

CIVILIAN SECRETARIAT FOR POLICE SERVICE

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**THE OVERSIGHT ROLE OF THE CIVILIAN SECRETARIAT ON
THE SOUTH AFRICAN POLICE SERVICE**

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1. Contextual Background

The Constitution of the Republic of South Africa places an obligation on the police service to not only subject itself to the rule of law, but also to transform itself into an institution whose mandate and functions are premised on democratic principles. This invariably implies that the objects and responsibility of the police must be carried out in line with the values of transparency and accountability. The concept of *oversight* is regarded as a key feature of democratic policing, and is thus consistent with efforts to align the police service to these values and principles.

Civilian oversight can be explained as a mechanism to enhance democratic policing through the participation of stakeholders outside of the police service in the ongoing monitoring, investigation and review of police in terms of their performance, policies and conduct. It refers to the entire system of ensuring that police service delivery is constitutionally compliant and consistent with the public good.

The advent of democracy in South Africa brought a number of significant reforms within the public administration, particularly with regard to the strategic orientation of policing towards a more human rights-based approach. It was acknowledged that an unfortunate by-product of the country's history was a policing culture that was inherently militant and callous towards the majority of its citizens. The transformation of the South African Police Service (SAPS) in this regard required a concurrent process of the institutionalisation of oversight mechanisms to ensure that citizens would have a role to play in holding the police accountable.

In view of the above, Section 208 of the Constitution provided for the establishment of a civilian secretariat for the police service, which was set to function under the direction of the Cabinet member responsible for policing.

2. The Civilian Secretariat for Police Service

An overview of existing literature on oversight mechanisms reveals that throughout history, the establishment and enhancement of institutions for civilian oversight has often been met with criticism and resistance from the police on the one hand, and from conservative pragmatics on the other. Fortunately, the fact that civilian oversight is a constitutional imperative makes the case for South Africa an elementary one. The incorporation of a mandatory civilian oversight function into the South African Police Service Act, 1995 (SAPS Act) also ensures that SAPS both acknowledges and accepts the existence of accountability mechanisms in the environment within which they operate.

The Civilian Secretariat for Police Service (CSPS) is a constitutional body that serves to ensure the transformation of the SAPS by promoting accountability and transparency in the police service. The CSPS exercises civilian oversight over the police service, in line with the mandate outlined in Sections 2 and 3 of the SAPS Act. It has been established as a designated department at national level in terms of the Civilian Secretariat for Police Service Act, 2011(CSPS Act).

The CSPS follows a hybrid of proactive and reactive approaches to civilian oversight through the identification of underlying problems and major challenges that are likely to have an impact on the ability of the police service to fulfil its constitutional mandate, and through the provision of strategic policy advice to the Minister of Police in terms of how to effectively deal with these issues. To this end, the CSPS may conduct a systemic

inquiry into SAPS and may compel members of the SAPS to provide the necessary information in order to advance an inquiry or investigation.

Based on this hybrid model, the CSPA has as its core functional areas policy development and research; legislation; civilian oversight monitoring and evaluation; and inter-sectoral coordination and strategic partnerships.

The CSPA Act outlines the following as objects of the Civilian Secretariat:

- Exercise civilian oversight over the Police Service through monitoring and evaluating overall police performance against planned programmes;
- Give strategic advice to the Minister in respect of developing and implementing policies;
- Provide administrative support services to the Minister to ensure South Africa's engagement with relevant international obligations;
- Liaise and communicate with stakeholders;
- 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;
- Implement, promote and align the operations of the Civilian Secretariat in the national and provincial spheres of government;
- Coordinate the functions and powers of the Civilian Secretariat in the national and provincial spheres of government;
- Promote cooperation between the Civilian Secretariat, the Police Service and the Independent Police Investigative Directorate (IPID), and
- Provide guidance to community police fora and associated structures and facilitate their proper functioning.

Flowing from the CSPA Act, the Civilian Secretariat for Police Service Regulations, 2016 have been promulgated. The Regulations further distill the functions of the CSPA

in terms of the obligation to conduct independent civilian oversight with respect to all aspects of policing. The Regulations also outline the following as key guiding principles for effective oversight over the police service:

- Rationality and impartiality;
- Democratic accountability and transparency;
- Collaboration and cooperation;
- Respect for human rights;
- Integrity and professionalism; and
- Adherence to *Batho Pele* principles.

These Regulations (and guiding principles, which are widely accepted as critical success factors for effective oversight) apply to members of the Civilian Secretariat, Provincial Secretariats established in terms of the CSPA Act, and to the SAPS.

3. Provincial Secretariats

The CSPA Act also takes into account Section 206 of the Constitution that provides the provincial executive with the power to perform certain oversight functions that relate to policing. In line with Section 206 (3) of the Constitution, each province is entitled to:

- monitor police conduct;
- oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
- promote good relations between the police and community;
- assess the effectiveness of visible policing; and
- liaise with the Cabinet member responsible for policing with respect to crime and policing in the Province.

Based on this constitutional imperative, Section 16 of the CSPA Act provides for the establishment of Provincial Secretariats by those Members of the Executive Council (MEC) who are responsible for safety in provinces.

The SPS Act provides that the Provincial Secretariats must support the Provincial MEC by:

- Providing advice;
- Ensuring civilian oversight of the SPS;
- Promoting democratic accountability and transparency in the SPS;
- Providing a legal advisory service;
- Monitoring the implementation of policy of the SPS; and
- Conducting research and evaluate the functioning of the SPS, and reporting thereon.

Provincial Secretariats are required to assist the CSPA to achieve its objects, and are also required to perform the functions of the CSPA in the provincial sphere of government, in accordance with the principles of co-operative government and intergovernmental relations, as contained in Chapter 3 of the Constitution.

In so doing, each Provincial Secretariat is therefore obliged to support and align its plans and operations with that of those of the Civilian Secretariat, as well as to integrate its strategies and systems at the provincial sphere of government with the strategies and systems of the Civilian Secretariat.

The prevailing legislation governing civilian oversight over the police has thus been effective in ensuring that oversight has a presence in all three spheres of government. The 2016 White Paper on Policing, which places an emphasis on the core of policing and provides a framework to align the police service to the rest of the broader public service, also seeks to enhance effective civilian oversight over the SPS in all spheres.

4. The Role of the Minister of Police

Effective civilian oversight also requires an enabling environment of political buy-in and support. The relationship between the Minister of Police and the CSPA can thus also be regarded as a critical success factor in the oversight role of the CSPA over the police service.

The Constitution directs the Minister to determine national policing policy, after taking into account policing needs and priorities of the provinces. As such, the Minister must set policy objectives and measure the effectiveness and efficiency of the SAPS. The CSPA is instrumental in supporting the Minister in executing his political responsibilities relating to the ongoing transformation of the SAPS.

The role of the Minister is to, amongst other functions:

- Account to the President, Cabinet and Parliament for the management and delivery of peace and security;
- Promote national policing policy which directs the SAPS, and be accountable for the implementation of this policy;
- Provide direction for the implementation of priorities and targets; and
- Appropriate from Parliament the single budget vote for the Department of Police and to direct the use of the budget.

In terms of Regulation 9 of the CSPA Regulations, the Minister may, from time to time issue directives to the Secretary for Police Service (the Secretary) on matters relating to civilian oversight or policing. The Secretary must, in turn, ensure that directives from the Minister in this regard are complied with. This implies that the Minister's role in civilian oversight depends on a strong and sustainable relationship with CSPA. It is thus imperative to continuously enhance the capacity and positioning of the Secretariat in a manner that maintains this relationship and enables the CSPA to effectively support the Minister.

5. Accountability and Reporting

The promotion of accountability and transparency forms the cornerstone of the establishment of civilian oversight structures in South Africa. Accountability aims to prevent the police from abuse of their powers, prevent political authorities from misusing their control over the police service, and to instill public confidence and trust in the police. Regular monitoring and reporting by oversight structures are key elements in the promotion of accountability.

The CSPA Act requires the Secretary to provide regular reports to the Minister and parliamentary committees responsible for policing on the activities of the Secretariat. This serves to ensure that Parliament, as the primary oversight organ, is kept abreast of activities and developments relating to police performance, conduct and policy.

The Provincial Secretariats are also required to submit quarterly and other reports to the Secretary, in order to ensure that the consolidated report on civilian oversight activities can be submitted to the Minister, on a predetermined date.

The CSPA Regulations outline reporting standards and procedures in terms of all functional areas of the Civilian Secretariat. The Regulations also provide for the establishment of a Senior Management Forum, the purpose of which is to generally enhance civilian oversight over the police service. The Secretary and Heads of Provincial Departments must meet at least on a quarterly basis in order to:

- ensure alignment between Provincial Secretariats and the Civilian Secretariat;
- discuss performance of the SAPS;
- ensure regular reporting on police performance; and
- Prepare for MinMEC and Cluster meetings.

As a consultative and technical platform, this forum contributes to the consolidation of a cooperative framework for effective civilian oversight over the police service.

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