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Introduction

Democratic policing is premised on the nature of policing as a service to the public—rather than to a regime—and in the qualities that characterize that service: respectful conduct, effective performance and transparency and accountability to the different clients or consumers of policing.

Civilian accountability of the police has been one of the critical issues facing the transformation of the South African Police in the 1990s. Emerging from a totalitarian past and a legacy of hostility, a police service accountable to the people through strong oversight mechanisms was seen as one of the cornerstones of the new democracy. Today we are tempted to ask whether, with the existence of elaborate oversight mechanisms, accountability should continue to hold the same weight in today’s debates as it did ten years ago. We argue that it should.

The danger of complacency, together with an ever present and natural resistance to accountability, can erode the effectiveness of our oversight mechanisms and the democratic gains we have made. A strong and robust system of accountability had been consistently shown to be key in developing trust between police and communities. Building and consolidating this trust remains one of the central challenges for policing in South Africa today.

The existence of multiple structures of civilian oversight is key to democratic policing, but also creates sets of concerns and interests that may vary between oversight structures and also may vary over time. South Africa created a remarkable set of oversight structures in government and in communities, with a vision and mandate for each. As with all new systems, many issues arise through the process of getting bodies up and running, coordinating between the elements of a multi-faceted system, and responding to changing circumstances. This project on strengthening police oversight in South Africa seeks to examine some of these dynamics with a view to building and strengthening the system and ultimately deepening democracy.

The Project on Strengthening Oversight of Police in South Africa

The Project on Strengthening Oversight of Police in South Africa, a joint initiative of OSF-SA and the Open Society Justice Initiative, aims to strengthen state mechanisms of police oversight while at the same time bolstering civil society engagement with the sector. The overarching goal is to enhance police accountability in South Africa by building on the transformation and structural reform of public security policy underway since the 1994 transition.
Beginning in January 2003, the project initiated a series of consultations with a broad range of civil society organizations working on policing and public security issues, and with national, provincial and local civilian police oversight bodies. This project phase included a review of developments in the field of policing oversight, an analysis of the key challenges facing oversight agencies, and a pooling of knowledge among practitioners, academics and NGOs with experience in monitoring police behavior in South Africa. Based on this process, a set of research needs was identified.

The second phase of the project ran from October 2003 to April 2004 and focused on policy research. The following areas have been investigated:

- The development of the National and Provincial Secretariats for Safety and Security as mechanisms to provide government with civilian policy management capacity, and their role in monitoring police performance;
- Development and piloting of a monitoring tool for the Community Policing Forums. Established by law at every police station, CPFs are to improve police service provision at the local, provincial, and national levels; and improve police transparency and accountability to the community;
- Development and piloting of a capacity-building strategy and monitoring tool for local council oversight of municipal police forces;
- Development of indicators for civil society monitoring of "Democratic Policing";
- Building and extending the knowledge base with a website on Policing Accountability.

The workshop of 10 May 2004 provided an opportunity for each initiative to report back on initial findings to stakeholders, and to reflect on potential uses of project results to promote and strengthen oversight. These discussion will inform the third, implementing phase of the project.

**Workshop on Police Accountability - 10 May 2004**

The workshop was structured in four panels: The first addressed key issues facing civilian policing oversight at Provincial, Municipal and Local Level. This section provided opportunity for participants to engage with the report back on the projects on research on the Provincial and National Secretariats, the CPFs, and Police Monitoring and Monitoring and Oversight of Municipal Policing.

The second panel addressed promoting and building accountability. It reviewed the web-based learning and communication tool developed on policing accountability, and the development of a generic set of democratic policing indicators. The third panel discussion addressed the topic of law and policy reform, and was structured around the possible review of policing legislation.

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Finally the South African Police Service (SAPS) provided input on the development of their own internal performance monitoring systems.

The first day’s inputs were taken into a second day where the project partners discussed the refinement and application possibilities of the research results.

PANEL 1: Key Issues Facing Civilian Policing Oversight at National, Provincial, and Local Level

Oversight of Municipal Policing

Gareth Newham, Centre for the Study of Violence and Reconciliation (CSVR)

At the municipal level, oversight of the Municipal Police Service (MPS) is in the hands of the Section 80 committees and the Section 79 civilian oversight committees. Gareth Newham reviewed key issues around the committees.

- The Section 80 “Public Safety Committees” exercise most direct and ongoing civilian oversight. They are named for Section 80 of the Local Government Municipal Structures Act. The Chairperson is appointed by the Mayor, and committee members consist of elected Councilors only. Political parties are represented proportionally. They meet once-monthly and receive documents for deliberation seven days before meeting. Their recommendations are forwarded to the Mayoral Executive Council for approval.

- Section 79 “Civilian Oversight Committees” have yet to consolidate their role. They are provided for in the Amended SAPS Act of 1998 (setting out powers and functions of the MPS), and are established in terms of section 79 of the Local Government Municipal Structures Act. The Section 79 committees have no legal powers; their mandate includes responding to and advising the Council and Mayor; promoting accountability and transparency; monitoring the implementation of policy and directives issued by the Mayor or Council; and evaluating the functioning of the MPS.

- Other local level structures involved in oversight vary, but include Section 80 Financial or Audit Committees and local level Ombudsperson.

Newham presented the following findings:

- **Section 80 committees** not only focus on Municipal Police Services, they also examine emergency services, licensing, etc. The nature of the oversight they undertake is primarily focused on departmental issues such as budgets, policies, structure and resources. Their focus on complaints against the police or on public scandals is *ad hoc*. Generally, the chairperson plays a leading role and is more involved in “overseeing” the MPS than is the committee as a whole. The relationship between the committee and the MPS is typically cordial and collaborative.

- The situation of **Section 79 committees** is less clear. Councils and MPSs have some “reservations” about these committees. Their size and
membership present substantial challenges and have yet to be fully defined. Their terms of reference are very broad and as yet unfulfilled (there is some feeling that these committees should look at public complaints). They have no independent support or resources (but are currently set up and supported through MPS budgets and capacity), nor do they have any public profile and little or no information about them is available.

Closing recommendations for potential projects that could strengthen policing oversight at the municipal level included:

- The development of a manual on police oversight and the role of local structures in South Africa;
- Conducting a training workshop with oversight committees;
- A Participative Action Research project with a specific committee to develop guidelines and examples of good practice and a budgetary reference point (this could feed into above initiatives);
- Reform of the Police Act could clarify the terms of reference, powers, location and budget for such committees.

Community Police Forums and Police Monitoring – Ian Bentley, UMAC

The Development of CPF policing oversight capacity at station-level is premised on the notion that community trust in the police is based on accountability, which in turn is based on transparency. The project is developing a “Policing Confidence Index” – a practical, user-friendly monitoring and oversight tool that is essentially a set of indicators to monitor police performance. These indicators are based on community members’ needs and supported by an assessment of legislation, police standing orders, and so on. The next step is to train CPFs to use this “tool” and to implement the activities of the project at station level. A pre- and post-intervention study will be conducted to assess the effectiveness of the “Policing Confidence Index” in building trust between the parties. At the end of the project, UMAC will publish the findings.

The process of identifying indicators has involved individual interviews, focus-group discussions and stakeholder workshops. Stakeholders—particularly CPF leadership—in each province agree on the need for a more in-depth consultation process, which is currently in progress. Stakeholders in different provinces are also seeing different benefits that can be gained at local level, for example, monitoring the Western Cape’s “Police Service Charter”. The preliminary indicators identified at this point are:

1. Service Delivery:
   - Response time (particularly the 10111 cycle);
   - Manner in which the Community Service Centres handle complaints;
   - Feedback / progress reports to community members.
2. Systems and Logistics:
   - Availability and usage of vehicles.

3. Police Conduct:
   - Treatment of prisoners in police custody;
   - Complaints register, feedback on complaints.

Research on the Provincial and National Secretariats – Duxita Mistry, Institute for Strategic Studies (ISS)

The research methodology of the project is primarily qualitative, using one-on-one interviews and focus groups with secretariat staff from the provincial secretary to the assistant director, and eliciting the perceptions of the respondents. Research remained to be conducted in the outstanding provinces of the Limpopo and the North West.

The challenges identified so far include:

- Gaps in current arrangements. For example, there is no provision to regulate the relationship between national and provincial secretariats, such as in the Independent Complaints Directorate (ICD) model. The provincial secretariats are autonomous, but still need coordination from the national secretariat. The functions and powers of the provincial secretariats and the status of their recommendations to the SAPS are not adequately clear, and must be reviewed.

- Institutional reform as proposed by the White Paper on Safety and Security 1999 is crucial in order for the national secretariat to place civilian oversight firmly on the agenda and to strengthen civilian oversight in a meaningful way.

- The SAPS National Commissioner is the accounting officer for the national secretariat. The implications of the Public Finance Management Act (PFMA) for oversight independence need to be assessed.

- There is a lack of joint strategic planning and coordination and little sharing of information and best practices. Contacts are mostly personal, and the meetings between Ministers and Members of Executive Committee (MinMEC) and Heads of Department (HOD) meetings tend to be crucial.

- The relationship with the ICD needs to be strengthened and closer cooperation must be developed.

- The institutional structures in provincial government also need review. Currently, the SAPS Provincial Commissioner is at the level of director general (DG), whilst his colleague in the Secretariat (HOD) is a deputy director general (DDG). This affects the level of interaction and influences
who gets sent to meetings where decisions have to be taken. It also reflects the extent of Provincial Commissioner accountability to secretariat.

- Capacity is lacking in some of the provincial secretariats, which are terribly understaffed.
- An expansion of the mandate of the secretariats risks duplication with the ICD.
- There is some evidence of a lack of political will and direction on civilian oversight of policing.

Mistry reviewed the opportunities that exist to address some of these issues:

- Expedited amendments to the Police Act could start to implement White Paper institutional reforms;
- The current research could be used to lobby for placing civilian oversight on the Ministry agenda; this could be enhanced if civil society groups engaged in lobbying around the reform of the Police Act;
- Finally, the MinMec and HOD meetings could be used for strategic interventions to strengthen civilian oversight.

Discussion

Responding to questions on the Oversight of Municipal Policing, Gareth Newham said that his central recommendations focused on the importance of training for the committees on establishment, administration and functioning. The work of the committees and their accessibility to the public needed to be improved. There is no shared definition of oversight and no agreement on what committees should be doing. Legislative review could clarify their focus, as could the development and implementation of a training manual.

One question noted that one purpose of oversight is to address misconduct, and asked whether the committees have the scope to address corruption? Gareth Newham replied that many of the committees saw corruption as an internal issue that the police need to deal with and that, unless the particular incident is very high profile, they will not make it a focus. The Committees were not resourced to address corruption and there is little capacity to address public complaints.

Responding to a comment on the political will to support oversight, Newham noted the recent inception of this structures, and said that within the councils there was the feeling that they needed to be careful about undermining public confidence in the police agencies. Newham said that his perception is that councillors fear that taking public complaints could generate chaos if this creates an adversarial relationship between the committees and the police. These were issues that could be addressed through more focussed terms of reference and training and resource support.
Following on this discussion, participants noted the importance of oversight over the law enforcement and traffic agencies of the smaller municipalities.

Responding to questions on the CPF Monitoring Project, Ian Bentley said that those stakeholders he had engaged with generally agreed that developing and training the CPFs in oversight functions has merit and could potentially breathe new life into CPFs, and improve the relationship between SAPS at station level and the communities that they serve.

One comment noted that the type of indicators being generated by the project were service orientated and not necessarily qualitative and democratic in nature. Bentley responded that current inputs for the indicators have come only from CPF members who are overwhelmingly focussed on service delivery. The range of indicators may expand as additional stakeholders are brought into the process. Ongoing discussions noted important sources for the indicators, including the Constitution, White Paper on Safety and Security and the Batho Pele Public Administration Principles.

Further discussion addressed the importance of access to information for effective oversight. Ian Bentley noted that the CPFs want to have more information, and the limited or, in some cases, complete absence of information is definitely affecting their work and relationship with the police.

A comment on the role of the secretariats observed that many secretariats seem to have overlooked the link between monitoring and policy-making inputs. A Constitutional mandate allows provincial secretariats to determine police priorities in that province; this gives teeth to the notion of democratic policing, but this level of civilian input still needs to be pursued.

Duxita Mistry answered a question about duplication between the ICD and Secretariats by noting that this is a particular danger in those locations where the secretariats are proposing to establish civilian complaint desks.

PANEL 2: Promoting and Building Accountability

Police Accountability Web Site – Elrena vd Spuy, UCT Institute of Criminology.

The vision for the website is for it to be a dynamic resource to enhance and promote effective, publicly accountable policing in South Africa and beyond on the African continent. The design seeks to be generic and open for use by as many agencies as possible. Thus, our goal is to extend ownership of the website, so that people use it to promote their projects, submit information and publications to enhance accountable policing. In this way, the site will be truly interactive and a useful base for advocacy.

The specific aims of the www.policeaccountability.co.za are:
To promote and strengthen civil society monitoring of police conduct
- Strengthen state oversight agencies and the police
- Highlight current debates
- Encourage networking
- Provide information on police oversight

A summary of the current content:
- **Information** about current projects looking at accountability mechanisms
- **Organograms** of African oversight structures and links to these structures. Currently Nigeria, Kenya, Mauritius, Malawi and Lesotho and South Africa
- **Current information**: newspaper articles and legislation
- **Publications**: Important publications and new publications on police accountability with full text online
- **Worldwide links** to police accountability institutions with information on the organisations A facility for the public to add a link
- An opportunity to join the **mailing list** and receive **regular updates**
- **A comments facility** for the public to send in suggestions and experiences
- **An annotated bibliography** with links to many online articles
- **A good search facility**

**Indicators for Democratic Policing – David Bruce, CSVR**

"Democratic policing" is policing which is responsive to the needs of community members for effective policing and which is conducted in terms of standards of respectfulness and lawfulness. According to Bayley (2001) democratic police forces act in accord with the following four norms:

- Police must give top operational priority to servicing the needs of individual citizens and private groups;
- Police must be accountable to the law rather than to government;
- Police must protect human rights, especially those that are required for the sort of unfettered political activity that is the hallmark of democracy;
- Police should be transparent in their activities.

Democratic police services are defined by both what they do and how they do it. Essentially this means that:

- **Service delivery** is directed towards meeting the needs of individuals, communities and institutions for protection against crime and disorder; and
- Police **conduct** is guided by specific principles—these include principles of accountability, integrity, respect for human rights, non-discrimination, impartiality, fairness and professionalism.

“Indicators of democratic policing” refers to the information which help in evaluating whether police are meeting these standards.

It is possible for oversight bodies to have a cooperative relationship with police and their leaders, particularly where the police themselves are strongly
committed to democratic policing. If the police are committed to these goals, strong oversight can create a dialogue which will assist the police to evaluate their policies, and maintain their commitment to and focus on achieving high standards required of them in a democracy. This is not only about holding police leadership accountable, but also supporting police leadership in understanding and resolving the challenges which face them.

Bruce then reviewed comparative examples of performance indicators of democratic policing:

In March 2004, the UK Home Office announced 35 measures (with additional measures to be added) to be applied to the 43 regional police forces in, England and Wales. The measures cover: User satisfaction; Confidence (percentage of people who think police do a good job); Fairness and equity; Crime levels; Offences brought to justice; Detection; Enforcement (this looks, inter alia, at arrests in domestic violence incidents); Traffic; Quality of life (fear of crime and feelings of public safety); Capability (inter alia, working hours lost to sickness). Measures on “Providing Assistance” to be added. Each police force is grouped with 5-8 other “most similar forces” for purposes of comparison.

The Commission on Policing for Northern Ireland (Patten Commission) made 175 recommendations for reforms. Tom Constantine (a former US police chief) was appointed to head an Oversight Commission to oversee the implementation of the recommendations. The Commission’s team of experts developed a list of 772 performance indicators to measure progress in the implementation of the Patten recommendations. The recommendations fall under following themes: Human Rights; Accountability; Policing with the Community; Policing in a Peaceful Society (inter alia deals with appearance of police stations, types of vehicles to be used, involvement of army in policing); Public Order Policing; Management and Personnel; Information Technology; Structure of the Police Service; Size of the Police Service; Composition and Recruitment; Training, Education and Development; Culture, Ethos and Symbols; Cooperation with other Police Services.

The Council of Europe put together a working group of police officers, government and NGO representatives from across Europe to develop a guide to help police assess whether their practices “adhere to and promote the standards and broader democratic values underlying the European Convention on Human Rights”. The resulting Council of Europe Guide puts forward roughly 330 indicators grouped under seven “components”: Basic Values; Staff; Training; Management Practise; Operational Policing; Structure; Accountability.

Public surveys – The Vera Institute of Justice has worked in St. Petersburg, Russia, and with NYC, Seattle and Pittsburgh police in US. They have surveyed variously (i) residents who requested help from the police, (ii) community leaders who met frequently with precinct commanders, and (iii) those involved in
“involuntary contacts” including those whom police had stopped and searched. In Seattle, one goal is to learn more about whether members of minority communities are more likely to believe that they have been poorly treated by police during routine stops.

In a U.S. publication titled “The Bottom Line of Policing,” Mark Moore and Anthony Braga list seven “Valuable Dimensions of Policing” (Table 1):

- I Reduce Crime and Victimisation
- II Call Offenders to Account
- III Reduce Fear and Enhance Personal Security
- IV Ensure Civility in Public Spaces (Ordered Liberty)
- V Use Force and Authority Fairly, Efficiently and Effectively
- VI Use Financial Resources Fairly Efficiently And Effectively
- VII Quality Services/Customer Satisfaction.

Moore and Braga suggest that the “highest value measures” are the following (Table 4):

- Dimension I: data on crimes not reported to police from victimization survey of general population conducted regularly.
- Dimension II: data on the quality of investigations (measure not specified);
- Dimension III: data on fear from surveys of general population;
- Dimension IV: data on reported crime and perceived safety in parks and schools and utilization of public transport;
- Dimension V: data on “allocation of police resources by need” and “service levels by neighbourhood”; data on “successful suits”, corroborated complaints, all citizen complaints; surveys of persons stopped and queried, investigated, cited for traffic violations, arrested for misdemeanours, arrested for felonies; data on cases where evidence excluded, street stops, citations issued and use of weapons; data on legitimacy of police from survey of general population.
- Dimension VI: data on “productivity gains/innovation” including the number and an assessment of problem solving initiatives, program evaluations, and operational experiments.
- Dimension VII: customer satisfaction surveys of individuals who call the police, organized groups who engage with the police, and persons involved in involuntary contacts with the police.

It is noteworthy that none of the “high priority measures” are routinely produced in South Africa. Instead, the Public Finance Management Act (PFMA) and the Medium Term Expenditure Framework created the framework under which the SAPS developed indicators. The SAPS Strategic Plan incorporates a number of performance indicators, and the SAPS reports on these through its annual reports. While the indicators are currently being revised these comments are based on the indicators used in the SAPS 2002-2003 Annual Report.

2 See http://www.policeforum.org or http://policeforum.mn-8.net/default.asp?link=
The Independent Complaints Directorate’s annual reports provide important information on deaths as a result of police action and in police custody (generally reported to the ICD by the SAPS or other police agencies) as well as complaints lodged by members of the public with the ICD. The Secretariat for Safety and Security has developed a Monitoring and Evaluation Tool for Police Stations. There appear to be some other indicators used by SAPS internally or in reporting at Provincial level. For example, the Gauteng Provincial Department of Safety and Liaison Framework and Standards for the Monitoring and Evaluation of Municipal Police Services (December 2001). Finally, there is work carried out by research organisations, notably the Institute for Security Studies, in conducting victimization and other surveys which provide data on perceptions of police.

David Bruce closed by presenting a preliminary list of indicators of democratic policing derived from these sources: Policing supports democratic political life; Non-discrimination; Accountability and transparency; the rule of law; Values and human rights; Police conduct and internal control; Access and responsiveness; Crime Prevention; Collaborative approach; Promotion of Safety and Security; Vulnerable groups; Communication; Use of force; Arrests and persons in custody; Recording and use of crime information; Conditions of service; Recruitment and Composition; Training; Symbols; Leadership and management practise; Resources; and International cooperation.

Bruce noted that he is refining this lengthy list of indicators into five focus areas:
- Protecting Democratic Political Life
- Accountability and Transparency
- Service Delivery for Safety, Justice and Security
- Proper Police Conduct
- Police As Citizens.

Discussion

When asked, David Bruce said that ideas for taking the indicators forward include soliciting feedback once a draft “handbook” is completed, examining the feasibility of regular surveys, having a dialogue about improving numeric indicators, and hosting workshops on indicators for members of committees of parliament and provincial legislatures and municipalities.

Workshop participants supported the indicators for democratic policing. They observed that the challenge will be persuading the public, making it important to involve the public in producing the indicators as well as making their results available.
SAPS Performance Management Chart – Senior Superintendent Leon Rabie

The performance management chart is being developed to reflect the fulfilment of the SAPS Vision and Mission through targeted results. The system measures SAPS performance numerically in the seven areas of Crime Prevention, Crime Reaction, Crime Investigation, Human Resource Management, Information Integrity, Vehicle Fleet Management, Value Adding and Overall Efficiency.

The chart tracks the vision of the SAPS, to:

- Reduce levels of crime
- Reduce levels of public fear
- Increase levels of trust
- Increase levels of satisfaction
- Fulfil its mission in Crime Prevention, Crime Reaction and customer satisfaction.

It operates over five dimensions, which are:

- Operational dimension
- Information dimension
- Resource dimension
- Customer orientation dimension
- Eupolsa index – all measures to get overall sense

The indicators include

- The five dimensions mentioned
- 35 performance indicators – common to all police stations
- 35 baselines, targets, and standards\(^3\)
- 35 performance indicator status rating – a station can score up to 70 points – based on its own performance and baselines and standards for that station.
- 35 Effectiveness rates
- Overall efficiency rates (Productivity rate)
- 1-5 star rating
- Performance grading – A to E.

The system will be implemented in 188 stations and will roll-out to all stations on 1 July 2004. This system is also intended to provide management information for operational planning.

Discussion

The discussion observed that a significant problem will be that of credibility. One participant asked if the SAPS would be prepared to have an independent body review the chart. In response it was noted the chart was in development and that engagement and input are welcomed. Further discussion addressed the multiple

\[^3\] These are determined for each police station. Some standards are fixed, and stations cannot set their own standards. Targets are set between baseline and standards.
measurement systems in the SAPS, and noted that plans called for eventually dovetailing this system with the individual performance measurement, and internal and external reporting by the SAPS.

PANEL 3: Review of Policing Legislation

Elrena van der Spuy gave an overview of the current debate on security sector reform. She noted that the concept of security sector reform has become central during the “third wave” democratization process. Security sector reform is essential in transitional societies with authoritarian pasts. There is still some debate about labels—whether to talk of Security Sector Reform or Security Sector Transformation. Nicole Ball argues that security sector reform is too mild a term—and that we need to talk about transformation. Other debates focus on the definitions of the Security Sector—and whether these should be narrow or broad.

Comparative analysis yields insights into politics and logistics. It focuses on the importance of clarity about objectives, policy frameworks, factors affecting sustainability, the role of civil society, local actors and ownership. In this debate, South Africa is viewed as a success story “as it does provide a blueprint for security sector transformation.”

Democratisation often coincides with new forms of militarism, violence and insecurity. These create a challenging environment for reform of the governance of security and pose particular obstacles to democratization of military and security establishments. Ultimately, democratisation as a process requires vigilance, commitment and ongoing enquiry.

Current legislative architecture – Melanie Lue-Dugmore, OSF-SA

Melanie Lue gave a rapid presentation of the various legislative mechanisms with responsibility for oversight of policing. These are summarized below, and the full paper can be found at www.policeaccountability.co.za.

The National Assembly Parliament is tasked with holding the executive and organs of state accountable. The essential functions of the National Assembly include providing a national forum for public consideration of issues by passing legislation, and by scrutinizing and overseeing executive action. Cabinet members are accountable to Parliament and must provide full and regular reports concerning matters under its control.

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The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account by the national legislative process. The NCOP also a series of direct oversight responsibilities of the national executive actions at the provincial level, of provincial executives interventions in a municipality; and it is to resolve disputes concerning administrative capacity of provinces. There are a number of additional functions, including approval together with the with the National Assembly must approve a declaration of state of national defence, and oversight of any body or institution whose role or functions impacts on provincial and local government matters.

The National Portfolio Committees are key mechanisms provided for in the Constitution to assist Parliament in rendering its oversight and accountability function. These committees monitor and review the departments of government and are tasked with holding officials and the responsible Minister accountable. The structure and working arrangements of these Committees are governed by Rules of Parliament. In addition to budgetary oversight, they can also hear submissions from NGOs and other interest groups. The portfolio committees may inquire into any matter, and compel representation from a government department or institution.

The Constitution gives the National Assembly, the National Council of Provinces and its committees, wide-ranging powers to call institutions and individuals to account. They can summon persons and institutions to give evidence; require the production of documents; and their sittings and proceedings are to be open to the public and may only be restricted if it is justifiable “in an open and democratic society”.

Political accountability for the SAPS vests in the National Minister of Safety and Security. He is responsible for policy determination, but is required to consult with the provinces in the process. He is also to coordinate with Members of Executive Councils (MECs) via a constitutionally-mandated committee.

Operational Accountability for the SAPS is vested in the National Commissioner who is accountable to the National Minister and is required to perform his/her duties under the direction of the National Minister and in accordance with National Policing Policy.

Civilian Accountability lies in the Constitutionally-mandated National Secretariat for Safety and Security (its creation is also called for in Section 2 of the SAPS Act). Section 3(1) of the SAPS Act sets out the functions of the National Secretariat, including advising the Minister, legal advice, research services, monitoring the implementation of the Minister’s directions and policies, promoting SAPS participation in the Reconstruction and Development Programme, and evaluating and reporting to the Minister on the functioning of the SAPS. The SAPS Act provides broad powers of access to the Secretariat. Issues raised regarding the Secretariat include its location, its budget, the lack of coordination
with the Provincial Secretariats, and the possibility of extending the functions of the Secretariat.

The Constitution provides for the establishment of an independent police complaints body in national legislation. This is the Independent Complaints Directorate (ICD) whose functions are to investigate any death in police custody or as a result of police action, and any misconduct or offence allegedly committed by a SAPS member. Where appropriate, the investigation may be referred to the Commissioner concerned. The Directorate by the Minister or a member of the Executive Council may also refer matters for investigation to the ICD. The ICD has reporting responsibilities for the Domestic Violence Act, and for deaths in custody and as a result of police action. Its mandate has been extended to cover Municipal Police Services. Issues raised regarding the ICD include its location under the Minister who also has responsibility for the SAPS; its limited powers in relation to the police; and the need to distinguish its role and clarify relations with the National and Provincial Secretariats.

The Chapter Nine Institutions are the Public Protector, South African Human Rights Commission, Commission on Gender Equality and Auditor General. Problem areas include the duplication of functions and mandate; the lack of capacity to render core functions; poor co-ordination between the agencies; limited enforcement powers; and lack of reciprocal responsibility.

The Constitution provides that the Provincial Executive is responsible for policing functions vested in it by Chapter 11, assigned by national legislation and allocated through the national policing policy. Each province is entitled to: monitor police conduct; oversee police effectiveness and efficiency, including receiving reports on the police service; promote good police-community relations; assess the effectiveness of visible policing; and liaise with the Cabinet member responsible for policing with respect to crime and policing in the province Provinces may also investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and make recommendations to the Cabinet member responsible for policing.

The Constitution stipulates that a provincial legislature must hold accountable all the provincial executive organs, and oversee the exercise of provincial executive authority in the province. The legislature and its committees have powers including the power to summon persons and institutions to give evidence or to documents, and can receive petitions, representations or submissions from any interested persons or institutions. A provincial legislature must facilitate public involvement in its business, which is to be conducted in an open manner. Exclusion of the public and media must be justified and reasonable.
The Members of the Executive Council (MEC) are responsible for the executive functions assigned to them by the Premier and are accountable to the provincial legislature for their performance in the exercise of their powers.

The Provincial secretariats for Safety and Security are provided for in the SAPS Act, but they are established by “provincial government” in consultation with the Minister. Their functions are the same as those of the National Secretariat only at the provincial level. Issues raised about the provincial secretariats include their capacity; the relationship between different Provincial Secretariats and their relation to the National Secretariat; their relation to the SAPS, and their functions.

The Provincial Commissioner of SAPS is to provide annual reports to the provincial legislature, as well as testimony as required by the legislature or its committees. The nature of the Provincial Commissioner’s relationship to the MEC has been a source of debate. The Constitution provides for a single national police service, and it is structured to function at national and provincial and where appropriate in local spheres of government. Constitutionally, provincial commissioners are subject to the power of the National Commissioner. However, the Constitution also provides the Provincial Executive, i.e. the MEC, with certain mandates regarding policing. The interpretation of these “mandates” is a source of tension and misunderstanding.

The National Commissioner may only appoint the Provincial Commissioner with the concurrence of the MEC; and the National Commissioner and MEC in consultation determine the Provincial Commissioner’s period in office. Whilst the MEC has to power to veto and approve the appointment of the Provincial Commissioner, and can institute measures for the removal of the Provincial Commissioner, the National Minister and National Commissioner are party to this process and decision making.

Local Level Accountability mechanisms include the Community Police Forums (CPFs), and linkages with local government. There are issues around the coordination of the Municipal Police oversight committees and the provincial secretariats, and the role of the MECs.

Melanie Lue-Dugmore wrapped up her presentation by summarising the challenges. In her view, these are the issue of political will and commitment to oversight in the police; the need for an integrated approach to civilian oversight (including the need for an integrated approach by civil society); and the process issues around developing a conceptual framework, developing policy and ultimately new legislation if that is required.
Reform in relation to oversight mechanisms – David Bruce, CSVR

Democratic policing and oversight are not directly threatened in South Africa. There is important political, police and public support for democratic policing and civilian oversight. However, there is also a sense that police reform has lost its momentum and vision. There is a vacuum in public discourse and debate, and consequent need for renewed commitment (also political commitment) to understanding and addressing issues.

In this process, the key issues for consideration include the funding of the ICD, Secretariats, the CPFs and the Municipal civilian oversight committees. Another key issue is the strategic vision and role of a range of oversight mechanisms.

- The original vision of the CPFs was appropriate to core transition period but reflects unrealistic expectations in the longer term. The policy debate on the CPFs has never been resolved.
- Municipal Civilian oversight committees – the current legislative framework is vague and general. Local Governments and Committees seem to have little understanding of how to resolve this impasse.
- The ICD has invested in the idea of itself as primary vehicle for investigations against police. There are merits to this argument but also strong arguments for an alternative approach.
- The Provincial Secretariats are the basic framework for policing oversight, but there are questions of overlap with the ICD.
- The articulation of the National Secretariat needs to be addressed.

Broader policy debates which would support resolving these issues have not taken place. These are all important issues for any debate about legislation; but it is difficult to address legislative framework in the absence of a broader substantive engagement with policy questions.

Continuing the focus on key issues, Bruce turned to the basic approach to complaints and investigations against police in South Africa, noting various gaps and challenges. He also observed that the issue has not been debated in an informed or thorough manner and that this debate is needed to support any legislative change. Currently the SAPS, MPS, ICD, Provincial and National Secretariats, the Public Protector (and maybe even the Scorpions?) have a role in dealing with complaints. The SAPS has abandoned its dedicated anti-corruption unit, and appears to have no clear policy on internal investigative systems (Standing Order 101 is inadequate in terms of guiding the SAPS approach to receipt of complaints). In 1999, the CSVR argued that the SAPS should establish an “independent office” in each area for receiving complaints (presumably to be linked to investigative unit). This issue also links directly to the strategic vision and role of ICD.

The fourth key issue Bruce addressed was the need to improve research capacity, either building internal research capacity in civilian oversight structures
or making better use of external research bodies (NGOs, universities, consultancies). He noted the British Home Office model, which regularly contracts and publishes research reports. While raising the issue, he also queried whether there might be a need for coordinated approach and quality control; and raised the issue of the ability of oversight structures to internalise lessons from research. Nonetheless, he concluded that better research would enhance capacity of oversight bodies to engage with policy issues (an important part of their role).

Bruce then turned to specific issues regarding the ICD. Beyond the need for a more strategic vision already noted above, he reviewed a series of issues raised by a range of organizations. These focused on: the location of the ICD and suggestions that it should be independent of the Minister of Safety and Security; the need to address the ICD’s “lack of any substantive powers other than to make recommendations” (Manby, 2000); the possibility of a separate “ICD Act”; the provision of general powers including an obligation for SAPS members to answer questions; the need to expand the ICD’s staff; the career path for ICD investigators; its use of police investigators; its powers of sanction for non-compliance by police; the authority to enter police stations; the power to nominate the SAPS investigator where a matter is referred to the SAPS. Bruce noted that the ICD White Paper had either not been completed or not been released, leaving a vacuum in the policy debate, and wondered whether the issues might be politically sensitive.

He then turned to legal issues relating specifically to the Minister and Secretariat, and to the MECs and Provincial secretariats, noting that it would be worth evaluating what the National Secretariat is intended to do and whether this has implications for the legal framework. Here, the broader debate about provincial governments is concerns the Constitution rather than legislative framework, but there is clearly scope for better definition in the legislation and for the provision of greater transparency regarding their relationships with police.

The final issue Bruce discussed was that of the need for improved information coordination. There is currently no standardised indicators system. However, there are great potential implications for using information technology which would require a resource investment in establishing a more meaningful indicator system. This could also integrate information on complaints against the police (also avoiding duplication).

In summary, Bruce reflected that the issues of greatest relevance to reform of the legislative framework might be the broad issue of the strategic vision and role issues; the specific vision of and roles for the National Secretariat and the CPFs; the composition of municipal civilian oversight committees; and, finally, the basic approach to complaints and investigations against the police and strengthening

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5 Manby, ICD, CSVR, TRC report
of the ICD (which, as indicated, needs substantive policy debate to support engagement with legislative issues).

In general, Bruce argued that South Africa needs a process that can support more substantive debate on policing oversight in order to produce a concrete approach to reforming the legislative framework.

History around police act reform – Mr Len Rasegatla of the National Secretariat for Safety and Security

Mr Rasegatla addressed some of background to the reform of the police act. He started by noting that the SAPS act pre-dates the Interim Constitution and that this fact had precipitated the discussion of reform. This creates incoherence with other aspects of legislation, for example, the SAPS Act refers to the Exchequer Act, whereas today the PFMA applies. Furthermore, since the drafting of the SAPS act, South Africa has gained extensive experience of policing in a democracy and this could be included in new legislation. Practically speaking, the concepts in the 1999 White Paper on Safety and Security also still need to be carried forward.

Rasegatla reported that Parliament is convinced that the Act needs to be reviewed. In fact, legislative drafting should have started long ago but there have been difficulties with regard to the process. Initially, the thought was that there would be a political committee that would produce a policy paper to set out the direction and parameters for drafting the new legislation. However, political direction on a number of issues is still pending and this will spearhead this process.

If and when the drafting process begins, Rasegatla stated that he hoped that the process would be inclusive, take new ideas into consideration and that the new act should take into account the experience garnered over past years.

Discussion

Discussion noted that legislative review attempts in other parts of the world – a US example was given – have failed when, despite repeated calls for reform from different sectors, no-one has the necessary political capital to bring about reform of a disputed and controversial issue. In South Africa, many oversight agencies, and especially local-level oversight, were at a disadvantage without clear guidelines and facing a tricky terrain of shifting attention and support.

As a key stakeholder, clear and consistent proposals from civil society are vital. Civil society should not sit back and wait but engage in the process. One avenue noted was that offered by the UN Optional Protocol on Torture which calls for creation of a national monitoring and oversight mechanism.
Closure Day One

The day closed with thanks to the participants for their input, and a description of the following day’s agenda – an NGO session to review the refinement and application of the individual research projects, including roll-out of certain products, and the possibilities for promoting a broader civil society lobby and network.

The opportunities for stakeholders engaged in Civilian Oversight were few and far between and the day provided an important opportunity to get together in a structured environment and discuss issues of mutual concern. Many of the newly appointed Provincial members of the Executive Committee (MEC) for Safety and Security could not make the workshop due to the current induction process and an offer was extended to conduct a briefing session for them if necessary and requested.

Launch of the Web Site on Police Accountability

Report on the Workshop on Policing Accountability held on 11 May 2004 in Cape Town

The agenda for the second day’s NGO discussion focussed on three main strategies for taking the initiative forward:

1. Providing technical support – Municipal Police Oversight; CPF project; democratic indicators;

2. Promoting political and public discourse around the issue of oversight – particularly around the review of the SAPS Act if that offers a useful approach;

3. Civil society engagement using the various projects to support broader capacity-building and networking initiatives.

The subsequent discussion noted that this may be a long-term process in which the project should identify key areas for intervention and seek sustainability. Ideas offered included focussing on evaluating services to different populations (e.g. immigrants), clarifying the different understandings about the kinds of problems that civilian oversight is meant to resolve and seeking consensus; undertaking a “state of the nation” assessment; applying the democratic indicators and asking how we are going to measure democratisation; and engaging the media.

The Review of the Police Act

The conversation focussed on the possibility of a legislative review, and the extent to which civil society could engage with the process and push forward the debate on policing oversight and accountability in South Africa. Could this be done using the current research to build capacity in civil society in the process? Discussion noted that while the Police Act may provide an opportunity for intervention, engagement has been very haphazard and there is no common approach. On the assumption that a review could happen soon, it would seem that civil society could make submissions.

For maximum impact, any lobby and advocacy campaign would need a common vision and strategy. Could this group develop a common position to initiate the engagement? Failing this, it would be necessary to allow a diversity of opinions to come forward.

The concept of democratic policing provided another strategic area of engagement and opportunity. It is dynamic and could be a key strategic vehicle. One possibility is that of using the indicators in a regular report on the “state of policing” though this would require an effort to sustain and produce on a regular basis.
In summary, the Police Act debate creates an opportunity. The new administration, and the opportunity of engaging with the new deputy minister, MECs and portfolio committee also need to be explored, as does the application of the SAPS performance chart. It was also noted that a review of criminal justice is currently underway, and that this could also inform future process and issues.

In conclusion, the OSF-SA was tasked to draw together input from the group and flesh out a strategy for promoting the debate on democratic policing in South Africa, and the possibilities this posed for feeding into possible review of policing policy and legislation.

African Forum for Policing Oversight

The meeting was informed of the resolution from the January 2004 ICD conference calling for the establishment of African Forum on Civilian Police Oversight. The initiative proposes to promote policing oversight in Africa by engaging with and supporting stakeholders. Initial activities are focussed on identifying a steering committee that will take the process forward, using an entity like the African Human Rights Commission to set standards and issue a declaration in favour of policing oversight, and support the development of oversight on the continent.

Participants supported the initiative and offered thoughts on potential engagement with the Africa Prosecutors Forum, the NEPAD Peer review mechanism and the Southern African Regional Police Commissioners Coordinating Committee (SARPCCO) were raised.

Development of a Proactive Oversight Capacity for the ICD

The workshop was informed of a developing initiative between the project and the ICD to develop the proactive research capacity of the ICD. This would be taken forward through the development of a business plan to present to Treasury for consideration.

The business plan would cover the following areas.

a. Statement of value added to be gained from investing in developing greater research capacity

b. Business structure of the Directorate including
   i. Process for the identification of research themes
   ii. Addressing SAPS access and communication strategy
   iii. Policy and process for collaborative research with existing civilian research capacity
   iv. Peer review procedures
   v. Support for operational investigation.
c. Human Resource Management
   i. Staff profile and outreach/hiring strategy, including job descriptions, recruitment interview and screening tools and a selection process and strategy
   ii. Training and development policy
   iii. Staff retention policy, research skills development plan
   iv. Expansion and forward planning.

d. Communication and Media Strategy
   i. Inter and extra departmental communication
   ii. Publication and Seminar program.

e. Budgeting for Research
   i. Financial Planning for Research.

f. Information Management System support for pro-active monitoring and research
   i. Assessment of current database software to accommodate research component. In addition to scan ICD data requirements in terms of performance management and operational management requirements
   ii. Comparative cost value analysis of designing and writing a new program
   iii. Feasibility of dedicated database manager.

g. A cost estimate / budget for the above

Participants supported the initiative, and noted that, in addition to the proactive research, preventative measures such as red flagging of aberrant behaviour should be considered. They also urged consideration of the issues of access to information and the research roles of civil society.

Communication Strategy

An outline on the development of a communication strategy was tabled highlighting the following:

- The project seeks to enhance and develop oversight of the police in South Africa as a key factor in building an effective and democratic police service. The project strategy emphasises improved communication, advocacy and lobbying around policing oversight issues by civil society.

- The Communication Strategy needs to articulate the issues being advocated—the importance of civilian oversight of the police. Ideally, this should be framed as a single message supported across a broad sector of civil society and around which a campaign can be developed.
Internal communication refers to communication between core partners and stakeholders (core partners, OSF-SA, the Justice Initiative, ISS, CSVR, UMAC, IoC, etc).

External Communication refers to communication between the project and stakeholders (stakeholders, ICD, Secretariats, Portfolio Committee, Ministry SAPS, CPFs, Metro Police, NGOs, Civil Society/public).

Consensus and a common vision between core partners – communicated regularly and coherently to stakeholders.

Developing the communication strategy requires that core partners participate in defining and owning the vision of the project and its message.

A range of mediums can be utilized to promote the message (media, newspapers, Servamus, Website, radio, Parliamentary briefings, Workshop).

Way Forward: Consensus of message; Activity Plan (message, medium, frequency, timing, follow-ups monitoring and evaluation); contributions.

Discussion focused on the need to articulate and develop consensus on the message to be communicated, as well as when, to whom, and in what format it needs to be conveyed. Two upcoming opportunities for communications were identified: first, at the conclusion of the research projects, when the results are released; and second, a possibility for civil society engagement is the workshop programme on police accountability of the Southern African Human Rights NGO Network (SAHRiNGON) and their South African partner, the KZN Campaign against Torture (CAT).

Project Finalisation

Role and Functioning of the Secretariats for Safety and Security

Some of the core issues, conclusions and recommendations emerging from the discussion on the previous day were:

1. The need for political will and political direction;
2. The apparent disempowerment of the National Secretariat;
3. The success factors of provincial secretariats – personality-based/proactive;
4. Role distinction between Secretariat and ICD mandates;
5. The concern that MinMec meetings have not taken place for a year, affecting, inter alia, coordination and communication between Secretariats;
6. The potential leadership role of the national secretariat in policy development;
7. Range of different capacities across the secretariats, and the need for proper training;

The discussion noted that it would be important to engage the Secretariats and in particular the HODs, and allow them to respond to the findings before the public dissemination of the results. The results should also be provided to the MECs to facilitate their engagement with the issues. Public dissemination could be structured to coincide with a Public Seminar and published on the web site.

Indicators for Democratic Policing

The project on democratic policing indicators aims to complete a draft handbook that will introduce the idea and highlight five key areas for monitoring. Discussions emphasised that it is important to generate a consensus among civil society and other stakeholders on the relevance of the indicators and usefulness of the exercise. To this end, comments on the indicators will be solicited from all partners, as well as international experts.

The democratic policing indicators have potential use in the training environment and as a vehicle for debate on the issue of oversight. They could serve as a first step towards building a national set of standards, but this would have to be done with the authorities.

The discussion concluded with an agreement that project management would support an extensive consultation process to complete the indicators in partnership with civil society, and position them to facilitate debate on policing oversight through their publication and implementation.

Municipal Oversight Project

Workshop participants were clear on the Municipal Policing Oversight Project’s effort to understand the role and functions of the municipal oversight committees and develop recommendations for strengthening them. The final stages of the project will discuss the report with the Municipal Police Oversight structures, identify areas of need with them, and draft a proposal for consideration around possible implementation. This could include: developing a training workshop, accessibility of the committee to the public; website; legislative review; and engaging the public.

Building CPF Monitoring and Oversight Capacity

The discussion of the CPF project acknowledged the delays and difficulties of working at community level. Some of the practical difficulties included the disparity among CPFs; the influence of station management; some CPFs act as vigilante groups, sometimes with the tacit consent of the police to rough up suspects; and some CPFs have been high-jacked by criminal elements.
Service delivery appears to be the logical focus for building monitoring capacity as there seems to be political support for this, and it is an issue that both communities and the police could readily identify. In any event, the initial set of indicators needed to make basic information easily accessible. (It was noted the finalisation of the indicators would likely be at the end of May 2004.) With this project as well, the media will be important in the release of the results and taking the debate into the public arena.

The discussion noted the pro and cons of the CPF model for police accountability at local level as opposed to a lay visitors scheme. Some of the most surprising findings were that CPFs were not seen as a vehicle for monitoring police; this runs counter to the last decade’s debate and means that the issue of the location and conduct oversight is still on the table.

**Way Forward and Closure**

The way forward was defined as follows

**Communication**

1. Project management will prepare a communiqué on project progress that will be sent to the Minister for Safety and Security, the MECs, and other stakeholders. A more detailed briefing on the project and subprojects will be offered.
2. Initial public engagement will be undertaken with a press release on website.
3. Individual research projects will enter the final stakeholder consultation phase.
4. The project will seek links with broader processes, particularly to the planned SAHRiNGON workshop for South Africa.
5. The project will publish a consolidated research report on Police Accountability in South Africa – target date: 1 July 2004.
6. Research results will also be used to write opinion pieces for the newspapers.
7. The website will send out regular newsletters and provide links to other sites.

**Police Act and Legislation Review**

1. Briefing sessions both at project and sub-project level will allow stakeholders to do “power-mapping” around the police act. This process should also identify the project components that can provide useful inputs.

2. A telephone conference to sharing the results of the power-mapping process on the 2 June 2004.
Research Project Completion


3. Developing Monitoring and Oversight Capacity in CPFS: Indicators finalised by 31 May 2004, followed by testing and completion of the project by September 2004.


6. Project consideration for roll out: Proposals to be received by 1 July 2004
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<td>Independent Complaints Directorate</td>
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<td>Ms. Faaiza Shaikh</td>
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<td>Ms. Danaline Franzman</td>
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<td>Prof. Anthony Minnaar</td>
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<td>Mr George Simon</td>
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<td>Ms. Munirah Osman-Hyder</td>
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<td>Mr. Jacques Carstens</td>
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