistently;
- c. Police must be subject to accountability mechanisms;
- d. Police must be trained and supported to work in accordance with the law.

**c) Respect for Human Rights** is central to the Constitutive Act of the African Union, which requires that member states promote and protect human rights. This can be supported by codes of conduct that:

- a. Prohibit arbitrary arrest and detention;
- b. The discharge of duties equitably and fairly;
- c. Prohibit discrimination;
- d. Frame use of force as exceptional, proportionate and rarely necessary;
- e. Prohibit torture, executions and disappearances;
- f. Respect the rights of people to assemble peacefully;
- g. Treat victims with compassion;
- h. Ensure accountability for violations of rights;
- i. Provide ongoing, comprehensive training.<sup>49</sup>

In addition to providing this helpful normative guidance, the AU also suggests ways in which to formulate codes of conduct for African police organisations and tips for making them operational. Table 5 provides an overview of these. As will be illustrated below, what limited records exist suggest that the SAPS may not have had the time or resources to develop and implement its 1997 Code as methodically as the AU recommends. If the SAPS opts to revise its Code, these and other recommendations in the AU *Guidance Note* should be taken into account.

The *Guidance Note* stresses that for codes of conduct to bring about behaviour change in police officials, their application must be measurable and evaluable. This view is at the heart of the NDP's SAPS-related recommendations, too. The NDP suggests that a breach of the SAPS Code should be considered a grave offence and that individual police officials must be held accountable for such breaches, while those who embrace the Code should be rewarded. And yet, as already shown, only 2% of SAPS disciplinary hearings are described as contraventions of the code of conduct – even though *any* disciplinary action indicates a breach.

Strategic	Operational
Increase participation of civil society in developing the code of conduct.	Develop a comprehensive stakeholder database.
Involve stakeholders from all interest groups.	Budget and plan for a comprehensive consultation and development process.
Facilitate participation across the ranks.	Provide for legal literacy learning opportunities for participants in the development of the code supported by relevant material.
Align the domestic legal environment and internal agency protocols and instructions to the developing code of conduct.	Design and implement an internal and external communication and outreach strategy. This should include the translation of the codes of conduct into all official languages.
Promote compliance with the code through ongoing monitoring and evaluation.	Audit domestic legal environment and internal agency protocols and instructions.
Engage with neighbouring countries with the goal of harmonising standards.	Identify and seek resolution on identified areas of conflict and weakness between the code and the domestic legal environment and police organisational protocols.
	Design and implement a monitoring and evaluation system as a key aspect of the code.
	Provide training on the code.
	Undertake regular reviews of the code.
	Work towards relevant regional codes.

## The SAPS code of conduct

There appear to be no formal records detailing how the SAPS Code was formulated. Fortunately, a 1998 masters dissertation written by a former SAPS official, Eric Bernado, offers rare insight into the Code's initial formulation and rollout.<sup>51</sup> A year after the Code's introduction, Bernado interviewed SAPS trainers and managers, and reviewed SAPS publications and internal communications, to ascertain how the Code was conceptualised and implemented. He found that it was formulated amidst a 'crisis of credibility' as the SAPS moved to distance itself from apartheid policing, which despite laudable intentions resulted in a rushed drafting and consultation process.<sup>52</sup>

Bernado's research suggests that the Code was introduced to ensure the creation of a 'sound value system' for the then new police organisation. It was reportedly drafted by the SAPS management committee, together with 'other role players such as the Head of Legal Services and academics'.<sup>53</sup> It was then disseminated to the SAPS's provincial management committees and to the national negotiation forum, including the relevant unions, for comment. It is unclear whether this process extended beyond the SAPS, or resulted in revision of the draft. For instance, the then president of the South African Police Union (SAPU) told Bernado that the code was not a priority for SAPU and that it had given it little attention.

The SAPS held formal ceremonies across the country to launch the Code in 1997. These involved groups of officials participating in Code-signing ceremonies, which were likely symbolically memorable for them. At what was probably the most dramatic of these, in October 1997, booklets containing the Code were reportedly parachuted to Earth, where they were received by National Commissioner George Fivaz and SAPS Chief Executive Officer Meyer Kahn. While these ceremonies were not open to the public, they received national media coverage, so communicated to the country that the SAPS was committed to change.

Bernado found the SAPS leadership without fault in their early Code-related intentions, but criticised the organisation for not planning to institutionalise the Code and bring it to life. Beyond the signing ceremonies, he described the Code's dissemination as ad hoc. For instance, police trainers were simply instructed to incorporate the Code's values into their training, without having been led through it themselves. Similarly, provincial commissioners reportedly instructed area commissioners to roll out the Code as they deemed fit, a task which they passed on to station commissioners.<sup>54</sup> In the absence of a coordinated national implementation and awareness campaign, Bernado concluded that the SAPS was focused on the rapid production of a Code and creation of a record showing officials' exposure to it, rather than ensuring that it was formed in a participatory and practically implementable way.<sup>55</sup>

During his research, Bernado engaged most with SAPS officials in the Western Cape. He found that an 'enormous effort' was made to communicate the SAPS's policing priorities and objectives for 1998/1999 – including the new Code – to police officials there. For instance, in May 1998, all officials were issued with a booklet that explained the SAPS's new strategy and stance on professional conduct, accompanied by a letter from the national commissioner appealing to officials to familiarise themselves with its content.<sup>56</sup> The SAPS's policing priorities and objectives apparently also made clear that transgressions of the Code would result in disciplinary action, while 'professional conduct' would be rewarded.<sup>57</sup> According to Bernado, the August 1998 issue of the SAPS publication, *SAPS Bulletin*, described the code of conduct as the best example of a post-apartheid measure to improve professional police conduct. It defined professional conduct as 'the degree to which the behaviour and conduct of police members subscribe to set police values and the extent to which community needs and expectations are satisfied.'<sup>58</sup> This language, as well as that used to discuss matters in parliament<sup>59</sup> over the same period (Appendix A), is notable for its similarity to that of the NDP and also that of the SAPS in the years since the NDP's release.

Some notable statements from parliamentary minutes from the period illustrate this point. While SAPS reports suggest the Code was introduced in October 1997, parliamentary minutes note SAPS management telling parliament in February 1998 that there was a 'process underway for putting together a code of conduct.' Later in 1998, the SAPS reported that it:

[H]oped that the new better-enforced code of conduct would have an effect on identifying and curtailing corruption. A co-ordination committee to address professional Conduct has been established ... popularisation of the code of conduct would be pursued ... specific measures are being undertaken to institutionalise the code of conduct and optimise the application of the disciplinary process and procedures.<sup>60</sup>

In 2001, the SAPS reported that 'there was a need to ... implement a code of conduct.'<sup>61</sup>

From 2001 to 2009 there is almost no reference to the code of conduct in parliamentary minutes. From 2012 references are more common, in part because of the NDP, and in part due to civil society repeatedly raising the matter in presentations to the Portfolio Committee on Police.

In its 2015/2016 annual report, the SAPS noted that:

[I]nadequate command and control, ill-discipline and non-compliance, should be compared with the SAPS code of conduct, which provides a clear, unambiguous and uncompromising

blueprint for police conduct, and is aligned with the public administration requirements in section 195 of the Constitution.<sup>62</sup>

While the SAPS Code is well aligned with the Constitution, it does not provide SAPS managers, officials or members of the public with an unambiguous measure of acceptable police conduct. The ambiguity of the SAPS Code is clearest when compared with that of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO), of which the SAPS is a member.

## The SAPS and SARPCCO codes compared

Perhaps the most challenging aspect of the SAPS Code is that parts of it are abstract and vague, making described conduct difficult to evaluate by SAPS managers or oversight bodies. This is clearly evident when one compares the SAPS Code to that of SARPCCO (Table 6, articles in bold, followed by standard). The SARPCCO code condenses the normative framework relevant to member states into clear standards of conduct which, in turn, are comparatively easy to measure.<sup>63</sup> Whereas all the SARPCCO articles and standards are clear, the same is true for less than half of the SAPS Code. A code composed of articles that are immeasurable is unlikely to effect change in the conduct of police officials.

Article	Article and standard
1	<b>Respect for human rights:</b> In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons.
2	<b>Non-discrimination:</b> Police officials shall treat all persons fairly and equally and avoid any form of discrimination.
3	<b>Use of force:</b> Police officials may only use force when strictly necessary and to the extent required for the performance of their duties adhering to national legislation and practices.
4	<b>Torture, cruel, inhuman or degrading treatment:</b> No police official, under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment to any person.
5	<b>Protection of persons in custody:</b> Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.
6	<b>Victims of crime:</b> All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.
7	<b>Respect for the rule of law and code of conduct:</b> Police officials shall respect and uphold the rule of law and the present code of conduct.
8	<b>Trustworthiness:</b> The public demands that the integrity of police officials be above reproach. Police officials shall, therefore, behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a police force/service.
9	<b>Corruption and abuse of power:</b> Police officials shall not commit or attempt to commit any act of corruption or abuse power. They shall rigorously oppose and combat all such acts. Police officials shall not accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the police official to refrain from performing official responsibilities honestly and within the law.
10	<b>Performance of duties:</b> Police officials shall at all times fulfil the duties imposed upon them by law, in a manner consistent with the high degree of responsibility and integrity required by their profession.
11	<b>Professional conduct:</b> Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.
12	<b>Confidentiality:</b> Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.
13	<b>Property rights:</b> In the performance of their duties police officials shall respect and protect all property rights. This includes the economical use of public resources.

The AU recommends three types of indicators be developed to ascertain adherence to a code of conduct:

- Strategic (overarching policy);
- Institutional (objectives and outcomes); and
- Activity and output indicators (daily police work).<sup>64</sup>

Table 7 presents examples of indicators through which the SARPCCO code can be measured and evaluated, both by police managers and by civil society. Most of these relate to the police organisation as a whole, but some can be used to evaluate individual behaviour, too. The APCOF document from which this is drawn presents comparable indicators for each of the SARPCCO articles and standards.

Table 7: Example of monitoring and evaluation indicators for the SARPCCO code of conduct		
SARPCCO Article 1: Respect for human rights		
Standard: In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons		
Indicator	Measure	Means of verification
Police actions are based on law and human rights	Operational documents and standards reflect and promote human rights values, and give clear guidance to police officials about what dignity and rights mean. Number and nature of cases filed against the police. Number and nature of findings and judicial rulings or out of court settlements based on a finding of excessive use of force or other human rights violations by the police. Percentage of unauthorised use of arrest and searches cases brought against the police.	Constitution and legislation. Policy documents and other police policy and operational documents. Media reports, court records, administrative police documents. Police annual reports and answers to questions in parliament.
Police are trained in human rights	Training on human rights is incorporated in basic, in-service and management training. Training includes theoretical as well as practical skills training on human rights based on scenarios related to daily practice. Civil society and human rights experts are involved in human rights training. Percentage of police officials who receive fundamental human rights training in their basic training, and/or receive refresher training in the last two years, disaggregated according to race, gender, ethnic group and rank.	Reports of training colleges, training academic curricula and materials, and reports by civil society.
Violations of human rights are identified and addressed	Number and type of reported complaints of human rights violations by police. Number and type of sanctions imposed on police officials for abuses of human rights, both judicial and disciplinary; sanctions are disaggregated according to nature of complaint, type and severity of sanction, and rank of police official and number of years in service.	Police records and statistics, NGO/civil society reports, records of independent complaints monitoring mechanisms. Information established by regional and international monitoring mechanisms, media articles, police human resource records, police annual reports and court records.
Human rights and dignity of police officials is respected	Police members enjoy the same rights as citizens.	Records of grievances by police officials. Media articles, surveys of police trade unions/professional associations.

The SAPS appears to have impressive performance monitoring and evaluation systems in place. This is evident from, for example, its annual strategic plans, its five-year strategic plans, and what is known about the SAPS Performance Chart, which measures the everyday outputs of operational officials, together with reported crime.<sup>65</sup> However, it is not clear how the SAPS measures adherence to its code of conduct, other than through disciplinary data – which likely represents the most extreme breaches of the Code – and by noting when officials have been briefed about or signed the Code. While commendable, this tells the SAPS and public little about the daily conduct of SAPS officials, what corrective measures are implemented and which are most effective.

Table 8 presents the first eight articles of the SAPS Code, along with brief commentary on the challenge of producing indicators for them that would be comparable to those of the SARPCCO Code.



Table 8: The SAPS code of conduct, articles and brief commentary	
Article	Articles 1–4: I commit myself to creating a safe and secure environment for all the people in South Africa by:
1	– participating in endeavours aimed at addressing the cause of crime
	Police officials and organisations have limited impact on the causes of crime. <sup>66</sup> It may be unhelpful to begin the code of conduct with an unattainable claim that is difficult to measure or enforce. The NDP calls for SAPS officials to only do that work to which they are suited, and to refer/leave other matters to other departments and public servants. Those police actions that may be understood as addressing causes of crime include the seizure of firearms and hotspot policing, and possibly ‘problem-orientated policing’.
2	– preventing all acts that may threaten the safety or security of any community
	Police officials are limited in the types of threats they can realistically prevent. To claim anything more is to both set the SAPS and its officials up for failure, and to encourage the dismissal of the code of conduct as an unrealistic document. That said, one must caution against absolving the SAPS and its members of taking action in the face of non-criminal threats. Police officials can impact order, which promotes safety. For instance, where a cow has been hit by a car and left in the middle of a rural road, police officials who come across it should move it from the road, or contact the relevant authority to do so, before passing it. In so doing they address a threat to safety.
3	– investigating criminal conduct that endangers the safety or security of the community
	Technically, this article is relevant only to members of the SAPS detective branch, which is responsible for investigating reported criminal activity. More abstractly, however, patrol officials and SAPS management should be responsive to community needs and should respond to complaints of criminal threats, even if only in a way that conveys symbolic acknowledgement of community or individual anxiety. One might term any such response ‘investigation’. The phrasing ‘investigating any alleged criminal conduct’ may also be preferable to the current wording, as one might argue that corruption, for instance, does not endanger safety or security, and so need not be investigated (although this is covered by a later article). Codes should allow as little room for interpretation as possible.
4	– bringing the perpetrators to justice
	This implies that SAPS officials and the organisation as a whole will work to arrest and bring before court individuals accused of criminal conduct. This may not be applicable to all SAPS officials, but is arguably a core goal of the organisation as a whole. It can be measured as the percentage of all reported crimes that lead to a suspect appearing before a court and/or results in conviction.
	Articles 5–8: In carrying out this commitment, I shall at all times:
5	– uphold the Constitution and the law
	Provided officials are familiar with the Constitution, this is a clear and measurable article. However, in that policing can involve the restriction of rights in defence of other rights, SAPS officials must be trained and evaluated on their ability to carry out their work at all times using the fairest means possible. This could in part be supported using an annual test through which officials exercise their decision-making capacities in hypothetical scenarios.
6	– take into account the needs of the community
	This is measurable at an individual and organisational level. SAPS officials must empathetically listen to individual and community needs and, where possible, work to address them to the best of their ability within the confines of the law and respect for human rights. Where the needs articulated by individuals or communities compete with those of others or threaten the law, police should play a leadership or facilitation role.
7	– recognise the needs of the South African Police Service as my employer
	This article is vague. It infers respect for the SAPS hierarchy and that police officials must do what they are told to do by those above them. However, if the needs of the SAPS are not spelled out more clearly, this article risks abuse and misinterpretation (e.g. ‘The SAPS needs me to meet performance targets, which require me to turn victims away’).
8	– cooperate with all interested parties in the community and the government at every level
	This is comparable with clause (f). It expresses a commendable virtue but can lead to a bungling of service where a range of stakeholders make competing demands. In such a case, the SAPS and its officials should be able to demonstrate and justify decisions made to work with some, and ignore other stakeholders, in the pursuit of fulfilling their constitutional mandate.

It is almost certainly true that the SAPS has standing orders, national instructions and policies that compel its officials to meet the SARPCCO articles and standards. However, standing orders are not required to be on police station walls, while codes of conduct are. Codes of conduct should provide

SAPS officials with a 'cheat sheet' through which to guide their work, ensuring that they always abide by the normative framework and inculcate its values into their work. It is, therefore, in the SAPS's interest to significantly simplify its Code, along the lines of the SARPCCO code of conduct, and to provide clear guidance to managers regarding the suitable disciplinary options available to them when specific articles and standards are violated. Of course, these do not need to be punitive but rather can be corrective. For example, an official who unnecessarily and irrationally points their firearm at a member of the public could face disciplinary action that sees them first spoken to, then tested on their knowledge of the Firearms Control Act and the relevant SAPS standing orders, and/or sent on a firearm refresher course, before more obviously punitive steps are taken against them. Where managers are aware of such options they will be better empowered to provide corrective interventions that ensure professional police conduct, while minimising negative consequences to their relationships with the officials they manage. Formally recording such disciplinary steps would help the SAPS monitor the types of intervention that produce the desired behavioural change in officials, which could be fed back into the indicators through which the SAPS monitors adherence to the code of conduct.

## **Summary and concluding remarks**

In 2012, the NDP recommended that the SAPS revisit its code of conduct, produce a code of professional police practice and link both to the organisation's disciplinary and promotion regulations. The NDP's vision was that these would lie at the heart of a change management process that would see the SAPS become a professional, efficient police service. This policy paper has reviewed the SAPS Code and its disciplinary regulations and data in relation to the NDP's recommendation, and has highlighted a number of ways in which the SAPS might work towards meeting them.

From what is available on record, the SAPS Code was formulated with the laudable intention of transforming policing in South Africa from authoritarian to professional democratic practice. However, beyond records suggesting that officials have read the Code and occasional lectures on the importance of (but not necessarily understanding) the Code, it is unclear whether definitive efforts were made to inculcate the Code's values into the SAPS's organisational culture and operational practices. What is apparent from records and parliamentary minutes, is that the language with which the aspirations for the Code were described in the late 1990s are very similar to that used to describe the NDP's vision for the SAPS, and that of the SAPS itself. The challenge, it would seem, is perennial.

In November 2016, the SAPS revised its disciplinary regulations. While the offences described in the regulations are quite clear, it is not clear how they relate to the code of conduct or to the NDP's recommendations. If the code of conduct is to help officials and the public understand proper conduct, the link between the Code and the disciplinary regulations should be very clear.

Table 9 presents an example of how the SAPS may want to approach its Code in an effort to make it more easily measurable and more directly linked to disciplinary regulations. If the SAPS revisits the Code with the goal of addressing the NDP's recommendations, it may want to work towards formulating this type of breakdown in order to provide clarity to both police officials and managers for inculcating the Code throughout the organisation. However, the example in Table 9 also illustrates the difficulty of formulating indicators for the first eight, relatively abstract, articles of the SAPS Code.

It is only the final section of the SAPS Code that is easily linkable to the conduct of individual officers and measurable like the articles of the SARPCCO code. Still, it is not apparent how these align with the disciplinary regulations, or whether guidance for managers is in place to promote uniformity and thus procedurally fair responses to misconduct, other than what is stated in the disciplinary regulations. It is likely that this absence could be addressed relatively simply, through targeted additions to, for example, SAPS pocket books and vehicles. These could have Code-related guidance printed on the inside covers or on dashboards, such as the guidance the New Zealand Police Service offers its employees (See Box 2 on page 19).

Table 9: Examples of indicators (and indicator creation method) for the SAPS code of conduct			
Article 1: I commit myself to creating a safe and secure environment for all the people in South Africa by participating in endeavours aimed at addressing the cause of crime			
Individual			
Indicator	Measure/Violation	Means of verification	Relevant disciplinary regulation
The police official works to solve, or refers to the relevant authority, matters that come to his or her attention that may contribute to crime or disorder.	The police official is un/familiar with the government departments and other stakeholders with whom he or she or the SAPS might communicate or collaborate in order to address a range of problems.	<ul style="list-style-type: none"> <li>• Pocket book entries.</li> <li>• Records of communication with relevant SAPS officials and/or stakeholders, including minutes and emails, with date, time and subject of referral.</li> </ul>	<p>(g) prejudices the administration, discipline or efficiency of a department, office or institution of the State.</p> <p>(u) contravenes any prescribed code of conduct of the Service or the Public Service, whichever may be applicable to him or her.</p>
The police official performs his or her duties according to best practices in evidence-based and democratic policing.	<p>The police official is un/familiar with the evidence base relevant to his or her tasking, including the limited impact traditional policing methods have on crime.</p> <p>The police official is aware that through his or her decisions and actions, social inequalities may increase, rather than decrease.</p> <p>S/he always acts with the intent to minimise harm and support justice.</p>	<ul style="list-style-type: none"> <li>• AVL data showing location of patrol car.</li> <li>• Pocket book entries noting duties carried out.</li> <li>• Training courses attended and exams passed, indicating awareness of evidence and democratic theory.</li> </ul>	(u) contravenes any prescribed code of conduct of the Service or the Public Service, whichever may be applicable to him or her.
Organisational			
Indicator	Measure/Violation	Means of verification	
The SAPS liaises with other government departments, civil society and station community actors regarding issues of safety, risk, disorder and crime.	Records and minutes of communications between SAPS officials and relevant stakeholders.	Records of communication with stakeholders, including minutes and emails, with date, time and subject of referral.	Not applicable
<p><b>Comment:</b> This article is based on Chapter 11 of the Constitution, which gives to the SAPS a 'responsibility to ... participate in endeavours aimed at addressing the causes of crime'. Police have limited impact on the causes of crime. It may be unhelpful to begin the code of conduct with an unattainable claim. The NDP calls for SAPS officials to only do that work to which they are well suited and to leave other matters to other departments. Those police actions which might be understood as addressing causes of crime include the seizure of firearms, hotspot policing and diverting young offenders.</p>			
<p><b>Recommendation:</b> It is recommended that this article be removed from the Code. Rather, reference should be made to upholding and respecting the law.</p>			

**Box 2: Conduct guidance tool, New Zealand Police Service<sup>67</sup>**

If in doubt, it may help to consider the self test questions:

**Scrutiny – Would your decision or behaviour withstand scrutiny and be seen as appropriate by others?**

**Ensure compliance – Does your decision or behaviour comply with the Code and other Police policy, general instructions and procedural expectations?**

**Lawful – Is your decision or behaviour lawful?**

**Fair – Is your decision or behaviour fair and reasonable?**

Another way to better align the SAPS Code with that of SARPCCO (and the NDP vision), is to ask 'What is missing?' from the former in relation to the latter. Here, eight omissions stand out. This reveals that the SAPS Code contains:

- No clear statement on the use of force;
- No clear statement on torture or related abuse;
- No clear statement regarding treatment of detainees;
- No clear statement on the treatment of crime victims;
- A limited statement regarding respect for rule of law;
- A limited statement on trust;
- No clear statement on confidentiality; and
- No clear statement on property rights.

Inclusion of clear articles and standards on these matters in the SAPS Code could make their interpretation, application and monitoring significantly simpler than may currently be the case.

SAPS disciplinary data suggests that the most common reasons for disciplinary hearings are violations of obligations to managers, rather than as a result of public complaints. This suggests that SAPS managers are acting against misconduct when they are aware of it, but that misconduct that takes place beyond the managerial gaze may be missed. Steps can be taken to minimise this weakness and better link misconduct to procedurally fair corrective and disciplinary actions, and to help SAPS managers become more competent in their use.

The data also suggests that the disciplinary action specifically relating to the Code is rare. If, as recommended by the NDP, this is to change, the SAPS needs to provide greater clarity regarding what such violations are and how one can report and act in response to them (for police officials and the public).

The AU suggests that the values informing codes of conduct should be measurable using indicators at the strategic (policy), institutional (objectives and outcomes), and activity and output (daily police work) levels. The SAPS has excellent monitoring and evaluation systems in place, but it is unclear whether or how they relate to the Code. The Code is unlikely to be successfully institutionalised if related indicators are not monitored. In its current form, aspects of the SAPS Code do not lend themselves to easy interpretation or measurement, particularly in terms of individual conduct. This is apparent when one compares the SAPS Code with that of SARPCCO. While the former is aspirational but at times vague, the latter is simple and clear. If SAPS management is to ensure that officials live and work by the Code, they must be given the tools with which to do so. Similarly, all SAPS officials should have easy access to simple guides that help them understand their conduct and ethical obligations.

The SAPS already has a good architecture in place through which to make progress towards the NDP's conduct-related recommendations. With a few, considered targeted interventions, it could likely make rapid progress towards becoming the professional police service it strives to be.

## Appendix A: Parliamentary references to SAPS code of conduct, 1998–2016

Date		Reference to the SAPS code of conduct in briefings to parliament's Portfolio Committee on Police, 1998–2016 <sup>68</sup>
18/2/1998	A	SAPS Director Groenewaldt told parliament 'There was a process underway for putting together a code of conduct.'
22/4/1998	B	'It was hoped that the new better-enforced code of conduct would have an effect on identifying and curtailing corruption. A co-ordination committee to address professional Conduct has been established ... popularisation of the code of conduct would be pursued. Interventions are immediately required to instil and reconfirm professional conduct in the Service. For this reason, specific measures are being undertaken to institutionalise the code of conduct and optimise the application of the Disciplinary process and procedures.'
19/5/1998	C	Mr Meyer Kahn (CEO: SAPS) told parliament of plans to 'reduce the head count of the SAPS through 'reduction of absenteeism, and the enforcing of a code of conduct.'
25/5/1998	D	The Commissioner told parliament that 'cases of violation of the police code of conduct will be disciplined'.
26/8/1998	E	'[I]n support of the Service Delivery Improvement Programme ... [a] Professional Conduct and Standards' programme was developed.'
26/8/1998	H	'Four areas have been prioritised in respect of professional conduct ... adopting zero tolerance towards behaviour which compromises the professionalism of policing services.'
26/8/1998	I	Mr Meyer Khan told parliament '130 senior officers have been briefed on the role and impact of their guidance and direction on professional conduct and effective service delivery; code of conduct certificates have been signed by 80% of all members; handouts explaining misconduct, the disciplinary process and procedures, and the individual rights and obligations of members have been distributed to all stations and units for distribution among all members.'
17/11/1999	F	SAPS anti-corruption head, Stef Grobller: 'Having a code of conduct, making clear that certain lines should not be crossed ... helps the SAPS ... understand where the boundaries of acceptable conduct lie.'
17/11/1999	G	'Matters that could [address corruption]: ... non-compliance with the code of conduct [and] possible code of Ethics for the South African Police Service where it refuses to deal with organisations that have not subscribed to a recognised code of ethics.'
31/05/2001	H	'Commissioner Motle emphasised that the approach required setting a vision for policing and the police. Amongst other things there was a need to design an integrated change plan and to implement a code of conduct.'
4/08/2009	I	'The Chairperson pointed out that SAPS had spoken about institutionalising a professional service ethos, but yet in the presentation they only covered disciplinary cases. She asked if ... the understanding of SAPS with regards to work ethos [was] limited to disciplining people or was it about ensuring that people conducted themselves ethically? Ms Mgwetha responded that they had a code of conduct which was signed by SAPS members. The code of conduct sensitised members about what was expected from them and how they were expected to conduct themselves, again the disciplinary code was progressive. Before they took disciplinary steps towards SAPS members, the members would first receive counselling, a verbal warning, a written warning etc. and thus they were not harsh towards SAPS members.'
12/9/2011	J	'Challenges in the existing legal framework included ... non-enforcement of codes of conduct.'
15/10/2009	K	'Ms Molebatsi asked whether there was a procedure for suspensions. Comm Phahlane replied that there was a grievance procedure and a code of conduct.'
3/12/2012	L	In response to a formal parliamentary question regarding statements posted on Facebook by an SAPS official, the minister of police said that 'a departmental investigation was conducted and the member's action/statement was found to be in contravention of the South African Police Service's Disciplinary Regulations and the code of conduct. The member's suspension from the service pending the finalisation of the disciplinary proceedings is considered.'
16/10/2012	P	The Institute for Security Studies (ISS) told parliament that 'The SAPS code of conduct and ethics should also be emphasised, as beyond being signed they were not always used to gauge performance. Adherence to these codes should be linked to rewards and promotions, and breaches should be dealt with by disciplinary measures as a matter of priority.'
16/10/2012	Q	The Civilian Secretariat for Police told parliament: 'There should be more serious consequences for breaches of the code of conduct and SAPS should put into place systems of ensuring greater accountability of leadership.'
24/10/2012	R	The Portfolio Committee on Police reports that 'Code of conduct: The sometimes disrespectful conduct displayed by members at Static security points were raised by Members of the Committee as a concern. The Department stated that there is internal system in place for complaints and encouraged Members to make use of such.'
16/04/2013	S	'The National Development Plan priority areas included ... professionalising the police service, emphasis on code of conduct and Professional Police Ethics when making appointments or exacting discipline.'
17/04/2013	T	'Lt Gen Schutte said ... SAPS was busy with community awareness programmes, which seek to enforce and inform members on the code of conduct.'

Date		Reference to the SAPS code of conduct in briefings to parliament's Portfolio Committee on Police, 1998–2016 (cont.)
26/03/2013	U	SAPS told parliament: 'There was a code of conduct, but it needed to be elevated, and management was trying to do this all the time.' The ISS told parliament that 'a clear five-year plan of action was needed to professionalise SAPS, by using the code of conduct.'
23/04/2013	V	The police secretariat told parliament 'that the purpose of the sub-programme on police conduct was to monitor and evaluate the conduct, integrity and transformation of SAPS. An effective complaints management system would be implemented, SAPS legislation would be assessed, there would be an ongoing review of SAPS disciplinary outcomes and processes, and special projects would be implemented in key areas. In addition, the rate at which SAPS implemented recommendations would be assessed.'
12/11/2014	W	The parliamentary committee's chairperson said 'It was important that corrupt members got dealt with swiftly ... it was important that the code of conduct envisaged in the National Development Plan (NDP) be implemented as soon as possible.'
11/7/2014	X	The Portfolio Committee on Police reported that 'The NDP proposes that the code of conduct be linked to a code of professionalism and to promotions and disciplinary regulations ... The demilitarisation process requires that an advocacy campaign ... be put in place in terms of the SAPS code of conduct ... The SAPS will [institute] a heavy integrity management capability. It will also institutionalise the revised code of conduct and incorporate it to identified developmental training programmes. Lastly, it will enforce sanctions for contravention of the code of conduct through Discipline Management.' According to the National Commissioner of the SAPS, 'institutionalising the code of conduct is high up on the agenda.'
4/3/2014	Y	The minister of police told the Inkatha Freedom Party that the 'Department, has, consistently communicated with members of the SAPS with respect to their need to not only comply with the laws of the country, but also SAPS regulations and the code of conduct that members swear to abide by under oath. Furthermore, we review incidents on a case-by-case basis and take action accordingly. Where we have reason to believe that a member has acted inappropriately, both internal disciplinary and criminal investigations are undertaken.'
14/4/2015	Z	APCOF advised the Portfolio Committee on Police that it should ask the SAPS to explain 'the manner in which the Code of conduct will be incorporated into the Disciplinary Code/Regulations' and that 'the police code of conduct and a code of professional police practice must be aligned to promotion and disciplinary regulations. The review and development of a code of conduct should be undertaken and presented to the Committee, with clear disaggregated indicators and measures to enable meaningful alignment with performance agreements and professional standards.' The Chairperson of the Portfolio Committee on Police asked if civil society identified any glaring gaps in the new White Paper on Policing. APCOF replied that 'The problem statement was not accurately stated which means interventions that flow from it may not be that good. It needs to be aligning discipline with the code of conduct, civilian regulations and the NDP.'
14/14/2015	Aa	The ISS told the Portfolio Committee on Police that 'The Committee should request practical examples as to how these codes [of conduct and ethics] were integrated into the disciplinary procedures and performance appraisal systems of the SAPS ... The Committee could also request explanations about how these codes were integrated into the recruitment and vetting processes of the SAPS, request explanations of how training was provided so that police officials used these codes to guide their decisions and behaviour and request explanations of how SAPS plans and strategies specifically promoted the values and principles contained in these codes.'
5/08/2015	Bb	APCOF told the Committee that the White Paper on Police should be aligned with the NDP including: 'With a code of conduct, a professional police service was essential for a strong criminal justice system. The police code of conduct and a code of professional police practice must be aligned to promotion and disciplinary regulations. The recommendation was for a review and development of a code of conduct with clear disaggregated indicators and measures to enable meaningful alignment with the performance agreements and professional standards must be clearly articulated in the White Paper.'
15/8/2015	Cc	Citing the code of conduct, the committee admonished top SAPS commissioners who had made a public statement in support of Riya Phiyega, following the release of the Farlam Commission Report (related to Marikana).
19/4/2016	Dd	'The Committee noted that an increase in the compliance of police members to the relevant prescripts (like legislation, regulations and the SAPS code of conduct) will reduce the number of cases registered with the IPID.'
17/02/2016	Ee	In presenting its risk management strategies to reduce police deaths, SAPS Strategic Management told the committee it was 'Popularising and enforcing ... the code of conduct'.
6/4/2016	Ff	Maj Gen Rabie then told the committee the purpose of new management interventions included 'Professionalism: Back to Basics quality dimension that is measured by addressing the needs (what) and the expectations (how) of the client focusing in the code of conduct.'
6/4/2016	Gg	Lt Gen Phahlane told the committee of a new 'anti-corruption unit within the detective services environment and said there would be specific categories in the disciplinary code/code of conduct' related to corruption.

## Endnotes

- 1 See Hornberger J, *Policing and Human Rights: The Meaning of Violence and Justice in the Everyday Policing of Johannesburg*, Abingdon: Routledge (2011); Shaw M, *Crime and policing in post-apartheid South Africa: Transforming Under Fire*, Bloomington: University of Indiana Press (2002); Marks M, *Transforming the Robocops: Changing Police in South Africa*, Durban: University of Kwazulu-Natal Press (2005).
- 2 See Independent Police Investigative Directorate (IPID), *Annual Report 2015/16*, Pretoria: IPID (2016); Farlam IG, *Marikana Commission of Inquiry: Report on Matters of Public, National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province* (2015), doi:10.1017/CBO9781107415324.004; O'Regan JC & Pikoli AV, *Towards a Safer Khayelitsha: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha*, Cape Town: Khayelitsha Commission of Inquiry (2014), available at <http://www.khayelitshacommission.org.za/> (accessed 5 September 2014); Newham G & Faull A, *Protector or Predator? Tackling Police Corruption in South Africa*, Pretoria: Institute for Security Studies, Monograph No. 183 (2011).
- 3 National Planning Commission, *Our Future – Make It Work: National Development Plan*, Pretoria: The Presidency (2012).
- 4 *Ibid.*, p. 385.
- 5 See Office of the United Nations High Commissioner for Human Rights, *Human Rights Standards and Practice for the Police*, New York & Geneva: United Nations (2004); United Nations Department of Peacekeeping Operations, *United Nations Police Handbook*, New York: United Nations (2005); United Nations Office on Drugs and Crime, *Handbook on Police Accountability, Oversight and Integrity*, New York: United Nations (2011); United Nations Office on Drugs and Crime, *United Nations Criminal Justice Standards for United Nations Police*, New York: United Nations (2009).
- 6 See African Union Commission, *Guidance Note on the Development of Codes of Conduct for African Security Institutions* (2014); Harare Resolution on the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct for Police Officials, adopted at the 6th Annual General Meeting, 27–31 August 2001, Mauritius, available at [http://www.apc.org/content/files\\_res/SARPCCO.pdf](http://www.apc.org/content/files_res/SARPCCO.pdf) (accessed 20 January 2017); Dissel A & Tait S, *Implementing the SARPCCO Code of Conduct*, Cape Town: African Policing Civilian Oversight Forum (APCOF).
- 7 See Bruce D & Neild R, *The Police That We Want: A Handbook for Oversight of Police in South Africa*, Johannesburg: Centre for the Study of Violence and Reconciliation (2005).
- 8 African Union Commission, *Guidance Note*, p. 7.
- 9 *Ibid.*, p. 4.
- 10 *Ibid.*, p. 2.
- 11 SAPS, *Annual Report 2015/16* (2016).
- 12 In 2010 and 2011, the two years preceding the publication of the NDP, SAPS annual reports did not contain the code of conduct (see Table 1). However, the SAPS's official values were presented near the front of the 2011/2012 report, and its code of ethics near the front of the 2010/2011 report. At the time of writing in February 2017, the code of conduct presented on the SAPS's official website was slightly different to that printed in its 2015/2016 annual report, but identical to that in the 2002/2003 report. This suggests that the version of the Code presented in the 2015/2016 annual report is the most recent, and that the Code has not been revised purposefully post-NDP.
- 13 National Planning Commission, *National Development Plan*, p. 387.
- 14 *Ibid.* p. 389.
- 15 *Ibid.* p. 389–390.
- 16 *Ibid.*, p. 390.
- 17 See O'Regan & Pikoli, *Towards a Safer Khayelitsha*, p. 58.
- 18 National Planning Commission, *National Development Plan*, p. 390.
- 19 Budget vote speech by minister of police, Nkosinathi Nhleko, delivered in parliament on 21 April 2016, available at <http://www.saps.gov.za/newsroom/msspeechdetail.php?nid=7929> (accessed 28 December 2016).
- 20 The SAPS was unable to answer a list of detailed questions put to it as part of the research informing this paper.
- 21 Such practices are not uncommon in bureaucracies. The SAPS did this in relation to its anti-corruption policies in the first decade of the century. See Faull A, *Corruption and the South African Police Service: A Review and its Implications*, Pretoria: Institute for Security Studies (2007).
- 22 The same is true of references to the Code in parliament. See Appendix A.
- 23 Similar references were made in the SAPS's 2014–2019 Strategic Plan published that year.
- 24 South African Police Service (SAPS) Act 1995, section 8, para. 24 (h).
- 25 This paper does not engage with promotion regulations, because they are not central to its purpose and are not part of the public record.
- 26 Department of Police, *Regulations for the South African Police Service*, Government Gazette No. 40389 (2016), available at [http://www.gov.za/sites/www.gov.za/files/40389\\_rg10662\\_gon1361.pdf](http://www.gov.za/sites/www.gov.za/files/40389_rg10662_gon1361.pdf) (accessed 2 November 2016).
- 27 *Ibid.* p. 7.
- 28 Department of Safety and Security, *Regulations for the South African Police Service*, Government Gazette No. 28985 (2006), available at <http://www.agrisa.co.za/wp-content/uploads/2014/01/Disciplinary-Regulations-2006-as-per-Gouvernement-Gazette.pdf> (accessed 2 November 2016).
- 29 This would include offences such as assault, fraud, housebreaking, robbery and murder, though such detail is not provided.
- 30 An annexure to the 2006 regulations lists the following offences as those in respect of which suspension without

remuneration may be considered. They are offences that would have counted as breaches of common or statutory law within the regulations: aiding an escapee; arson; robbery with aggravating circumstances; assault GBH [grave bodily harm]; bribery; corruption; dealing in drugs; defeating the course of justice; extortion; forgery and uttering; fraud; hijacking; housebreaking and theft; kidnapping; malicious damage to property of a serious nature; murder; rape; terrorism; theft of a serious nature; treason; any attempt, conspiracy or incitement to commit any of the aforementioned offences.

- 31 Oddly, the total 'outcome of disciplinary hearings' and the total 'reason for disciplinary hearing' correlate in 2015/2016 and 2011/2012.
- 32 Cockcroft T, *Police Culture: Themes and Concepts*, Abingdon: Routledge (2012); Reiner R, *The Politics of Police*, 4th edn, Oxford: Oxford University Press (2010); Punch M, *Police Corruption: Deviance, Accountability and Reform in Policing*, Cullompton: Willan Publishing (2009).
- 33 SAPS, Annual Performance Plan 2016/17 (2016), 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 13 December 2016).
- 34 SAPS, Performance Information Management Framework 2016/17 (2016), available at [http://www.saps.gov.za/about/stratframework/strategic\\_plan/2016\\_2017/technical\\_indicator\\_description\\_2016\\_2017.pdf](http://www.saps.gov.za/about/stratframework/strategic_plan/2016_2017/technical_indicator_description_2016_2017.pdf).
- 35 It should be mentioned that the SAPS's Annual Report for 2015/16 lists as a 'desired standard of service' – 'All SAPS members living the Code of Conduct', followed by the 'Achievement' – 'The Acting National Commissioner briefed all commanders in all nine provinces, including cluster and station commanders and commanders of detective and specialised units, on the requirements of section 195 of the Constitution (1996) and the Code of Conduct.' This is praiseworthy, but means little if individual officials are not held accountable for their conduct.
- 36 Department of Police, *Regulations for the South African Police Service* (2016), pp. 4–6.
- 37 Previously 'theft of a serious nature'.
- 38 *Ibid.*, p. 9.
- 39 If they don't admit to the misconduct, a disciplinary hearing must be instituted.
- 40 African Union Commission, *Guidance Note*.
- 41 Readers in search of more detail on the AU's excellent guidance note should consult both the original document and its annexure.
- 42 African Union Commission, *Policy Framework on Security Sector Reform* (2013), available at <http://www.peaceau.org/uploads/au-policy-framework-on-security-sector-reform-ae-ssr.pdf> (accessed 3 January 2017).
- 43 *Ibid.*, p. 7.
- 44 *Ibid.*, p. 8.
- 45 African Union Commission, *Guidance Note*, p. 19.
- 46 *Ibid.*, p. 9.
- 47 *Ibid.*, p. 7.
- 48 *Ibid.*, p. 5.
- 49 African Union Commission, *Guidance Note*, pp. 10–11.
- 50 The *Guidance Note* cites Bruce & Neild (2005) and Bayley D, *Changing the Guard: Developing Democratic Police Abroad*. Oxford: Oxford University Press (2006).
- 51 Bernado E, The role of discussion in the institutionalisation of a code of conduct by the South African Police Service, unpublished masters dissertation, Stellenbosch University (1998), available at <https://scholar.sun.ac.za> (accessed 15 December 2016).
- 52 *Ibid.*, p. 33.
- 53 *Ibid.*
- 54 *Ibid.*, p. 34.
- 55 *Ibid.*, p. 41.
- 56 *Ibid.*, p. 35.
- 57 *Ibid.*, p. 36.
- 58 South African Police Service, *SAPS Bulletin* (August 1998), cited in Bernado, p. 36.
- 59 Minutes of the Portfolio Committee on Safety & Security/Police, available through the Parliamentary Monitoring Group at: [www.pmg.org.za](http://www.pmg.org.za).
- 60 Parliamentary Monitoring Group, *Meeting Report: Portfolio Committee on Safety and Security*, 17 February 1998, available at: [www.pmg.org.za](http://www.pmg.org.za) (accessed 1 December 2016).
- 61 Parliamentary Monitoring Group, *Meeting report: Safety and Security Portfolio Committee; Security & Constitutional Affairs Select Committee; Joint Meeting, 30 May 2001, South African Police Services Transformation; National Crime Combatting Strategy: Briefing*. available at: [www.pmg.org.za](http://www.pmg.org.za) (accessed 1 December 2016).
- 62 SAPS Annual Report, 2015/2016, p. 262 of SAPS report.
- 63 See APCOF, *Implementing the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct* (2011), for a thorough list of indicators through which to measure adherence to the SARPCCO code.
- 64 African Union Commission, *Guidance Note*, p. 9.
- 65 See Faull A, 'Measured governance?: Performance management in the South African Police Service', *Public Administration and Development* (2016); Khavelitsha Commission of Inquiry (2014).
- 66 See Skogan W & Frydl K (eds), *Fairness and Effectiveness in Policing: The Evidence Committee to Review Research on Police Policy and Practices*, National Research Council (2004); Ogilvie J, Allard TJ & Stewart AL, 'Impact of police numbers on crime', *Justice Modelling Griffith* (2008).



- 67 New Zealand Police Code of Conduct, available at: <http://www.victimsinfo.govt.nz/assets/Guidelines-and-standards/Police-code-of-conduct.pdf> (accessed 13 December 2016).
- 68 Four stations visit by the Portfolio Committee on Police in 2012/2013 were also recorded. While these are motivated in part by a need to see whether or not stations are abiding by the performance plan and code of conduct, the reports do not mention findings in this regard.





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## **ABOUT APCOF**

The African Policing Civilian Oversight Forum (APCOF) is a Not-for-Profit Trust working on issues of police accountability and governance in Africa. APCOF promotes the values which the establishment of civilian oversight seeks to achieve, namely: to assist in restoring public confidence; developing a culture of human rights, promoting integrity and transparency within the police; and good working relationships between the police and the community. While APCOF is active in the field of policing, its work is located in the broader paradigm of promoting democratic governance and the rule of law.

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