



Campaign for Safe Communities

**SUBMISSION TO THE CIVILIAN SECRETARIAT OF POLICE
ON THE GREEN PAPER ON POLICING
31 July 2013**

Contact: Craig Oosthuizen (Secretary)
Telephone: 071 611 7237 / 021 423 3089
Email: craig@nu.org.za
Website: safecommunities.sjc.org.za

Produced in collaboration with:



Contents

| | |
|--|----|
| General Overview..... | 2 |
| Contents of the Submission | 3 |
| Standing of the Campaign for Safe Communities | 3 |
| Constitutional Obligations of the Police Service | 4 |
| Criticisms of the Process Followed..... | 5 |
| The Need for a Professional and Accountable Police Service | 6 |
| Criminality within the Police Service..... | 8 |
| Transformation of the Police Service..... | 9 |
| The Duty of Police to Protect the Vulnerable..... | 10 |
| The Private Security Industry | 11 |
| Recommendations | 12 |
| Constitutional Obligations | 13 |
| The Need for a Professional and Accountable Police Service..... | 13 |
| Criminality within the Police Service | 14 |
| Transformation of the Police Service | 14 |
| Protecting the Vulnerable | 15 |
| The Private Security Industry..... | 15 |

General Overview

1. The South African Police Service (SAPS) is at the forefront of the fight against violent crime in the country, especially in its poorest and most densely populated areas. This environment is made even more hostile by the prevalence of deep social inequality. The dangers that the police are forced to confront every day are made evident by the number of police officers killed in the line of duty.
2. Our communities experience a daily and persistent attack on their constitutional rights to life, dignity, freedom and security of the person and a severe limitation on their freedom of movement to access basic services through violent crime. In an area such as Khayelitsha more than 80% of people do not feel safe in what are mostly ramshackle homes with almost no protection from criminals or the elements.
3. SAPS are often the only line of protection that communities and individuals in poor and working-class townships have against the real danger of crime. Regrettably, it is often the least likely to be of assistance and too frequently police are perpetrators of crime, including extremely violent crime.
4. The building of a democratic, effective and accountable police service under professional and ethical command is a constitutional imperative. This cannot be achieved, however, while political and criminal interference, as well as corruption, permeates the service. Political interference has been identified as a leading cause of public order policing units being unable to effectively manage public protests.¹ The presence of criminality within the police service is made evident by the fact that the Independent Police Investigative Directorate (IPID) reported that nearly 3000 criminal offences, committed by members of the service, were on its desk in 2012.² The conviction of a former National Commissioner in 2012 for corruption further entrenched the public's perception of the police as a service that is compromised and corrupt. That case strengthens the argument for the National Commissioner to be appointed according to their competency, as opposed to being a political appointment.
5. Current legislation does not fully incorporate the principles enshrined in the final Constitution, necessitating the need for change.

¹ I. Kinnes, *Public Order Policing in South Africa: Capacity, Constraints, and Capabilities*, Open Society Foundation South Africa, 2013.

² Independent Complaints Directorate, *ICD Annual Report 2011-2012*, 2012, p.28.

Contents of the Submission

6. The Civilian Secretariat for Police called on “interested people and stakeholders to submit comments on the Green Paper on Policing” (GN 616 of 2013, page 3).
7. This submission has been prepared in collaboration with the Social Justice Coalition and Ndifuna Ukwazi.
8. The Campaign for Safe Communities’ (CSC) submission is structured in the following way:
 - 8.1. Standing of the Campaign for Safe Communities
 - 8.2. Constitutional Obligations of the Police Service
 - 8.3. Criticisms of the Process Followed
 - 8.4. The Need for a Professional and Accountable Police Service
 - 8.5. Criminality within the Police Service
 - 8.6. Transformation of the Police Service
 - 8.7. The Duty of Police to Protect the Vulnerable
 - 8.8. The Private Security Industry
 - 8.9. Recommendations

Standing of the Campaign for Safe Communities

9. The CSC was formed by the collaboration of civil society organisations, social movements, research institutions and individuals in an attempt to work towards a safe South Africa for all people regardless of race, nationality, gender, sexual orientation, age, disability or class. Through its network, the CSC facilitates the sharing of information, research, skills and experience.
10. Over time the CSC aims to bring everyone in South Africa together to bring safety and justice to all communities, particularly those who are marginalised and vulnerable. The campaign currently has a special focus on Western Cape communities, but aims to expand nationally.
11. In producing this submission, the CSC interacted with various partner organisations as well as individual members of the community. All representatives at the meetings indicated that the timeframe provided for written submission is insufficient to provide serious and meaningful input on the Green Paper.
12. Crime and safety is a national issue that affects everyone in this country. This submission is made by the CSC and its partner organisations in the interest of the public.

Constitutional Obligations of the Police Service

13. According to section 205(3) of the Constitution:

“The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

14. Section 195(1) of the Constitution states that public services, such as the police service, must be “governed by the democratic values and principles enshrined in the Constitution”, which includes:

14.1. The promotion and maintenance of a “high standard of professional ethics”.

14.2. The “efficient, economic and effective” use of resources.

14.3. The impartial, fair, equitable and unbiased provision of resources.

14.4. Responsiveness to the needs of the public.

14.5. Accountability.

14.6. Transparency, including providing the public with “timely, accessible and accurate information.”

15. SAPS must perform its constitutional obligations diligently and without delay in terms of section 237 of the Constitution.

16. The National Development Plan (NDP) advocates a professional code of practice for the police which states that:

“...officers' fundamental duties are to the Constitution. They are 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.” (Page 390)

17. The CSC welcomes the Green Paper’s call for a police service that must be “professional, uphold the Constitution and respect human dignity” (page 17).

18. However, page 17 of the Green Paper also states that:

“Policing in democratic societies operates in a space between their constitutional framework and the legal framework that defines how they must operate.”

This statement is both ambiguous and misleading, and should be amended. Police in a democratic society must operate within the bounds of the Constitution. As set out in section 2 of the Constitution, the “Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid.” Both the police and the legal framework that governs how they operate are subject to the values, principles and provisions of the Constitution.

Criticisms of the Process Followed

19. It is important to note the CSC’s serious concerns relating to the manner in which the consultation process on the Green Paper has been rushed through. Section 195 (1)(e) of the Constitution requires that the public should be encouraged to “participate in policy-making.” Further to that, sections 59 and 72 require Parliament to “facilitate public involvement in the legislative and other processes.” Justice Ngcobo, in *Doctors for Life International v Speaker of the National Assembly and Others*,³ held that this meant taking steps to ensure public participation. According to him, these steps should include providing meaningful opportunities for the public to participate, as well as ensuring that the public has the ability to take advantage of these opportunities.

20. Communities most affected by crime did not have a meaningful opportunity to provide input into the formation of this paper, and the timeline for written submissions has not provided adequate opportunity for serious and meaningful engagement by the public. Following the shooting of Andries Tatane, Marikana and many other incidents of police brutality reported in the media over the last few years, public confidence and trust in the police has never been lower. According to a recent Transparency International survey,⁴ people in South Africa consider the police to be the most corrupt institution in the country. This process provided a key opportunity to repair the breakdown in relations between the police and communities, but has been inhibited by a lack of proper consultation.

³ 2006 (6) SA 416 (CC).

⁴ D. Hardoon and F. Heinrich, *Global Corruption Barometer 2013*, Transparency International, 2013.

The Need for a Professional and Accountable Police Service

21. As stipulated in section 195 (1) of the Constitution, a police service built on democratic values must be accountable and have “professional ethics.” Accountability and professionalism from the top of the service, including the National Commissioner, right down to the level of individual officers is non-negotiable. Furthermore, the democratic principles encapsulated in section 195 (1) of the Constitution apply to all spheres of government; local, provincial and national.

22. The NDP recognised that a “professional police service is essential for a strong criminal justice system.” It characterised a professional service as one that:

22.1. Is “knowledgeable about the law and their roles” (page 389),

22.2. Performs their duties “competently” (page 389), and

22.3. Recognises “their responsibility to serve communities” (page 389).

23. This can be achieved, according to the NDP, by ensuring that:

23.1. A code of conduct and ethics is enforced (page 390),

23.2. Appointees are trained and skilled (page 390), and

23.3. A body is set up to create and monitor standards (page 390).

A police service cannot reasonably be expected to behave in a professional manner without adequate competency and training.

24. The NDP envisages a process whereby the National Commissioner of Police is appointed:

“...by the President on a competitive basis. A selection panel, established by the President, should select and interview candidates for these posts against objective criteria. The President should appoint the National Commissioner and Deputies from recommendations and reports received from this selection panel. This would enhance the incumbents' standing in the eyes of the community and increase the respect accorded them by their peers and subordinates.” (Page 391)

25. The Green Paper makes no mention of any selection panel, as advised by the NDP. Instead it advocates the current process whereby the National Commissioner is appointed by the President without the requirement of consultation. It is crucial that the head of the police service be competent to fulfil that role. Appointment of the National Commissioner on a competitive basis would improve the credibility of the post, increasing the morale and professionalism of the police service.
26. Almost all of the SAPS audits have been qualified. The qualification of these audits filters down to every level of SAPS, particularly stations. According to the Green Paper and the Public Management Finance Act (PFMA),⁵ the National Commissioner, as the head of the department, is the accounting officer for the police service.⁶ As such, the National Commissioner “is responsible for the effective, efficient, economical and transparent use of the resources of the department.”⁷ The legislature, recognising society’s strong moral objection to financial misconduct, made it a crime. If the National Commissioner fails to properly exercise his or her responsibility, in terms of the PFMA, he or she is liable to pay a fine or be imprisoned.⁸ The Green Paper is silent on the consequences should the National Commissioner fail to properly perform his or her duties.
27. Answers by SAPS to the Parliamentary Portfolio Committee on Police in April revealed that station commanders are currently being appointed without being properly trained to fill the post. After being appointed, commanders are put on a long waiting list for training and can be in the post for a number of years before being equipped with the necessary skills and knowledge to fulfil that role. This approach is in complete contradiction of the plan envisaged by the NDP.
28. Officers who are not properly trained to perform their duties cannot reasonably be expected to be efficient, effective, ethical and accountable. In 2011/2012 SAPS made 1.6 million arrests. 777 140 of those arrests were for serious crimes. If one maintains the distinction between serious and other crimes, that indicates an arrest rate for serious crimes of just over 30%. In trying to determine what happens to people who are arrested and why they are arrested in the first place, it is important to analyse the results of an internal investigation of three police stations by SAPS in 2012:

“The large number of suspects that are detained, not charged, and then later being released on a SAPS 328, is however of concern. The general reasons for the release of the suspects are often indicated that the suspects cannot be

⁵ Act 1 of 1999.

⁶ Public Management Finance Act; s 36(2)(a).

⁷ Public Management Finance Act; s 38(b).

⁸ Public Management Finance Act; s 86.

linked with the crimes committed. This creates the impression that members are arresting and detaining suspects without the prerequisite of a reasonable suspicion that the suspects committed the crimes in question, exists. In general, the arresting officers do not make statements that indicate the reason for the arrests made.”⁹

The arrest and detention of suspects without just cause appears to be systemic, and exists on such a scale that station commanders must at least have knowledge of it. This demonstrates that number of arrests being made is at best a questionable performance indicator and indicates that station commanders, if not directly responsible for the unlawful behaviour, have lost control of their stations.

29. In 2011/2012 the Auditor-General found that performance indicator data from SAPS is questionable. For example, he found that 58% of the positive incident reports (10111 calls that should have resulted in a docket) were not linked to dockets on the CAS system. The reliability of performance indicator data cannot be verified owing to an inadequate audit trail and a lack of administrative controls. Reliable performance indicators are essential in order to ensure accountability.

Criminality within the Police Service

30. A professional and accountable police service cannot be developed while there is excessive criminal interference and corruption.

31. According to data collected from the 2011/2012 ICD Annual Report, criminal offences committed by members of the police amounted to 1 for every 68 employees.¹⁰ SAPS’ own data revealed that of the 1 050 officers charged with corruption or misconduct in 2011/2012, only 6% were suspended without pay. The vast majority, 92%, were not suspended.¹¹

32. In hearings before the Portfolio Committee of Police in April 2013, concerns were raised over the number of officers with criminal records on active duty. This was apparently due to the fact that officers are often acquitted in an internal disciplinary hearing and subsequently convicted in the courts.

33. The levels of criminality that are being tolerated indicate either an inability or complete unwillingness by commanders to tackle corruption within the service.

⁹ South African Police Service, *Report On The Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations In Khayelitsha, Cape Town*, 2012, p. 9.

¹⁰ Including people employed according to the Public Service Act

¹¹ South African Police Service, *South African Police Service Annual Report 2011/2012*, 2012, p.39.

Transformation of the Police Service

34. The police service is required by section 195 (1)(e) of the Constitution to:

“...be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.”

35. Transformation must, as the Green Paper states, guide practices and policy so that they align with the “principles of democratic policing” and in a way that ensures “a culture of professionalism, efficiency and effectiveness, transparency and accountability.” However, while ensuring that the demographics of the police service are properly representative the service must not forget to focus on the culture of the institution.

36. In 1994 the process of demilitarisation of the police began. The intention was to professionalise the service and rebuild the communities’ trust, following the abuses of the militarised and politicised apartheid police force.

37. The intention to demilitarise the police service was never fully accepted and even resisted. Therefore, in 2000 it was reversed, and the police service began the long process of re-militarisation culminating in the reintroduction of military ranks in 2010. According to the NDP:

“It took place against the backdrop of increasing violent crime, high levels of community frustration and fear, and a perception that the old military police ranks would command greater respect from communities.” (Page 392)

As the NDP points out, the role of a military force does not reconcile with the role of a public service such as the police. A military’s role is to “overpower, and destroy an enemy...collateral casualties are accepted as inevitable.” This is inconsistent with the constitutional role of the police service, which is to “protect” people.

38. Re-militarisation of the police has not resulted in increased respect from the public. The Green Paper recognises that a community-orientated police force requires “a social contract between the police and the communities they serve.” This is impossible given the current climate of mistrust between communities and the police.

39. Transformation of the police must be defined in terms of the culture that exists at police stations. Demographic targets, while necessary, are limited in their effectiveness. The definition of transformation must include qualifications, competency, skills, the ability to learn and communicate, non-sexism and non-racism.

The Duty of Police to Protect the Vulnerable

40. SAPS has a duty to respect and protect the rights of all vulnerable people in terms of section 7(2) of the Constitution. Chapter 12 of the NDP rightly states that:

“...the safety of communities should therefore be measured by the extent to which the most vulnerable in society, women in particular, feel and are safe from crime and the conditions that breed it.” (Page 386)

41. Women and children are particularly vulnerable. According to SAPS’ own statistics for 2012, 48.5% of sexual offences were perpetrated against adult women and 40.1% were perpetrated against youth younger than 18.¹² The police cannot be held responsible for rape, our culture has to be transformed. The duty of the police is to ensure sensitive and effective investigation, and to bring perpetrators to trial.

42. The Green Paper on policing recognises gender based violence – including violence against lesbian, transgender and gay people – as a serious concern. While the CSC supports the call for a more “victim-orientated” police service, the Green Paper fails to elaborate on what this entails. Overall, SAPS is currently failing to meet the needs of victims of sexual violence. According to the 2011/2012 SAPS Annual Report, over 200 stations (nearly 1 out of every 5) have no victim friendly rooms (VFRs).¹³ In many of the stations where VFRs do exist, these spaces are unmanned, do not have properly trained personnel or are unusable. A 2012 SAPS Task Team Report revealed that, although the Khayelitsha and Harare police stations have VFRs, the Khayelitsha VFR is unusable and the Harare VFR is unmanned.¹⁴

43. A further concern is that the Green Paper fails to mention other vulnerable groups, such as the people with disabilities, people targeted because of their nationality, sex workers, the elderly and the homeless. The NDP advocated further research to:

¹² South African Police Service, *Crime statistics overview RSA 2011/2012*, Available at: http://www.saps.gov.za/statistics/reports/crimestats/2012/crime_stats.htm, [Accessed 13 July 2013].

¹³ South African Police Service, *South African Police Service Annual Report 2011/2012*, 2012, p.58.

¹⁴ Supra note 6; p. 19.

“...evaluate the safety of vulnerable groups, the prevalence of xenophobia, and of hate crimes against gay and lesbian people, and people with disabilities.” (Page 398)

Metro Police, in particular, have been in the spotlight for the harassment of sex workers and homeless people¹⁵.

44. According to a 2011/2012 survey,¹⁶ out of all the identified vulnerable groups, people with disabilities in Khayelitsha feel the most unsafe.

45. In an affidavit provided as evidence in the case of *The Minister of Police and Others v The Premier of the Western Cape and Others*,¹⁷ Mandla Majola (an activist from Khayelitsha) stated that in 2008 at least 100 000 people were displaced, many were injured and 60 people were murdered because of their nationality. He points out that the attitude of police officers at the stations in Khayelitsha “reflected the broader xenophobia in the community.”

46. In keeping with section 195 (1)(d) of the Constitution, police officers must perform their duties “impartially, fairly, equitably and without bias.” The NDP envisaged a police service that would:

“...serve the community...without discrimination, protect the peaceful against violence, and respect the rights to equality and justice.” (Page 387)

The Private Security Industry

47. The Private Security Industry in South Africa is one of the largest in the world. As pointed out in the Green Paper, the industry contributes 1.25% of South Africa’s GDP compared to only 0.3% in the United States. Registered active security guards outnumber police by almost three to one, and there are at least eight security companies for every police station.

48. There are significant concerns related to the diversion of firearms from the private security industry to the criminal sector. The ability of the Private Security Industry Regulatory Authority (PSIRA) and the police to track firearms used by security companies has been repeatedly raised in hearings before the Portfolio

¹⁵ Women’s Legal Centre, *A Report on Human Rights Violations by Police against Sex Workers in South Africa*, 2012.; SAPA, CT homeless claim police assault, Available at: <http://www.news24.com/SouthAfrica/News/CT-homeless-claim-police-assault-20110604>, [Accessed 4 June 2011].

¹⁶ Western Cape Government, *Community Safety Barometer 2011/2012*, 2012.

¹⁷ Case number: 21600/12 [2012].

Committee of Police over the last decade. Although no data has been publicly made available on the amount of firearms being diverted from the private security industry, the 2008 Small Arms Survey revealed that the industry is a major source of firearms for the criminal sector.

49. Serious issues around compliance to the law as well as PSIRA regulations also exist. According to PSIRA it conducted 876 inspections on security companies in 2011/2012, of which 14% deployed unregistered guards and 14% deployed guards without the necessary training. Of 2 955 security guards inspected in 2011/2012, 20% were unregistered and 17% were untrained.
50. Private security guards are increasingly being asked to perform functions, such as arrests and searches, which are traditionally within the realm of the police service. They are not, however, subject to the same level of scrutiny as the police. No data is currently being made available regarding death or injury due to the actions of security guards, but IPID publishes annual figures regarding the consequences of police actions. Recent revelations in the international media regarding the PRISM programme in the United States further demonstrates the possible risks associated with entrusting security to large international private companies. Local entities can use these international companies to collect data it would otherwise be illegal for those entities to collect directly.
51. The Green Paper's suggestion that clear guidelines, based on research, be developed to "guide relations between the police and private security providers" is a positive one. The largest problems within the industry are enforcement, a lack of professionalism and corruption.

Recommendations

52. On 23 July 2013, the CSC attended the presentation by the Civilian Secretariat for Police to the Portfolio Committee of Police on the Green Paper on Policing. The CSC endorses the recommendations made by the Portfolio Committee of Police on that date, requiring the inclusion in the Green Paper of:
- 52.1. A vision statement that clearly articulates what type of police service it intends on developing,
- 52.2. An organogram of the management structure of SAPS at a national level,
- 52.3. The inclusion of empirical research and international best practice, and

52.4. Explanations, based on sound evidence and research, when the Green Paper diverges from the vision set out in the NDP.

53. In light of the contents of this submission, and taking into account the inputs of our partner organisations and community members, the CSC makes the following recommendations:

Constitutional Obligations

54. The Green Paper should remove the statement inferring that the police operate in a space between the Constitution and the legal framework governing their operations. It should clearly state that the primary objective of the police is to protect and serve the public in line with the principles enshrined in sections 205 and 195 of the Constitution.

The Need for a Professional and Accountable Police Service

55. The Green Paper must include the creation of a selection panel that will advise the President on the appointment of the National Commissioner. The panel should include all stakeholders, including civilians and members of the police service. This will encourage confidence in the police as well as professionalism throughout the service.

56. National Commissioners, as accounting officers, need to be held accountable. The Green Paper should include a statement reinforcing the fact that the National Commissioner will be held accountable for failure to perform his or her duties in terms of the PFMA and other relevant legislation, including a possible fine or imprisonment.

57. The CSC supports the NDP recommendation of a National Policing Board, which can set standards for and monitor the recruitment, appointment and promotion of police officers. The creating of norms and standards by this board will lead to a more professional and accountable police service.

58. Given the serious concerns relating to the amount of untrained station commanders and their inability to control their stations, the Green Paper should clearly state that officers should receive training prior to being appointed or promoted.

59. In order to enforce accountability, the Green Paper must insist on independent verification and timeous publication of police service data. This will help ensure

that the reported performance indicators are accurate. It must also stipulate that performance indicators, other than just statistics, must be developed and used.

Criminality within the Police Service

60. A strong statement needs to be included in the Green Paper indicating that corruption and criminal behaviour is threatening to become endemic and must not be tolerated within the police service.
61. Section 36 of the South African Police Service Act¹⁸ stipulates that a member of the police who is convicted of an offence may, at the discretion of the National Commissioner, be reinstated as a member unless the conviction resulted in a sentence of imprisonment without the option of a fine. The Secretariat should insist on an immediate amendment to the current legislation, stipulating that any member of the service who is convicted of a criminal offence, regardless of the sentence, may not serve as a police officer. This decision should not be left up to the discretion of the National Commissioner.
62. The current trend of allowing officers who are found guilty of criminal misconduct to remain on active duty cannot be allowed to continue. In order to foster an atmosphere of accountability, these officers should be dismissed. In the exceptional case where the infraction by the officer warrants a suspension rather than dismissal, the member must be suspended without pay. Otherwise, their suspension amounts to nothing more than paid leave.
63. Owing to the evident lack of will amongst management within the police service to expel criminal elements, the Green Paper needs to emphasise that officers in a position of command within the service who fail to act against criminality should face disciplinary action.

Transformation of the Police Service

64. Militarisation of the police has resulted in a culture of impunity and aggression. This has further alienated communities and prevented transformation efforts from producing a service that the public sees as democratic, representative and accountable. If the Green Paper is serious about developing a community-orientated police service it should commit to the demilitarisation of the service, including changing or removing military officer ranks.

¹⁸ Act 68 of 1995

65. Transformation, while ensuring that the police force is truly representative of the population, must also be defined by qualifications, competency, skills, the ability to learn and communicate, non-sexism and non-racism, taking into account the needs of diverse communities.

Protecting the Vulnerable

66. The Green Paper should reiterate the NDP's vision of the police service as one that protects the vulnerable against all forms of unjust discrimination; including discrimination based on nationality, gender, sexual orientation, disability, age, homelessness or occupation. It must recommend a plan to tackle discrimination against the vulnerable, including homophobia, xenophobia and sexism.

67. The Green Paper should also call for statistics to be regularly published on the prevalence of hate crimes. It is important to isolate these statistics so that the success or failure of SAPS to combat these forms of violence can be measured.

68. Section 10 of the Constitution guarantees everyone the right to dignity. The Green Paper should reinforce the importance of spaces in which victims can be dealt with in a dignified and professional manner. At least one, functional, victim-friendly space with properly trained personnel should be made available at every police station. The Green Paper should also stipulate that properly trained personnel are allocated to these spaces, and that if no properly qualified person can be found from within the service they should be sourced from elsewhere such as civil society.

The Private Security Industry

69. The private security industry is governed by the Private Security Industry Regulatory Act, the Firearms Control Act, and PSIRA regulations. However, the legal framework surrounding the industry is poorly enforced. The Green Paper must call for the enforcement of the current laws and regulations, as well as proper oversight by the police service.