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**IMPLEMENTATION OF THE CIVILIAN SECRETARIAT FOR POLICE SERVICE ACT, 2011
(ACT NO 2 OF 2011)**

1. INTRODUCTION

Section 208 of the Constitution of South Africa provides for a civilian secretariat for the police service that must be established through national legislation and which must function under the direction of the Minister of Police. Until the promulgation of the Civilian Secretariat for Police Service Act, 2011 (Act No 2 of 2011) (hereafter referred to as 'the Act'), the Secretariat was established through section 2(1) of the South African Police Service Act, 1995 (Act No 68 of 1995). When the Act was assented by the President on 12 May 2011, section 2(1) of the SAPS Act was repealed by section 35 of the Act, which now establishes the Civilian Secretariat for Police. The new legislation expanded the mandate of the Secretariat significantly, most noticeably in terms of the monitoring the compliance of SAPS members to the provisions of the Domestic Violence Act, 1998.

The purpose of this brief is to provide a concise overview of the legislative framework of the Civilian Secretariat for Police and examine the degree to which the Act has been fully implemented since it came into operation on 1 December 2011.

**2. PROVISIONS OF THE CIVILIAN SECRETARIAT FOR POLICE SERVICE ACT, 2011
(ACT NO. 2 OF 2011)**

The Act came into operation on 01 December 2011. This was with the exception of two crucial provisions, the first being the establishment of the Secretariat as a designated department (Section 4(2)) and the second, the appointment of the Secretary of Police as the Accounting Officer of the Secretariat (Section 3(3)). These two sections were assented by the President in December 2013 and came into operation on 01 April 2014. As such, the Secretariat is currently in transition to become a designated department. It will be receiving its first separate budget vote in the 2015/16 financial year.

2.1.1 Objects of the Act

Section 3 of the Act states the objects, which are to:

- a) give effect to section 208 of the Constitution by establishing the Civilian Secretariat to function under the direction of the Minister;
- b) provide for civilian oversight of the police service;
- c) provide for the functions and powers of the Civilian Secretariat;
- d) provide for the establishment, composition and functions of the ministerial executive committee as required by section 206 (8) of the Constitution;
- e) provide for the establishment, composition and functions of the senior management forum;
- f) provide for co-operation with the Independent Police Investigative Directorate and the South African Police Service; and



- g) provide for intervention by the Civilian Secretariat into the affairs of a provincial secretariat.

The Act provides, amongst others, for:

- (a) The establishment of a Civilian Secretariat for Police by the Minister of Police as a designated department at national level;
- (b) The appointment, duties and functions of the Secretary of Police;
- (c) The powers and functions of the Civilian Secretariat for Police;
- (d) The responsibility of each MEC responsible for policing in the province to constitute a provincial secretariat for that province within 18 months after the commencement of the Act. Provinces had until May 2013 to establish provincial secretariats; and
- (e) The establishment of provincial secretariats which are mandated to cooperate with the Secretariat at national level in terms of coordinating the monitoring and evaluation of the SAPS at local and provincial levels.

2.1.2 Objects of the Civilian Secretariat

Section 5 of the Act states the objects of the Civilian Secretariat, which are to:

- (a) exercise civilian oversight over the police service;
- (b) give strategic advice to the Minister in respect of developing and implementing policies;
- (c) provide administrative support services to the Minister to ensure South Africa's engagement with relevant international obligations;
- (d) liaise and communicate with stakeholders;
- (e) implement a partnership strategy to mobilise role-players and stakeholders to strengthen service delivery by the police service to ensure the safety and security of communities;
- (f) implement, promote and align the operations of the Civilian Secretariat in the national and provincial spheres of government;
- (g) co-ordinate the functions and powers of the Civilian Secretariat in the national and provincial spheres of government;
- (h) promote co-operation between the Civilian Secretariat, the police service and the Directorate (IPID); and
- (i) provide guidance to community police fora and associated structures and facilitate their proper functioning.

2.1.3 Functions of the Civilian Secretariat

According to section 6(1) of the Act, the Civilian Secretariat must, in order to achieve its objects, perform the following functions:

- (a) monitor the performance of the police service and regularly assess the extent to which the police service has adequate policies and effective systems and to recommend corrective measures;
- (b) monitor the utilisation of the budget of the police service to ensure compliance with any policy directives or instructions of the Minister;
- (c) monitor and evaluate compliance with the Domestic Violence Act, 1998 (Act 116 of 1998);



- (d) make recommendations to the police service on disciplinary procedures and measures with regard to non-compliance with the Domestic Violence Act, 1998;
- (e) consider such recommendations, suggestions and requests concerning police and policing matters as it may receive from any source;
- (f) conduct or cause to be conducted any research as it may deem necessary;
- (g) enter into either memoranda of understanding or agreements or both, in consultation with the Minister, with civilian oversight groups and other parties and engage such groups and parties to strengthen co-operation between the various role-players;
- (h) advise and support the Minister in the exercise of his or her powers and the performance of his or her functions;
- (i) provide the Minister with regular reports with regard to
 - a. the performance of the police service; and
 - b. implementation of and compliance by the police service with policy directives issued or instructions made by the Minister; and
- (j) assess and monitor the police service's ability to receive and deal with complaints against its members.

In order to perform the above functions, section 6(2) of the Act states that the Civilian Secretariat must establish various competencies and capabilities in its operations in order to:

- Section 6(2)(a):
 - (i) conduct research into any policing matters and report to the Secretary thereon;
 - (ii) provide policy advice to the Minister through the Secretary;
 - (iii) make available recent, relevant and evidence-based research to the Minister and to Parliament;
 - (iv) create a resource information centre; and
 - (v) develop at least one civil society reference group;
- Section 6(2)(b):
 - (i) conduct quality assessment of the police service and monitor and evaluate its performance;
 - (ii) identify problem areas for early interventions;
 - (iii) review police practices and develop best practice models;
 - (iv) recommend steps for improved service delivery and police effectiveness;
 - (v) develop frameworks and strategies to ensure improved police accountability; and
- Section 6(2)(c):
 - (i) facilitate and implement intergovernmental co-operation on safety;
 - (ii) conduct ongoing interaction with citizens in the manner contemplated by this Act;
 - (iii) enhance the quality and accessibility of safety programmes through improved participation by the community;
 - (iv) encourage national dialogue on safety and crime prevention;
 - (v) facilitate pro-active and interventionist models in communities;
 - (vi) co-ordinate efforts to deal with challenges faced by the police service as requested by the Minister;
 - (vii) develop frameworks and strategies to ensure uniformity, accountability and enhancement of community police fora and associated structures; and



- (viii) maximise capacity and expertise in the Civilian Secretariat.

Section 13 of the Act states that the Secretary must submit quarterly reports to the Minister and the Parliamentary Committees responsible for police on the activities of the Civilian Secretariat. However, *this report has not yet been tabled before Parliament since its commencement in December 2011.*

Comments and questions

- 1) The Secretariat presented an analysis of the 2012/13 SAPS budget to the Portfolio Committee in March 2013. However, the Secretariat has not presented an analysis of the SAPS budget since. According to section 6(1)(b) the Secretariat must monitor the utilisation of the budget of the police service to ensure compliance with any policy directives or instructions of the Minister. The Committee should question the reason for not complying with this prescript.
- 2) The Committee should question the measures taken by the Secretariat to improve the compliance to the IDVA by members of the SAPS. As the Committee has been made aware, this area represents a serious challenge for the SAPS and should be attended to as a matter of urgency. The IDVA has been in operation since 1998, and full compliance by the SAPS has not been achieved 16 years after its implementation. The Secretariat, as the body mandated to craft policy for the SAPS, should consider alternative means to develop a creative and implementable solution to the failure of the SAPS to implement the Act. This will assist in realising one of Government's key priorities, that of reducing crimes against women and children.
- 3) The Secretariat should provide a comprehensive breakdown of all civil society partnerships entered into and what the nature of these partnerships is.
- 4) Section 4(j) clearly states that the Secretariat must assess and monitor the police service's ability to receive and deal with complaints against its members. The Committee should request the Secretariat to elaborate on the measures taken to monitor this ability and how it can be improved.
- 5) In the past, the Secretariat has been accused of being very reactive in terms of its operations. Section 6(2)(a)(iii) states clearly that the Secretariat must make available recent, relevant and evidence-based research to the Minister and to Parliament. The Committee has never received a research paper from the Secretariat without having to request it during annual report hearings. The Committee should encourage the Secretariat to forward research paper to Parliament upon completion thereof.
- 6) The Committee should question the reasons for the failure to produce and table a quarterly activity report of the Civilian Secretariat as mandated through section 13 of the Act.

2.1.4 Chapter 4: Provincial Secretariats

Section 16 of the Act states that each Member of the Executive Committee (MEC) must constitute a provincial secretariat for that Province, within 18 months after the commencement of the Act. This is to support and align the mandate of that provincial secretariat with the mandate of the Civilian Secretariat.



Each Provincial Secretariat must support the objects of the Civilian Secretariat and is subject to the principles of co-operative governance and intergovernmental relations contained in Chapter 3 of the Constitution. Each provincial secretariat must perform the following functions:

- align its plans and operations at the provincial sphere of government with the plans, policies and operations of the Civilian Secretariat; and
- integrate its strategies and systems at the provincial sphere of government with the strategies and systems of the Civilian Secretariat.

According to the Act, the provincial secretariat must, for purposes of the above, establish competencies and capabilities in its operations, to do the following:

- monitor and evaluate the implementation of policing policy in the province;
- evaluate and monitor police conduct in the province;
- develop and evaluate safety models and monitoring tools to ensure alignment with the functions of the Civilian Secretariat;
- assist the Civilian Secretariat with any monitoring and evaluation projects; and
- promote community police relations;
- establish and promote partnerships; and
- manage the enhancement of community safety structures with the province.

Comments and questions

- 1) The Secretariat should indicate the number of Provincial Secretariats fully constituted in terms of the Act. If not all Provincial Secretariats are constituted to date, the Secretariat should explain the reasons for this and also state the challenges faced in the establishment of the Provincial Secretariats.
- 2) The Secretariat should indicate the number of Community Safety Forums (CSFs) established to date.

2.1.5 Chapter 5: Co-operative Framework

Part 1: Heads of Departments (HODs)

Section 23(1) of the Act stated that the Secretary and the Heads of Provincial Departments (HODs) must meet at least once a quarter to ensure the optimal functioning of the provincial secretariats. Subsection 2 further states that the Secretary must convene meetings, determine the agenda for and presides at the HOD forum meetings as mentioned above. The Secretary is also responsible for providing administrative support to the meetings.

Part 2: Senior Management Forum

Section 24 of the Act provides for the establishment of a Senior Management Forum to meet on a bi-monthly basis to report on activities of provincial secretariats and to facilitate interaction and co-operation amongst the provincial secretariats. The forum is constituted by the Secretary (as Chairperson), the heads of provincial secretariats, and senior management of the Civilian Secretariat and each provincial secretariat.



Part 3: Intervention by the Civilian Secretariat

Section 26 provides for the Civilian Secretariat to intervene (after consultation between the Minister and MEC) in the affairs of a provincial secretariat in accordance with section 100 of the Constitution. This can only happen when the respective secretariat is not performing its functions or is unable to fulfil its mandate.

Part 4: Ministerial Executive Committee (MINMEC)

Section 27 of the Act provides for the establishment of a Ministerial Executive Committee, which consist of the Minister of Police (as Chairperson), the MEC from each province and any other member the Minister may consider necessary. This is in accordance with section 206(8) of the Constitution and is commonly referred to as a MINMEC.

Part 5: Co-operation with the IPID

Section 31 of the Act establishes the nature of co-operation between the Secretariat and the Independent Police Investigative Directorate (IPID). It states, through section 31(1), that the Secretariat must consider reports received from the Executive Director of the IPID in terms section 9 of the Independent Police Investigative Directorate Act, 2010 (*the Act is dated 2011*). This section refers to the functions of the IPID and states, amongst others, that the IPID must produce the following reports (which should be considered by the Secretariat):

- identify and review legislative needs and report on such matters to the Secretariat;
- report to the relevant MEC on matters referred to the Executive Director by the MEC;
- submit an annual report to the Minister and to Parliament;
- make recommendations to the South African Police Service resulting from investigations done by the Directorate; and report twice a year to Parliament on the number and type of cases investigated, the recommendations, the detail and outcome of those recommendations.

Subsection (2) further states that the Civilian Secretariat must monitor the implementation by the police service of the recommendations made by the Directorate and provide the Minister with regular reports on steps taken to ensure compliance. A copy of this report must be sent to the Executive Director of the IPID.

Subsection (3) provides that the Secretary and the Executive Director must ensure the necessary cooperation for the proper functioning of the Consultative Forum contemplated in Chapter 4 of the Independent Police Investigative Directorate Act, 2010 (*date should be 2011*). Chapter 15, section 16(1), of the IPID Act provides for the establishment of a Consultative Forum, which is composed of the Executive Director of the IPID and the Secretary. The Consultative Forum is established to facilitate closer cooperation between the Secretary and the Executive Director; and also to discuss, amongst other, issues related to trends, recommendations and implementation of such recommendations.

Section 18(1) of the IPID Act, 2011 states that the Secretary must convene the first meeting of the forum and preside at that meeting. Subsection (2) then provide for the Secretary and the Executive Director to alternate as chairpersons of the Consultative Forum meetings. The forum



determines its own procedure and agenda for its meetings and must meet at least four times a year on issues of common interest.

Part 6: Co-operation with the SAPS

Section 32 of the Act provides for the co-operation between the SAPS and the Civilian Secretariat. It states that all SAPS members must provide their full co-operation to the Civilian Secretariat and where so required to a provincial secretariat must including (but not limited to) the following:

- assisting the Civilian Secretariat with the necessary information and records in the manner prescribed to perform its monitoring function in relation to oversight of the police service in terms of this Act;
- assisting the Civilian Secretariat to monitor and evaluate compliance with the Domestic Violence Act, 1998 (Act 116 of 1998); and
- any other information or documentation as may be required by the Civilian Secretariat in order to fulfil its functions in terms of this Act.

Comments and questions

- 1) The Secretariat should provide a breakdown of the HOD Forum meetings held to date which must include the number of meetings, attendance of meetings and minutes of the most recent meeting.
- 2) The Secretariat should also provide a breakdown of the Senior Management Forum meetings held to date which must include the number of meetings, attendance of meetings and minutes of the most recent meeting.
- 3) The Secretariat should further provide a breakdown of the MINMEC meetings held to date which must include the number of meetings, attendance of meetings and minutes of the most recent meeting.
- 4) The Secretariat Act erroneously refers to the IPID Act, 2010 – it is dated 2011.
- 5) The Secretariat should provide details on the establishment of the Consultative Forum with the IPID. The first meeting must be constituted by the Secretary – has this happened? The Secretariat should also indicate the number of Consultative Forum Meetings held to date? If none, the Secretariat should explain the situation.
- 6) In terms of section 32, the Secretariat should state whether it or any relevant provincial secretariat had experienced any resistance from the SAPS in executing its mandate.

2.1.6 Chapter 6: Regulations

Section 33 of the Civilian Secretariat for Police Service Act, 2011 provides the following:

- 1) The Minister may, after consultation with the Secretary, make regulations regarding-
 - a) any matter which in terms of this Act may or must be prescribed;
 - b) any action in order to promote compliance with this Act; and
 - c) any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- 2) Regulations with regard to the implementation of this Act must be submitted to the Minister by the Secretary within three months of the commencement of this Act.



- 3) The regulations referred to in subsection (1) must be submitted to Parliament for notification purposes before promulgation.

The Act clearly states that the regulations must be submitted to the Minister of Police three months after the enactment thereof and submitted to Parliament for notification prior to promulgation. However, the Act came into operation on 01 December 2011, which is 33 months ago. This is a significant over-run and should be dealt with as a matter of urgency.

Comments and questions	
1)	The Secretariat should explain the reason for not tabling the Regulations in terms of section 33(2) of the Act within the provided time-frame of 3 months after commencement.
2)	The Secretariat provided a draft copy of the Regulations to the Committee at the Committee's Strategic Planning Session on Friday, 05 September 2014. However, the Regulations must be formally tabled before Parliament and a comprehensive presentation should be given to Members of the Committee in order to engage in the provisions of the Regulation, as the Committee is a respected stakeholder in the drafting of all police policy.
3)	The Secretariat should indicate the date on which the Regulations will be tabled before Parliament.

3. REPORTING DUTIES TO PARLIAMENT

The Secretariat has several reporting requirements to Parliament. These are:

- Section 6(2)(a)(iii) states that the Secretariat must establish competencies in order to make available recent, relevant and evidence-based research to the Minister and to Parliament.
- Section 8(3)(d) states that the Secretariat must, as advisor to the Minister, present legislation in Parliament as determined by the Minister.
- Section 13 states that the Secretary must submit quarterly reports to the Minister and to the parliamentary committees responsible for police on the activities of the Civilian Secretariat.
- Section 15(3) states that the Minister must table a copy of the annual report, financial statements and audit report on those statements to Parliament (the deadline for tabling is the end of September annually).
- Section 33(3) states that the regulations made in terms of the Act, must be submitted to Parliament for notification purposes before promulgation.
- The DVA, 1998 (Act no 116 of 1998), through Section 18(5)(c), provides that the Civilian Secretariat must submit a six-monthly report to Parliament regarding the number and particulars of matters reported to it in terms of any member of SAPS who fails to comply with an obligation imposed by the DVA (Section 18(4)(a)), and setting out the recommendations made in respect of such matters.



Comments and questions

- 1) The Committee should pay specific attention to the bi-annual reports that must be submitted to Parliament in terms of compliance to the DVA by police members. These reports are not being tabled in the legislated time-frame and the Secretariat should be taken to task on this issue.
- 2) The Committee should also note that the Secretariat has not yet tabled a quarterly report on its activities as stipulated in section 13 of the Act.
- 3) The Committee should further note that the Act specifies that the Regulations regarding the implementation of the Act must be submitted to the Minister (by the Secretary) within three months of the commencement of the Act. After which it must be tabled in Parliament for notification purposes before promulgation. The Act commenced on 01 December 2011 and the Regulations have not yet reached Parliament. The Committee should request a status report on the Regulations.

3 CONCLUSION

The Committee should take cognisance of the provisions of this Act as it impacts on the oversight role of Parliament, especially in terms of the statutory reporting duties to Parliament. Specific focus should be placed on the role the Secretariat is playing in the revision of the 1995 SAPS Act and the 1980 National Key Points Act to align these with the provisions and spirit of the 1996 Constitution. The Committee should also seek clarity on the current capacity of the Civilian Secretariat and enquire whether it is sufficient to fulfil its mandate in terms of the Act. If the Civilian Secretariat lack sufficient capacity, it should engage the Committee on its future needs in order to enable the Committee to make the necessary recommendations to National Treasury. As legislatures, Members of the Committee have a unique responsibility to influence the legislative framework of South Africa and should jealously guard the oversight role it plays in keeping government departments accountable through statutory prescripts.