KEEPING THE POLICE IN CHECK

Assessing the secretariats for safety and security

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Civilian oversight bodies such as the secretariats for safety and security and the ICD have been vocal about recent incidents of police misconduct and abuse of power. However, it is not enough to merely record and comment on such incidents. If real transformation of the SAPS and improvements in service delivery are to occur, civilian oversight should be given greater value and support by political and administrative leaders. This article presents the findings of a recent evaluation aimed at identifying ways to strengthen the secretariats' role in police oversight.

The transformation of the South African public sector, the criminal justice system, and specifically the police, is critical to the consolidation of democracy in the country. Good governance demands that a sound judicial system operates in an environment where services are delivered in a manner that is transparent, accountable and responsive to citizen's needs, while at the same time ensuring equal treatment and attention. To this end, the bodies responsible for civilian oversight of the police have an important contribution to make.

In an effort to promote transformation and strengthen democracy, the Open Society Foundation South Africa (OSF SA) and the Open Society Justice Initiative (OSJI) initiated a study into civilian oversight of policing in South Africa during 2003. The aim of the project was to find ways to strengthen civilian oversight. A lengthy consultation process resulted in five focus areas of police oversight being identified for research and evaluation:

- oversight of municipal policing;
- the role of community police forums (CPFs) in civilian oversight;
- developing a set of indicators for democratic policing;
- establishing a website focusing on police oversight issues; and
- evaluating the secretariats for safety and security at both national and provincial levels.[1]

Mechanisms for police oversight

In the early 1990s, the role of the police in a democratic South Africa was debated and reconstructed. A number of innovations were introduced to contribute to police transformation in the country. These included the formation of one South African Police Service (SAPS) from the 11 previously existing police agencies, and the establishment of mechanisms for civilian oversight of the police.

The three primary mechanisms of civilian oversight are community police forums at local level,

secretariats for safety and security at provincial and national levels, and the Independent Complaints Directorate (ICD) which also operates at provincial and national levels. All of these mechanisms are provided for in relevant pieces of legislation and/or the Constitution.

In addition to the provision of civilian oversight at local, provincial and national level, the legislation allows for oversight over policy, strategy and operations. The legislative provisions relating to CPFs permit them to encourage members of the public to work with the police to ensure improved relationships and trust between the police and the community. Similarly, the ICD was established as an independent body that would investigate cases of abuse of force and misconduct in relation to the public, and make policy recommendations in this regard. The role of the secretariats has been more focused on monitoring the SAPS and conducting oversight at the policy and strategic levels.

How necessary is civilian oversight?

In the tenth year of our democracy, it is apparent that civilian oversight is as necessary as ever. Recent high profile incidents of deaths resulting from police action include those of 17 year old Teboho Mkhonza in Harrismith,[2] and Optel Rooi in the Northern Cape.[3] The problem of police corruption was also recently highlighted on television in SABC's Special Assignment, which exposed Johannesburg SAPS officers taking bribes from sex workers and their clients.[4]

According to the ICD statistics for 2003/04, recorded cases of deaths in police custody or as a result of police action increased by 35% when compared to the same period in 2002/03.[5] In addition, there was a 47% increase in reports of serious criminal offences allegedly committed by SAPS members. Incidents of misconduct reported to the ICD also increased by 28% compared to the same period in 2002/03.[6]

The high profile cases noted above, as well as the many civil claims for damages awarded against the SAPS and increasing deaths in custody, highlight the importance of effective civilian oversight over the SAPS and the various municipal police departments. The question that needs to be posed is: has the SAPS transformed itself adequately and, by implication, has civilian oversight succeeded in its mandate to transform the SAPS?

A recent ISS evaluation of the national and provincial secretariats for safety and security indicates that these civilian oversight mechanisms have had, at best, mixed success and have made a limited contribution to police transformation. The findings of this research are presented below. However, in order to understand the issues, it is necessary to consider the changing context within which oversight has taken place.

The rationale behind establishing civilian oversight institutions was primarily to ensure that the police would never again be a law unto themselves as they were prior to 1994. Oversight structures would hold the police accountable for their actions, among other things, and instill good practices within the service generally. Initially, as far as the secretariats were concerned, civilian oversight centred on the appointment of civilians rather than people from the security apparatus. Many of the people staffing the secretariats had histories in non-governmental and community based organisations, which influenced the nature of the secretariats and how they went about their business.

The first national secretary for safety and security was appointed in 1995, and the national and provincial secretariats were established thereafter. The Constitution directs that a civilian secretariat for the police must be established under the cabinet member responsible for policing.[7]

The mandate of the secretariats is spelt out in the South African Police Services Act 68 of 1995 ('the SAPS Act').[8] This includes advising the minister for safety and security in the exercise of his powers, and promoting democratic accountability and transparency in the police service. The secretariats were to ensure police compliance with transformation, and to do this they needed to overcome resistance from senior and lower ranking police members to change, and place transformation at the centre of the police service.

Essentially the task was to transform the police from a security force to a legitimate public-oriented police service. As a result, expectations about the secretariats' role and impact on the police were high. These expectations were tempered by the realisation that transforming the SAPS was to be a long term project. Indeed, there was an assumption that civilian oversight would always be high on the agenda of the SAPS, the minister for safety and security, and the relevant provincial members of the executive council (MECs).

Changing shape of the national secretariat

The context within which civilian oversight bodies were established shaped their structure. The secretary for safety and security and the executive director of the ICD report to the minister for safety and security, as does the national commissioner of the SAPS. Therefore, the minister deals with diverse but competing interests, which has often resulted in the national secretariat being sidelined.

A major difference between the oversight bodies lies in the financial autonomy of the national secretariat and the ICD. Although both structures report to the minister, they are significantly different in terms of who controls the purse strings. The national commissioner of police is the accounting officer for the secretariat as stated in both the Public Service Act and the Public Finance Management Act.[9] By contrast, the executive director of the ICD is the accounting officer for that organisation, giving it greater independence. The ICD is therefore believed to have, and indeed does have, a greater degree of autonomy and impact in the execution of its functions than the secretariat.

The functions of the national secretariat are listed in s3(1) and s3(2) of the SAPS Act. In the first five years of the national secretariat's existence, it played a prominent role in formulating policy and overseeing its implementation. The national secretariat was then well staffed, equally well resourced and politically supported. Moreover, regular meetings took place between the leadership at the time: the minister for safety and security, Sydney Mufamadi, the national police commissioner, George Fivaz and Azhar Cachalia, the secretary for safety and security.

Civilian oversight could be said to have taken its rightful place in shaping safety and security issues. It was during this period that important policy documents such as the National Crime Prevention Strategy (NCPS) and the White Paper on Safety and Security were developed and adopted.

This state of affairs was dramatically overturned after the national elections in 1999 when a new minister for safety and security, Steve Tshwete, was appointed. A few months later, Azhar Cachalia vacated his post and slowly but surely the capacity and influence of the national secretariat diminished. The reduced status was reflected in the downgrading of the national secretary's post from director general to deputy director general. Moreover, the secretariat's role in respect of formulating policing policy was substantially weakened.

Other important developments included naming the SAPS national commissioner as the secretariat's accounting officer, thereby effectively placing the secretariat in a subservient position. The social crime prevention capacity of the secretariat was also taken away and placed under the auspices of the SAPS.

Structure of the provincial secretariats

In contrast to the national secretariat, the provincial secretariats are autonomous bodies answerable to the provincial executive and independent of the national secretariat. Some of the provincial structures are well funded, with budgets and staff complements varying from one province to another. The Western Cape Department of Community Safety, for example, has a budget of R151,436,000 for 2004/05, while the Northern Cape's budget is R11,997,000.[10]

Although the White Paper for Safety and Security has had a great deal of influence over their structure – in particular by suggesting the establishment of directorates dedicated to social crime prevention – each of the provincial secretariats has a different configuration. They nevertheless broadly carry out the same type of work, including policy monitoring, responding to service delivery complaints, and conducting crime awareness campaigns in their provinces.

While a hierarchy is evident between the SAPS and the secretariat at national level, the same does not apply at provincial level. Relationships vary widely at provincial level and the unevenness in how the provincial secretariats are structured is also apparent in their relationship with the SAPS.

In Gauteng, for example, the secretariat has entrenched a system of quarterly reviews with the SAPS. These review sessions are organised by the provincial secretariat and attended by its senior managers, the MEC, the SAPS provincial and area commissioners as well as the regional director of the ICD. The reviews take place over two days during which SAPS' progress is measured against set objectives. Practices such as these seem to be dependent on the personalities of the MECs, and the relationships that exist or are developed between MECs and SAPS provincial leadership.

In contrast to the Gauteng example, the Northern Cape secretariat only recently managed to have the SAPS accompany them when they reported to the provincial legislature. The Constitution requires the SAPS to report annually to the provincial legislature on policing in the province.[11]

How have the secretariat's fared?

The evaluation of the secretariats was conducted over a five-month period during 2004. The research was qualitative in nature, using face-to-face interviews and focus group discussions with individuals in the provincial secretariats. Those in the secretariats' monitoring and evaluation directorates were singled out for interviews because theirs is the core business of the secretariat.

In sum, 32 individuals were interviewed and four focus groups with a total of 15 individuals per group, were conducted. Unfortunately a request to interview SAPS provincial commissioners was turned down, as were repeated requests to interview the national secretary and his staff. The reluctance of the SAPS and national secretary to contribute to the study, although unfortunate, largely confirms what the available respondents indicated with regard to problems of transparency and inclusiveness on the part of SAPS.

In short, the evaluation highlighted the divergent experiences of civilian oversight, and the rapidity of change in what constitutes civilian oversight of the police. The research found that despite the legislative requirements and policy frameworks, the outputs of these agencies vary from location to location. Nevertheless, respondents from each of the secretariats felt that they played a key role in monitoring police service delivery and transformation, as well as issues of representivity, resource allocation, and performance.

Apart from their monitoring activities, the provincial secretariats also coordinated various crime prevention meetings and projects at provincial and, in some cases, local level. However, the research found that these practices were largely uneven and dependent on the personalities of the MECs and the heads of the departments involved.

All the secretariats appear to suffer from a lack of national coordination and vision. The relationships between the national and provincial secretariats, between the secretariats in each province, and with the SAPS and ICD, remain unstructured. Furthermore, the lack of secretariat influence at police station level was a particular concern to the respondents. The difficulties experienced by provincial secretariats in trying to exert influence over police counterparts in their province who take direction and orders from their national leadership, should not be underestimated.

In sum, the evaluation concluded that the secretariats have functioned less as civilian oversight mechanisms than as structures providing *ad hoc* monitoring of various aspects of policing, policy advice, and coordination for crime prevention projects. This was tacitly acknowledged by the respondents, who clearly indicated that the current policing priorities and context should form the backdrop to a strategic review of the secretariat's *raison d'etre*, as well as a possible realignment of the secretariats' role and function. This process would also allow for the position and powers of the national secretary to be assessed and amended if necessary.

Recommendations

The study's recommendations relate to both the role and functioning of the secretariats at national and provincial levels. These include the following:

Existing provisions in legislation must be exploited

Currently, the secretariats are not using the opportunities provided for in legislation to place civilian oversight firmly on the SAPS' agenda. A process should be undertaken as soon as possible to identify gaps in existing practice, so as to give direction to the legislative review process.

The current role, function and structure of the secretariats should be revisited

The policing priorities and context should inform a strategic process which would include a reassessment of the secretariat's *raison d'etre*, as well as a possible realignment of the secretariats' role and function. This process should also allow for the position and powers of the national secretary to be assessed and amended if necessary.

Sharpening the national secretariat's role

The national secretariat should remain a small but effective policy advice think tank for the minister of safety and security and for the provincial secretariats. The national secretariat needs to regain its former strategic role in policy advice to the minister.

The same training on policy analysis and implementation is needed for all secretariats

It is apparent that the capacity for policy analysis, monitoring and evaluation is severely lacking in some secretariats. In addition, the interpretation of these roles varies in some instances.

Collaborative planning and strategising between the secretariats and with the ICD

The national and provincial secretariats should have collaborative strategic planning sessions which include the ICD when appropriate. This will assist to create a common understanding of needs and priorities, and to ensure uniformity in approach where necessary and appropriate.

Sharing of good practice between the secretariats

Currently there is little formal or structured collaboration between the secretariats as far as the sharing of good practice is concerned.

Formalising of processes to ensure good working relations

There is currently a reliance on personal goodwill and interpersonal relationships for the creation of good working relationships between each of the secretariats, and between the secretariats and the ICD and SAPS in the provinces. Structures need to be set in place to formalise and guarantee that cooperation occurs.

Contribute to policy and legislative review processes

While the secretariats have, to varying degrees, implemented the provisions in the White Paper and NCPS, the time is right to revisit the understanding of the term 'civilian oversight' in relation to the secretariats and their work.

A future for the secretariats?

Considering that relationships between the police and the communities they serve have improved since 1994, and that the SAPS has undergone significant transformation, the question is whether there remains a need for civilian oversight in the form of the secretariats. While the issue is debatable, the fact is that although the political environment has changed substantially since 1994, the policing and social environments still demand that clear and effective mechanisms for police oversight are in place.

The real and perceived high levels of crime in South Africa result in a great deal of pressure on the police to perform. The proliferation of firearms and the high levels of violent crime exacerbate the situation, adding to the risk of police misconduct or improper use of force. This may be one explanation for the increase in the recorded number of cases of police misconduct. The trend may also be attributed to improved knowledge among the public of their rights in this regard. What is certain is the need for more effective oversight processes to ensure that such incidents are reduced, and that transformation of the SAPS is assisted through amendments to policy and practice where necessary.

Endnotes

1 See D Mistry and J Klipin, *Strengthening Civilian Oversight Over the Police in South Africa: The National and Provincial Secretariats for Safety and Security,* ISS Paper 91, September 2004.
2 G Gifford and SAPA, Police shootings challenged, *The Star*, 1 September 2004.
3 Death of a Bushman – update, ECOTERRA Intl, <http://listsserv.cnr.it/cgibin/wa?A2=ind0408&L=camnet&F=&S=&P=9144>
4 SABC 3, *Good girls, Bad cops*, 28 September 2004.
5 Independent Complaints Directorate Annual Report 2003-2004.
6 Ibid.
7 See s208 Constitution.
8 See s3 of the South African Police Services Act 68 of 1995.
9 See s7(3)(a) of the Public Service Act 1994 which refers to Schedule 1 and the Public Finance Management Act 1 of 1999.
10 The budget for the secretariats is contained within the budget of the Departments of Community Safety and Safety and Liaison respectively. It is difficult to make adequate comparisons between the Departments because their structures differ and some, like the Western Cape, have traffic and security as components of the Department. The switch to the word department is for ease of reference. Strictly speaking, according to the SAPS Act they should be called secretariats, but the Public Service Act and the Public Finance Management Act refer to the secretariats as Departments of Safety and Security.
11 See s207(5) of the Constitution.