



SUBMISSION

to the

CIVILIAN SECRETARIAT FOR POLICE

on the

Green Paper on Policing

31 July 2013

1. Introduction

The Catholic Parliamentary Liaison Office (CPLO) is a structure of the Southern African Catholic Bishops' Conference, the umbrella body of the Catholic Church in South Africa. Since 1997, the CPLO has made submissions and comments on a wide range of legislation and policy issues, and has appeared on over 60 occasions before parliamentary portfolio committees. We welcome the opportunity to comment on the Green Paper on Policing.

At the outset, we wish to express the very deep appreciation of the Catholic Church for the dedicated and professional work carried out by the South African Police Service. We are acutely aware of the sacrifices made by thousands of SAPS members, of the considerable risks that they face in the course of their duties, and of the ultimate price that is paid by so many police officers. As we write at the end of July, seven officers have been murdered over the last few weeks in the Cape Town area – a scandalous indictment on the levels of violence and lawlessness in our society, and the lack of respect for the police.

In our brief submission on aspects of the Green Paper we will be critical on certain points; such specific criticisms should not be interpreted as portraying a negative view of the SAPS as a whole. We will limit our submission to a brief consideration of four topics covered by the Green Paper: the Basic Approach to Policing; a Single Police Force; the Police as a Service; and the question of Specialised Units. The Catholic Church claims no specific expertise in the area of policing theory or practice, and we will not presume to comment on the more technical aspects of the Paper. We do feel, however, that we have something to offer from the point of view of a committed civil society body which – to repeat – has the highest regard for the work done by the SAPS.

2. The Basic Approach to Policing

Policing must be first and foremost the performance of a service to people, not the exercise of an authority over people. This distinction should characterise the difference between the SAP of the apartheid era and the SAPS of the democratic era. As the Green Paper eloquently states, “policing is not something done *to* people, but rather policing is something that is done *with* people.” (page 23)

We must question, however, to what extent this is the actual experience of ordinary South Africans. There are far too many instances of excessive use of force by SAPS members in the course of their

duties – the events at Marikana and the killing of Andries Tatane at Ficksburg are merely two of the worst examples. Worse than this, there are also regular instances of the abuse of power by SAPS members; again, the killing of the Mozambiquan taxi-driver Mido Macia is but the most notorious example. Three officers in the Western Cape have recently been arrested for rape.

In 2011/12 the Independent Complaints Directorate registered some 4 923 complaints against police officers. This amounts to an average of 14 per day, and it is safe to assume that only a percentage of victims take the trouble, or have the capacity, to register a complaint.

All of this is indicative of serious levels of police misconduct, and raises questions about the prevailing philosophy in the SAPS – is it truly one of service to the community? Or is it perhaps too much inclined towards authoritarianism? In this respect it is disappointing to note that the Green Paper is relatively silent on the question of abuse of power and unlawful actions in the course of duty by police officers. Certainly, the paper clearly asserts the need to create a professional force, and it recognizes that “discipline, upholding of the Constitution, defending the weak, enforcing the law and being generally upright must constitute the defining values of the police” (page 43). But this is forward-looking; it appears in the section dealing with recruitment. It would be encouraging to see more about what can be done to retrain or reorientate existing SAPS members who do not understand these high ideals.

“Police brutality” is perhaps an emotive phrase, and often regarded as a legacy of the apartheid era, but there are unfortunately too many citizens who have experienced it in recent years in South Africa.

3. A Single Police Service

This section of the Green Paper does not explicitly recommend the subsuming of the metropolitan police services (‘metro police’) into the SAPS, but this appears to be the thrust of the argument. We find the argument unpersuasive; and such a move would, in any event, probably be unconstitutional.

It is stated on page 19 that “the call for a ‘single police service’ has been informed by a desire to maximise our capacity for effective, accountable and efficient policing.” There are two problems with this statement. First, it is nowhere indicated who has made this ‘call’ or how strong or valid it is. Second, no evidence is presented to show that doing away with, or subsuming, metro police into

the SAPS would improve effectiveness, accountability or efficiency. The mere assertion that it would do so does not amount to evidence.

Regarding *accountability*: it may be, as the Paper states, that metro police are not required to participate in Community Police Forums, and that they lack civilian oversight bodies such as the SAPS's Civilian Secretariat and the Independent Police Investigative Directorate. The answer, surely, is not to do away with metro police, but to provide such accountability mechanisms for them.

In any event, there is a strong argument to be made to the effect that the level at which metro police operate is in itself a powerful guarantor of accountability. They are directly answerable to a municipal council, via a MAYCO member, rather than to a massive, national body with numerous layers of command and control. There is thus a close relationship between a relatively small force and its political authority, and thence to the local electorate.

On the *positive side*, metro police are often in a position to deal more effectively with certain issues that may be peculiar to a municipal area, or at least of special concern there. As a local police service they are likely to have a more specialised understanding of local issues. Indeed, this point is made in the Green Paper: "International experience suggests that, without the co-operation of local government, social crime prevention initiatives, targeted at specific problems, seldom succeed on the ground. Cities and towns should be encouraged to establish local crime prevention strategies within [their] resource capacity" (page 66). We suggest that metro police have the potential to fulfil exactly this role.

Finally, the *constitutional argument against metro police*, as set out on page 18, is misconceived. The reference to 'a single police service' in section 199(1) of the Constitution does not imply that there should be only one police service responsible for law enforcement for the whole country. 'Single' in this context does not mean 'sole' or 'only' but is rather an indication that there should not be a number of equal, but jurisdictionally separated, services such as exist, for example, in the various states of the USA. Or as existed prior to 1994 in South Africa and the various Bantustans.

This interpretation is clear from two other constitutional provisions. Firstly, section 199(2) provides that "the defence force is the only lawful military force in the Republic". If 'single' meant 'only' this sub-section would be redundant, since 199(1) already provides that there shall be a "single defence force".

Secondly, section 206(7) provides that “National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.” It is beyond dispute, therefore, that the Constitution envisages municipal – or ‘metropolitan’ – police services; any attempt to do away with them, once they have been formed in a constitutionally-compliant manner, is doomed to fail.

We suggest, therefore, that instead of attempting to collapse all policing in South Africa into the SAPS, with the enormous costs and distractions that that would bring about in terms of protracted litigation and political wrangling, the focus should be on finding ways in which better co-operation can be engendered between the national and metropolitan services, with each retaining its own special attributes and competences.

4. The Police as a Service

The Paper notes that, after 1994, there was an effort to “civilianise a highly politicised police force”. Part of that effort was the shift from a ‘force’ to a ‘service’; another part was the change from apartheid-era military ranks to civilian ranks. These were important changes, symbolising a paradigm-shift away from a time when the police were an instrument of oppression; and sending a clear message to both police officers and those whom they serve.

Ten years later, according to the Green Paper (page 22) a “decision was taken to make use of ranks within the police” in order to “reinforce a more focused approach to dealing with crime” and “to improve discipline, morale and ultimately the overall efficiency and effectiveness of the SAPS.”

This prompts a number of comments. Firstly, it is wrong to speak of ‘making use of ranks’: there were always ranks, but in the mid-2000s it was decided to make use of *military*, as opposed to *civilian*, ranks. Secondly, there is no indication of why the use of military ranks brings about a more focused approach to dealing with crime. Thirdly, if the discipline, morale, efficiency and effectiveness of the SAPS is significantly influenced by giving its members military ranks, then there is a serious underlying problem. It needs to be asked why calling a police officer ‘inspector’ or ‘director’ is bad for his or her morale and discipline; and why calling him or her ‘warrant officer’ or ‘brigadier’ instead helps him or her to be more efficient and effective.

The Green Paper (page 22) talks of “a change in the organisational culture [being] explicitly required through conscious efforts aimed at changing key aspects of the police ideology and approach”, and of a “need to inculcate a human rights culture into the police – one that was sorely lacking under apartheid”. Clearly, the move away from apartheid-style military ranks was part of this change; how it is to be sustained by returning to military ranks and hierarchies is, at best, unclear.

Finally, we agree with the point made in this regard by certain other civil society organisations, among them the African Policing Civilian Oversight Forum (APCOF), that military ranks within the SAPS are not just about neutral terminology or nomenclature, but about a particular hierarchical structure that reflects a military view of hierarchy and authority. Such ranks do not so much reflect duties or responsibilities, but simply authority and power. For instance, the National Commissioner of Police is referred to as ‘General’ while the Provincial Commissioners are also referred to as ‘Generals’, as are their deputies. These titles convey the power or authority of the individual without articulating anything else about their office or jurisdiction. Thus, authority is being asserted not by reference to competence, but by association with seniority and power.

Accordingly, we urge strongly that police ranks be de-militarised and that the post-1994 civilian ranking system be re-introduced.

5. Specialised Units

We firmly support the notion that “special investigative techniques, skills and knowledge are required for dealing with certain types of crime, for example crimes against women and children” (page 33). It seems that there is growing consensus that the decision to close down most of the specialised units was mistaken, and it is encouraging to see that the family violence, child protection and sexual offences units are now being reinstated.

The question is whether other specialised units are needed. For example, there have been calls from some crime experts for the ‘gang unit’ to be re-established; likewise a drug or narcotics unit. On the other hand, it may be argued that too many specialised units may lead to fragmentation and compartmentalisation. We are not in a position to comment on which specific areas of crime require a specialised unit, but we do urge that serious consideration be given to this question, and that regional interests be taken into account where appropriate.

We would also point to a possible negative consequence of having an overly-specialised approach; that is, that ordinary, non-specialised police officers may inadvertently become unable to deal effectively with crimes that fall into these specific areas. The Green Paper notes this problem with reference to sexual offences and the role of Client Service Centres as first points of contact for the public (page 34). The point is that *all* police officers, not just those who belong to specialised units, must receive the training necessary to equip them to deal with the various kinds of crime, and victims of crime, with which they may come into contact.

6. Conclusion

One of the great strengths of South Africa's democracy is the way in which important matters of public policy are submitted to the public for their comment and participation. The area of law enforcement is arguably one of the most important for the achievement of a 'better life for all', and it is thus vital that the public have the opportunity to influence policy developments in this area. Consequently, we commend the Civilian Secretariat for its work in producing this Green Paper and making it available for comment, and we look forward to further engagement with the Secretariat and, in due course, the portfolio committee on police.

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