



Submission on the White Paper on Policing

By

African Policing Civilian Oversight Forum

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Contact

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1. The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to comment on the White Paper on Policing, and affirms the importance of the need for a new policy statement on policing for South Africa.

2. The Submission herein provides recommendations on areas of the White Paper, which APCOF believes will provide a clearer policy framework for policing that is consistent with the obligations of the police in terms of the Constitution of the Republic of South Africa, and recommendations contained in the National Development Plan (NDP). The submission is divided into two parts: one reflecting on the structure of the paper, and the other on content issues.

3. Language and Structure

3.1 The Vision for the White Paper on Policing should be set out at the very beginning of the White Paper and modelled on the vision for policing contained in the NDP.

3.2 The preamble must locate the proposed policing agenda within the principles of democratic policing. Whilst the current draft locates the need and historical basis for a White Paper on Policing, it fails to set out the key areas for reform, which will drive this new policy framework. These areas should reflect key principles which are contained and articulated in the South African Constitution and include the following:

- The role of the police in a democratic South Africa, the benefits of which include:
 - o Promotes safety in the community;
 - o Promotes trust between the police and the community;
 - o Improves accountability, which increases respect for the police; and
 - o Indicates a willingness to support police reviews and reform.

- Key components of democratic policing:
 - o Adherence to the Rule of Law;
 - o Compliance with human rights standards and obligations;
 - o Accountability - internal and external systems;

- Equality in resource provision and service;
- Transparency;
- Responsiveness - including imperatives for community participation;
- Effectiveness - in performance;
- Efficiency: Improved coordination with other state actors particularly in Justice Crime Prevention Security (JCPS) cluster; and
- Partnerships - collaboration: Role of non-state actors - such as private security, business, and civil society.

3.3 The Introduction of the White Paper should contextualise policing developments. This section can be strengthened by articulating key changes in policing environment and current challenges facing policing. The section can be further improved by grouping these challenges to assist the drafters of subsequent legislation to understand where interventions are required and what reforms the White Paper is advocating to address these challenges. The proposals contained in the NDP should be articulated in a manner that explains how these respond to the particular challenges/ situational analysis.

3.4 The language of the White Paper needs to shift from a research paper to an instructive document which can be translated into clear legislative proposals, implemented by the police and which the Civilian Secretariat of Police (CSP) and provincial secretariats, can use to monitor compliance. The language needs to be instructive and speak to outcomes and where appropriate outputs, i.e. mechanisms, should be put in place to achieve the articulated outcomes. To promote this aim, the development of system-wide indicators to monitor performance should be included in the White Paper.

4. Content

Problem Statement

4.1 The following need to be more fully discussed in the problem statement:

- The effectiveness of the current resource allocation system and its impact on operational and management choices;
- Challenges within police leadership;

- Poor internal systems of control and particularly with regard to firearm management;
- Inefficiencies in police disciplinary systems; and
- Challenges in responding to/policing certain crimes/incidents i.e. public demonstrations/ xenophobia/ domestic violence/violence against children, etc.

Demilitarisation

4.2 The current White Paper articulates the need to locate South African Police Service (SAPS) within its constitutional mandate and philosophy of civilian control but fails to explain the impact of militarisation on policing and its consequences. The demilitarisation of police needs to be defined and contextualised within current challenges and an explanation of how 'demilitarisation' will address these challenges must be provided. Two concepts introduced in the White Paper are key to demilitarisation: community-centred policing and professional policing.

Community-Centred Policing

4.3 Community-centred policing needs to be defined and the policy must articulate how this is to be achieved. Community-centred policing is about responding to the security needs of a community, as articulated through requests for assistance. It therefore requires a police agency that is accessible and available, friendly and helpful, fair and respectful. Ultimately, this enhances both the legitimacy and effectiveness of law enforcement.

4.4 Community-centred policing requires police training that has a focus on developing service delivery skills. The emphasis of police training should be the development of the following skills:

- Service delivery skills, including facilitating requests for assistance and responding to the community;
- Handling witnesses and victims;
- Working with community groups;
- Problem solving;
- Ethical conduct;

- Equal treatment; and
- Human rights standards.

4.5 The White Paper needs to articulate clearly the role of Community Police Forums (CPF). In this regard, APCOF contends that emphasis must be placed on the role of the CPFs in setting police priorities for the station, monitoring their implementation, and undertaking regular station visits, which includes cell inspections and promoting a system of procedural justice in the interface between police and community. Steps should be taken to deter the limiting of community participation in legislative prescripts.

4.6 SAPS budgeting processes must allow for responsive budgeting practices for local stations and province-specific priorities to effect the implementation of station plans.

Professional Policing

4.7 The White Paper needs to articulate requirements for building a professional police service. Specifically it must insist that all officers go through rigorous competency assessments to determine whether they meet the required standards for the particular posts that they hold. This process is vitally important due to the many irregular appointments to senior SAPS management posts over the years, and therefore, should start with top management. Those senior managers who are capable will be clearly identified and their competency reinforced. Those officers who do not meet the set standards should not be considered for promotion until they attain the relevant level of competence for that rank. Where officers do not meet the minimum requirements for the posts they hold, APCOF believes that they should be redeployed to positions in the SAPS for which they are better suited, and that their former posts be advertised and filled with properly qualified and experienced officers.

4.8 The White Paper should give effect to the NDP position that the National Commissioner be appointed by Parliament through a competitive process and confirmed by the President.

4.9 In the next five years, a two-stream system should be developed to create high-calibre officers and recruits. One stream should be for appointing non-commissioned officers and the second stream should be for appointing commissioned officers. Appointment into the

first or second stream should be based on set criteria, which could be further refined and developed by the National Policing Board.

4.10 There should be a clear focus on training for professionalism in a democracy and not simply on compliance with rules and regulations. Trainers should be assessed for their ability, and curriculums should be designed to ensure that police officials possess the skills that enable them to problem solve, negotiate and promote trust.

4.11 The White Paper should confirm the establishment of a National Policing Board (NPB) consisting of multi-sectoral and multi-disciplinary expertise to set standards for recruitment, selection, appointment and promotion, and to develop a Code of Ethics for the police. The NPB should consist of well-recognised experts in fields such as, but not limited to, policing standards, strategic and executive management, human resources, organisational development and change management, and be established in the format of a Police Service Commission. It should also include community and civil society representatives along the lines of the Health Professions Council.

The Code of Conduct and Ethics should also be aligned to the constitutional and legislative human rights framework that governs the police, including the requirement that internal disciplinary systems adhere to principles of procedural fairness in order to promote confidence in those systems.

Human Rights Framework

4.12 Use of force by police officers

The White Paper needs to address challenges in inculcating a human rights approach in police work and, in particular, in the context of excessive use of force, police brutality and incidents of abuse/torture, etc.

The White Paper should reflect on the nature and extent of police use of excessive force and firearms, and provide a policy framework for a rights-based use of force policy. By taking a rights-based approach, police will be provided with the direction required to fulfil their obligation to act in a way that is compatible with human rights, and consider human rights

issues in their decision-making processes. The White Paper should therefore provide policy direction on the regulation of the use of force by the police, a framework for the proportionate use of force, and promote accountability measures when excessive force is used.

A policy framework for the proportional and rights-based use of firearms should also promote the proper protection of public safety. A human rights framework for the use of firearms provides a balance between protecting the rights of the community, the rights of persons who come into contact with police, and the rights of police officers, and should be developed in conjunction with operational safety principles to govern the planned use, or incidents where there is a potential use of firearms. Operational safety principles include: safety first (the safety of the public, offenders and police is paramount); risk assessment; effective command and control; cordon and containment; avoid force; minimum force; and resources. All police officers should receive comprehensive training on the rights-based framework and operational safety principles to minimise potential harm before using their firearms.

The White Paper should also reaffirm that the issuance of firearms to police officers does not provide authority to use weapons in any situation. It should propose a policy framework for strengthening the authority provided to police for use of their firearms which limits such use to specific situations that are consistent with law, policy standing orders, and procedure.

4.13 Emphasis must be placed on adherence to human rights articulating how effect will be given to the proposal of the NDP. The existing **Code of Conduct** should be reviewed against a human rights framework, indicators and measures should be developed, and the Code should be included in the police's disciplinary regulations and performance appraisal system. Further, periodic checks should be conducted to assess the extent to which the Code is understood and practiced by members of the police, and those members who fail to comply with the Code should be disciplined or even dismissed, accordingly.

The Constitutional and legislative obligations on the police to comply with South Africa's human rights framework are clear, and reflect the international normative standards for policing. However, despite the central role of the police in upholding and promoting human

rights, too often the police violate human rights. Normative standards for policing conduct will not translate into rights-based policing practices if there is no framework to enhance police understanding of the application of fair and effective policing practices, and no accountability structures to hold police to account when there is a violation.

The White Paper should provide clear policy direction on the need to develop and deliver comprehensive and on-going human rights training for police members as a core component of basic and in-service training programmes. The purpose and content of the training programme should promote a conceptual and operational understanding of human rights principles, and promote the institutionalisation of human rights as part of the core-policing mandate.

The White Paper should also clearly set out the obligation on police management to ensure that officers receive the requisite training and are held accountable for violations using procedures grounded in principles of procedural fairness. In addition, procedures should be in place to protect police whistle-blowers as part of a rights-based system of internal management, discipline and control. The relationship between police management and independent police oversight should be articulated in a way that reinforces the importance of internal and external oversight mechanisms as promoting a human rights culture within the policing system.

Single Police Service

4.14 Policing in South Africa is, by nature, a plural process. In addition to Metro Police Departments, there are multiple service providers, including private security companies, Neighbourhood Watches and Municipal and City Improvement Districts. The White Paper must establish the imperative to develop a framework of co-operation between SAPS and these nodes of security and policing that provides minimum standards in terms of rule of law, human rights professionalism and a community-centred approach to policing.

Accountability

4.15 The excising of the IPID from the Police Act paves the way to remove the political accountability of IPID to the Minister of Police. In the interest of fostering the independence

of the IPID, it should be removed from the realm of the Police Ministry and afforded status as other independent statutory bodies reporting directly to Parliament, such as the Directorate for Priority Crime Investigation and the National Prosecuting Authority.

Institutional Arrangements

4.16 Role of provinces in enhancing police accountability

The White Paper must respond to the recent Constitutional Court judgement,¹ which clarifies the role of the provinces in respect of policing, and establishes clear policy parameters on the obligations of SAPS in respect of reporting and cooperation with provinces.

Information Management and Reporting

4.17 The White Paper must engage with issue of information management in SAPS. Both in terms of interface between systems to enhance police work but also in the manner in which data is reported. Lack of disaggregated data, inconsistencies in record-keeping, and poor quality of reports on crime has interfered with the ability of government to respond and engage with the state of crime and violence in South Africa, and to interrogate the effectiveness of SAPS strategies. For example, data on gender based violence and violence against 'vulnerable' groups needs to be collected, collated and included in SAPS Annual Reports, Annual Crime Statistics, and reported to Parliament.

Annexure 1

Background on APCOF

The African Policing and Civilian Oversight Forum is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF takes the

¹ *Minister of Police & Six Others and Premier of the Western Cape & Eight Others*. [2013] ZACC 33

view that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community. APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

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

The objectives of APCOF are to:

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

APCOF works on a range of issues such as:

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