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THE ROLE OF THE CIVILIAN SECRETARIAT FOR POLICE SERVICE (CSPS) IN TRANSFORMING THE SOUTH AFRICAN POLICE SERVICE (SAPS)

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A research report submitted to the School of Governance in the Faculty of Commerce, Law and Management of the University of Witwatersrand, Johannesburg, South Africa, in part fulfilment of the requirements for the Degree of the Masters of Management in Public Policy.

WITS UNIVERSITY

DECLARATION

I declare that this report is my own, unaided work apart from contribution cited in the acknowledgments. It is submitted in partial fulfilment of the requirement of the Degree of the Masters of Management (in the field of Public Policy) in the University of the Witwatersrand, Johannesburg, South Africa. It has not been submitted before for any degree or examination in any other university.

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Mothupi Stacious Mafologela
29 April 2019

DEDICATION

I dedicate this research work to my mother, Mafokisi Abitha Mafologela, who gave birth to me, nurtured and supported me as a single parent under difficult conditions. Although she passed away on 31 July 2010 long before the commencement of this research project, she laid a good foundation and instilled good principles of resilience and commitment in me to achieve this milestone.

I extend the dedication to my beautiful wife, Mohlago Sarah Mafologela, for giving me the unconditional support towards the achievement of this academic milestone, and my two sons, Mothupi Junior Bokang Mafologela and Sello Botshelo Mafologela for propelling me to work smarter and better. It is my wish that my children will be encouraged to do better in their future endeavours.

I further extend the dedication to all my siblings in particular Itumeleng Mafologela, Tebatšo Mafologela, Nthokolo Thato Mafologela, Hlologelo Mafologela, Tumišo Mafologela and Sello Katlego Mafologela for their presence in my academic journey. They too should look at this academic achievement as a motivation to propel them to achieve their vision.

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To all those who participated in the research as interviewees, your support, time and valuable information contributed significantly to this research.

Further, acknowledgements are in order for the Librarians who helped me with research material as and when I needed it. Thank you and continue with the good work.

I extend acknowledgements to all my uncles and aunts for your parental support and guidance in my life endeavours.

LIST OF ACRONYMS	
ACRONYM	**DESCRIPTION**
CD	Chief Director
Committee	Portfolio Committee on Police
CPF	Community Police Forum
CSPS	Civilian Secretariat for Police Service
DCAF	Geneva Centre for Democratic Control of Armed forces
DDG	Deputy Director-General
DG	Director-General
DNC	Deputy National Commissioner
DPCI	Directorate for Priority Crime Investigations
IAT	Independent Advisory Team
IPID	Independent Police Investigative Directorate
Minister	Minister of Police
MINMEC	Minister and Members of Executive Council
National Commissioner	National Commissioner of the South African Police Service
NCCS	National Crime Combating Strategy
NCPS	National Crime Prevention Strategy
NDP	National Development Plan
NIU	National Intervention Unit
NPB	National Police Board
NPC	National Planning Commission
NPM	New Public Management
PPUs	Paramilitary Police Units
SAHRC	South African Human Rights Commission
SAP	South African Police
SAPS	South African Police Service
SSG	Security Sector Governance
SSR	Security Sector Reform
STF	Special Task Force
TRT	Tactical Response Team

ABSTRACT

Any democratic state would be concerned about a policing approach that is characterised by militarism. South Africa under the apartheid government experienced the hardships that come with a police agency that is militaristic and politically oriented to serve minority interests and '*deal*' with the apartheid government detractors. Security Sector Reform (SSR) was amongst the crucial policy issues that a democratic South Africa had to address considering the historical nature of the functioning of security and intelligence institutions.

The transformation of the South African Police Service (SAPS) from a force to a service-oriented police agency formed part of the SSR, amongst which included creating civilian oversight mechanisms to serve as checks and balances on how the SAPS functions in a democratic state. The Civilian Secretariat for Police Service (CSPS) forms part of the civilian oversight institutions. Overtime, the SAPS started showing signs of reverting back to the militaristic policing approach which included reverting back to adopting military ranks in 2010. This raised concerns in the public domain with a consequential regression in terms of public trust and police integrity.

This research assessed the role of the CSPS in terms of SAPS transformation focussing on police militarisation, demilitarisation, role and power of the Minister and role of SAPS in policy development. Further, the research also assessed the South African SSR policy and Security Sector Governance (SSG) framework to understand the implications these have regarding SAPS transformation. The study found that the SAPS is to some extend militarised through PPUs but the latter failed to gain full traction. Militarisation in itself is not a negative approach, however, the extent and degree of deploying militaristic policing approaches require stricter monitoring. The CSPS has adequate powers derived from policy and legislation but such are not adequately utilised to ensure a significant success on SAPS transformation. Political will is crucial to propel police reform in South Africa. The Minister of Police can strengthen the political oversight role on the SAPS by ensuring effective use of the CSPS and governance framework established for SAPS transformation.

Key words: militarisation, demilitarisation, civilian oversight, policy implementation, transformation, governance

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CHAPTER 1: BACKGROUND

1.1 Introduction

The aspect of civilian control of the police service was designed to ensure that the South African Police Service (SAPS) does not revert back to its historical functioning of fighting political battles. The temptation to use excessive force by members of the SAPS during normal visible policing functions is one factor that has many South Africans raising their concerns especially the consequential killing of civilians. The changes in police ranking in 2010 sparked debates about the militarisation of the SAPS and what it means under a democratic government where civilians are in charge (or expected to be in charge) of determining the policing policy trajectory. This research study focussed at the role of the Civilian Secretariat for Police Service (CSPS)[1] in transforming the SAPS.

1.2 Problem Statement

The South African Police (SAP as it was called before the advent of democracy in 1994) was engaged more in defending the apartheid regime than upholding law and order in the context of human rights. The SAP was seen as law onto itself and accounting to no one except within the SAP command structure. The African National Congress (1992) drafted the Ready to Govern: ANC policy guidelines for a democratic South Africa giving amongst others the need to reconfigure the security institutions amongst which was the SAP. This was done during the negotiations for a democratic South Africa in the early 1990s and the realisation that the SAP cannot be allowed to operate in the manner it did during the apartheid government. The provisions of the Ready to Govern Document were later refined and included in the *Constitution of the Republic of South Africa, 1996* (*Constitution*). There is clear delineation of roles and responsibilities between the Cabinet member responsible for policing, National commissioner of the SAPS, Independent Police Investigative Directorate (IPID) and CSPS, which are amongst the government institutions created as part of police reform in South Africa. In order to resonates with the human rights based approach of a democratic South Africa, the SAP was renamed as the SAPS adding a crucial aspect of "service" (i.e. the focus of the SAPS is to provide services to the citizenry).

The South African Police Service Act, 1995 (Act No. 68 of 1995) was promulgated based on the Interim constitution to clearly articulate the police reform legislative framework including the operational posture of the SAPS going forward. The *National Crime Prevention Strategy, 1996 (NCPS)* was also developed under the leadership of Mr G. Fivas (SAPS National Commissioner from 1994 – 1999) to guide policing operations towards reducing crime in South Africa focusing on prevention approaches. The *National Crime Combatting Strategy* (NCCS) succeeded the *NCPS* during the early 2000s with the appointment of Mr J.S. Selebi as the SAPS National Commissioner. With this move, the policing approach moved from that of 'crime prevention' to 'crime combatting', which was justified based on the high crime levels. The SAPS appeared to have made strides in accepting change and embracing transformation, but the change in policing strategy marked a turning point for the SAPS transformation trajectory, and perhaps the start of reverting back to militaristic policing approaches.

The CSPS was established in mid 1990s in order to strengthen civilian oversight, transparency and accountability by the SAPS as part of the institutional transformation in the security sector. The CSPS

[1] Previously referred to as the National Secretariat for Safety and Security

operated in line with its legislative and policy mandate until the early 2000s, when the Minister of Safety and Security together with the SAPS National Commissioner showed their discontent with the existence and functioning of the CSPS. Both the Minister and National Commissioner did not see the need to have a civilian secretariat because they were also civilians. This led to the early departure of the Secretary for Safety and Security in early 2000s, and the CSPS experienced a decline in its functionality until the late 2000s when the CSPS was reorganised. Although the CSPS was reorganised into a fully fletched department in 2011, it was still struggling to effectively discharge its policy and statutory roles.

The appointment of Mr B.H. Cele as SAPS National Commissioner in 2009 marked yet another turning point in policing where paramilitary units (e.g. Tactical Response Unit) in the SAPS were involved in operations that are best suited for non-specialised police members, reintroduction of hard-core policing and reintroduction of military ranks. All these policy and strategic changes were developed and implemented without the involvement of the CSPS. It does appear that the SAPS transformation trajectory started on a good foundation in the mid 1990s but changed course towards the early 2000s with a huge shift in terms of policy and policing strategy including leadership challenges at the highest echelon of the Minister, SAPS National Commissioner and Secretary for Police Service. The introduction of the Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011) and White Paper on Policing, 2016 appear to provide some fresh perspectives in terms of the institutional transformation including the role of the CSPS and other stakeholders. Whether these policy propositions will be implemented is a contentious issue especially in the context of historical challenges related to the implementation of similar policy propositions.

Geneva Centre for Democratic Control of Armed Forces (DCAF, 2015: 2) state:

> Security Sector Reform (SSR) is the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable, within a framework of democratic civilian control, rule of law and respect for human rights.

The SAPS is seemingly and gradually adopting militaristic policing approaches, techniques and culture contrary to the policy and legal framework designed for SSR in South Africa under a democratic government. There is growing public animosity, mistrust and discontent towards the SAPS due to the heavy-handed militaristic policing approach that is compounded by high levels of serious crimes.

As early as 2000, the SAPS appeared to be regressing from somewhat a demilitarised to a militarised police agency characterised by sporadic shootings, police brutality, excessive use of force and increased centralisation of power (National Planning Commission (NPC, 2011). In his thesis research, Bruce (2000: 150) concluded as follows:

> In the current period the SAPS is facing intense pressure to improve its performance in tackling the crime problem. In these circumstances the temptation is to turn a blind eye to the police in relation to their use of force. But failing to restrain the brutal elements in the police service does not ultimately serve any constructive interest.

The NPC (2011: 350) highlighted that "the remilitarization of the police in recent years has not garnered greater community respect for police officers, nor has it secured higher conviction rates". Furthermore, the NPC (2011) cited the military ranks in the SAPS as a possible factor in the deterioration of public trust and confidence on the SAPS, and rising community frustration and fear.

The brutal killing of Andries Tatane on 13 April 2011 during a service delivery protest in Ficksburg portrays a policing culture characterised by militancy, indiscipline, use of excessive force and disregard for human rights i.e. the right to life and right to protest (South African History Online, 25 April 2019). The policing approach used by the SAPS in Marikana on 16 August 2012 where thirty-four miners were killed can be characterised as a military style execution of civilians by the police. (Marikana Commission of Inquiry, 2015). In addition, the disturbing incident that occurred on 24 February 2018 where police members shot and killed (or murdered) seven suspected criminals associated with the killing of five police members at Engcobo Police Station is worrying from the perspective of democratic policing.

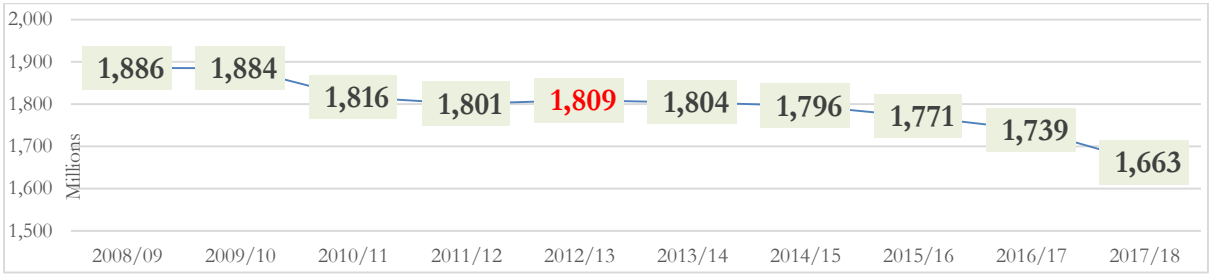
The approach of a civilianised policing is to search and apprehend the suspect not to destroy the suspect/enemy which appeared to be the case in this instance. When contrasting between civilian and military police, the Marikana Commission of Enquiry (2012: 375) found that:

> Firing hundreds of rounds into the koppie is typical of a military action, aimed at overpowering and destroying an enemy. A policing operation would be limited to firing shots at particular members of the group on the koppie who posed an imminent threat to life.

It must be noted that the Marikana massacre occurred hardly a year after the adoption of the *National Development Plan, Vision 2030* (NDP) by Cabinet, where the issue of police demilitarisation was advocated strongly by the NPC. This is not to suggest that the police must not protect themselves from ruthless criminals, but rather the primary intentions must be aligned to the policing policy objectives of apprehending suspects, investigating and bringing them to account in the Criminal Justice System.

Figure 1 below shows the trend for serious crimes reported for the past ten years, which shows that the number of reported serious crimes is generally decreasing though the crime levels remain high.

Figure 1: Number of reported cases of serious crimes for the past ten years

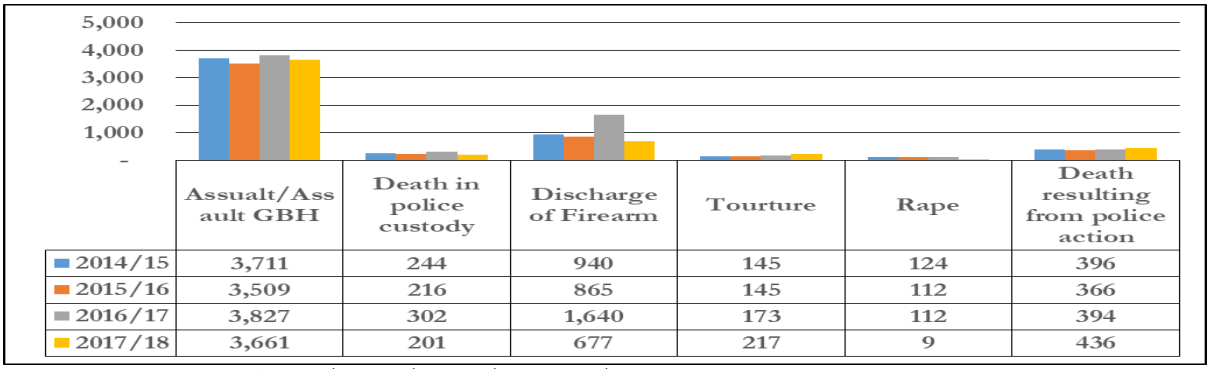


Source: SAPS Crime Statistics, 2018

Notwithstanding the trend given in Figure 1, some specific types of serious crimes are increasing; namely, murder, attempted murder and robbery with aggravating circumstances amongst others. In the past five financial years, the total number of cases for serious crimes brought to court decreased from 333 656 in 2013/14 to 141 974 in 2017/18 financial year. Notwithstanding the decreasing trends on reported serious crimes, the number of cases that reach court and conviction secured (recorded conviction rates in the higher eighties) is very small compared to the overall total reported serious crimes.

The crucial aspect of police transformation is more on the policing approach than the trends on crimes statistics. For instance, the SAPS continues to pay millions of rands in civil claims emanating from the actions of police members. During the period between 2013/14 and 2017/18 financial years, the SAPS paid R1,14 billion on civil claims with majority attributed to unlawful arrests and detention, shooting incidents and assaults. Furthermore, the Independent Police Investigative Directorate (IPID) opened and investigated cases mostly associated with assaults, torture, death resulting from police action and discharge of a firearm against members of the SAPS. Figure 2 below shows the number of criminal cases lodged with the IPID for the past four financial years against members of the SAPS.

Figure 2: Number of criminal cases lodged with the IPID against SAPS members



	Assualt/Assault GBH	Death in police custody	Discharge of Firearm	Tourture	Rape	Death resulting from police action
2014/15	3,711	244	940	145	124	396
2015/16	3,509	216	865	145	112	366
2016/17	3,827	302	1,640	173	112	394
2017/18	3,661	201	677	217	9	436

Source: IPID Annual Reports for 2014/15, 2015/16, 2016/17 and 2017/18

The criminal cases in Figure 2 above show that SAPS members are prone to trample on human rights of citizens by not adhering to the policy and legal framework that guide the nature and approach to policing in South Africa. Although the trend in the criminal cases lodged against SAPS members decreased during 2015/16 financial year, a subsequent increase is evident during the 2016/17 financial year. The trend on torture has been on the increase for the period 2014/15-2017/18 while for death resulting from police action recorded consecutive increases from 2015/16 to 2017/18 financial years. The steady increase in payments of civil claims, and the considerable number of criminal cases investigated by the IPID against SAPS members are worrying issues in the context of the demilitarisation process.

The CSPS Strategic Plan of 2015-2020 is inward looking and does not explicitly reflect the position of the CSPS regarding the high number of police officers convicted of crimes. The situational analysis in the Strategic Plan reflect more on the high rates of recorded crimes and that the "SAPS has made significant strides in dealing with serious and violent crime" (CSPS, 2017:7). Notwithstanding, it was reported during 2014 that 1 448 active police officers in the SAPS had

criminal records, of which 70% (1 017) were identified as no longer fit to serve (News24, 10 April 2014). In 2018, fifty-seven (57) police officers had criminal records within the Family, Children Protection and Sexual Offences Unit of the SAPS (Morapela, 7 May 2018).

1.3 Research Aim, Objectives and Contributions

The research seeks to interrogate the role of the CSPS in the context of SAPS institutional transformation focusing on police militarisation and demilitarisation. While many scholars and others in the academic community made voluminous contribution in terms of SSR, the focus has been more on the SAPS reform and less on the role of the CSPS on SAPS transformation.

The rationale to focus the study in the context of militarisation and demilitarisation stems from the policy shift from 2010 followed by the growing trend of the use of exercise force by the SAPS in traditional policing operations including the involvement of PPUs in what is considered normal policing operations. The CSPS by virtue of the policy provisions in the *White Paper on Policing, 2016* is responsible for policy development, and any policy shift is expected to have been designed, articulated and supported by civilian. Therefore, it is crucial that the policy shift in terms of a move from a community-policing model to that which incorporates militarism, what role did the CSPS play especially on advocacy. Militarisation by definition is a process that comprises many factors. Although the focus is in the main of militarisation and demilitarisation, other associated components of SAPS transformation are covered.

Many people in communities, academia and government institutions do not know the CSPS despite its existence for over two decades. This situation may be because of weak marketing strategy and/or the nature of functioning of the CSPS. Few scholars and bureaucrats have written about the role of the CSPS from various perspectives in research reports, articles and discussion documents. The perspectives on the CSPS role range from the *National Crime Prevention Strategy (NCPS, 1996)*, policy, legislative mandate and functions, enhancing the effectiveness and efficiency of civilian oversight, monitoring systems and police accountability. All these perspectives are directly linked to the role of the CSPS in the transformation process of the SAPS.

The discussion document authored by Mokotedi and Koitsioe (1997: 2) sought "to understand the historical functioning of civilian oversight of policing in South Africa". Aspects related to race, affirmative action, uniform, training, human rights culture, community participation and accountability were traversed.

The study found that the SAPS transformation was stagnant to only changing the police uniform. Mokotedi and Koitsioe (1997: 7) argued "for as long as the police have the legitimate right to use force [the CSPS] will always exist". The SAPS failed to take the transformation process forward and the CSPS must take the lead to ensure progress. Consequently, it was clear that the SAPS transformation could not occur by default except if the CSPS takes a central lead (Mokotedi and Koitsioe, 1997).

Pelser (1997) undertook a research study focusing on the establishment, functions, objectives, structure, institutional arrangements and perception of the effectiveness of the CSPS. The study concluded that:

> The collaborative institutional arrangements developed in the Department of Safety and Security[2] to facilitate the functioning of the Secretariat resulted in a blurring of the roles and responsibilities of the Secretariat and the SAPS, which dispersed responsibility and accountability and therefore weakened and inhibited the ability of the CSPS to fulfil its accountability and control functions" (Pelser, 1997: 89-90).

The effectiveness of the CSPS in fulfilling its accountability and control functions is predicated on a review of these institutional arrangements. The major contribution of the CSPS in enhancing oversight, accountability and control of the police service, in its first year of operation, lay in developing trust within the Department of Police, providing the Minister with independent advise and, most importantly, creating the foundation for the development of an effective system of police oversight, control and accountability in South Africa.

Cachalia (2000) conducted a research mainly focussed at exploring the adequacy of the monitoring system used by the CSPS to monitor and hold the police accountable. The study found that the CSPS monitoring system was informed by the New Public Management (NPM) paradigm of performance measurement which tends to focus on internal organisational issues rather that outputs and outcomes. The use of the NPM in the context of policing has its own limitations considering the multi-faceted nature of policing, emphasis on quantitative measures than service measures and it is not clear who the 'customer' is when it comes to policing.

The new political developments in 2000 suggested that the role of the CSPS in terms of civilian oversight and monitoring policing has been substantially diminished. A coherent strategy is required to monitor the police and hold them accountable. The SAPS reform proposals are yet to be fully realised and it is highly likely that the reform proposals in the new *White Paper on Policing (2016)* might not be realised. This argument is made considering that a study was not conducted to decisively diagnosis and determine the factors that contributed to the non-implementation of the reform proposal contained in the White Paper on Safety and Security (1998).

Mistry and Kiplin (2004) took a ten (10) year review to examine the efficiency and effectiveness of the CSPS and Provincial Secretariats in terms of performing their legislative mandate and functions. Mistry and Kiplin (2004: 1) stated that:

> The secretariats believed that they played a key role in monitoring the police for service delivery, transformation, issues of improved representivity, allocation of resources and performance. They also involved themselves in co-ordinating various meetings and projects aimed at crime prevention. But in every case the secretariats appear to suffer from lack of national co-ordination and vision.

[2] Currently referred to as the Department of Police

Omar (2010) analysed the role of the CSPS in the context of the revival of the NCPS as part of police transformation and the suitable institution to lead the implementation of the NCPS. Omar (2010: 11) proposed that:

> The responsibility of overseeing implementation of the NCPS is too large an undertaking for the secretariat: apart from the enormity of the mission, the secretariat lacks the implementing or line function authority over the other departments involved in the NCPS.

There is convergence by the authors regarding the role of the CSPS in terms of police transformation. Furthermore, there are commonalities in the literature by Pelser (1997), Cachalia (2000), Mistry and Kiplin (2004) and Omar (2010) regarding the challenges that negatively impact on the role of the CSPS and Provincial Secretariats in the context of police transformation. The conclusions of the authors have largely been negative regarding the effectiveness and efficiency of the role of the CSPS in police transformation coupled with an acknowledgement of the potential of the CSPS to improve its civilian oversight role.

While the authors make very interesting reading on SAPS transformation, the passage of time and developments require the reassessment of the role of the CSPS. Considering the passage of time in terms of the current literature, it is crucial to make a reflection on the transformation role of the CSPS on the SAPS. There has been new developments from a political, policy and legislative perspectives that necessitate an introspection of the CSPS in terms of its contribution on SAPS transformation for at least the past ten (10) years. What is the progress that the CSPS has made to deal with the historic police transformation challenges as identified by various researches, scholars and bureaucrats? What are the challenges that the CSPS is facing on its crucial role of transforming and making the police accountable? These and various other questions require a fresh perspective especially considering the dynamic nature of policing.

The main contribution of the research is to build academic literature on the CSPS as a civilian oversight agency that has a role to play in SAPS institutional transformation. The research expand knowledge about the role of CSPS from the perspective of SSR and Security Sector Governance (SSG). The research outcomes provide academia, the citizenry, government and policy makers with a broader understanding and appreciation of the role that CSPS plays on SAPS transformation. In their article titled 'keeping the police in check', Mistry and Kiplin (2004: 7) argued that "if real transformation of the SAPS and improvements in service delivery are to occur, civilian oversight should be given greater value and support by political and administrative leaders".

1.4 Conclusion

Despite the statutory and policy framework on institutional transformation on civilian oversight and policing, it appears that SAPS militarisation gained momentum with the reintroduction of the military ranks which seemed to be the final nail in the coffin of instilling militaristic approach to policing and *the war on crime and against criminals*. The critical question to be asked is in respect of the role that the CSPS plays in the militarisation and demilitarisation of the SAPS. The chronology of the research report is that Chapter 2 deals with the literature review and the methodology is covered in Chapter 3. Further, the research findings are reflected under Chapter 4 while Chapter 5 contains the

conclusions, recommendations and research proposal. The data analysis process followed the narrative and thematic analytical approach. Data has been analysed, processed and presented not as a parallel process but as part and parcel of data collection.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

Militarisation and demilitarisation are ideologies that find expression in policing literature and it is very crucial to understand their genesis. Besides the description of these ideologies, the literature will also focus on the following aspects:

a) SAPS reform and current policing trajectory in particular police transformation, militarisation and demilitarisation;
b) Policy, legal and institutional framework for civilian oversight over the SAPS;
c) Current approach to exercising civilian oversight over the SAPS;
d) Interface, power dynamics and authority between the Ministry, CSPS and SAPS; and
e) The theoretical framework of analysis.

2.2 Police Militarisation and Demilitarisation

The concept transformation traces its origin from the term '*transform',* which according to the ninth edition of the Concise Oxford Dictionary means to make a thorough or dramatic change in the form, outward appearance, character, form, nature etc. (Thompson, 1995: 1 481). In an organisational context, transformation is a process of profound and radical change that orients an organisation in a new direction and takes it to an entirely different level of effectiveness. Unlike 'turnaround' (which implies incremental progress on the same plane) transformation implies a basic change of character and little or no resemblance with the past configuration or structure (Business Dictionary, 25 April 2019). Scharf (1999: 1) states that the common imperative in many countries that had military police agencies was to transform police forces from colonial-style paramilitary forces into impartial police services more suitable to democratic State.

Although a distinction between 'transformation' and 'turnaround' has been made, these concepts are interrelated in the sense that a turnaround strategy occurs within the broader transformation process. The SAPS transformation is and remains the broader policy position of the democratic government, but it also required change management strategies to operationalise the transformation process. Furthermore, the SAPS transformation was not designed to occur in isolation but part of the broader transformation of the civil service and global context. Factors such as institutional and operational model, culture and image, systems and processes are critical for transformation especially considering the move from an apartheid to a democratic government.

The necessity of change management in any transformation process is meant to ensure that all stakeholders that are or would be affected by the intended change clearly understand why and how the change would unfold and what assistance will be provided to properly manage the transition (Scharf, 1999). Therefore, for any transformation process to unfold and succeed, a clear action plan and political will is critical, the latter which should extend beyond the framing of the policy framework but include decisive commitment and action on the part of politicians. Failure to narrate clearly the process has the potential to propel institutions that are undergoing a transformation process to fall back to the 'old tricks'. It is acknowledged that the SAPS transformation was and remains a complex process, which

included the amalgamation of the eleven homelands police forces and integration of non-statutory forces, which in itself presented unique challenges some of which are still not addressed. It can be seen that transforming the culture and processes in an institution characterised by various demographic factors including race and gender was not going to be an easy task.

It is evident from the descriptions above that transformation is about a broader and systematic overhaul of an institution to resemble a new desired vision and policy trajectory. It is clear from the policy framework for security reform in democratic South Africa that the SAP needed a clean break from its previous stature that focussed on dealing with insurgencies towards the government instead of providing security services to the citizenry.

The emerging trend on militarisation of the SAPS is and remains outside the scope of the SAPS transformation envisaged in the early 1990s. As a precursor, it is prudent to trace the origins and substance of militarisation as a concept. Militarisation is derived from the ideology '*militarism'*, which refers to "a set of beliefs, values and assumptions that stress the use of force and threat of violence as the most appropriate and efficacious means to solve problems" Kraska (2007: 3). The ninth edition of the Concise Oxford Dictionary (1995: 863) refers to the '*militarism'* ideology as "the spirit or tendencies of a professional soldier; undue prevalence of the military spirit or ideals." These definitions imply that militarisation denotes the process of implementing '*militarism'*.

The military forces across the world are justifiably militarised considering the scope of their responsibilities especially in terms of state security from external threats. Military personnel are trained to defend the sovereignty of their state using the maximum force necessary including killing the 'enemy'. The militarisation of the police appears not to be a desirable option, however, it should be understood that the foundation of military and police power is the same i.e. using force to achieve state objectives (Kraska, 2007). It is an accepted norm that police forces in the world contain some sought of militarism especially in the form of paramilitary units. The emergence of terrorism in the 21st century and transnational crimes had moved police militarisation somewhat down the militarisation continuum. The critical issue is not whether or not the police are militarised, but rather the extent and degree of militarisation looking at the material used, culture, organisational ad operational systems and processes (Kraska, 2007).

The police in the United States of America have to a large extend been militarised post the 2011 terrorist attacks, with the emergence of Paramilitary Police Units (PPUs) like the SWAT teams (Kraska, 2007). In the case of South Africa, the emergence of PPUs like the Tactical Response Teams (TRT), Public Order Policing and National Intervention Unit (NIU) suggests a certain degree of militarisation. However, it not the existence of militarism in the PPUs but the nature of deployments that they engage in and the degree of force used. It is not desirable to utilise PPUs to replace traditional/ordinary policing units, but it appears that police in many countries are engaging in the converse.

The trend is that PPUs in the USA and South Africa for instance are more engaged in traditional policing using the extreme and highly dangerous tactics that are best suited for high-risk incidents like hostage and terrorist situations. The critical question therefore is whether the rise in PPUs is the result of inefficiencies in traditional policing, and how to manage the extent to which militarism is used within the context of a community policing. Unlike the USA, France and South Africa, PPUs in Spain and

Australia were mainly used in rural areas (Berning and Masiloane, 2011). It is therefore evident that militarisation and policing are to a certain extend intertwined considering their use of state power, but the extent of militarisation can only be determined by looking at a variety of factors and not a single factor like change in rank structure.

The concept of democratic policing is aligned to the desire for demilitarisation of the police forces in modern democratic states. A clear distinction and delineation of role is desirable and crucial between the military and police in a democratic state, however, the police reform agenda should not be simplistic due to its potential to have what Steinberg (2014) describes as 'continuities of the old regime'. It appears that there has been many 'continuities' in the SAPS and many scholars of policing are still grappling to understand this trend (Steinberg, 2014). The democratic policing approach is that the police should provide a service to the communities in the context of human rights, rule of law and broader development of democratic states (internal security) while the military focuses on threats from external forces (conquer and defeat the enemy of the State).

There is a blurring of the lines evident in the 21st century with the establishment of paramilitary units in many police forces across the globe including South Africa, USA, France, Germany to name but few. The trends in terms of community policing and the involvement of PPUs is traditional policing operations makes it difficult to fully advance and leverage on the effectiveness and efficiency of community policing (Kraska, 2007). Advocating for democratic policing does not render PPUs redundant, but rather seeks to encourage collaboration and cooperation between the police and community members in law enforcement and crime prevention initiatives. Although the South African government adopted a community policing approach in the early 1990s, Steinberg (2014:173) argues, "what has changed since the end of apartheid is the relationship between policing and political order." The current policing approach in South Africa still has many aspects of the old policing regime mainly because the political players find them useful for their own purposes (Steinberg, 2014).

The execution of the highly militarised police operation in 2012 that led to the Marikana massacre occurred due to political pressure not because of operational necessity. Therefore, the battle for the advancement of democratic policing faces serious challenges if the scope of the PPUs in South Africa and other countries is not closely monitored and its natural scope managed properly. The tendency to revert to 'old tricks' is becoming a reality especially in the context of the growing discontent between politicians and the citizenry pertaining to service delivery. The call to demilitarise the SAPS made by the National Planning Commission (NPC) and reiterated by the Farlam Commission of Enquiry still remains and is yet to be explicit in terms of its form in the context of the broader police militarisation. Although scholars do mention the CSPS within the broader institutional transformation of the security sector, the extent of its role in SAPS transformation is minimal.

In his submission to the Marikana Commission of Inquiry on militarisation of the SAPS and possible implications for public order policing, Burger (2014) looked at the meaning of militarisation in a more substantive manner from a perspective of origin and the work done by Kraska (2007). Kraska (2007 cited in Burger (2014: 3) define "police militarisation as the process whereby civilian police increasingly draw from, and pattern themselves around, the tenets of militarism and the military model". Demilitarisation is the inverse of militarisation considering the description in the Concise Oxford Dictionary (1995: 359) being to "remove a military organisation or forces".

The NPC (2011: 355) states:

> Civilianising a highly militarised and politicised police force was a key objective of transformation immediately after the 1994 elections. It was considered necessary to professionalise the police, establish a rapport with communities, develop confidence and trust in the police and promote community-police relations. Civilianisation of the police required the changing of police insignia, military ranks and force orders. From 2000, the police service gradually started reverting to a semblance of a paramilitary force. This process was formalised with the reintroduction of military ranks in 2010.

Police professionalisation is linked to police transformation focussing on factors like police culture, ethics including adoption of a code of conduct. The professionalisation of the police should enable "the recruitment of competent, skilled and incorruptible officers" (NPC, 2011: 350). It appears from the literature that the extent to which a judgment can be made on whether the SAPS is militarised require an integrated approach looking at various factors than a single factor. Berning and Masiloane (2011: 62) argue that "police militarisation cannot be inferred from a single factor – such as the rank structure – but it is the culmination of many factors e.g. culture, values, socialisation and mode of operation". As Chimamanda (2009) stated, "*beware the danger of a single story*".

In their study of police militarisation, Berning and Masiloane (2011: 1) point out that "one of the challenges that faces post-colonial and post-conflict Africa has been the issue of the transformation and legitimisation of police agencies". Militarisation in this regard refers to "increased use of the military's organisational chain of command, the militant execution of combat operations and the display of high calibre weapons" (Berning and Masiloane, 2011: 62). Militarisation has the potential to ruin instead of "promoting relations between the police and community" (Fremmerlid, 2014: 52). The transformation of the SAPS is "driven by the need to improve police efficiency and effectiveness" (Berning and Masiloane, 2011: 60).

The militaristic nature of policing during the apartheid era, which was characterised by human rights violations, is at the centre of police transformation. The police transformation is a change process used to refocus policing policy goals and objectives from a militarised to a civilian policing approach that appreciates democratic principles and strengthened accountability to a civilian authority. Fremmerlid (2014) pointed out that the introduction of mechanisms [for civilian oversight of security agencies] has therefore become a very important and integral part of transformation. The apartheid South African Police (SAP) did not create a safer space for all people to realise their socio-economic potential, but was a political mechanism designed to *brutally deal* with persons who show dissent towards the apartheid government.

The *White Paper on Policing* (2016: 10) states that "continuous process of transformation must position the SAPS to adapt to a constantly evolving environment, while also responding appropriately to the ever-changing needs of a democratic society". Furthermore, the "discourse on demilitarisation is thus about conduct, and about the police service displaying an unwavering commitment to its constitutional mandate as a civilian police embracing a human rights culture" (*White Paper on Policing*, 2016: 14).

The first Minister of Police under a democratic government (from 1994-1999), F.S. Mufamadi (1994 cited in Burger, 2014: 8-9), made the following remarks with regard to the principles of the quality of service:

> One of the major tasks of the new government relates to the transformation of the police from a force, which had been instrumental in upholding the National Party's apartheid ideology, into a service fulfilling the vision of our new constitution and defending democracy and human rights. Our emphasis on a demilitarised approach to policing is not limited to changing the symbols of militarisation which currently pervade the police organisation – for example, the ranks, insignia and vehicles. Changes to the organised military structure must be accompanied by changes to the culture of the organisation … perhaps one of the most significant challenges facing the new government.

The remarks made by the former Minister E.N. Mthethwa (2010) during the announcement of the new rank system makes for an interesting reading because of its contradicting nature in contrast to remarks made by former Minister F.S. Mufumadi. This considering that the Ministers served the same governing party which has not changed the SSR policy in terms of militarisation.

For instance, former Minister F.S. Mufamadi (1998) remarked:

> We have come a long way in meeting our initial objectives. We have created a single police service from eleven separate police forces and have succeeded in laying the foundation for making this police service accountable and community-oriented. This was achieved by, amongst other things, the demilitarisation of the rank structure of the new police service and the appointment of skilled civilians into key positions in this service (*White Paper on Safety and Security, 1998*: 2)

Former Minister E.N. Mthetwa directly contradicted the abovementioned policy position by stating that:

> We have taken a stance as this Government of fighting crime and fighting it tough. The rank changes are therefore in line with our transformation of the *Force,* in terms of not only a name change but change in *attitude, thinking* and operational duties. This should not be misinterpreted as merely the *militarization* of the police but as part of our new approach of being fierce towards criminals, while lenient to citizens' safety and maintaining good discipline within the Force (11 March 2010 cited Burger, 2014: 11).

The remarks of E.N. Mthethwa show that the intention in 2010 was more than just a change in rank but to militarise the SAPS in its true sense and meaning (see Kraska, 2007). The remarks by E.N. Mthethwa suggested militarisation of the SAPS and therefore a regression from the articulation of the *White Paper on Safety and Security* (1998).

The NPC (2011: 356) noted:

> The police will earn the respect of communities if they are efficient and effective. Military ranks might create fear, but they do not instil respect. Critically, they do not lead to a greater rate of arrests and convictions. Instead, militarisation can contribute to increased violence by police and undue heavy-handed conduct, deterring effective investigations.

The NPC recommended the *immediate* re-civilianisation and demilitarisation of the police service without an explicit definition of what constitute demilitarisation. What is evident though is that the NDP directly links demilitarisation with historical brutality of the police, transformation and '*civilianising the police'*. In giving context for police civilianisation, the NPC (2011: 355) emphasises that "it was considered necessary to professionalise the police, establish a rapport with communities, develop confidence and trust in the police and promote positive community-police relations".

The demilitarisation of the SAPS as part of the reform agenda in the South African security sector suggests that SAPS members must understand the rule of law in discharging their constitutional mandate. The nature of an untransformed or militarised police is that it tend to focus on the elimination of criminals from society and waging war against criminals as a strategy to crime prevention and detection as seen from the remarks of former Minister E.N. Mthethwa. This assertion finds resonance in Berning and Masiloane (2011: 60) who argued that the militarisation of the police tend to become "the main line of defence that is engaged in a '*war on crime'*, a short term approach that sacrifices the institutionalisation of professional policing and designed to suppress and conquer the enemy". On the other hand, "in many respects, the police played a military role, crushing popular protest and engaging in South Africa's domestic civil war, as well as being deployed in support of white regimes in independence struggles in neighbouring states" (Rauch, 2004: 9).

The arguments advanced by Berning and Masiloane (2011), and Rauch (2004) resonate well with the killing of civilian protesters by the police as seen at Marikana and other public protests across South Africa. Furthermore, Berning and Masiloane (2011), and Rauch (2004) look at policing from a social perspective meant to maintain law and order. "Police training has been systematically demilitarised and the police are now also trained in human rights issues and the use of non-lethal force" (Cawthra, 2005: 102). However, some policing approaches of the SAPS suggest that police training is not yielding the expected outcomes in terms of changing policing culture and ethos.

According to Berning and Masiloane (2011: 60), "policing is regarded as a social function to maintain order in society rather than a military law enforcement operation that is designed to eliminate criminals in society". Furthermore, "demilitarisation meant the changing the style of policing to make it less militaristic, less hierarchical and less authoritarian – moving towards a community based style of policing rather than a colonial style of policing" (Berning and Masiloane, 2011: 66).

The police have to accept the democratic principles in discharging their constitutional responsibilities (Cao, Huang and Sun, 2015). According to Pelser (1997: 70) the "political

prerogative of improving the credibility and legitimacy of the police, which provides the basis for the collaborative institutional arrangements made in the Department to facilitate the role of the Secretariat". The demilitarised police is that which respect human rights, recognise constitutional and democratic principles in their policing approach, respect civilian authority and positively contributes to the socio-economic and political stability of a country and its people.

The militarisation of the police "negates professionalism and undermines individual accountability because [police] members often turn a blind eye to irregular or illegal activities of their fellow [police] officers and colleagues" (Berning and Masiloane, 2011: 65). According to Faull and Rose (2012: 2), "the idea of police professionalism has altered somewhat in most modern democratic states, where police agencies are supported by codes of ethical behaviour, professional policies, formal training and career development". The gradual reintroduction of hard-core policing approaches is perhaps devoid of a community-centred policing as a pillar to police demilitarisation.

The concept of democratic policing refers to a policing approach characterised by respect for human rights and adherence to democratic principles in discharging policing responsibilities. The police reform agenda shows the potential "to promote democratic policing [and] new policing ethos that allow for a capable, competent, and democratic policing workforce" (Joplin and Marwah, 2013: 126). Faull and Rose (2012: 3) stated that to "have any impact on social order, the police must be widely accepted as legitimate by a citizenry, together with the state authority and its laws".

The rank structure is but just a mechanism to ensure command and control, and not a holistic approach to police demilitarisation. The adoption of a militaristic rank structure in 2010 may be a drawback in the police transformation efforts and may further contribute to the animosity and distrust between police and communities. Although there is more emphasis on the military rank structure, it cannot be used as the sole yard stick from which to pass judgement on whether or not SAPS is militarised.

2.3 Civilian Oversight of the SAPS

The ninth edition Concise Oxford Dictionary (1995: 1 249) provide the meaning of '*secretariat'* as "*a permanent administrative office* or department, especially a government one"; "its members or premises"; "the office of secretary". Section 208 of the *Constitution* establishes the CSPS through national legislation *to function under the Minister* (emphasis).

Mokotedi and Koitsioe (1997) argued that the relevance and value of the CSPS will remain considering the fact that SAPS is empowered to use force where necessary, which sometimes can infringe on other people's human rights. The function to draft policing policy and legislation for implementation by the SAPS provides the CSPS with a special opportunity to influence and lead SAPS transformation.

According to Fremmerlid (2014: 62) the concept of civilian oversight is concerned with "the involvement of people from outside the police taking a role in holding the police answerable and responsible for their actions". In the South African context, the emphasis on civilian oversight

"stems from the fear of the police misusing their mandated power as they had done in the past" (Fremmerlid, 2014: 57).

In addition, F.S. Mufamadi (1998) announced that "we have also established functioning mechanisms of civilian oversight and channels for community participation" (*White Paper on Safety and Security,* 1998: i). The mechanisms of civilian oversight that the Minister referred in the aforementioned statement include the CSPS and IPID. These statements by the Minister gave a clear and unequivocal direction in terms of the intentions of the democratic government pertaining to the fundamentals of policy shift as it regards the nature and character of the police service.

The vision of F.S. Mufamadi may have been derailed because S.V. Tshwete[3] and J.S. Selebi[4] "made no attempt to understand oversight and questioned the need for an institution outside of the police to advise them" (Omar, 2010: 5). The downgrading of the role and functioning of the CSPS from the early 2000 appear to have strictly limited the ability of the CSPS to influence policing and institutional policy (Rauch, 2004). Omar (2010) appears to concur with the argument by Rauch (2004: 4) in that the role of the CSPS was seen as *superfluous* and its functioning curtailed to the extent that the police were allowed "to determine policy and policing priorities". This is also expressed during the consultations towards the reorganisation of the CSPS where it was found that:

> The Minister's role in determining policy and priorities as well the oversight and monitoring of policies and priorities prior April 2009 was to a large extent usurped by the police to the extent that the current situation is now more reflective of the pre 1994 period where policing in South Africa was characterised by weak accountability and a lack of civilian and Ministerial input into police (CSPS and APCOF, 2010: 5).

The CSPS was established in mid 1990s to amongst others "provide support and advise to the Minister. There are observable demographic changes in terms of representation on race and gender, women in the top management of the SAPS, changes in police training curriculum and corporate image. However, these changes do not necessarily reflect the holistic approach of the SAPS transformation trajectory because of the multi-dimensional nature of police militarisation which include police culture, ethos and commitment to constitutionalism. Above all, the SAPS transformation trajectory is supposedly a living process that require continuous refinement to improve policing service delivery. F.S. Mufamadi (1996 cited in Pelser, 1997: 72) emphasised that "when fully established, the [CSPS] will be a source of support for police leadership ... [and] should ideally be seen as supportive to decision-making and management by police leadership".

Due to the historic challenges that the CSPS faced, the Ministry of Police took a decision to reorganise the CSPS in order to strengthen its functioning and "relocate policy and law reform back to the CSPS as a key civilian support for the Minister" (CSPS and APCOF, 2010:5). The reorganisation of the CSPS was centred around the following internal challenges:

[3] Minister for Safety and Security from 1999 to 2002
[4] SAPS National Commissioner from 2000 to 2009

a) Lack of strategic direction and planning;
b) Historical lack of performance and inability to meet their mandate;
c) Lack of capacity;
d) Lack of leadership and absence of management controls;
e) Lack of quality assurance; and
f) Need to define and clarify relations between the SAPS and the Secretariat (CSPS and APCOF, 2010:5).

The external challenges related to the SAPS were as follows:

a) Lack of seriousness with which Secretariat was taken;
b) The need to recapture the role of civilian oversight;
c) Addressing issues of having SAPS as Cost Centre for the Secretariat;
d) Reliance on good will for access to information; and
e) Reluctance by SAPS to change status quo (CSPS and APCOF, 2010:5).

Furthermore, the "lack of transformation and accountability, corruption, division and conflict in the police" (CSPS and APCOF, 2010:5) was amongst the general policing challenges in South Africa that had to be considered in reforming the CSPS. In the articulation of the CSPS vision, the transformation of the SAPS was also included and contained in the final vision statement; "a transformed and accountable police service that reflects the values of our developmental State" (CSPS and APCOF, 2010:11).

The CSPS was proclaimed as a national department through *Government Gazette No. 37151, Vol. 582* dated 13 December 2013, and is currently situated in Pretoria Central Business District in a building adjacent to that occupied by the Minister and SAPS. The CSPS comprises of four core programmes i.e. Policy and Research, Legislation, Intersectoral Coordination and Strategic Partnerships, and Civilian Oversight, Monitoring and Evaluation.

As at 31 March 2018, the CSPS had an approved staff establishment of 150 personnel of which 139 posts were filled. A total of 76 posts were allocated to the core programmes of which 66 posts were filled. A total of 114 personnel are within the highly skilled to senior management bands. During the past four financial years, the audit outcomes on the performance of the CSPS improved from two consecutive qualified audits in 2014/15 and 2015/16, recorded an unqualified audit in 2016/17 and ultimately a clean audit in 2017/18 financial year. While noting the clean audit outcome in 2017/18, the fundamental question is whether the CSPS is delivering on its mandate. This argument is relevant considering the audits dealt with whether the CSPS is *doing things right* and not whether the "*rights things are done*".

Mistry and Kiplin (2004) argue that the CSPS and Provincial Secretariats are not functioning as expected and called for the Minister and Secretary for Police Service to reassert itself and provide more direction. "It is apparent that the necessary skills and understanding of policy, monitoring and evaluation functions is severely lacking in some secretariats" (Mistry and Kiplin, 2004: 2) and amongst the contributing factors to the failure of the CSPS to fully discharge its statutory mandate. Furthermore, the argument by Mistry and Kiplin (2004) for the need to acknowledge the value of the

CSPS and Provincial Secretariats and the need for political and administrative support is crucial towards improving service delivery. The CSPS' peripheral functioning seems to prevail despite the *White Paper on Policing (2016)* and *Civilian Secretariat for Police Service Act, 2011(Act No. 2 of 2011).*

The dysfunctional state of the CSPS prompted a process of resuscitation by Parliament through the passing and enactment of the *Civilian Secretariat for Police Service Act, 2011*, which provides the following:

a) Section 5: the CSPS exercises civilian oversight over the police service; give strategic advice to the Minister in respect of developing and implementing policies;
b) Section 6: the CSPS advise and support the Minister in the exercise of his or her powers and the performance of his or her functions;
c) Section 6(2) (ii): compels the CSPS to establish competencies and capabilities in its operations in order to provide policy advice to the Minister through the Secretary, exercise its mandate and perform all the functions related thereto; and
d) Section 9: the CSPS must do all that is reasonably necessary or expedient to perform the functions of the Civilian Secretariat properly.

Literature relating to the determination and assessment of key competencies for personnel in the CSPS to enable them to discharge the legislative mandate and effectively contribute to the transformation of the SAPS is scares. Notwithstanding, Ismail (1996) conducted a research regarding the critical success factors and the key competencies needed by the senior management of the Defence Secretariat. While the Defence Secretariat and CSPS operates in different ministries in the security environment, their establishment, stature and role within the security cluster are in essence similar if not the same in terms of policy formulation, monitoring and implementation as part of the civilian oversight and control mechanism over security institutions.

The research by Ismail (1996: 14) assessed twenty-six (26) competency areas for the Defence Secretariat in terms of importance, performance and the need for training aimed:

> To determine the critical success factors in the establishment of the Defence Secretariat and its ability to function effectively, and determine the key competencies that will be needed by senior staff members of the Defence Secretariat, to enable the mapping of a learning process for training and development of personnel in the Secretariat.

All performance areas that related to the core mandate of the Defence Secretariat were found very important majority of which were found to be poor in terms of performance. Overall, only 23.1% of the competency areas were found to be low while the rest of the competency areas ranged from high to very high in terms of training needs. This scenario necessitated a heightened need for training of personnel in the Defence Secretariat, hence the conclusion that "if the Defence Secretariat was to succeed, it had to develop and improve the competence of its staff" (Ismail, 1996: 159). The same may be applicable for senior personnel in the CSPS.

The posture of the CSPS over a period of time in terms of civilian oversight suggests a dependency on the character and will of individual Ministers of Police (Cawthra, 2005 and Omar, 2010). The literature point out that the CSPS has had its successes and misfortunes in terms of playing its

statutory mandate. Some of the contributing factors may have occurred by design while others were a deliberate attempt by powerful politicians and police leadership to relegate the CSPS to the periphery in order to possibly avoid accountability and transparency.

Power and authority is often used as instruments to persuade others to consent to and support a public policy position. The exercise of public power is more to do with influence than being coercive in approach. Scruton (1982: 224) notes that influence "involves affecting the conduct of another through giving reasons for actions short of threats". Therefore, influence can be described as the art of negotiating and persuading others or a group of people to follow a particular direction. Authority is another form of power conferred by policy or legislation and vested to an institution, functionary or person(s) to perform certain activities and/or direct others to act in a particular manner consistent with adopted rules and procedures (McLean, 1996). Whether the CSPS has the power and/or authority to influence the transformation trajectory of the SAPS, was a matter that had to be examined in the context of the research problem.

The CSPS derives its legal and policy authority from *the Constitution* and *Civilian Secretariat for Police Service Act, 2011*. These are crucial instruments of public policy that seek to instil civilian authority to lead the SAPS in redefining a policing culture commensurate with the principles of a democratic government. Hogwood and Gunn (1984: 23-24) defines public policy as "comprising a series of patterns of related decisions to which many circumstances and personal, group and organisational influences have contributed". The *White Paper on Policing (2016)* serves as the crucial statement of intent by the political actors aimed to address challenges of policing and transformation.

The *White Paper on Policing* (2016: 37) states:

> The Civilian Secretariat for Police will, through the Secretary of Police provide support to the Minister in terms of the proper management of the budget for the Department of Police. Furthermore, it is responsible for monitoring the allocation and expenditure of the budget in support of the Minister and the Minister's policy priorities.

Rauch (2004: Note 14) pointed out that "the Secretariat was created with the express purpose of providing civilian input into policing policy, and more specifically into the process of police reform". Further, Cawthra (2005: 101) pointed out that "a civilian Secretariat for Safety and Security was provided for in the constitution and established in 1994 at national headquarters to deal with policy, budgeting and political accountability issues". Omar (2010: 5) argued that, "institutional reforms and the delineation of roles and functions outlined in the White Paper have not been fully implemented" and not yielding the envisaged results in terms of police demilitarisation and professionalisation. It is interesting that the CSPS appears to have a strategic role in SAPS transformation but yet there are contradictions in terms of whether that role is effectively performed towards the transformation of the SAPS.

2.4 Political Responsibility of the Minister on the SAPS

Section 206(1) of the *Constitution* provides that a member of the cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments

and taking into account the policing needs and priorities of the provinces as determined by the provincial executives, and Section 207(1) provides that the President appoints a woman or a man as the National Commissioner of the police service, to control and manage the police service.

The *White Paper on Policing* (2016: 35) states "the Minister of Police is responsible for policing in the Republic … supported by the Secretariat for Police, in giving effect to his/her responsibilities and obligations". Further, the *White Paper on Policing* (2016: 41) states that, "Minister of Police is the custodian of this *White Paper on Policing* and tasks the National Commissioner of Police with its implementation and the Secretary of Police with oversight over its implementation, impact and review". At the centre of the police reform agenda was professionalisation and bringing civilian authority to lead the SAPS from a policy and strategic perspective (Berning and Masiloane, 2011, Faull and Rose, 2012).

The *Civilian Secretariat for Police Service Act, 2011* provides as follows:

a) Section 7(1): the Minister must, subject to the laws governing the public service, appoint a person as Secretary for the Police Service; and
b) Section 11(a-c): the Minister may remove the Secretary for the Police Service from office is the latter is unable to perform the duties of the Office of the Secretary for Police Service on account of either misconduct, ill health or inability or a combination of these factors.

Four different Ministers of Police have been appointed from 2014 the latest being B.H. Cele appointed in February 2018. The National Commissioner seconds all support personnel to the Ministry of Police from the SAPS fixed establishment, and the CSPS does not play any role in this regard. The political responsibilities of the Minister towards the CSPS and SAPS are clearly articulated in policy and legislation. The issue that had to be ascertained is the exercise of these responsibilities and powers in the context of civilian oversight and transformation of the SAPS.

2.5 Governance of the SAPS transformation

"Good governance leads to good management, good performance, good stewardship of public money, good public engagement and, ultimately, good outcomes" (Independent Commission on Good Governance in Public Services, 2004: v). The concept of good governance is about the development of systems, structures and setting of standards for ethical leadership, accountability and transparency to support the delivery of public value. Therefore, good governance requires leaders and employees alike to develop, adopt and uphold corporate and ethical standards that guide them on how the organisation operates in both the micro- and macro environment.

The *White Paper on Policing* (2016: 10) states that "discipline and integrity are cornerstones of democratic policing and it is thus incumbent on police leadership and management and oversight organs to ensure that the organisational factors that give rise to persistent problems are addressed through sound governance".

As Booysen (2017: 12) puts it, power connotes "a condition that exists where the role player in power exercises that power to shape the other's preference". In the study of security governance in South

Africa, Cawthra (2005) observed that the SAPS and political leaders perceived the role of the CSPS as an impediment to the fight against crime. This resulted in a substantial decline of the powers and influence of the CSPS including the assumption of civilian oversight functions by the SAPS. The consultations during the process of reorganising the CSPS revealed that the institutional reform and delineation of roles and functions outlined in the *White Paper on Safety and Security, 1998* … were not fully implemented … instead the role of both the Minister and the CSPS were eroded in favour of the SAPS (CSPS and APCOF, 2010:5). According to the *White Paper on Policing* (2016: 19-20) "the state institutions involved in the sound governance of policing include Parliament, the Civilian Secretariat for Police (CSP), Provincial Secretariats, Independent Investigative Directorate (IPID), the DPCI Judge and relevant Chapter Nine Institution".

The literature on good governance highlights that ethical leadership and employees are required to develop, adopt and uphold good corporate and ethical standards that guide them on the effective implementation of public policy, programmes and projects. Oversight institutions for SAPS transformation are clearly indicated in the *White Paper on Policing* to inculcate and strengthen a culture of transparency and accountability in the SAPS through good governance. Considering the power relations between the SAPS and CSPS, and the resistance by the SAPS to subject to civilian oversight, it is prudent to ascertain the level, understanding and application of the principles of good governance on SAPS transformation.

2.6 Theoretical Approach to Research

Amongst the fundamental aspects to understanding the role of civilian oversight institutions operating in the security sector is to analyse the policy and legal framework for SSR that gives rise to their existence. The SSR policy and legal framework designed by the South African democratic government include the *South African Police Service Act, 1995, Constitution, White Paper on National Defence for the Republic of South Africa (1996), Defence Act, 2002 (Act. No. 42 of 2002), Civilian Secretariat for Police Service Act, 2011, White Paper on Safety and Security (2016)* and *White Paper on Policing (2016).*

The statutory and policy framework that informs the establishment of the CSPS was critically interpreted as the point of departure. Berning and Masiloane (2011) show that civilian police agencies are driven by the social contract between police and citizens. The police reform agenda happens in the social context considering the move from militaristic to community-policing approach. This interpretative framework of analysis centred on social reality of the power relations, political dynamics, authority and autonomy on the functioning of the CSPS based on the individual experiences of the research participants. The social context of the interpretations was linked to the constitutional imperatives of democratic policing, respect for human rights and professionalisation of the police.

The capacity, skills and expertise in the CSPS were analysed in the context of its functioning and contribution to the SAPS reform agenda. Descriptive analysis of these challenges were crucial in understanding SAPS transformation in terms of the current focus on hard-core policing, crime combatting and elimination of criminals from society. Overall, the institutional policy analysis was central to analysing the role of the CSPS in transforming SAPS.

2.7 SSG Framework

The SSG framework that seeks to ensure improved accountability and effectiveness regarding provision of security services guided the research approach. Governance of security institutions underpinned the formation of a democratic South Africa, which is considered a useful approach for reform of other security sector processes (Cawthra, 2005).

As DCAF (2015: 2) puts it, "good SSG means that the security sector provides state and human security, effectively and accountably, within a framework of democratic civilian control, rule of law and respect for human rights". Security institutions in South Africa have to be seen from a historical perspective especially in terms of their character and purpose during the apartheid government. The dawn of a democratic government in South Africa necessitated the need to bring about reform on various aspects including the security sector with emphasis on SSG.

The need for SSG is mainly propelled by the desire to promote the rule of law, transparency, accountability, effectiveness, efficiency, participation and responsiveness in the transformation of the security sector towards the delivery of public value (protection). Notwithstanding these underlying principles, decisive and visionary leadership appears central to effectiveness and efficiency of SSG.

The SSG focusses on the creation of policy framework, institutions, structures, systems and processes to ensure effective transformation of security institutions. In Mongolia, just like in South Africa, the 1992 Constitution is considered "a solid legal framework for democratic reforms in the security and defense sectors" (Khishigsuren et al., 2017: 27).

Institutions like the Executive, Parliament, Civil Society, National Security Council, Independent Oversight Institutions (e.g. CSPS, IPID, etc.), Independent Media and Judiciary are amongst the crucial institutions for SSG, which serve as checks and balances. This is similar to the SSG institutions cited by Khishigsuren et al. (2017) in the study titled 'Security Sector Governance in Mongolia-Almanac' and consider them crucial to ensure human rights and freedoms. The CSPS Strategic Plan of 2015-2019 refers to the *White Paper on Policing, 2016* as the appropriate policy framework for police reform in South Africa. The Strategic Plan indicates that "the *White Paper on Policing, 2016* provides a framework for reframing the role and functions of the CSPS". Furthermore, "the CSPS is critical to supporting the Minister of Police in the execution of his political responsibilities in relation to the transformation of the SAPS" CSPS, 2017:9). Therefore, the strengthening and repositioning of the CSPS through legislative powers and capacity will contributes to the transformation of the SAPS.

The SSG cannot be dealt with in isolation but as part of the fundamental aspects of SSR. The SAPS is expected to provide policing services in an effective manner and account to a civilian authority in the form of the Minister, Parliament and the public in general. Sometimes the governance institutions are not effective in their respective roles to strengthen discipline and good governance in the security sector.

The need for transparency and openness regarding the provision of protection and security services is based on the historical nature of security institutions as a closed-community that often resist scrutiny by external institutions like independent oversight and civil society. As Khishigsuren et al. (2017) puts it, "due to the specific and professional nature of the work carried out by organizations responsible for national security their activities could not be fully open and transparent to the public. There is a high risk that the decisions made behind closed doors might affect and violate human rights and public interests, thus the media's role as a public watchdog is important" (145). The SSG advocates for accountability, participation and responsiveness within the security sector. The lack of information from the security sector institutions has a high potential to derail the effectiveness of SSG.

The basis for SSG is creating a linkage between the security sector institutions and civilian authority to ensure that security services are provided within the ambit of democratic constitutionalism. Considering the historic character of the security institutions in South Africa, SSG becomes crucial to ensure that the SAPS does not revert to militarisation, and are managed, controlled and held accountable by civilian authorities and institutions. The CSPS as an institution with an independent character towards the SAPS could create a space for coordination, cooperation and collaboration between the SAPS and government institutions, Chapter Nine Institutions and civil society for effective SSG.

2.8 5C Protocol

Public institutions (e.g. CSPS and SAPS) have legal obligations to implement policy and ensure delivery of public value in an efficient, effective and economical manner. The 5C Protocol (hereafter referred to as the Protocol) is an approach that can be utilised for the purpose of *policy implementation* throughout the policy cycle (policy conceptualisation, development, implementation, monitoring, evaluation, review). This approach was necessitated by the lack of service delivery by public institutions and complexity of policy implementation. Consequently, a need arose to advocate for coherence, convergence and integration for effective policy implementation and service delivery (Brynard, 2005).

Policy implementation can be associated with a scenario where a deliberate action (process) is taken by public or private individuals and acted upon to deliver on policy objectives towards ensuring improved socio-economic and political landscape (Hogwood and Gunn, 1984; Ninth edition of the Concise Oxford Dictionary, 1995; Brynard, 2005 and Cawthra, 2005). Policy implementation is not static but rather a dynamic and ongoing process characterised by successes, failures, trials, lessons, and perseverance. The attitude required is for public institutions not to lose focus on the ultimate policy objective and goal.

Now that clarity is given regarding what policy and implementation connotes, the focus turns to what the Protocol entails. The central tenet of the Protocol is the integration of Content, Context, Commitment, Capacity, Client and Coalitions (or networks) to ensure effective policy implementation and thus delivery of public services.

The content and context focus on the nature of the policy (distributive, regulatory or redistributive) and the historical functioning of implementing agencies. Commitment and capacity is concerned with the will and support of role players including resourcing institutions to enable policy implementation. It would be naïve not to seek collaboration with all stakeholders otherwise the possibility of civil disobedience would be high. Policy implementation affects social circumstances of people, and therefore crucial that affected parties form part and contribute at various stages in the policy cycle. Communication is central to effective policy implementation. It is important for the intended recipients of policy deliverables to be made aware about the policy goals and objectives and be kept abreast about the progress and outcomes in the language they understand.

The policy and legal framework for SSR in South Africa integrates aspects of distributive, regulatory and redistributive policy. This is considering the historical character and nature of security sector institutions including the SAPS which was characterised by brutality and use of excessive force towards civilians along racial lines. The South African Police before 1994 served the interest of minority grouping, reported and accounted to themselves. The SSR brings equity in the delivery of policing services, defines the parameters for policing in a democratic government and distribute power across various role players, which include the Minister, CSPS, IPID and civil society.

From a commitment and capacity point of view, political will of Parliament and Executive, and support from civil society, independent oversight institutions are crucial for SAPS transformation. Furthermore, it is imperative to avail resources (budget, human, technology) to enable the implementation of policy otherwise it only becomes an idea that cannot be acted upon. In addition, leadership, commitment and willingness of all stakeholders are crucial intangible considerations for policy implementation.

The fundamental aspect of the research is the implementation of public policy. The establishment of the CSPS is a consequence of the SSR policy in South Africa which advocate for civilians to lead the reform of security institutions like the SAPS. The study by Cawthra (2005: 104) has indicated "that neither the defence nor safety and security secretariats are achieving in full their objectives as provided for in the constitution". Therefore, the role and functions of the CSPS are exercised within the context of the policy and legal framework for SSR.

The literature suggests that in the main, the dysfunctional state of the CSPS, policing policy uncertainty on militarisation/demilitarisation, leadership failure, Minister's not understanding their roles and relationship with CSPS, deliberate '*capture*' of the Minister by the SAPS leadership are a consequence of failure to implement public policy. This resonates with the argument advanced by Cawthra (2005) that the adoption of policies that are not tailored to the specific conditions in South Africa, lack of political will and inadequate availability of resources (human, capital, technological, organisational) are the most contributing factors to failure in policy implementation. Furthermore, Lunn (2015: 12) states that "democratic oversight of the armed forces and security services is now a well-established foundation for the development of stable, free and prosperous societies ... However, its implementation is always evolving in response to internal and external pressures".

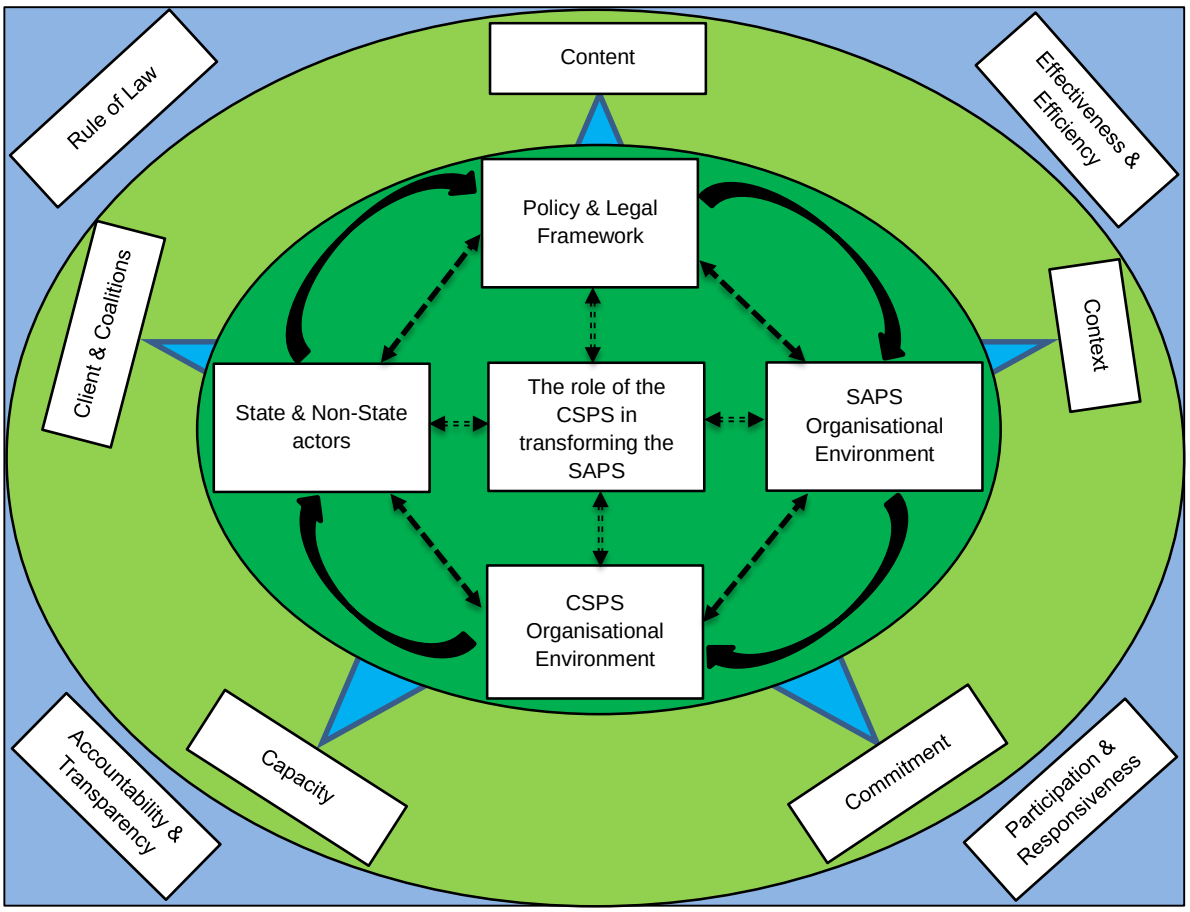
Brynard (2005: 662) found the Protocol to be "a useful vehicle for making sense of these twists and turns in policy implementation". Indeed, the Protocol was useful for assessing the policy

framework for SSR looking at integration between institutional governance and policy implementation. Furthermore, the Protocol provided an opportunity to consolidate and link policy, strategy, operations and service delivery to ensure improvement in terms of SAPS transformation and the broader reform in the policing environment.

Application of the SSG and 5C Protocol

The elements of both the SSG and Protocol were not applied in isolation but as an integrated unit to assessing the effectiveness of policy development, implementation and review as seen in Figure 3 below.

Figure 3: Three dimensional Integrated Theoretical Research Approach



(Source: Mafologela, 2018)

SSG approach assisted in analysing the political reforms, reorientation of the policy on SAPS transformation and establishment of the CSPS as an oversight institution. The concentration of these approaches were on the organisational and performance environments of both the CSPS and SAPS as part of institutional policy implementation, and the contributions of other role players in the transformation of the SAPS.

The CSPS Strategic Plan of 2015-2019 provides reflections with regard to all the 5Cs. The content and context is informed by the legal and policy framework given under the strategic overview

section which include the *Constitution, White Paper on Policing, Civilian Secretariat for Police Service Act, 2011* and *Independent Police Investigative Directorate Act, 2011*. Some of the key challenges expressed in the Strategic Plan are the inadequacy of capacity, skills and access to SAPS information, which hamper the effective functioning of the CSPS. A variety of stakeholders and forums have been highlighted including the SAPS, IPID, Parliament, Provincial Secretariats, other government department and non-state actors e.g. civil society, academic and research institutions.

The Protocol was used to analyse the implementation of the SSR in particular roles, power dynamics, authority and influence of the Minister, CSPS and SAPS. This approach also assisted to ascertain the extent to which the policy and legal framework has unfolded, what challenges exist and what is needed to improve transformation of the SAPS into a civilianised and professional institution.

Furthermore, effective policy implementation is also reliant on various factors which include good policy conceptualisation, planning and budgeting, development of appropriate strategies, conducting feasibility studies and availability of resources. The Protocol was also used to analyse the capacity, capability, leadership and management aspects of the CSPS in the context of exercising civilian oversight functions, and providing advice to the Minister within the broader SSR.

2.9 Application of the theoretical research approach

The qualitative research allowed for the sourcing of primary data from research participants coupled with secondary data from a variety of documents which assisted to draw trends, themes, interpretations, and narrating a construct that provide some perspective on the role of the CSPS in SAPS transformation.

The multi-dimensional approach in Figure 3 above guided the research focussed on working relationships between the Minister, CSPS, SAPS and other institutions that have a role in SAPS transformation. The working relationships were looked at from the perspective of scope, power dynamics, support and coordination to ensuring the effective transformation of the SAPS. From a policy implementation perspective, the discussions were centred on the political context of SSR, adequacy of the policy content, political will and commitment by all stakeholders including the policy implications on the scope and powers of the Minister, CSPS and SAPS of their respective influence and contribution to SAPS transformation.

The posture of the SAPS on civilian transformation was analysed in terms of accountability to Parliament, Minister and the citizenry, and the transparency of the SAPS regarding its functioning. The effectiveness and efficiency of the transformation of the SAPS was discussed and analysed focussing on the Minister's role from a policy determination perspective.

The role of the CSPS regarding policy development and civilian oversight was discussed and analysed in the context of power relations, capacity, capability and influence including the contribution of SAPS to the police reform agenda. The capacity and capability (skills, expertise,

authority, power and resources) of the CSPS was analysed to ascertain its ability to perform the civilian oversight mandate on the SAPS.

The transformation of the security sector in South Africa occurs within the context of the SSR considering the historical context of moving from a militant to a civilianised SAPS. The discussions and analysis around police militarisation and demilitarisation focussed on the policy context, content and political commitment for effective policy implementation. The perspectives on political reform and civilian control of security institutions focused mainly at the political will of the Minister to lead SAPS transformation.

The institutional arrangements for SAPS transformation were discussed and analysed in the context of the need for transparency, accountability and good governance being the critical pillars for effective policy implementation. Noting that the SAPS transformation cannot be dealt with in a singular trajectory, the nature of working relationship between the Ministry, CSPS, IPID and SAPS were discussed in terms of the need to have institutions, structures and systems that support SAPS transformation from both SSR and SSG perspectives.

2.10 Conclusion

The militarisation of the SAPS appears to have undesired effects as witnessed and observed in the history of South Africa. The high levels of crime and criminal conduct of SAPS members have the potential to strengthen the discontent between communities and police, and may hamper the integrated and community centred approach to crime prevention and policing.

South Africa had a good transition in terms of the changing of guard from self-control to civilian control of the police. The question that has arisen is the extent to which the police has progressed or regressed in the transformation trajectory. The observations of the NPC in Chapter 12 of the NDP suggest a different trajectory especially with regard to militarisation of the police.

The literature provides good reflections and arguments on the concepts of militarisation, demilitarisation and the role of the CSPS in shaping the SAPS reform agenda. The underlying questions though are: why does it appear that the SAPS is reverting back to a militaristic policing approach; what contribution(s) is/are made by the CSPS in this worrying policing approach; why is the flip-flopping of policy position on police militarisation and demilitarisation; is the CSPS an accomplice, complacent or complicit in these policing policy shifts? The study examined these questions as part of articulating the role of the CSPS in SAPS transformation process using the interpretivism/constructivism paradigm, SSG, SSR and 5C Protocol as the theoretical framework of analysis.

CHAPTER 3: METHODOLOGY

3.1 Research Questions

The interrogation of the role of the CSPS in SAPS transformation required an assessment of the policy and legal framework, capacity and resource allocation. The research questions that were post to the research participants are as follows:

a) What role does the CSPS play to institutionally transform the SAPS into a demilitarised police agency?
b) What are the powers of the CSPS in shaping the transformation trajectory of the SAPS?
c) What is the available capacity in the CSPS in terms of composition and expertise to drive SAPS institutional reform agenda?
d) What is the role that SAPS plays in the development of police transformation policy and trajectory?
e) What role and influence does the Minister have on the functioning of the CSPS in terms of SAPS institutional transformation?

3.2 Research Methodology

As Wagner, Kawulich, and Garner (2012:126) put it, qualitative research;

> Strives to create a coherent story as it is seen through the eyes of those who are part of that story, to understand and represent their experiences and actions as they encounter, engage with, and live though situations, and provides richness and depth of explorations and descriptions of data.

The qualitative approach was used as the methodology in the sense that research is analytical, exploratory and descriptive in nature. The qualitative research methodology was chosen because it allows the research to generate descriptive analysis focusing on the appreciation and interpretation of individual and/or group perspectives. In essence, the qualitative approach enable the soliciting of views of research participants from various historical, demographic, social and cultural contexts.

3.3 Methods, Techniques and Instruments

An open ended questionnaire that included the research questions was designed to conduct face-to-face semi-structured interviews with fifteen (15) research participants (see **Appendix A** for the questionnaire and **Appendix B** for the list of research participants). The research participants were identified based on their professional profiles, experience, expertise and understanding police reforms. The profile of the identified research participants included policy makers, civil servants, academic researchers, bureaucrats and civil society players within the policing, safety and security environment.

Securing interviews with research participants was very difficult considering their own commitments, time, location and interests. The research participants had to decide the time and location of the interview. All the interviews were conducted as scheduled without fail which included negotiations with the employer about rescheduling of other work commitments. There were negotiations with the employer to renegotiate and rearrange work commitments in cases where there were clashes with the times proposed by the research participants. This was easily dealt with considering the interests that the CSPS has on this research study.

Majority of the research participants were able to provide their views on all the thematic issues with the exception of two who were chosen to provide insights on specific themes. Some of the identified participants were not available for interviews and were replaced with participants with similar professional profile and relevant expertise. All participants were asked the same research questions in the same thematic manner and the discussion that follow were based on the individual participants' responses. The role of the researcher was mainly to guide the discussions and provide clarity (where necessary) in the context of the thematic issues and responses from the participants, without debating preconceived idea(s) on own experience. In essence, the discussions with the research participants were based on the issues emanating from the literature review and the responses of research participants.

The thematic issues were shared with the research participants in advance before conducting the interview so that they have a sense of themes to be discussed. This approach strengthened the quality of responses solicited from the research participants over and above the fact that other participants were well versed with the thematic issues due to their direct engagements with same in their professional life. Because there was no time for a second interview, all interviews were recorded (with the verbal agreement by the research participants) to ensure that every aspect of the discussions is secured for retrieval and accurate reference. In addition, a variety of secondary material including statutes, policies, books, journals, research reports/thesis, government documents and reports was used to enrich the research study.

3.4 Research Limitations

The limitations associated with the research project are that:

a) the CSPS is a small central government institution that is not widely known at various levels especially at the service delivery level including within the SAPS. Consequently, data collection did not include the views of '*ordinary*' citizens because the unit of analysis (CSPS) is not widely known at the local community level;
b) resistance from within SAPS to solicit views from members including those in senior leadership positions;
c) the initial sample was amended to expand and replace research participants as the research unfolded; and
d) this research is exploratory and does not seek to provide perfect reflections and conclusions to address the research problem and therefore not comprehensive to cover all aspects of police transformation.

CHAPTER 4: RESEARCH FINDINGS

The research findings and some analyses of the data sourced from the research participants and document analysis are presented in this chapter. The flow of the research findings is guided by the themes that emanates from the literature review and theoretical approach. These themes were infused into the design of the questionnaire to guide the packaging of the research findings in a logical manner and also for ease of interpretation.

4.1 Police Militarisation and Demilitarisation

Introduction

The government is and remains concerned about the likelihood that the SAPS appears to be slowly reverting to militarism, and need an urgent intervention to ensure that the SAPS does not become a force but remain a service oriented police agency imbedded in democratic policing ethos, standards and practices. A reflection on police militarisation and demilitarisation is crucial as a precursor for the analysis of the role of the CSPS in transforming the SAPS. The research participants provided their views in terms of their understanding of the character of militarisation and demilitarisation, the current status of the militarisation and/or demilitarisation of the SAPS.

Background to SAPS transformation

A. Soman (6 June 2018), a former Director for Legislation in the CSPS, pointed out that the historical perspective in understanding the SAPS transformation was its adoption of particular policing ethos that were devoid of respect for human rights. The Minister during the apartheid regime was advised and supported by the police and there were no independent oversight mechanisms. In order to address the apartheid legacy including transformation of the security sector, the *Constitution* was negotiated and promulgated in 1996. Section 195 of the *Constitution* provides the constitutional principles that guide structures that are delivering public services including maintaining and promotion of professional ethics, effective, efficient and economical use of resources, democratic accountability, transparency and equitable demographic representation. Consequently, the SAPS had to reorganise itself in terms of structure, policing practices and ethos that are aligned to the democratic government with the Bill of Rights at the centre of the design and approach to policing.

Further, Soman stated that "the SAPS must be seen in the context of it being a department, adhering to the constitutional principles and operating within the public service and administration". The SAPS demilitarisation is seen mainly in the transfer of the policing policy function away from the SAPS to the Minister as the civilian authority over the SAPS. Soman argued that the SAPS can act tough on crime but still required to operate within the legal framework and parameters for policing without being soft on crime. This argument resonates with all the research participants that were interviewed around the application of democratic principles on policing.

G. Cawthra (16 June 2018), a retired Professor in the School of Governance at the Witwatersrand University, pointed out:

> The global understanding is that the police are not equipped for military tasks where the ethos is the use of maximum force to kill the enemy in contrast to the use of minimum force to apprehend the criminal as would a civilianised police. In the 1960s the South Africa Police became more militarised for political purposes especially in dealing with political opponents, coupled with some support from the Defence Force when the South Africa Police could not cope with the pressure. The South Africa Police training curriculum included aspects of counter insurgency as a basic police training. The SAPS transformation was initially looked at in the context of demographics in terms of race and gender.

Mondi (6 June 2018), an official in the Chief Directorate: Legislation in the CSPS concurred with the above narrative and added that "the historical view on police militarisation was the adoption of the commando system for policing where the militarisation of the police service also made the community to also be militant". Further, Mondi indicated that there is still animosity towards the SAPS which taint public trust of the SAPS. Mondi stated that "the police ranks should relate more to the concept of community policing" (building a good relationship between the police and citizenry) which is needed in order for the police to function effectively. The nature of the police service during the apartheid era was to protect the government and its interests. This is confirmed in a statement by F.S. Mufamadi that the police force "had been instrumental in upholding the National Party's ideology" (20 September 1994 cited in Burger, 2014: 9).

J. Burger (5 May 2018), a Senior Researcher in the Governance, Crime and Justice Division at the Institute for Security Studies (ISS), stated that "any police organisation worldwide, even those who have civilian ranks, have elements of militarism". This view is also held by Cawthra who characterised Burger's argument on militarism "as an international phenomenon where the role of police and military sometimes gets conflated".

M. Rogers (28 May 2018), a former Director for Policy Development in the CSPS stated that the point of departure for police demilitarisation is the extent to which the police relate and interact with the public. Further, police demilitarisation relates to how the police execute their duties in terms of delivering services, protecting the citizenry, respecting human rights, do not infringe the rights of persons and their duty to serve in an apolitical manner without fear or favour.

Cachalia (24 May 2018), a Judge of the Supreme Court of Appeal and first Secretary for Police Service, characterised police militarisation in terms of form and substance. The former relates to the titles/ranks that are given to police officers while the latter is characterised by civilianisation of the police i.e. functions that are performed by police officers. Cachalia stated that "although there is no police agency that uses the sort of military ranks that SAPS uses, the use of military ranks does not suggest that the SAPS should not be disciplined and professional". Z.N. Mbhele (13 June 2018), a Member of Parliament serving in the Portfolio Committee on Police (Committee) since 2014, stated that "militarisation and demilitarisation are the opposite sides of the same coin". According to Mbhele, demilitarisation in the public view relates to the removal of the military

ranks to more civilian ranks, reversing the trend of a paramilitary approach to policing operations. This narrative appears to be in line with what Cachalia advanced in terms of militarisation as both a form (rank system) and substance (conduct, mentality, operational approach and stance).

G. Newham (31 May 2018), the Head of the Justice and Violence Prevention Programme at the ISS, argued that:

> A police agency is the legitimate use of force and all police agencies have a bid of militarisation. However, the use of force by the police should be directed at *fighting crime* and not using force to *fight in a war i.e. finding and destroying the enemy*. A police service should be a problem solver using minimal force, use force occasional to protect the rights of others and gain the trust of the communities.

There is consensus amongst the research participants in the CSPS that there is more to militarisation than the linkage of the change in ranks to militarisation. Police militarisation cannot be equated to change of ranks only because the nature of multidimensional ranging from the calibre of persons that are recruited into the SAPS, conduct of police members, attitude, culture and the kind of training provided to police. Phenyo (21 May 2018), an official within the Chief Directorate: Intersectoral Coordination and Strategic Partnerships in the CSPS, stated that "there was complacency on the transformation of the police and no one was actually doing it because all stakeholders thought someone else is doing it". Phenyo agreed that there are incidences where the police have overreached the use of force but that does not necessarily mean the police are militarised. There is lack of command, control and negative attitude of some of the police officers but these incidents do not adequate to projecting the SAPS as a militarised police agency.

Thabiso (7 June 2018), an official within the Secretary's office in the CSPS indicated that the *White Paper on Transformation of the Public Service, 1995* included transformation issues related to demographic representativity pertaining to race, gender and people with disability, and changing the police force to become a police service. These transformation issues were considered in order to change the character of the SAP from that which used to kill people who were opposed to the government of the day to that which protects the rights of people and contribute to the developmental state of South Africa as a democratic country.

Another dimension of SAPS transformation was the integration of non-statutory forces into the SAPS, which remains incomplete and the affected members feel unfairly treated. Very few people who were in the non-statutory forces are at the upper echelon of the SAPS while majority of those who were part of the apartheid police are the one who are at the upper echelon of the SAPS.

Reflections on police militarisation and demilitarisation (progress)

The narrative in Chapter 12 of the NDP is a reflection of the extent to which transformation has or has not occurred especially considering the emphasis to the demilitarisation, civilianisation and professionalisation of the SAPS. Majority of the research participants refer to the year 2010 as point of reference that brought about the perceived public view that the SAPS is militarised through the change in the SAPS rank structure from civilian ranks of Commissioners to military

ranks of Generals (see **Appendix D** for the new SAPS rank structure). The SAPS added three newly created ranks of Warrant Officer (WO), Major and Lieutenant, some of which were later abolished through *Government Gazette No. 40008* dated 24 May 2016 and integrated into other old ranks due to challenges experienced regarding command, control and salary bands (see **Appendix E** for the new SAPS rank structure).

A. Van Wyk (19 June 2018), a former Member of Parliament who served in the Committee until 2014 and A. Faull (14 June 2018), a former Senior Lecturer at the University of Cape Town indicated that SAPS transformation has not being achieved holistically but an artificial transformation is evident. There is change in the top leadership and to a certain extent demographics in terms of equity in representation (race and gender), training and code of conduct. Cawthra echoed a similar view and pointed out that "the SAPS has certainly not reverted to the policing approaches of the eighties but that the SAPS demilitarisation process remains on a superficial level". The amalgamation of the eleven homeland forces showed a move towards appreciating the transformation from an apartheid to a democratic dispensation. Gibson (2018) published that the SAPS is planning to promote police members who served as Umkhondo Wesizwe and Azania People's Liberation Army freedom fighters to senior ranks in the SAPS, "a move that could see some of them skip as many as five ranks".

Cawthra stated that "the police are involved with criminals daily" and are therefore amenable to criminality due to frustration, killing of police members which drive them to a revenge mode. As Cawthra argued, police agencies use torture to solicit information as can be seen in Reports from Transparency International and IPID Reports on the criminal investigations against the police members. The government need sufficient number of police members to deal with the rot in the SAPS.

Furthermore, Van Wyk and Mbhele stated that the delays in the review of the *South African Police Act, 1995* is a reflection of resistance to transformation by the SAPS and a consequential civilian oversight failure by the CSPS and Minister.

There was a theory from political players that if the ranks change, the rest will follow. There was this belief that with a civilianised police ranks there was a drop in respect and discipline. But this was an absolute mistaken belief hence the failure of the demilitarisation hence the NPC (2011: 360) found that "competence, not military ranks, will command respect". As Burger argued, even if the government intended to militarise the SAPS, it did not succeed because the SAPS was not militarised in 2010 but that only a change in civilian to military ranks occurred, which in itself cannot be equated to militarisation in the true sense as described by Kraska (2007).

Mondi stated that "no one has clearly formulated what the SAPS transformation and demilitarisation entail". There is difficulty to measure the extent to which the SAPS transformation has unfolded even from the CSPS oversight perspective because transformation was not properly articulated from the onset in terms of performance measurements. There was never a systematic analysis of the policy framework to track progress and ascertain the impact of SAPS transformation policies. The increased scrutiny due to 2010 spike in police brutality necessitated the analysis to be conducted. Notwithstanding, Rogers argued that the SAPS has not managed to cross over the line

of demilitarisation regarding the use of excessive force, deaths in police custody, assault and torture cases and the unnecessary use of specialised paramilitary units in frontline policing. All these factors negatively contributed to the decreased level of public confidence and trust in the police which does not encourage the public to confidently approach the police and seek assistance.

Cachalia was not certain whether the demilitarisation is happening except that the SAPS could have moved further down the line in terms of transformation. Cachalia, however, did not think that South Africa is at a position where the SAPS can and are performing their work properly. Christine (28 May 2018), an official in the Chief Directorate: Civilian Oversight, Monitoring and Evaluation in the CSPS, argued that "it is not easy to teach an old dog new tricks", and the presence of police officers in the SAPS leadership who formed part of the apartheid police might be contributing negatively to SAPS transformation.

Newham pointed out that the SAPS has been through various phases since the dawn of democracy which borders around civilianisation, professionalisation and demilitarisation. The counter insurgency training and military ranks where abolished and government tried taking the police outside the realm of politics since 1994. However, some of these things are brought back especially from 2000 when the SAPS political leadership started talking tough on *fighting the war on crime*, changing police ranking structure, reducing the police training period and moving from NCPS to NCCS. The military ranks were reintroduced during B.H Cele's reign as National Commissioner and moving the SAPS from a service into force agency. The statements around the shoot to kill approach and that police members should not die with a gun in their hands was a sort of reintroducing a hard-core policing and increasingly undisciplined conduct as a result of the breakdown of command and control.

Soman indicated that the *White Paper on Policing* provides the policy framework that guide the transformation of the SAPS. Soman stated that "post 1994, there was a move to transform the SAPS with the early years being very difficult to achieve because police transformation could not be achieved overnight".

Christine stated:

> That if there is proof that the mentality that comes with the military ranks makes police members to act in a military manner, then the ranks may need to the reconsidered and ultimately removed. In the absence of such, the linkage of giving police member's military ranks to the adoption of military conduct in policing remains to be seen.

This resonates well with what Burger, Cawthra, Faull and Soman pointed out by agreeing that the fact that police members in the SAPS were given military ranks neither equate to militarisation of the police nor to police success in crime prevention. "The remilitarisation of the police in recent years has not garnered greater respect for police officers and higher conviction rates. If anything, it has boosted violence in the service and seen an increase in murders of police" (NPC, 2011: 350). Furthermore, "military ranks might create fear, but they do not instil respect. Critically, they do not lead to a greater rate of arrests and convictions" (NPC, 2011: 356).

There is a policy position to demilitarise the SAPS as seen in the NDP and *White Paper on Policing*, but it appears that there are no concrete steps taken to change the status quo. Effective policing requires police who do not act violently and police who are properly trained to perform policing functions.

There is consensus amongst the research participants that the initial efforts to transform the police from a military to a civilian agency were incredibly useful e.g. law reform, conduct of police, demographic representation and building police infrastructure in marginalised communities. The adoption of the NCPS in 1996 and shifting the focus to stabilisation and normalisation appears to have been a good approach to police transformation in the early years of the transition. However, the progress on police demilitarisation appears to have regressed around 2000 based on policy decisions particularly moving from the NCPS to the NCCS. Mondi, argued that the less civilian oversight over the SAPS, the more likelihood that the SAPS might be militarised.

The research participants cited few incidents which reflect factors of militarism to policing devoid of the principle of democratic policing to preface their views about their observed regression of the gains made in police transformation in the early years of democracy, namely:

a) reintroduction of military ranks in the SAPS in 2010;
b) the killing of civilians during the Marikana massacre;
c) the killing of criminals during cash-in-transit crime incidents; and
d) the shooting and killing of protesters in various parts of the country during public protests and unrests.

Paramilitary Specialised Units

Burger argued that even a militarised police agency can become a professional police agency which "can be demonstrated by looking at the number of police members in the specialised paramilitary units of the SAPS who have criminal records in contrast to police members in the non-militarised environment".

Majority of the research participants in the CSPS indicated that some of the issues raised on SAPS militarisation is more perception than fact. The research work that the CSPS (2018) has done to test the understanding of militarisation by SAPS leadership concluded that there will always be paramilitary units within the SAPS but that does not render the SAPS a militarised police agency. Further, the research conducted by the CSPS (2018: 23) on police demilitarisation found "little evidence to suggest that the problems within the SAPS are due to police militarisation". Newham also agreed with the argument that although the SAPS should be a community-oriented police agency, there will always be specialised units that are highly trained and militarised to deal with very extreme crime situations that can only be dealt with in a militaristic approach.

Mbhele concurred with the perspective noting that the operational policing approach of the paramilitary units should not be holistically militaristic, their training be segregated from ordinary day to day community policing and that ordinary people should hardly know what these units are and look like i.e. there is a need to isolate them from public view. Mbhele cites the POP

environment as a classical example of the use of too much force and greater violence in order to *root out* public protests and unrests. Mbhele argued that:

> Instead of using brutal force to disperse crowds public order policing should be about defusing the public demonstrations by containing the unrests though a sheer force of number and strategically starting to identify the ring leaders with the support of intelligence operatives and isolating them in order to calm down the unrests.

The current public order policing approach towards public demonstrations of dispersing crowds through stun grenades and rubber bullets, is not going to be that helpful in the long run except to heighten public animosity towards the police. Another contributing factor to the trend of the use of excessive force could be associated with the deployment of police members who have been exposed to paramilitary training. A case in point is the brutal killing of Andries Tatane during a service delivery protest in Ficksburg in 2011 (South African History Online, 25 April 2019), few months before the adoption of the NDP by Cabinet. Although all the police officers involved were acquitted, it suffice that the extent of the use of force was unwarranted, and not in line with the provisions of the Policy and Guidelines: Policing of public protests, gatherings and major events, 2011. There is a need to exercise restraints in terms of when and how to use excessive force by specialised units such as the POP during public protests, gatherings and major events.

All the views of the research participants converge regarding the existence of paramilitary units in the SAPS which are responsible to deal with medium-high risk interventions. Notwithstanding, the research participants maintained that these SAPS paramilitary units should always operate within the ambit of the law, and their deployment should be dictated by the situation at hand consummate for the type of training and operational approach necessary to deal with such situations. However, the SAPS sometimes deploy these specialised paramilitary units to deal with normal policing functions as was the case during the Marikana protests which led to the unnecessary killing of civilian protesters.

The unnecessary use of excessive force which is also exacerbated by the decrease in human resource capacity[5] in the public order policing environment culminated in the SAPS using paramilitary units like the Tactical Response Team (TRT), Special Task Force (STF), National Intervention Unit (NIU) and Flying Squad to deal with crowd management. These specialised paramilitary units are now brought into the general policing functions and therefore defocusing them from their core function of dealing with medium and high risk crime incidents. If the trend on how the SAPS respond to crowd management and illegal conduct of police members continues, the SAPS transformation trajectory faces bigger challenges which has a high potential to culminate in the re-militarisation of the SAPS if no interventions are made.

Leadership, training and conduct

S. Tait (23 May 2018), the Director at the African Policing Civilian Oversight Forum, stated that the approach to command and control (high supervision) of police members was not thought

[5] From 7 227 in 2005/06 to 5 654 in 2017/18 financial years.

through well enough and the spike in the recruitment from 1994 was neither conducted nor managed properly. The increase in the recruitment of police members into the SAPS may have contributed to the deterioration of the quality of training (physical and mental readiness), which was also pressurised by the need to realign training to modern day policing. The SAPS fixed establishment shows that the number of police members grew by 13 064 from 137 727 in 2007/08 to 150 791 in 2017/18 financial year. Cachalia argued there are large number of police members in the SAPS, who are neither properly trained nor qualified and do not perform policing effectively. Mbhele argued that the lack of proper and quality training in the SAPS makes police members tend to revert back to a militaristic approach to policing.

As Burger stated:

> If police officers behave badly, it is often equated to militarism rather than the conduct of the police officer. The observed incidents of police brutality have more to do with the type of police, training, command and control, and a culture of getting away with it (lack of consequence) than militarisation or militarism. The recent incidents of brutality by police members are more the elements of militarisation due to the reintroduction of hard-core policing and use of excessive force, and lack of proper command and control. The SAPS culture is different but should always be professional and not be a military/authoritarian type of culture.

Cawthra argued that "there is an element of protectionism amongst police members" when one of their own falls foul on the application and enforcement of the law. According to Cawthra, the Marikana massacre had nothing to do with militarism but was rather an act of revenge by the police members for the killing of their fellow police members by the striking miners. Newham argued that "the Marikana massacre occurred due to failure of SAPS leadership and political interference, lack of experience, and bringing a highly militarised unit to deal with public order policing". It appears that six years later, none of the SAPS leadership involved in the massacre were held accountable for the criminal conduct and killing of civilians in Marikana.

I. Kinnes (14 June 2018), a former Chief Director for Policy and Research at the CSPS stated that:

> The police members just want to do their job but the challenge is the hierarchical and command structure of the SAPS and to a certain extent political interference and suggested that the command structure of the SAPS be reviewed because of its nature of not questioning but of following instructions.

There is a need to inculcate an approach to democratic-community policing approach in the SAPS training programmes as implied in the *White Paper on Policing*. Newham stated:

> Good policing instead of hard-core policing equals less crime. Many police in the visible policing environment are using unnecessary force to get certain results. There is deterioration of accountability in the SAPS and police members just do what they like without consequence. There is impunity and officers commit serious crimes but still keep their jobs as if nothing has happened.

The emphasis of police demilitarisation and policing approach was focussed on police retraining in order to align the training programme toward that which resonates with the principles of democratic policing as encapsulated in the *Constitution*. Notwithstanding, Newham stated that "there was no real change in the police training curriculum" (31 May 2018).

The approach to police demilitarisation and professionalisation is also about the attitude, discipline nature of training and holding police members and leadership accountable for their action or failure thereof. If the police have coercive powers, the police members need to be adequately trained to enable them to perform those functions e.g. power to arrest, search and infringe on citizens' rights, use of force to arrest which should be proportional to the situation being dealt with. The inadequate quality of training, lack of command and control, inefficient internal oversight on command and control system appears to be the major contributing factors to the inclination of the police to use excessive force. A well trained, well-disciplined and properly commanded and controlled police agency could assist police members not to overstep the line when discharging their policing responsibilities.

Police demilitarisation is part of the policy approach to professionalising the police. However, policy is good on paper but it would be a waste of time and resources if there is failure to implement. Strict consequence management is crucial including making an example of police members whose attitude is not in sync with their policing ethos, practices and code. There is a need to change the attitude at the political and all levels of management in the SAPS in order to build a professional and non-militarised police agency. Majority of the research participants in the CSPS indicated that the Marikana incident was due to management failures, absence of professionalism, lack of command and control. The commander for every crime situation must be that which has the necessary training, expertise and authority proportionate to the situation at hand.

The issues that the police deal with sometimes are not policing issues but related to failure by other service delivery oriented departments or institutions. The unfortunate thing is that when public unrests occur, the police become the face of government and this is not helpful to assist the police in building a good relationship with the public. Public representatives should be the face of government in this instance to engage with communities than sending police members to disperse public gatherings and demonstrations. In essence, the extent and nature of police exposure to public demonstration further exacerbates the public animosity where the SAPS is seen in the same light as those related to the apartheid era.

Political Posture

Cachalia stated that "politicians around the world think there must be tough talk, be hard on criminals and use military precision on the *fight against crime*". This argument is supported by Faull who indicated that the political connotation of former National Commissioner B.H. Cele and Minister E.N. Mthethwa to be *tough on criminals* and figh*ting the war on criminals* suggested the existence of a lot of political theatre which somehow did not assist the SAPS to transform.

As Rogers put it "the influence of what people in position of power say could have either a positive or negative impact depending on the understanding by the police of what it means". Faull argued that the vision on police transformation may have been lost when the political rhetoric moved towards being hard on criminals and fighting crime than community policing approach.

Mondi agreed that political will is needed to implement policy and that the implementation of policy is the pillar of strength for SAPS transformation, but that there are instances where political players do certain things that are inconsistent with government policy. This relates to instances where political leadership of the SAPS gave police members *permission to shoot to kill* and *not to worry about the regulations*. Mondi argued that the attitude of the SAPS should be that of serving than enforcing the law – although there is a need to enforce the law.

Furthermore, Soman stated that the first Minister in a democratic government, F.S. Mufamadi, clearly understood the nature, complexity and character of the transformation of the SAPS. This can be seen and validated by the type of policy pronouncements made by Minister Mufamadi. Soman stated:

> The subsequent Ministers of Police starting with S.V. Tshwete had different approaches to policing especially on the use of force without any qualification which communicated a message to the police members contrary to that which connotes democratic and community-centred policing advocated for by F.S. Mufamadi. For instance, S.V. Tshwete had the responsibility of restoring police morale but then focussed on talking tough on crime, which was misinterpreted by the police members who then acted with impunity.

Conclusion

In terms of militarisation, the research participants pointed out that the use of excessive force (destroying the enemy than apprehending the criminal), militaristic rank structure and uniform, style of training, command and control are some of the elements of police militarisation. These are similar characteristics that were echoed in literature by various authors including Burger (2014), Berning and Masiloane (2011), NPC (2011), Kraska (2007) and Cawthra (2005) when defining and describing police militarism and militarisation. The crucial aspect emanating from the views of the research participants is that militarisation is broader than just looking at a singular aspect, for instance, rank or uniform but that militarisation should be looked at holistically to determine whether the SAPS is militarised or not. On the other hand, the research participants stated that police demilitarisation is not about changing of ranks and uniform but more about moving an illegitimate police into a legitimate police that is not used as a political tool to destroy the enemy (i.e. persons with dissenting views and challenging government decisions). This view suggests that police demilitarisation has in the main to do with the institutional and organisational culture of the SAPS.

Police demilitarisation is about making the police more transparent and receptive to the population they ought to serve. The police transformation require a broad view besides the rank structure which became the focal point during 2010. The police transformation is part of an ongoing process

that started before 1994 which requires government to take effective and efficient steps to ensure fully integrated police transformation.

There is a policy and regulatory framework to transform the SAPS but the implementation is a challenge and the tactical approach is more a reflection of the police force during the apartheid period. The SAPS must be guided by the provision of the *Constitution* in mapping the transformation agenda. The SAPS has constitutional responsibilities in Section 205(4) of the *Constitution* in terms of objectives in contrast to the expectations of the Defence Force. For instance, the SAPS cannot be involved in defence activities because this is solely the realm of the Defence Force, and that the police training curriculum is that which should be based on community policing.

The research participants agree that there is no need to have a police agency that is militarised like the military. Notwithstanding, whatever the level of militarism there is in the SAPS, a need arise to ensure that police officers always act in a professional manner in discharging their legal policing mandate. This can be done by recruiting the right calibre of police members in terms of their makeup, train them well, adoption of a promotion system based on clearly defined performance standards and holding police members accountable for their action(s) or inaction(s) that is/are inconsistent with the SAPS Code of Conduct and Ethics. The essence of the arguments advanced by the research participants is that society should accept that the elements of militarisation will continue to exist in the SAPS especially in the context of the specialised paramilitary units like the TRT, NIU and SPT. What remains crucial is to manage the exercise of policing powers in an effective and efficient manner aligned to professionalism as proposed in the NDP.

Militarisation is broad as it comprises many factors than just a change in rank and uniform. The SAP was militarised for political purposes during the apartheid government but the democratic government developed the policy and legal framework to transform the SAP into a civilian police agency aligned to the constitutional imperatives and principles, but the full implementation appear to have failed. However, the SAPS transformation process is yet to be achieved beside the superficial changes on rank, uniform, insignia and demographic representation at the top leadership of the SAPS. Police training was changed during the inception of the democratic government, but the training curriculum has not been adjusted to integrate the political and socio-economic dynamics that occurred since the early 2000.

There will always be paramilitary specialised police units in any police agency to deal with medium-high risk incidents. Notwithstanding, the use of the specialised units in normal policing functions must be avoided to safeguard lives of civilians and the integrity of the SAPS. The tough talk by political leaders and actors does not align well with the demilitarisation of the SAPS in the context of the NDP. This approach coupled with the lack of command, control and effective leadership further diminishes the little confidence and trust that communities may have regarding the functioning of the SAPS.

Police transformation is not properly articulated and lack clear performance measures from which to demand accountability. The *White Paper on safety and Security* was only reviewed twelve years after its expiry. This is another reflection of complacency and ineffective civilian oversight by the CSPS

and lack of understanding by Ministers of their political responsibility of determining the national policing policy. Further, whether the *White Paper on Policing* is the '*national policing policy*' as encapsulated in the *Constitution*, is a legally debatable matter because the Minister has not declared it as such.

The narrative in this chapter provided a holistic overview of the views of the research participants with regard to the nature and character of militarisation and demilitarisation including the progress of SAPS transformation in a democratic government. The crucial aspect is to get a sense of what the research participants thought about the role of the CSPS in the context of SAPS transformation agenda, and the next chapter provide the views and some analysis.

4.2 The role and powers of the CSPS on SAPS institutional transformation

Introduction

The policy and legislative connotations in literature imply that the CSPS functions under the direction of the Minister in order to provide the latter with advice and support regarding his/her political responsibilities. The functions and powers of the CSPS are clearly stated in legislation to enable the exercise of civilian oversight over the SAPS. The research participants were asked to reflect on the role and contribution of the CSPS in the context of SAPS transformation including whether the CSPS has adequate powers and capacity (human resource, skills, competencies and expertise) to exercise civilian oversight, support and advise the Minister on the performance of his constitutional and political responsibilities. The following are the views of the research participants gathered through face-to-face interviews and some analysis.

Background: Establishment of the CSPS

There is consensus amongst the research participants that the CSPS is an institution established to provide advise and support the Minister to discharge his/her political responsibilities. The crucial matter was the extent to which the CSPS is delivering in terms of its statutory mandate.

Cachalia made reflections regarding the model and thinking on the establishment of the CSPS especially from a constitutional perspective by stating that:

> The CSPS, just like the Defence Secretariat, is a constitutional structure which signifies its importance on the advancement of constitutional democracy and transformation of the SAPS. The police could not function on its own any longer and needed a proper system and structure to help the Minister to perform this function. Whether the advise given by the CSPS is accepted or not, the Minister will have to exercise his/her choice. This is similar to any other advise given by Directors-General in other government departments and institutions because policy directions is the realm of the executing authority. This civilian secretariat model resembles the kinds of structures or government structures in other countries.

Soman indicated that an Independent Advisory Team (IAT) led by Cachalia was established after the first democratic Minister was appointed to conduct a background and preparatory work for the transformation of the SAPS. This was part of the SSR in South Africa where civilians are expected to be in charge of policing policy and managing police agencies. Van Wyk highlighted that the establishment of the CSPS separate from the SAPS was to ensure that the CSPS has the space to do its work without fear, favour or political interference. What remains to be seen is the value that the Minister gets from the CSPS.

Functioning

Soman stated that "the CSPS was very influential under the leadership of Cachalia. The Minister did not allow the SAPS to submit any documentation before it was scrutinised by the CSPS, which caused frustration on the part of the SAPS".

Rogers observed that "the institutional posture does not allow the CSPS to function effectively because of the huge disjuncture between policy development and practical implementation, and that the CSPS cannot track the impact of the products it produces". This was the observation made by Pelser (1997) when assessing the functioning of the CSPS. The policy position is not being executed because the CSPS is not strong enough from a leadership and capability perspective. Further, Rogers and Kinnes concurred with Soman by stating that:

> The CSPS under the leadership of Cachalia had good credibility position compared to the CSPS which is facing credibility and legitimacy challenges. The CSPS then was strong enough to lead the NCPS with a strong human resource capacity to drive policy development and advise the Minister accordingly. The current CSPS has weakened significantly and viewed by the SAPS as a nuisance rather than a legitimate institution that plays a curial role in shaping policing and transformation in the SAPS.

Tait stated that "the influence of the CSPS in terms of its role has dropped. The CSPS is lazy and need to work smart, and proactively refocus its policy and research projects over and above that which the Minister directs". Tait indicated that the CSPS should perform better on policy development, monitoring, stakeholder and partnership and produce periodic papers on policing similar to that which the ISS and other oversight agencies produces in order to keep the citizenry abreast of developments within the policing environment. The dominance of the ISS in debates around issues of safety, security and policing is said to reflect badly on the stature and image of the CSPS and highlighted that "the silence of the CSPS is not good in the eyes of the public in term of its credibility" (Tait).

Mbhele stated that the CSPS thus far has not played a major role in SAPS transformation. The *White Paper on Policing* include some good content and themes that are linked to the transformation of the SAPS, but the CSPS is yet to be seen as the driving force on SAPS transformation. According to Mbhele, the CSPS has potential to contribute and influence SAPS transformation but the future is uncertain.

Burger stated:

> There appears to be a lack of capacity and proactive approach on the part of the CSPS to provide strategic and policy advise to the Minister. The other problem area is when the policy framework in the form of the *White Paper on Policing* gave the CSPS more power to manage the SAPS budget while the SAPS maintains that their budget should be controlled by its leadership. The CSPS is an important public institution but misguided on how it performs its civilian oversight role and the resistance by the SAPS to be subjected to oversight scrutiny perpetuate the dilemma.

"The *White Paper on Safety and Security* (1998) was never implemented. There are serious doubts on whether the *White Paper on Policing* will be implemented considering the dilemma on its predecessor and that there is no real power except if it is imbedded in legislation", argued Burger. This is supported by Cawthra who stated that "it is always easy to pass policy than implement it", which is a dilemma facing South Africa in that it is not lack of policies or good policies, but rather poor policy implementation.

Contrary to the views of Cachalia and Soman, Cawthra stated that the CSPS coincidentally became an advisory structure for the Minister, which was not initially what the CSPS was established for considering that the Minister has advisors in the Ministry in accordance with the Ministerial Handbook. This is similar to the findings by Mistry and Kiplin (2004) about the shrinking role of the CSPS.

Faull stated that "the establishment of the CSPS is good but that the CSPS does not have the power to be able to make impact on SAPS work let alone on transformation issues". Faull further argued that the CSPS should provide the guiding policy and build a good working relationship with the SAPS. This will make SAPS to recognise and acknowledge the value and role of the CSPS while the Minister ensures that the work of the CSPS feeds in and guides the work of the SAPS. Fuall saw a possibility for improvement with regard to the CSPS role in SAPS transformation also aligned to the issue of a professional police imbedded in the NDP and strengthening its research on evidence led policing.

Christine argued that the policy and legal framework that talks to and give guidelines for SAPS transformation highlight that transformation happens through the CSPS advising the Minister. Therefore, there is reliance on the authority and political will of the Minister to make sure that SAPS transformation is happening, and happening the way it should. Christine stated that "the CSPS cannot drive the transformation process of the SAPS but can advise the Minister on how it should unfold". Further, Christine also pointed out that the CSPS has been in existence for many years but the SAPS have been performing all the functions that policy dictates should be performed by the CSPS. As things stand, the SAPS can still choose what to accept and not irrespective of what the policy imperatives are in the *White Paper on Policing* as they did with its predecessor, unless the political will is present to enforce implementation.

Phenyo indicated that it was agreed during the transitional negotiations from apartheid to a democratic government that the SAPS must be under a civilian authority to build a good

collaborative working relationship between SAPS and communities. However, historical personality cult has eroded the effective functioning of the CSPS especially from the era of J.S. Selebi as the National Commissioner. The CSPS appear to be functioning along the lines of personality cult and this took out the essence of what the role of the CSPS is and should be. Although the first Secretary for Police Service had a military experience, he understood his role and was able to perform his role as expected in the context of the civilian oversight mandate.

The average citizen or police member does not know that the CSPS exists or that an institution exists to develop policy for the SAPS. The CSPS is mainly unknown even at engagements forums of other government departments and does not have a voice out there in the public domain. Rogers observed that the CSPS is afraid to speak out and '*upset'* the Minister or National Commissioner. But the crucial aspect for the CSPS is, in essence, its ability to speak, critic and comment on things as they are. Section 4(4) of the *Civilian Secretariat for Police Service Act, 2011* states that the Civilian Secretariat must exercise its powers and perform its functions without fear, favour or prejudice in the interest of maintaining effective and efficient policing and a high standard of professional ethics in the police.

Cawthra suggested that the CSPS should reconsider the NCPS because crime is not a policing function only but a national function with cross-dimensional aspects. Omar (2010) concluded that the NCPS should be resuscitated but that the coordinating responsibility be located within the Presidency because the CSPS does not have authority over the other departments.

Thabiso highlighted that the frequent changing of Ministers in the police portfolio creates problems and instability in terms of how the CSPS functions. The CSPS built relationship but this gets interrupted by the frequent changing of Ministers. This scenario puts the CSPS in a difficult position because often, Ministers come with their own priorities which might not coincide with the priorities of their predecessor(s). There is a need to have a Minister to finish a five year term to ensure stability and sustenance. The views of Thabiso resonates well with the *personality cult* observed by Phenyo.

While it is good that the CSPS is put under the Ministry of Police, it should not be to the detriment of having the CSPS at the mercy of the Minister to the extent that the CSPS fails to engage directly with the public. Newham indicated that there was no easy transformation path in the SAPS in the first five years of democracy, but former Minister F.S. Mufamadi listened to and took the CSPS seriously. Furthermore, Rogers argued that the CSPS must demonstrate the value of the work it does to build credibility and legitimacy despite the difficulty to maintain the momentum because of the sporadic political changes in Ministry of Police.

The most crucial instrument of political will, argued Van Wyk, is the budget statements which the latter is "not convinced that the CSPS use as an instrument to measure, monitor and evaluate the work done by the SAPS in order to hold them accountable".

The constitutional imperative for the CSPS to work under the direction of the Minister may be constraining its independency and the extent to which the CSPS can profile itself in the public

domain. Rogers agreed that the legal standing of the Minister constrains the extent to which the CSPS can go public in terms of its oversight work.

Currently, the CSPS is not doing well in terms of its role to drive and influence the transformation agenda for the SAPS. Soman emphasised that the question the CSPS should be asking is; what change (impact) it is making in the police transformation agenda? It is not about the quantity of work the CSPS produces, how many targets are achieved and how much budget is spend. Rogers aligned his views with those of Soman and stated that "the CSPS is expected to assist the SAPS to deal with many of the challenges it faces, but more of what the CSPS does is rather on meeting performance targets. The CSPS should think more on what constitute an advise and how it is given to the Minister

Leadership

In public discourse, there are debates about the need to have ethical and credible leadership to drive the socio-economic and political discourse to achieve positive results that improves the lives of the citizenry. The respect of the policy position depends on the stature or position that the public official has in public policy, argued Cachalia. Christine agree with the view expressed by Cachalia in that "the level of the Secretary for the Police Service should not have a bearing on the posture of the SAPS under normal circumstances, but due to the hierarchical, command and control structure of the SAPS, the post level becomes crucial". Mondi concurred that "the post level of the Secretary for Police Service matter considering that SAPS members placed huge emphasis on the rank system which is aligned to power, authority and respect".

The SAPS, argued Christine, sees the CSPS as an inferior institution just because of the post level of the Secretary. The current institutional arrangements and level of engagements are misaligned e.g. National Commissioner at the Director General (DG) level versus Secretary for Police Service at a Deputy Director-General (DDG) level. The Deputy National Commissioner (DNC) and Divisional Commissioners versus Chief Directors (CD) in the CSPS considering that a CD in the CSPS is equivalent to the Major General in the SAPS. This situation hampers the work of the CSPS because everything that must be communicated to the SAPS, must be done through the Secretary for Police Service which is neither practical nor sustainable for an effective functioning of the CSPS.

Cachalia stated:

> The post of the Secretary for Police Service should be graded at a Director-General level in order to gain the respect of police members. This is due to the command and control regime used by the SAPS to instil discipline and respect for senior police members.

Cachalia (26 July 2010) expressed this similar view when giving inputs at a CSPS strategic planning session. Although the post level of the Secretary for Police Service was elevated to a DDG in 2009, Cachalia (2010) felt that it is not adequate to ensure that the CSPS functions effectively in bringing about change in the SAPS and its influence on policy and strategic matters.

Van Wyk expressed that the lack of decisive leadership in the CSPS, lack of political will and absence of the South African Human Rights Commission (SAHRC) in holding SAPS accountable for human rights violation contributed negatively to SAPS transformation.

Cawthra argued that the role of the CSPS depends on the strength of the CSPS leadership, unless it is a deliberate move to exclude the CSPS from the crucial and high level public space. Sometimes the deployment of incompetent people in crucial leadership positions is deliberate and a politically viable option. Soman stated that "the departure of Cachalia let to the appointment of Secretaries for Police Service of a different calibre less than that required of the stature to lead an effective and efficient functioning of the CSPS". The observed downward spiral in the functioning of the CSPS continued to the extent that the post of the Secretary for the Police Service was downgraded to a CD level and perceived redundant until a move was taken during 2009 to revive the functioning of the CSPS. Cachalia concurred that the CSPS was downgraded overtime and was not able to function as envisaged in legislation, and was not properly capacitated to perform the functions.

Rogers also pointed out that the CSPS is still debating the meaning of *oversight* and what it entails and "the personnel in the CSPS cannot be expected to execute oversight if there is no common understanding of the *oversight* mandate that the CSPS is expected to carry". The effective functioning of the CSPS also depends on the ability of senior leadership to clearly articulate the strategic and tactical vision and infuse it in operations.

Acceptance and resistance to civilian oversight of the CSPS

Thabiso pointed out that Parliament should have passed legislation during 1996 to establish the CSPS, which would have avoided a lot of the challenges experienced after the departure of Cachalia. The strong indication by former National Commissioner, J.S. Selebi that there is no need to have the CSPS to advise the SAPS led to the diminishing influence and role of the CSPS and a situation where the SAPS advised the Minister. Largely the status quo remains the same.

Mistry and Kiplin (2004) stated that the downgrading of the post of the Secretary for Police Service to DDG level, and a hard and fast rationalisation of the secretariat's structure and staff was intended to lower the power and influence of the CSPS on how the SAPS operates. Mondi expressed similar connotations by stating:

> The CSPS has been part of the tension both on political and functional level. This created a huge challenge in so far as the advisory role of the CSPS on the Minister is concerned If the power of the CSPS is lowered, the influence is also negatively affected. The tension on oversight on the SAPS is continuing with the SAPS complaining about oversight fatigue.

Soman highlighted that the CSPS had developed a certain working relationship with some of the Units and Sections in the SAPS during Cachalia's term as Secretary for the Police Service and there was some cooperation and progressive approach to working together. However, the appointment of former Minister S.V. Tshwete and National Commissioner J.S. Selebi in 1999 meant that "the working relations and communication were curtailed and dried up to the extent that a directive

was issued that no police member should communicate with the CSPS or its officials" (Soman). Burger's forecast is that "the rivalry that exists between the CSPS and SAPS will continue and the CSPS has to grabble more with its civilian oversight role than growing in size" which is a similar view held by Mondi.

Further, Kinnes emphasised that the role of the CSPS in terms of SAPS transformation and its general functioning has been diminished by the succession of Ministers with the dependency factor of the CSPS not being helpful. The CSPS must maintain the technical policy on policing. However, the SAPS Commissioners wanting more powers and authority with the conscious or subconscious support of Ministers ensured the intentional degrading of the CSPS. The appointments of National Commissioners who are civilians and senior politicians contributed to the depreciation of command and control, and let to the deliberate devaluing of the role of the CSPS.

The SAPS accepted the Minister because it was not a new phenomenon but resisted and still resisting the CSPS as an oversight institution. Burger highlighted that there was acceptance about change and transformation during G. Fivas' term as the first National Commissioner under a democratic government. There was consensus on the vision between F.S. Mufamadi and Cachalia in terms of the change needed but the SAPS was still resistance to transformation.

According to Soman, the CSPS is being tolerated by the SAPS because of the constitutional imperatives on the establishment of the CSPS. The crucial point is that the CSPS should go beyond being tolerated to being acknowledged by the SAPS and Minister in order to be at the apex point where it plays a crucial role on SAPS transformation and influential in the determination of policy, and monitoring the directives issued and decisions taken by the Minister. There is still resistant by the SAPS to acknowledge the existence and role of the CSPS which is compounded by the lack of understanding by successive Ministers of Police of the role and functioning of the CSPS.

Cawthra highlighted that the Defence Secretariat is better resourced and the Defence Force does not undermine its role and powers. The civilian military relations were stabilised and it does not matter whether there are uniform members in the civilian functions as long as they understand the ethos. Cawthra agreed that the Defence Secretariat does have its problems but that it is normal in a democratic system. The CSPS was quite dysfunctional during J.S. Selebi's tenure as the National Commissioner, which, according to Cawthra, "may not have been by accident but by design as part of a capture process to cover corruption".

Van Wyk was also concerned that every time a new National Commissioner is appointed, the SAPS organisational structure changes and without consultation and input from the CSPS and Parliament. Soman highlighted that the resistance of the SAPS to cooperate in terms of access to information must be curtailed at most with the intervention of the Minister. The SAPS used the excuse of the lack of security clearance for CSPS personnel as a point for the objection to provide information, but now that this was addressed it is not clear why there is still resistance from the SAPS to cooperate with the CSPS in terms of the latter's civilian oversight responsibilities. Notwithstanding, the CSPS has never taken the SAPS to court for their reluctance to provide the necessary information for the CSPS to exercise its oversight functions.
Soman stated:

> The untimely departure of Cachalia from the CSPS culminated in a marked decline in terms of the functioning and influence of the CSPS on the work of the SAPS. There is still mystery around the exact reasons behind the premature termination of Cachalia's term of office and departure as Secretary for Police Service in early 2000.

However, the strong opposing stance taken by former National Commissioner J.S. Selebi that there is no need to have the CSPS because himself is a civilian appear to have contributed to Cachalia's departure more so because S.V. Tshwete supported the posture taken by National Commissioner J.S. Selebi.

It appears that the SAPS wanted to disregard the powers of the CSPS very early in the transformation process, which was an indication of resistance. The SAPS appear to have succeeded in their quest to render the CSPS ineffective by taking and exercising the powers of the CSPS. This scenario went to the extent that the work done by the CSPS was side-lined by the SAPS even before it gets to the Minister not recognising the direct reporting line of the CSPS to the Minister. It appears though that the situation was made to prosper because Minister S.V. Tshwete had a particular military background and did not see anything wrong with what the SAPS did regarding the functional state of the CSPS.

Structure and Capacity

Thabiso stated that like any other department, the CSPS is expected to ensure compliance to all legislations but there is shortage of specialised skills in certain environments like change management, organisational development and budget analysis.

The CSPS is a national institution with an extended mandate at the provincial level. Soman supported by Newham stated that the CSPS is a special type of department which cannot be compared to any other department in government. The CSPS must be one step ahead of the SAPS in all areas because in order for the CSPS to advise the Minister, the CSPS must have well-researched, evidence based, well-articulated, documented and sound recommendations. This requires the CSPS to have the research skills and strategic direction so that the Minister is well informed and not embarrassed when directing the SAPS. Newham stated that "the current organisational design of the CSPS is not in sync with the specialised nature of the CSPS".

Rogers prefaced his view by indicating that the multiple historical factors between the CSPS and SAPS, and the inadequate human resource capacity limit the extent to which the CSPS can effectively and efficiency play its civilian oversight role on the SAPS. Rogers stated:

> There is a need to strengthen the capacity and skills set of the CSPS to be able to exercise the civilian oversight mandate. The CSPS is not adequately capacitated to provide an in-depth assessment of SAPS budget and needs to have various expertise in specific focus areas of the SAPS to promote specialisation and ensure quality outputs that will bring about impactful change once implemented.

Christine emphasised that monitoring of policy implementation by the CSPS contributes immensely to the SAPS transformation. The SAPS is a huge organisation with about 194 000 personnel with the CSPS having about 150 personnel. With this capacity, the CSPS can only focus on one area at a time and the SAPS will be well ahead by the time other areas are reached by the CSPS. Christine stated that "the human resource capacity of the CSPS should be strengthened to have skills in different areas of the SAPS operations in order to cover as many SAPS operational areas as possible and proactively contribute to SAPS transformation".

Cawthra cited the '*Parkinson Law*' which is "the adage that work expands so as to fill the time available for its completion". In general, the '*Parkinson Law*' is "the demand upon a resource tends to expand to match the supply of the resource" (Wikipeda, 2018). In essence, the '*Parkinson Law*' implies that it does not matter how many personnel are in an organisation because the more personnel an organisation has, the more they find more to do. The endless restructuring in the CSPS, argued Cawthra, creates instability and more problems which leads to too many policies that are not implemented.

Soman stated:

> The structure of the CSPS should be mean and lean (not a bloated structure) capacitated by well-appointed and recruited personnel with relevant skills, expertise and specialised skills. There is a need to have basic skills when appointed to work for the CSPS. The approach to appointing personnel and then provide training to them to acquire the skills necessary to perform their work should be avoided. Currently, the CSPS is being bloated in terms of numbers on its fixed establishment.

Kinnes seemed to agree with Soman's view by stating that "the review of the CSPS structure especially for the core functions is good but the CSPS should be smarter in terms of how it exercises the civilian oversight mandate over the SAPS". The argument advanced by Soman is mainly in the context of cooperative governance framework. Provincial Secretariats have some capacity to exercise civilian oversight on the SAPS, but the CSPS is not adequately leveraging on it. Kinnes suggested that "getting the Provincial Secretariats to fall under the operational authority of the CSPS will be a good move to strengthen the role of the CSPS in transforming the SAPS".

The views expressed by Kinnes and Soman insinuated that the CSPS at national level should not have too many personnel because the Provincial Secretariats are established to perform the functions of the CSPS at the provincial level. The CSPS in the main should set out the civilian oversight framework, provide support and capacitate the Provincial Secretariats and let the latter to perform and report to the CSPS. Mbhele stated that Provincial Secretariats could be an opportunity if they are effective and their outputs feed into the CSPS value chain but also a risks if they are dysfunctional.

In line with the views of Soman and Kinnes on the capacity of the CSPS, Tait stated that "there is a need to figure out the relationship with the Provincial Secretariats in order to maximise the use of these structures than to make them fall under the CSPS considering the current challenges on government fiscus". What is evident from Soman statement supported by Phenyo and Newham

is that the crucial thing to consider is not quantity but rather quality and capacity of personnel focusing on skills, knowledge and expertise to develop policy, conduct civilian oversight monitoring and evaluation using a results based approach to bring about police transformation.

Mbhele and Van Wyk did not think that there are no specific or acute skills shortage in the CSPS to transform the SAPS but rather the challenge is the quantitative human resource capacity which needs expansion, working and thinking smarter and showing results. In contrast, Burger supported by Newham argued that "the CSPS lacks skills and expertise necessary to transform SAPS from an institutional point of view". Notwithstanding, it appears that the CSPS should focus on bringing a balance between quality, quantity and skills set for it to deliver on its mandate.

There is a need for interface between civilians and uniform police when it comes to procurement and personnel management in the SAPS. The CSPS can provide the global procurement and personnel management but not to interfere with line function policing in terms of command and control of police operations. The CSPS must therefore be involved in the higher budget and strategic procurement and personnel management and let the police focusing on policing operations.

Powers

Cachalia stated that "the CSPS does not have the power to direct and cannot direct the SAPS except the Minister who is empowered by Section 207(2) of the *Constitution*". Christine argued that "the CSPS needs to have certain legislative powers to enforce implementation of oversight recommendations". For instance, Section 33 of the IPID legislation provides sanctions for SAPS members who fail to comply with legislative requirements, however, such is not provided in the *Civilian Secretariat for Police Service Act, 2011* except that SAPS members must provide their full cooperation to the CSPS.

As Mbhele stated:

> In both theory and design in terms of the enabling legislation, the CSPS is fully empowered to spearhead the SAPS transformation. But there is a need for the SAPS to cooperate with the CSPS. The real issue is for the CSPS to fully flex its legislative muscle to effectively exercise its mandate and statutory powers. However, the enforcement of the CSPS powers requires the Minister' support through provision of resources, giving directives and setting the agenda to enable the CSPS to play its crucial role effectively and efficiently towards the transformation of the SAPS.

In agreement with Mbhele's view, Tait stated that "the current legislation provides adequate powers to the CSPS to function properly and make valuable contribution to SAPS transformation". On the other hand, Soman stated:

> The dilemma with regard to the adequacy of the powers of the CSPS is its dependency on who the Minister is and the latter's approach to civilian oversight because Ministers have different approaches and understanding towards the functioning of the CSPS. As long as

there is varying understanding of the constitutional imperatives by the Ministers, the CSPS will continue limping along in terms of its functioning.

Cawthra stated that "on paper, the CSPS appears to have adequate power to contribute to the institutional transformation of the SAPS". However, Cawthra indicated that power is more to do with the confidence of persons in leadership roles and their connections to political power.

Mondi argued that the effective functioning of the CSPS has nothing to do with the CSPS having power but a political will when it comes to policy direction and implementation, and stated that "the CSPS has the power given into legislation which are limited to an advisory role". Phenyo and Van Wyk argued that the CSPS has the legislative powers to exercise its mandate over the SAPS. The crucial matter is whether the CSPS is properly informed and exercising the powers given in the legislation.

Independence of the CSPS

Thabiso does not agree that the CSPS should work as an independent institution mainly because the Minister is a civilian and responsible for policing and give direction to the SAPS. Christine also argued that "the Minister and CSPS cannot be separated because the latter is established to support the former as per the constitutional imperative". The CSPS that operates as an independent institution will further expose the Minister to be at the mercy of the SAPS as is the situation currently. The Minister requires capacity to perform all the political responsibilities and the CSPS is established to provide that capacity. In essence, the CSPS does not exist outside the realm of the Minister.

Soman concurred with Thabiso and further argued that there are other independent institutions like the SAHRC, Public Service Commission and Auditor-General of South Africa that play or are expected to play an independent oversight role to advance accountability and transparency in the context of the transformation of the SAPS and public service as a whole. There is no need for duplication.

In agreement with Soman, Cachalia pointed out:

> The CSPS has been established as a separate department mainly because of the public service regulations and limited human resource capacity in the Ministry. The CSPS is therefore established to enlarge the Ministry of Police so that the Minister has adequate human resource capacity to exercise his political oversight role in terms of control and management of the SAPS.

Tait stated that the CSPS with an *independent character* and *goodwill* as a custodian of the NCPS played a critical role in SAPS transformation during F.S. Mufamadi's term as Minister, but has since lost its *independent character* (emphasis). Burger stated that "it is a good point for the CSPS to function in an *independent manner* but it may not be politically accepted". The problem, Burger says, is how the CSPS advisory role is understood; whether it is a reactive advise through requests by the

Minister or proactive advise where the CSPS identifies challenging areas and provide the Minister with an advise on how to address the challenges.

Future Perspective

Soman stated that "the CSPS has a long way to go in reaching the peak that the first CSPS reached under the leadership of Cachalia". The transition necessitated by the *White Paper on Policing* will be an intense one considering the lapse of time since the SAPS took civilian functions from the CSPS, and the power associated therewith.

Mbhele believes that there is opportunity for the CSPS to be a huge and impactful civilian oversight body to the extent that if its footprint, visibility, reputation and resourcing was adequate, the CSPS can get to a point where members of the public automatically approach the CSPS to lodge service delivery complaints and police misconduct. This will provide the CSPS with an opportunity to solicit inputs from the public, identify systematic issues and trends to feed into policy development, monitoring and evaluation.

The CSPS is in a good position to get as much information as possible from the public, interrogate reports from the SAPS and provide advise to the Minister whom is expected to direct the SAPS on the direction to take to address identified challenges. With the intense interest around issues of policing, safety and crime fighting and given the theoretical powers of the CSPS as a civilian body, it has the potential to become one of the top influential public bodies in the public service and administration.

In terms of community policing model, Phenyo indicated that communities do not trust the SAPS and the CSPS can play a critical role to improve the trust levels between the SAPS and communities. The CSPS, Phenyo argued, must stand up, rise up to the occasion and strengthen the monitoring and evaluation mechanism with Parliament playing a crucial role to restore the dignity of the CSPS.

Newham recommends that the CSPS leadership must rethink how the CSPS should play its oversight role as it relates to the SAPS transformation and conduct a benchmark with other oversight structures around the world. Newham argued that constitutionally and legislation wise, the CSPS is well positioned to perform its mandate, but its ability rests on the political will of the Minister. Soman argued that the CSPS must have a database of the directives issued by the Minister because its absence constraints the extent to which the CSPS can monitor and report on progress on SAPS implementation of such directives which leads to SAPS compliancy and unaccountability.

Conclusion

The post level, strength and credibility of the Secretary for Police Service appear to have a bearing on the effective functioning of the CSPS in the context of the hierarchical command and control nature of the SAPS.

Further, it appears that the CSPS was influential in the period 1996 to early 2000 but regressed since then to the point of extinction up until 2009 when interventions were introduced to resuscitate the functioning of the CSPS. Notwithstanding, there is still a deliberate resistance on the part of the SAPS to acknowledge the existence of the CSPS coupled with the complacency of the Minister. For instance, there are crucial strategic changes (e.g. structural and strategic) that occur in the SAPS that are approved by the Minister without inputs from the CSPS as the Minister's principal advisor on policing policy.

The approval by Cabinet of the *White Paper on Policing* in 2016 also appears not to have made any policy shift in terms of the actual posture of the SAPS and Minister regarding the institutional arrangements. The SAPS continue to perform the functions that the *White Paper on Policing* (and its predecessor) allocated to the CSPS. Further, the CSPS has failed for the past 22 years to review the *South African Police Service Act, 1995* and did not take any concrete steps to reclaim the civilian functions from the SAPS.

The findings show the Minister's political will is crucial for the effective functioning of the CSPS. The sporadic changes in the appointments of Ministers in the police portfolio is also not helping. Further, the CSPS appears not adequately capacitated in terms of both skill and number but any expansion of its human resource capacity should be to improve operational efficiency of working smarter and producing impactful results. The findings point out that the capacity that exist at the Provincial Secretariats including the constitutional powers of provincial executive are not being maximised by the CSPS. If the oversight institutions are not adequately capacitated and empowered, the status quo would remain and the SAPS will do as it wishes without any substantive scrutiny from the CSPS.

The policy and legal powers of the CSPS appear to be adequate for the effective functioning of the CSPS but not being used adequately. The powers of the CSPS can be strengthened through political will of the Minister amongst others. The CSPS does not have the powers to direct the SAPS because that is the exclusive terrain of the Minister. The findings also suggest that the CSPS was not designed to function as an independent institution from the Minister from a constitutional point of view but it should have an independent character and approach in the exercise of the civilian oversight mandate bestowed on it by legislation.

The CSPS is legally established to provide support and advice to the Minister regarding his/her political responsibilities as given in the *Constitution*, exercise civilian oversight over the SAPS regarding their compliance to instructions and directives issued by the Minister. Therefore, the CSPS cannot function as an independent institution but as an institution with an independent character from the SAPS.

4.3 The role of SAPS in policy development and institutional transformation

Introduction

In the main, the SAPS is the principal advisor to the Minister on policing operations. The role and functions of the SAPS are clearly articulated in policy and legislation as part of the transformation

journey that it has to traverse towards been a police agency that is trusted by the community it serves. The research participants were asked to reflect on the role of the SAPS in policy development and institutional transformation, and whether the SAPS embraced or accepted the reorientation of police culture from being paramilitary agency (a police force) to a service delivery oriented police agency.

The role of SAPS in policy development and institution transformation

Christine indicated that "the working relationship between the CSPS and SAPS should not be dealt with in a legalistic manner". If the SAPS sees the CSPS as a partner, then the SAPS will be inclined to work with the CSPS to get support in terms of developing enabling frameworks and policies for the police service to effectively deliver policing services. The SAPS should be open, transparent and invite the CSPS to support them through proactive and reactive initiatives.

The SAPS is expected to translate the research documents and policies approved by the Minister into operational policing, failure which, the Minister must then intervene and enforce accountability on the part of the SAPS. Until few years back (since 2011), the SAPS developed policy, legislation and determined policing priorities without involving the CSPS.

Van Wyk stated:

> The SAPS took the policy and legislative functions due to the vacuum left by the CSPS for many years. Mainly police members who formed part of the apartheid police and questioned whether transformation can occur in this situation comprise the top leadership of the SAPS.

The *White Paper on Policing* clearly puts back policy development in the realm of the CSPS. In fact, the policy position regarding the functional scope of the CSPS and SAPS was never changed, but the CSPS did not perform these functions due to the deliberate degrading of its functional stature. According to Mbhele, the SAPS should make inputs into policy development that is led by the CSPS. Cawthra appeared to concur with other research participants that there is a need to involve the SAPS in policy development mainly because policing policy is also part of the SAPS. The non-involvement of the SAPS in policy development could be problematic considering the operational policing expertise which is a crucial substance that should inform policy development".

Rogers stated that "the SAPS cannot be excluded from policy development because they are the ultimate implementers of the policy once approved by the Minister and adopted by Cabinet". Rogers highlighted that the SAPS typically "do not need someone to develop policy on their behalf" but the legal framework does not give the SAPS this responsibility. The posture of former National Commissioner J.S. Selebi is evident as can be seen from the literature by Omar (2010), Mistry and Kiplin (2014). Kinnes concurred and stated that "the CSPS cannot be developing policies without the intimate involvement of the SAPS".

In concurrence with Cawthra, Thabiso argued that there is a need to understand the practical and operational expertise when developing policy and legislation. Therefore, the SAPS must provide inputs into the policy development process in order to ensure that the policy architecture responds

correctly to the practical issues that occur in the SAPS. Further, the input of the SAPS is crucial because policy development is a result of policy implementation, monitoring, evaluation and feeding results back into the policy development cycle, which are mainly the CSPS functions. Phenyo saw "the role of the SAPS as giving feedback on the implementation of policy; on whether a policy is working or not and indicate the areas that requires policy intervention like security at police stations especially on access control".

The CSPS has to work closely with the SAPS from a policy development perspective because of the benefits associated therewith including the buy in of the SAPS in terms of implementation of policy. It is not sustainable to build working relationship between the CSPS and SAPS solely on personality of the senior leadership because any change in leadership will be a drawback. Rogers stated that "changes in the appointments of Ministers and posture of the SAPS leadership often hinder progress in policy development. For instance, former National Commissioner, M.V. Phiyega, disregarded the policy process and seen the CSPS as an irritation".

The SAPS and CSPS have to work together without contaminating the independent character of the CSPS. There should be initiatives in both institutions but the independence of the CSPS should remain to ensure a clear separation from policy and operations. The CSPS has the role to monitor SAPS operations and provide guidance where necessary. If the CSPS becomes part of the SAPS, the objectivity will be lost. Section 7(4) of the *Civilian Secretariat for Police Service Act, 2011* indicates that the Secretary must not be a member or former member of the police service of the Republic. This is so that the independent character and objective thinking in the exercise of civilian oversight is maintained.

SAPS embracing transformation

The broader SSR in South Africa include the creation of the CSPS. Cachalia indicated that "in the earlier days the debates were held about demilitarisation but many police officers were anxious to moving to a democratic policing". The turning point that led to the near distinction of the CSPS was when J.S. Selebi became the National Commissioner and just ignored the CSPS with the Minister S.V. Tshwete being complacent. The SAPS have treated and continue to treat the CSPS like a nuisance. Newham proposed that mutual respect in terms of working relationship between the CSPS and SAPS can have a positive impact on SAPS transformation with the Minister fully understanding the vision and role of CSPS.

Soman stated:

> There are pockets in the SAPS that see a need for change in police transformation and there are those which are resistant at all levels in the SAPS. The ultimate test rests on the Minister in terms of political will supported by the CSPS to ensure that transformation occurs in the SAPS. The fundamental weakness is the lack of an integrated strategy for the transformation of the SAPS on which to measure progress.

If the SAPS does not cooperate, the Minister with the unconditional and unequivocal support of the CSPS must direct and instruct the SAPS to do so. In this way, the CSPS will be able to reclaim

its influential position in terms of the work of the SAPS and also develop credibility and legitimacy that it lost since the early 2000. How this can be done remains a challenge considering the operational focus by the Ministers of Police.

Tait stated that "the SAPS did not embrace the idea of demilitarisation as part of the transformation process. The SAPS must be willing and able to engage, be insulate from political influence and strengthen internal management system". Mbhele highlighted that the SAPS has to be receptive to change and implement the policies that flow from the work of the CSPS, but "the embracing of transformation by the SAPS has been incomplete, partial and shallow especially towards oversight structures like the CSPS". As to whether the SAPS embraced demilitarisation as part of transforming the SAPS, Rogers indicated that there is progress but whether the improvements are enough is a debateable matter. Kinnes held a similar view with Cachalia that "the only time the SAPS accepted transformation was during the transition period from apartheid to democracy".

Mbhele in support of the view held by Newham, Burger and Kinnes stated:

> The police culture over the world is very insular, and that any state institution that is expected to act with coercion (to act with force against people) and sometimes limits and violates people's rights, would have resistance to checks and balances that scrutinise that power.

Therefore, tensions will always exist between the CSPS and SAPS in this context, but the tensions should be that which promote integration of policy and operation to improve service delivery instead of struggles for power and resources. Mbhele argued that if there is a stubborn National Commissioner towards oversight institutions, but the CSPS perform effectively in as far as their respective statutory mandates are concerned, such will render the hostility and stubbornness futile. But if there are no balance of power and not enough muscle to enforce accountability, the hostility towards the CSPS will be sustained especially worse if the Minister is also complacent and consumed into SAPS operations.

Christine indicated that "the SAPS has to a certain extend embraced the transformation agenda" while Thabiso indicated that the SAPS has not really embraced the idea of having the Minister giving them directives. Rather, the SAPS sees the Minister and CSPS as administrative functions and not as policy and strategic drivers of policing. At a certain point, the CSPS was regarded as the number one strategic risk for the SAPS. Phenyo also argued that "due consideration should be given that to a certain extend the SAPS has welcomed the civilian authority but more could be done to ensure that the SAPS fully acknowledges the CSPS and Minister as the civilian authority for the SAPS".

Another example given by Christine related to the structural arrangements between the CSPS and SAPS: if the perception is that the CSPS is policing the SAPS, and the SAPS had to provide resources to the CSPS, human nature dictates that it is highly likely that the CSPS will not get the resources. This relates to the SAPS resistant to subject itself to the scrutiny of the CSPS and making the CSPS to depend on the SAPS for resources. Instead of SAPS giving resources to the CSPS,

the SAPS decided to fill the gap/void left by the CSPS due to lack of adequate resources. Pelser (1997) also observed this institutional dilemma.

Conclusion

It is clear that the determination of policy is the exclusive purview of the Minister supported by the CSPS. It appears from the findings that the role of the SAPS in policy development is contributory in nature to provide inputs to ensure that the content of policy encompasses the practical, technical and operational factors in policing operations. This contribution is crucial for policy development process mainly on the basis of the lack of understanding of practical and operational policing expertise by civilians in the CSPS. Further, the SAPS is expected to implement policy as directed by the Minister and provide feedback to the Minister and CSPS. The results of policy implementation should be such that it provide appropriate picture of policy outcomes so that corrective action can be taken including possible review or termination of policy.

The SAPS have not embraced the transformation agenda and the sustained resistance to acknowledge the CSPS as an oversight body is a reflection of the SAPS historical posture to institutional transformation. Further, the presence of police members in the top leadership of the SAPS who formed part of the apartheid police makes it even difficult to effectively transform the SAPS. The resistance by the SAPS to be subjected to civilian oversight appears to be an international challenge. An incapacitated CSPS leaves ample room for the SAPS to venture into territories that are solely supposed to be controlled by civilians. Therefore, the political will of the Minister is crucial to ensure that the SAPS acknowledge government policy of moving towards being a civilianised police agency subject to civilian authority. The findings show that the SAPS and CSPS have to work together closely in policy development to ensure an integrated approach to transformation of the police service and policing approaches. The tension between the SAPS and CSPS is bound to continue in the normal course of their respective functioning, but the Minister exists to stabilise and neutralise the tensions to ensure that such do not derail the delivery of policing services.

In terms of managing SAPS budget, Cawthra argued that the police leadership at all levels should not be consumed with managing finances but that civilians should be there to service the SAPS, monitor the budget expenditure, lead the policy planning and budgeting processes. The argument was also highlighted by Mokotedi and Koitsioe (1997: 8) that "the Secretariat should be consulted on, and even manage, the police budget.

The current status quo where the SAPS are managing their own budget and procurement process is not advisable because this support responsibility takes away valuable time that SAPS management need to focus on operational policing matters. Notwithstanding, the *Public Finance Management Act, 1999 (Act No 1 of 1999)* brought some challenges regarding accountability on public finances which requires Accounting Officers (National Commissioner) to rake full responsibility for budget management. Notwithstanding, the powers of the National Commissioner are not unfettered, but are exercised subject to the direction of and policing policy approved by the Minister.

4.4 The role and powers of the Minister on SAPS transformation

Introduction

The statutory and policy framework put the Minister as the civilian authority on the SAPS. As per Section 206 of the *Constitution*, the political responsibilities of the Minister include amongst others the detrmination of the national policing policy and priorities and giving directives to the National Commissioner. The research participants were asked to reflect on the role and powers of the Minister in championing the SAPS institutional transformation and the posture of the Minister and former Ministers of Police pertaining to the civilian oversight functions of the CSPS.

Role and powers of the Minister

Tait pointed out that "the Minister sets the policy direction and hold the National Commissioner accountable for the implementation of the policing policy". Mbhele highlighted:

> The Minister is the political officer bearer responsible to ensure the implementation of policy mandates that the government is propagating. Further, the Minister leads in policy design and setting parameters to enforce accountability and have tight supervision on what the SAPS does in terms of the progress on agreed priorities, challenges and the need for change where applicable.

Further, Mbhele argued that the failure of SAPS transformation is associated with the Minister's failure to exercise tight supervision and accountability on the SAPS which creates a lax environment where the SAPS does what it wants knowing there is lack of accountability.

In concurrence with Mbhele and Tait, Soman stated:

> It will be better for the Minister to politically articulate his directives to the SAPS in terms of what he expects them to do and consider the findings and recommendations of the CSPS emanating from their oversight function. In the cause of holding the SAPS to account, the Minister should express his happiness or unhappiness with the results as would have been presented by the CSPS about the successes and failures of the SAPS. The SAPS must then take responsibility and develop corrective measures.

The sporadic change of Ministers of Police over time has a negative impact on the SAPS transformation. Mbhele highlighted that there is a disjuncture between the content of the Annual Performance Plan of SAPS and CSPS respectively in contrast to what the Minister pronounces in Parliament during budget speech and hearings. Therefore, a need exists to have stability in the appointment of Ministers of Police so that they can set a five-year strategic direction and plan with a long-term trajectory and see through the outcomes.

All the research participants in the CSPS felt that the Ministry of Police often forget its mandate. For instance, the Minister is a civilian but is more associated with the SAPS in all forms of support

from office accommodation, human and physical resources. Mondi confirmed this view expressed by CSPS officials and went further to state that:

> There are personality issues at play between the leadership of the CSPS and SAPS, but a good working relationship between the Minister and CSPS might draw the attention of the Minister toward the CSPS, which will resuscitate the latter's influence on SAPS transformation.

The deployment of police members by the SAPS in the Ministry of Police through the secondment process than civilians to support the Minister is concerning according to Phenyo. The most worrying aspect in this regard is that the personnel seconded to the Ministry of Police for support functions are from the SAPS and not from the CSPS. This could be interpreted as a form of surveillance by the SAPS on the Ministry of Police which potentially exposes the Minister in terms of his objectivity, impartiality and accountability approach on the work of the SAPS.

The Minister who gets consumed by the operations of the SAPS loses the opportunity of having the CSPS as the capacity to support and advise the Minister to effectively oversee and hold the SAPS accountable. This view is also echoed by Phenyo stating that "Ministers do not understand their role and have become more operational than strategic and policy oriented which exposes them to experience fatigue". The Minister has to seat with the CSPS, strategise on how to hold the SAPS accountable and afford the CSPS the support and space to provide advise on matters that SAPS should attend to in pursuit of transformation and consequently improving policing. This setup provides the CSPS an opportunity to monitor SAPS and report back to the Minister for accountability purposes and issuing of directives to the SAPS. The Minister must be the champion of the national policing policy which is a huge responsibility that requires the support of the CSPS.

The exclusive reliance on the SAPS for support in almost everything potentially put the Minister in a dilemma and highly compromising position. For instance, the SAPS may as well be feeding the Minister with wrong information and the Minister would not know unless the Minister works closely with a well-functioning and capacitated CSPS that will insulate him/her from SAPS operational functions and be able to provide policy and strategic advise necessary for executive decision making.

The Minister is responsible for everything within the policing function. Cawthra stated that "if the Minister does not use the powers or the powers are used for wrong purposes, whatever is on the paper becomes useless". Cachalia stated:

> The Minister has all the powers given by the legal framework, but the use of the power to hold the police service accountable remains uncertain. The Ministers are not understanding their roles correctly and their tough talk rhetoric without proper action is absolutely hopeless. What people need is to be treated with respect and have their complaint properly investigated and given proper positive feedback. If the Minister does not have the capacity to delivery, then Parliament should be engaged to request capacity and budget to capacitate his support functions.

Newham suggested that "the SAPS must be isolated from political interference because of the potential to weaken the authority of the SAPS leadership. The high possibility that National Commissioners are appointed for certain political reasons cannot be ruled out". The political head of the SAPS must set the policing agenda and national policing priorities as a pubic representative and then monitor whether the police service is doing its work with the support of the CSPS. The SAPS must ensure that the crime intelligence is used for supporting policing and resist any political directive to the contrary.

The *Constitution* provides the President with the sole power to appoint the National Commissioner. Further, the President appoints the Minister because the President cannot be closely monitoring what the police does. Newham argued that there is a blurry area between operational and policy issues that bring challenges on what the Minister consider as policy or not. One of the crucial things that Newham highlighted is that "a wise President appoints a good Minister to hold the SAPS accountable. The role of the Minister is to ensure that the SAPS is strengthened to deliver on government policing priorities".

There is this possible vicious cycle that the CSPS could be conducting civilian oversight over the Minister, which in a way may limit the extent to which the work of the CSPS becomes public knowledge and SAPS held accountable. However, Soman pointed out that the fundamental questions to be asked is whether the role of the Minister is to protect his political position or to ensure that government programmes are implement without fear, favour or prejudice. Rogers highlighted that "historically the Ministers have been protective of the SAPS and sometimes for the wrongs things" like what occurred leading to the Marikana massacre.

The South African SSR policy has huge institutional and organisational implications for the CSPS in terms of the future functional trajectory. The Minister has the powers to ensure the *White Paper on Policing* is implemented as a government policy which must be done in its entirety, otherwise the CSPS risks remaining a subset of the SAPS and at the periphery of the Minister who will, as usual, continue to rely on the SAPS for support and advise. There is a high likelihood that SAPS will be reluctant to accept the institutional arrangements in *White Paper on Policing*.

Posture of Minister to civilian oversight

Soman's view on the proximity of the Minister to the SAPS than the CSPS and the future of the CSPS, was that "the matter is not new and has been raised before but it has been the strategy of the SAPS to circumvent the role of the CSPS". For instance, when former Minister S.V. Tshwete replaced former Minister F.S. Mufumadi, the approach of the CSPS was to brief the Minister before SAPS did but the SAPS found their way to the Minister before the CSPS could. It appears that this approach has been sustained and remained for all successive Ministers which contributed to the near extinction of the functioning of the CSPS. The CSPS proximity to and direct engagements with the Minister coupled with political will are crucial to resuscitate the effective functioning of the CSPS, but Soman stated:

> If the trend does not change, there cannot be a bright future for the CSPS. The hope for the CSPS future is for it to become more action based in terms of the mandate and ensuring

> that the products produced bring impactful change. Until this happens, the CSPS is just pushing paper and wasting taxpayer's money.

According to Mbhele:

> The Ministers do not sufficiently appreciate the full potential of the CSPS. The CSPS is sidelined by the Ministers on some of the crucial work that was supposed to be performed by the CSPS and instead made to be a participant than leading the projects e.g. Reference Group to look at challenges with SAPS leadership, deployment of senior SAPS members and Task Team on Transformation of the SAPS.

For instance, to show the under appreciation of the crucial role of the CSPS, the Ministers are not seen coming to Parliament when the CSPS present their accountability reports but the Ministers avail themselves when the SAPS present to Parliament especially on the presentation of Annual Reports, Annual Performance Plans and Budget and other scheduled SAPS briefings to the Committee. The ideal is that when the Minister appears before the Committee, both the Secretary for Police Service and National Commissioner should be present as advisors on policing policy and operational policing respectively, and vice versa. This will start to profile the CSPS not as a peripheral institution, but that which oversees the police service and providing the Minister with policy and strategic advise and support.

Rogers stated that "the credibility of the CSPS is in the eyes of the respective Ministers and there were lots of opportunities to profile the CSPS as an institution that support the Minister like during the Minister's budget vote speeches in Parliament". The missed opportunities may have been a deliberate action perhaps because the Minister's level of confidence on the CSPS was the problem. According to Rogers "the CSPS has not asserted itself as a civilian oversight institution over the SAPS" and therefore, the Minister may as well look somewhere else for support which the SAPS is forever ready to respond and fill the gap. However, according to Cachalia, "there is no evidence to suggest that some Ministers choose to ignore the CSPS. The Minister cannot just ignore the CSPS because it will be tantamount to waste of public money". However, if the CSPS does not provide the necessary support, the Minister will choose to either do away with the CSPS or capacitate it to be able to provide the support expected of the Minister.

Newham observed that when the SAPS appear before any oversight structure including Parliament, they would have all the answers and all the strategies to deal with any challenge they may be facing but nothing is done. This trend will only change if there is accountability in the SAPS, argued Newham, and that a good Minister would require an independent assessment in the form of the CSPS on what the SAPS provides to the Minister.

The crucial factor, Christine argued, is how the Minister views his role and responsibilities in terms of policing and the bearing such role has on the effectiveness of the CSPS. If the Minister sees his role as a civilian who is responsible to guide and instruct the police service, then a different picture emerges where the CSPS starts having a clear role. However, if the Minister understands his/her role as being part of SAPS operations it nullifies the political oversight. Consequently, the CSPS ceases to exist in the proper sense of the word, because no one in the form of the Minister will be

taking notice, appreciating and guiding the work of the CSPS and consequently whatever recommendations the CSPS comes up with will not be implemented.

Thabiso pointed to the proximity and availability of resources in the SAPS as the main driver for the Minister to be inclined to work closely with and depend on the SAPS than the CSPS. This view is also held by Phenyo who indicated that "the Minister's alignment to the police service than the CSPS is about power, resources and publicity". Thabiso acknowledged that the CSPS is not responsible for the Minister's security details, but argued that the first briefing of any new Minister in the police portfolio must be done by the CSPS and then gets introduced by the CSPS to the police service. In essence, civilians must brief the Minister in order to understand the dynamics before engaging with the SAPS leadership.

Christine stated that "the resourcing of the CSPS is dependent on the political will of the Minister who may be lacking the understanding of the role of the CSPS. The CSPS must up its game and ensure effectiveness in its functioning".

Conclusion

The Minister has the constitutional powers to determine the national policing policy, set national priorities and direct the SAPS to implement. Further, the Minister must enable the SAPS to implement the policy priorities and directives by allocating resources (budget). These crucial factors propel the Minister to hold the SAPS accountable for their work and results produced. The Minister should also take consideration of the work done by the CSPS when engaging with the SAPS leadership and holding the SAPS accountable.

The findings shows that the Minister's failure to effectively exercise close political oversight and supervision on the SAPS is due to lack of understanding of their role and a fundamental factor that led to failure to transform the SAPS. The research participants highlighted that the Ministers of Police are not using their powers properly, do not understand their role hence the peripheral posture of the CSPS in crucial discussions and engagements related to the SAPS. The future of the CSPS will be doomed if the posture of the Minister does not change.

The question is whether the Minister does hold the SAPS to account for implementation of policy directives or not. Any reaction or posture that suggest denial and protection of the SAPS by the Minister does and will not assist in achieving the SAPS transformation as encapsulated in the NDP.

4.5 Governance Framework for SAPS transformation

Introduction

It does appear that good governance and not just governance is very crucial for SAPS transformation. The research participants were asked to reflect on the governance framework to enable effective SAPS transformation. The following are the views of the research participants gathered through face-to-face interviews and some analysis

Institutions and structures

The Minister, CSPS and Provincial Secretariats form the crucial foundation for a governance structure for SAPS transformation. Further, the Committee is empowered to hold the SAPS and Minister accountable while the Standing Committee on Police exists in the Provincial Legislatures to hold SAPS Provincial Commissioners to account regarding policing in the respective provinces. The IPID has a responsibility to independently investigate conduct of members of the SAPS that is *prima facie* criminal in nature and therefore contrary to the SAPS Code of Conduct and Ethics, and general statutes.

Furthermore, the establishment of Senior Management Fora and Heads of Provincial Department for Safety and Security as part of the governance structures is meant to assess the work done by the Provincial Secretariats and provide progress, feedback and strengthen collaboration. The work done within the legal ambit of the CSPS should be critiqued, analysed, consolidated and given to the Minister which can also be taken for discussion to Minister and Members of Executive Councils (MINMEC) Forum.

Mbhele argued that if the CSPS was doing what is required from the budget monitoring perspective and IPID from the criminal side, then both these civilian oversight institutions can integrate and work closely to support the Minister to hold the SAPS accountable. The current fragmentations between the CSPS and IPID provide the SAPS an opportunity to continue sidelining the oversight institutions.

Faull pointed out that "on paper South Africa has a very good oversight structure and governance framework but sometimes they do not work because they are not implemented the way they were envisioned". One of the factors contributing to the deficiencies in the governance of policing is the systematic undermining of oversight structures by political players and SAPS. Faull argued that "it has been too easy to use the security structures for political fights which has damaged the government and governance of South Africa". The governance framework has not really shifted pertaining to how security sector institutions operate, and better leadership is needed to change the status quo.

The establishment of the CSPS and the concept of community policing was meant to bring the police under the control of civilian authority at all spheres of government. Cawthra had uncertainty whether the police service should be put under the control of civilians. However, Cawthra indicated that "the idea of the Community Policing Fora (CPF) through the establishment of Community Policing Boards was to strengthen the SAPS accountability because the SAPS is not just accountable upwards to the political head but also downwards to the communities they serve or ought to serve. Cawthra argued that this community-based accountability approach is easy in theory than in practice and may be working in '*white rich*' areas than where it should be (which is mostly in the black marginalised and poor communities).

Kinnes indicated that the SAPS is resisting transformation of being accountable to a civilian authority due to their historic institutional culture. This, Kinnes argued, requires the strengthening of Parliament oversight role and the interface between the SAPS, CSPS and Parliament.

The institutional arrangements in the *White Paper on Policing* are meant to avoid a situation where the Minister becomes part of the SAPS operations. Thabiso emphasised that "the Minister is a civilian and must remain a civilian in order to properly discharge his/her constitutional responsibilities of determining national policing policy and ensure a *strengthened and effective coordination and cooperation* between the SAPS and CSPS.

Phenyo stated that a precursor to good governance framework for SAPS transformation is "going back to basics, respect for what the legislative framework provides and for the SAPS and Minister to give due recognition to the legislative mandate of the CSPS". Further, the members of the CPF are the foot soldiers for the CSPS and therefore a realignment is necessary to ensure that the CPF operate and function under the direction and guidance of civilians in the CSPS.

Cachalia stated:

> There is no need for a governance structure for SAPS demilitarisation. A political will, policy framework, proper support systems for the Minister to discharge his/her responsibilities and also appointment of properly trained police members at all levels to perform policing functions are needed to demilitarise the SAPS.

Systems and Processes

Good governance requires the setting up of systems and processes to support governance institutions to effectively contribute to SAPS transformation. Tait stated that "the military rank system has to be changed, appoint highly ethical police members and integrate the Code of Conduct into the SAPS disciplinary and performance process". Further, the SAPS has been reluctant to engage with the public since 1994 but the National Police Board (NPB) as recommended in the NDP will be valuable to help fix the challenges in the SAPS transformation process especially from a professionalisation perspective in terms of recruitment and training, and setting of norms and standards. In addition, Tait suggested that the SAPS centralised approach of determining policing priorities at national should be revised and decentralise allocation of resources based on community priorities. There needs to be consideration for local priorities and allocate budget in order to respond accordingly to community-based challenges.

Rogers suggested that "the SAPS requires a proper system to track and analyse the use of force and conclude disciplinary cases associated therewith as speedily as possible". Further, oversight institutions and Chapter Nine institutions like the SAHRC should monitor, report and hold the SAPS accountable for human rights violations by police members. The lack of institutional mechanism to integrate efforts amongst civilian oversight institutions and weak civilian oversight institutions creates fertile environment for a lot of things to fall on the cracks, and this is not ideal in pursuit of the SAPS transformation process.

Christine indicated that the appropriate action to achieving SAPS transformation is to deal with the issue of command and control, improve planning on how SAPS respond to crime incidents, debriefing of the police members and the need for serious management training. As part of professionalisation and managing in a democracy, the training provided in the SAPS should be

redirected to provide speciality in all areas of police operations e.g. crime intelligence, visible policing and detective. Further, Christine indicated that it appears there are standards for the public and for members of the SAPS. There is this believe that the police members do not enjoy the rights like any other person and this may make the police members to respond in a way that is incompatible with the law. The society must be taught about the dos and don'ts, and also teach the police members about the rule of law and how police members use force.

Thabiso argued that "the Minister must be serviced by the CSPS and not the SAPS because the Minister is a civilian authority". Most of the time the Minister deals with the SAPS operations than policy issues, the latter which is a constitutional responsibility solely bestowed to the Minister to enable him to exercise his political responsibilities and oversight over the SAPS.

Newham argued that "to professionalise the SAPS means that police members are specialists and apply the code of conduct when performing their policing duties, and consequence management is pursued where police members deviate from the agreed standards". The politicians should desist from deploying persons who do not have experience in policing in the top leadership of the SAPS because this contributes to inefficiencies and deficiencies in the delivery of policing services. Newham argued that only the best possible men and women should be appointed to lead the SAPS, and avoid political interference in policing.

Establishing an independent multidisciplinary Board with a variety of expertise in various environments to set standards, assess and interview candidates for top SAPS leadership positions is what Newham suggested. This is more in line with the recommendations in the NDP for the establishment of the National Police Board. This is in view of the non-transparent manner in which the appointment of the National Commissioner is handled unlike the process followed when appointing some Heads of Chapter Nine institutions or Heads of Department.

The High Level Panel led by former President Kgalema Mothlanthe (2017) also raised concerns pertaining to corruption and independence of key institutions within the Criminal Justice Sector. This was raised in the context of the appointment process for heads of anti-corruption institutions e.g. SAPS, National Prosecuting Authority and Directorate for Priority Crime Investigations looking at mechanisms that could provide a certain degree of independence.

Mbhele stated that "there is adequate governance framework in South Africa for SAPS transformation. The problem is not the laws and policies or lack of governance framework, but the lack of implementation and political will on the part of the Minister". The CSPS will not be able to exercise supervision and hold the SAPS accountable if the Minister does not provide the political will.

Mbhele reiterated that the Minister has to be proactive to giving feedback to the President in terms of SAPS compliance to policy directives and performance as the line function for the National Commissioner. Newham stated:

When politicians issue directives to the SAPS, such must be in writing and handed to the National Commissioner and presented to Parliament. This will ensure that a trail of evidence exists and enable the SAPS to prove whether the directive was acted upon or not.

Conclusion

The findings reveal that there is adequate governance framework from a policy, legislative and institutional point of view for the transformation of the SAPS. The challenge, as pointed out by the research participants, is the implementation and lack of an integrated approach on how the institutions drive and contribute to SAPS transformation. The undermining of and reluctance to acknowledge civilian oversight institutions by the SAPS, and political interference in policing operations compound the challenge to strengthen governance on SAPS transformation. What remains critical is that all roleplayers in SAPS transformation process including the SAPS must fully respect the provisions of the legislative framework designed to propel transformation in the manner that policing is conducted in a democratic government guided by the principle of good governance.

The research participants suggested processes that are directed at improving governance of SAPS transformation. These include:

a) Strengthening the role of Parliament, CSPS and CPF;
b) Reviewing the command, control, and training approach to align to democratic policing;
c) Appoint credible and ethical police members;
d) Deal decisively with corruption in police ranks; and
e) Police members to dully adhere to code of conduct, professional policing ethos, practices and standards as set out by the National Policing Board.

4.6 SSR for South Africa

Introduction

The transformation of the security institutions was amongst the crucial issues that a democratic South Africa had to address to ensure that they function within the scope of the *Constitution*. The following are findings and reflections on SSR policy in South Africa.

Background

SSR is "the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable, within a framework of democratic civilian control, rule of law and respect for human rights" (DCAF, 2015: 2). The *Constitution* clearly articulate SSR in South Africa in respect of the Defence Force, SAPS and Intelligence Services. Section 198 of the *Constitution* provides that national security must be pursued in compliance with the law (including international law). National security is subject to the authority of Parliament and the national executive.

The *Defence Act, 2002* was to give legal force to the national defence policy to ensure civilian authority of how the Defence Force functions. The Secretary for Defence is the Head of Department and Accounting Officer for the Department of Defence and Military Veterans, while National Commissioner is the Head of Department and Accounting Officer for the Department of Police. There was never a realignment of the institutional arrangements in the policing environment after the final *Constitution* was adopted in 1996

Reflections on SSR

It appears from a policy and legislative perspective that the SSR in South Africa has been articulated including on issues of good governance in terms of reporting, transparency and accountability. Faull stated that "there was more coherence of what kind of transformation was desired in the 1996 and that the governance framework has not really shifted how security institutions work". The challenge appears to be from the implementation perspective which is exacerbated by the sporadic institutional review which has been worsened by political interference and partisanship of the leadership of the security institutions.

Mondi stated that "policy is good on paper but a waste of time and resources if it cannot be implemented. "The *White Paper on Safety and Security* (1998) was never implemented", argued Burger. Political will is needed to ensure the implementation of the *White Paper on Policing*. Cawthra concurred with Mondi and Burger, and stated that "it is always easy to pass policy than implement it". Further, Faull highlighted that "on paper South Africa has very good oversight structure and framework but sometimes they do not work because they are not implemented the way they were envisioned mostly owing to the systematic undermining by political players".

For instance, each time a National Commissioner of the SAPS gets appointed, there are changes on the policing strategy, approach and organisational structure. G.J. Zuma[6] tasked some Ministers in the security cluster "to review the structures of the civilian intelligence community with the aim of developing a more effective and efficient intelligence architecture" (Coetzer, 2015). Ten years later, M.C. Ramaphosa[7] (2018) appointed a panel "tasked with assessing the mandate, capacity and organisational integrity of the agency" (Khumalo, 2018).

The CSPS was restructured in 2009 and the process is still in progress. The *White Paper on Policing* calls for the review of the institutional arrangements and functioning of the institutions reporting to the Ministry of Police in particular the CSPS and SAPS.

Cawthra stated that "the real problem is the abuse of the intelligence, prosecution and police for factional political ends aimed at self-enrichment and not police militarisation". Faull highlighted that "it has been too easy to use the security structures for political fights or battles which consequently damaged the governance in South Africa". The review of institutional arrangements and strategic direction are crucial to ensure that security institutions adapt to changing conditions in the political, legal, socio-economic and technological environments. However, reviews and

[6] Served as President of the Republic of South Africa from 2009 – 2018.
[7] The President of the Republic of South Africa from 2018 …

changes in the security institutions based on partisan political interests is not desired in a democratic government considering the historic legacy on how these institutions operated.

The protracted delays to review the *South African Police Service Act, 1995* brought a dilemma and disjuncture between policy and legislation which has been sustained for over two decades. Van Wyk, Cawthra, Soman and Rogers raised their concerns in this regard and pointed to it as a sort of resistance by the SAPS to subject to civilian control of policing. Van Wyk further pointed out that the appointment of a former SAPS Major General (who was responsible for drafting SAPS and other related legislations) to lead the review of the *South African Police Service Act, 1995* is concerning from a civilian oversight perspective. This, Van Wyk argued, is a reflection of leadership failure.

The fact that the National Commissioner remain the Accounting Officer of the Department of Police is in itself a contradiction from the policy position on SSR as encapsulated in the *White Paper on Policing*. The fact that the National Commissioner has taken over civilian functions contradicts the policy direction in terms of the institutional arrangements. All these dynamics created a conundrum in terms of entrenching good governance towards ensuring effectiveness and efficiency of policing service delivery. However, Cawthra argued that "the role of the police and military sometimes gets conflated which is an international phenomenon. It does not matter whether there are uniform members in the civilian functions as long as they understand the ethos".

Conclusion

The South African SSR policy is in place in line with the constitutional principles. Proper alignment of policy and legislation coupled with better political and bureaucratic leadership are crucial to improve, strengthen and empower civilian oversight institutions to ensure accountability, transparency and sound governance of security institutions like the SAPS. The apparent flip-flopping on policy issues by Ministers of Police and Cabinet hampers SSR processes and progress. Political interference in the functioning of the SAPS and involvement in policing operations by Ministers of Police create a dilemma and fertile environment for complacency on accountability and transparency by security agencies.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

By adopting a militaristic approach, techniques and culture for policing, the SAPS contradicts the policy and legal framework designed for SSR in democratic South Africa. The heavy-handed militaristic policing approach that is compounded by the high levels of serious crimes led to growing public animosity, mistrust and discontent towards the SAPS.

The purpose of the research was the interrogation of the role of the CSPS in the context of SAPS institutional transformation concerning police militarisation and demilitarisation. The objective was to assess the policy and legal framework and the capacity of the CSPS regarding the SAPS militarisation trajectory and the role that the CSPS could play to transform the SAPS institutionally into a demilitarised police agency that resonates with a democratic state. The research questions were focused on the role and powers of the CSPS and Minister in SAPS transformation, and role of SAPS in policy development including a reflection on the governance framework for SAPS transformation. The following are the conclusions emanating from the research findings which are presented in thematic manner derived from the research questions. The recommendations and proposed research project are also given in subsequent sub-sections.

5.2 Thematic conclusions

5.2.1 Police militarisation and demilitarisation

Transformation of the SAPS was amongst the key objectives in 1994. Progress was made until 2000 where the SAPS appeared to be regressing from a somewhat a demilitarised to a resemblance of a military force with military ranks, and a strong emphasis on police militarisation by former Minister, E.N. Mthethwa. As observed from the literature, a police agency that is militarised is not desired in a democratic government due to the tendency to use excessive force especially on civilians. But it was also clear from the literature that militarisation of the SAPS cannot be attributed to only one or two aspects e.g. adoption of military ranks and change in insignia because militarisation is multidimensional and include a variety of factors.

The superficial changes in rank structure, uniform, insignia, demographic representation and to a certain extend the police training curriculum was a good start to transform the police service that provides services to the citizenry instead of a political tool to silence government detractors. However, the pronouncements made by the Ministry of Police in 2010 was a reflection of the failure to further take the SAPS transformation forward alongside the constitutional imperatives, democratic principles, policy and legal framework that underpinned SAPS transformation. Therefore, the envisaged SAPS transformation as envisaged in policy and statutes is yet to be achieved.

The fact that the SAPS transformation is a process and not an event should not make government to be complacent and flip-flop on policy positions regarding the policing approach in South Africa. The lack of properly articulated performance indicators and measures from which to track progress

and hold the SAPS leadership accountable regarding police transformation is a deficiency on the part of civilian oversight and political responsibility. The SAPS long-term vision as given in the NDP would not be realised due to failure to clearly articulate the process of police demilitarisation, civilianisation and professionalisation. This is exacerbated by the lack of clarity by the NPC regarding the role of the CSPS in the process of implementing the NDP recommendations.

Even though the broader intention behind the change in ranks in 2010 was militarisation in the true sense, the SAPS did not reach the threshold on the continuum of militarisation narrated by Kraska (2007 cited in Burger, 2014). The attempt to remilitarise the SAPS during 2010 was a failure of judgment by the Ministry of Police and Cabinet to appreciate and understand crime dynamics and historical context in terms of the character and nature of police militarism as was experienced during the apartheid government. Though some of the elements of militarism are being used by the police service in their policing activities, the full militarisation of the police service failed to gain traction because it was an ill-advised policy approach by Cabinet and Ministry of Police. Further, the Minister's reliance on the SAPS leadership for policy advice led to this failure of judgement on policy position.

The SAPS is not a government institution operating in an isolated environment but forms part of and operate in an integrated and intergovernmental space that necessitate multi-stakeholder approach. It is not necessary for the police service to be unnecessarily fierce towards crime prevention if it fully appreciates the fact that crime is imbedded in the social fibre of society and cannot be dealt with solely from a policing perspective, but requires involvement of other social partners in both public and private sector.

Further, the current trend where the SAPS becomes the first responder to public demonstrations and firing of rubber bullets to disperse crowds is characteristic of the apartheid police tactics and therefore not sustainable in a democratic state where the *Constitution* reign supreme. It is understandable from a legal point of view that the police have a duty to protect people's rights and property, uphold and enforce the law. However, the exercise of this duty should not be such that it suppresses public expression but that which appreciates public demonstration in the context of the socio-economic dynamics in South Africa while not being complacent at the same time. This requires a careful balancing act and clear decisive command and control by the SAPS leadership.

5.2.2 The role and powers of the CSPS

The CSPS plays a crucial role with regard to the transformation of the SAPS. While the CSPS had its share of successes especially during the early years of the democratic government, it has had its misfortunes since the early 2000. Amongst the crucial misfortunes was the deliberate political downgrading of the post level of the Secretary for Police Service from a DG to a CD, which reduced the CSPS influence and power in relation to that of the National Commissioner, and lost greater respect within the SAPS considering police member's attachment of respect to rank. Further, the CSPS was disabled to carry out its functions to the extent that the SAPS took over crucial civilian functions, determined policy and policing priorities. Although the CSPS was revived in 2009 with the post level elevated to a DDG, the extent to which the CSPS uses its policy and

legislative muscle remains that of a subservient to the SAPS hence the failure to gain traction in terms of influence and impact on SAPS functioning and transformation.

The establishment of the CSPS has constitutional imperatives in the context of SAPS transformation. Although the stature and character of the CSPS especially in terms of the specific functions is not narrated in the *Constitution*, the mere inclusion of a provision in the *Constitution* for the establishment of the CSPS shows the significance attached therewith by the Constitutional Assembly. The deliberate downgrading of the functioning of the CSPS to a near distinction show the complacency of the executive authority on the constitutional significance of the CSPS in the broader SAPS transformation.

Besides the need for good ethical and credible leadership in the CSPS, the effective functioning of the CSPS in terms of its influence on SAPS transformation and broader policing is unfortunately linked to the strength and credibility of the Minister, a clear understanding by the Minister regarding his/her responsibility and segregation between what constitutes policy and police operations. Section 208 of the *Constitution* clearly shows that the CSPS *functions under the direction of the Minister*. For whatever the CSPS does pertaining to the provisions of the legislation flowing from Section 208 of the *Constitution*, the CSPS does so as directed by the Minister. Therefore, the current legal framework does not allow the CSPS to function independently from the Minister except that the CSPS is expected to have an independent character and approach in the exercise of its civilian oversight mandate and support to the Minister.

The SAPS engineered the collapse of the CSPS in the early 2000 with the conscious or unconscious support and complacency of the Minister. This dilemma can be demonstrated by the events leading to the departure of the first Secretary for Police Service in 2000 and regression of the influential role of the CSPS henceforth. The literature supported by the views from the majority of the research participants reveal that the downward slope in terms of its functionality started when former Minister S.V. Tshwete was appointed together with former National Commissioner J.S. Selebi both of whom did not see the need to have civilian advisors. The diminished role of the CSPS was also found in the research study conducted by Cachalia (2000). The continued trend in terms of SAPS resistance to civilian oversight with successive Ministers of Police, failure to review the *South African Police Service Act, 1995* is a consequence of political complacency for rendering the CSPS dysfunctional.

The political will of the Minister is crucial for the effective functioning of the CSPS and the sporadic changes in the appointments of Ministers in the police portfolio is not helping to sustain momentum to strengthen civilian oversight over the SAPS. Further, the inadequacy of human resource capacity in terms of both skill and quantity, the minimal utilisation of the legal powers and capacity of Provincial Secretariats are impediments to improving operational efficiency of the CSPS, working smarter and producing impactful results.

5.2.3 The role of the SAPS in policy development and transformation

The policy and legislative framework defines the scope of the role of the SAPS in the transformation process. The gains that were made on SAPS transformation during the first

administration of a democratic government had stalled mainly attributed to the SAPS resistance to the CSPS as an oversight institution and complacency of the Ministers of Police on the role of the CSPS and their involvement in police operations. This led to the SAPS leading a campaign to have the CSPS sidelined which was successful under the leadership of S.V. Tshwete and J.S. Selebi as Minister and National Commissioner respectively and sustained since 2000. Further, the SAPS incorporated all the crucial functions of the CSPS in their operations and consequently running the CSPS redundant.

The SAPS must contribute to blend policy content with practical, technical and operational policing factors. The SAPS implement policy priorities and directives of the executive authority. Therefore, it is crucial for the SAPS to be involved, consulted in policy development process. Further, the SAPS is expected to provide feedback to the Minister and CSPS to track performance indicators which will be tested against policy objectives. This can be characterised as the '*policy feedback loop*' where the results of policy implementation are analysed against the predetermined policy objectives and outcomes. Whether a corrective action is required remains the function of a thorough analysis and evaluation of policy outcomes by the SAPS.

The resistance by the police agencies to be scrutinised by civilian oversight institutions is not unique in the case of the SAPS, but an international challenge. The posture of the SAPS towards the existence of the CSPS as a civilian oversight institution is a reflection of their resistance to change and not embracing transformation. Notwithstanding, the SAPS has implemented many of the changes in the context of broader public service transformation but resist to acknowledge the role that the CSPS plays to bring about a change in SAPS in terms of professionalisation and democratic policing.

For instance, the fierce hostility shown by the SAPS towards the IPID with regard to the investigations levelled against some of the senior leadership of the SAPS appears to be a reflection of the resistance to civilian oversight and accountability for the actions or inactions of police members. Former Acting SAPS National Commissioner, General J.K. Phahlane, apparently interfered in the IPID investigations against him to the extent that the "IPID has demanded that the acting police commissioner stay away from any investigation involving its officers" (Serrao, 2017). The failed suspension of the Executive Director of the IPID by former Minister N.P.T. Nhleko in 2015 is a classic example of manipulation by the SAPS of their proximity to political power and the misunderstanding of Ministers of Police as it pertains to their role on the police service.

For instance, Lindeque (2015) reported that "a Gauteng court has ruled Police Minister Nkosinathi Nhleko's decision to suspend Independent Police Investigative Department (Ipid) boss Robert McBride, was unlawful". Further, Herman (2017) reported that former Deputy President Cyril Ramaphosa has admitted he struggled to get former Police Minister Nathi Nhleko and Independent Police Investigative Directorate head Robert McBride to restore relations"

Both the SAPS and CSPS must work together in policy development, implementation, monitoring and evaluation towards ensuring delivery of policing services to the citizenry. The tension that is expected to exist between the SAPS and CSPS is that which is characterised by the normal battle

of ideas and ideologies not battles about 'defending territories' and obsession with power and resources. The role of the Minister in these tensions is that of stabilisation to ensure that the tensions do not derail policing service delivery and adherence to government goals.

Another dilemma in this SAPS transformation conundrum and wrestle for power is related to the appointment of the National Commissioner. Although the *Constitution* bestows the power of appointment to the President, that power is not without qualification. As seen in many court judgments, the exercise of presidential powers on appointment of persons in government institutions like Heads of Department and Heads of Chapter Nine Institution must be '*rational*'. The recommendations of the NPC (2011) and High Level Panel led by former President Kgalema Mothlanthe (2017) that an independent multi-disciplinary panel be constituted to screen applicants and recommend persons for appointment as the National Commissioner are crucial and should be considered henceforth in terms of the approach and process. This will surely subdue the power struggles that may exist between the Secretary for Police Service and National Commissioner.

5.2.4 The role and powers of the Minister of Police

The policy and legislative framework defines the scope, role and powers of the Minister in the transformation process. Notwithstanding, the historic dysfunctional and sidelining of the CSPS and lax/complacent posture of the Ministers of Police suggest the lack of understanding of the CSPS role or pure disregard of its transformational role on the SAPS.

The Minister has the constitutional powers to champion the transformation trajectory of the SAPS. The Minister does this through the determination of the national policing policy, setting national priorities, giving directives and allocating resources (budget) to the SAPS to support implementation. Notwithstanding, the Minister cannot single-handedly exercise these powers without support from the CSPS. It is clear from the reading of Section 208 of the *Constitution* that the CSPS was established to provide support necessary for the Minister to exercise his/her political responsibilities. This is also evident from the functional areas allocated to the CSPS in the *White Paper on Policing*. Therefore, the CSPS supports and assist the Minister to hold the SAPS accountable for their deliverables both in terms of performance and transformation results. It is clear that the Minister should seriously consider the outputs produced by the CSPS to effectively discharge his/her constitutional and political responsibilities to ensure SAPS transformation.

The Ministers of Police fail to maximise the support of the CSPS due to misunderstanding of their role and responsibilities. This is amongst some of the fundamental factors that led to failure to transform the SAPS. The proximity of the Minister to the SAPS operations limits his/her powers to exercise the political oversight responsibilities and the extent to which the SAPS is held accountable. A distant Minister away from the CSPS is a reflection of failure to appreciate the constitutional imperatives of the CSPS, increases exposure to manipulation by the SAPS leadership, limits objectivity to balance policy and operations.

For instance, a Minister who is distance from the CSPS and takes policy advice (which is a civilian territory) from the SAPS becomes a baton for maintaining institutionalised resistance by the SAPS towards civilian oversight and indirect abuse of power over the civilian oversight authority. The

same scenario can be said for other Ministers of Police who allowed the downgrading of the CSPS, and the assumption of civilian functions by the SAPS. Any reaction or posture that suggest denial and protection of the SAPS by the Minister does and will not assist in achieving the SAPS transformation as encapsulated in the NDP and other government policies including the *White Paper on Policing*.

Further, a fundamental legal question arises. Is the *White Paper on Policing* the '*national policing policy*' that is referred to in the *Constitution?* This is a tricky question considering how persons in both government and academia defines what constitute policy or public policy. From a novice legal perspective, it appears to be legally indefensible to refer to the *White Paper on Policing* as the '*national policing policy*' as encapsulated in the *Constitution* because the Minister has not legally declared it as such. The contradicting policy statements and flip-flopping on policy by various Ministers of Police are not assisting to improving the transformation of the SAPS.

5.2.5 Governance Framework for SAPS transformation

The *White Paper on Policing* emphasises sound governance as the cornerstone to ensure discipline and integrity for a democratic policing. The governance institutions, systems and structures exist to strengthen and propel SAPS transformation, and ensure good governance of policing and high levels of accountability. The governance framework for SAPS transformation is well established from a policy perspective in the form of the Constitution, White Paper on Policing, South African Police Service Act, 1995, Civilian Secretariat for Police Service Act, 2011, Independent Police Investigative Directorate Act, 2011 amongst others. The initial implementation of the SAPS governance framework in the mid-later 1990s was very effective with the CSPS playing a crucial role in terms of policy development and advisory role to the Minister. The turning point was when Mr S. Tswete and Mr J. Selebi were appointed as Minister of Safety and Security, and National Commissioner respectively in 1999, and marked the demise of the entrenched governance framework that was designed to transform the SAPS into an institution that respects the Constitution and reports to a civilian authority.

The principles of good governance are non-negotiable for any policy, programme and project to achieve the envisaged objectives and goals. Likewise with the transformation of the SAPS as a policy position, good governance is crucial for its success. The governance framework has been established to propel and contribute to SAPS transformation, which include having civilian oversight institutions (CSPS, IPID, Parliament and CPF) and systems of accountability in the broader public service environment (reporting to Minister, Parliament, National Treasury and Auditor-General). SAPS initially responded well with regard to systems of accountability but still reluctant and resistant towards the civilian oversight structures especially the CSPS, IPID and Parliament.

The implementation of the civilian oversight governance mechanism over the SAPS requires political will coupled with decisive and unapologetic leadership of the oversight institutions. The current posture of the IPID in terms of investigating the top leadership of the SAPS has not gone without causalities, but it is the necessary tension that the CSPS has to go through for it to be acknowledged and be influential in the transformation of the SAPS.

5.3 General conclusions

Theoretically, (i.e. from a policy and legal perspective) the CSPS is expected to play a crucial role in SAPS transformation which include policy formulation, high-level strategic planning, resourcing, and monitoring and evaluation. The practicalities are that since early 2000, the CSPS has not played its part to propel SAPS transformation but rather diminished into an institution that merely exist because the *Constitution* dictate as such. The continued grappling within the CSPS regarding what constitute *oversight* including the lack of long-term policy planning, clear policy development approach and feasibility studies to test the appropriateness of policies before full-scale implementation is not helpful either. The fact that the CSPS did not play any role and was excluded regarding the policy changes announced in 2010 in terms of militarisation and non-involvement in the strategic restructuring of the SAPS sustain the argument that the CSPS has become insignificant in terms of its influential stature on SAPS transformation.

The CSPS is not established to '*protect*' or make the Minister '*happy*' but to exercise civilian oversight including providing support and advice the Minister in terms of his/her political responsibilities. The Minister might not be '*happy*' with the outputs submitted to him/her, but the CSPS should remain resolute and exercise its statutory functions despite its heavy reliance on the Minister. Notwithstanding, the CSPS must strike a balance between policy and politics, and lead the policing transformation in such a manner that the SAPS are isolated from politics (Mokotedi and Koitsioe, 1997). There are two fundamental arguments to the phenomenon of '*reliance*': one from the *Constitution* (*function under the direction*) while the other is from the national legislation (*specified functions, powers*). In whatever form or substance, the overriding constitutional principle is that the CSPS *functions under the directions of the Minister.*

Ultimately, the role that the CSPS plays to transform the SAPS is heavily reliant on whether the Minister is '*receptive*' towards submissions and proposals from the CSPS regarding SAPS reforms. The '*receptive*' must be qualified in that the CSPS must show value in the work it does and draw the attention of the Minister. It is simple for the CSPS to pass the blame for its inefficiencies and ineffectiveness in bringing about an impactful results on the lack of support from the Minister. However, the fundamental matter is that the quality of the work of the CSPS has a bearing on the posture of the Minister in terms of his/her reliance to the CSPS for advice and support. In essence, the quality of the CSPS' work should be such that it automatically draws the attention of the Minister towards the CSPS for advise and support.

The CSPS remains more of an advisory structure although its functional scope was expanded through the *Civilian Secretariat for Police Service Act, 2011*. Strong personnel is required in the CSPS to support the Minister in taking policy decisions and determine policing policy and priorities. For this to happen, there is a need to have a strong and fully capacitated CSPS. The deliberate downgrading of the CSPS and the failure to fully resuscitate and capacitate it weakens the strength of the oversight powers that the political principals have over the SAPS. Further, a dysfunctional CSPS provide unfettered scope and power to the SAPS to entrench their resistance to civilian authority and conduct themselves with impunity without worrying about accountability and consequence management.

The following arguments are made:

a) the CSPS as an institution is at the centre of driving SAPS transformation mainly due to its influence on policy, strategy and resourcing. Although the CSPS does not have direct powers to drive SAPS transformation, the constitutional and legal proximity of the CSPS to the Minister, and *White Paper on Policing* should be explored by the CSPS to influence and drive SAPS transformation.

b) the advisory role of the CSPS regarding the determination of national policing policy is at the centre of SAPS transformation. The understanding emanating from the constitutional provisions implies that the CSPS is expected to indirectly exercise the powers of the Minister.

c) while noting that the Minister has a choice to accept or disregard the advice from the CSPS, at the least, the Minister would have been given an informed view upon which the Minister can take a decision. The centrality and strength of the influence of the CSPS is dependent on the Minister's political will and understanding of the rationale for the establishment of the CSPS and its role in terms of the SAPS transformation process. One may argue that the political will is in the form of policy, legislation and resource allocation, but the context of the *political will* expressed herein is more the practical actions of the Minister to acknowledge the role of the CSPS, work closely with and support its initiatives.

d) since the early 2000, the CSPS has not played the crucial role of transforming the SAPS owing to a variety of factors which includes the following issues that contributed to the distant working relationship accorded to the CSPS by the Minister:

    i. Lack of political will;
    ii. SAPS resistance to civilian oversight;
    iii. Deliberate degrading of the powers and influence of the CSPS and takeover of its functions by the SAPS facilitated by the complacency or laxity of the Minister and his involvement in police operations;
    iv. The inadequacy of capacity in terms of skill; expertise and quantity;
    v. CSPS failure to show value through its work;
    vi. Failure by the CSPS to produce work of good/high quality relevant to SAPS transformation; and
    vii. The reactive approach to policy development.

e) the post level of the Secretary for Police Service, independency from the Minister and legal powers are immaterial as far as the effective functioning of the CSPS is concerned. This because the powers of the Minister are the once directing how the CSPS should function including appointment of strong, ethical and credible leadership in the CSPS. The CSPS is the mirror of the Minister's exercise of his/her powers and political responsibilities. Strong, unapologetic, decisive, ethical and credible leadership in the CSPS remain material factors to the effective functioning of the CSPS and its influence on the transformation and functioning of the SAPS.

f) the creation of the SAPS and CSPS as national departments is not aligned with the South African SSR, which advocates for civilians (Minister of Police supported by the CSPS) to be in control of the security agencies. The institutional arrangements in the Department of Defence and Military Veterans is a classic example of what the architectures of the South African democratic state, government and SSR envisaged. The fact that the policy position in the *White Paper on Policing* gives the Accounting Officer responsibilities as provided for on the *Public Finance Management Act, 1999* to both the SAPS National Commissioner and Secretary of Police Service in their respective functionaries is problematic from the perspective of the transformation of the South African security sector.

   If civilians are expected to be in control of the police service and policing approach in general, they must have the overall control of the resource allocation flowing form the policy directives and policing priority approved by the Minister. The Secretary for Police Service should assume the Accounting Officer responsibilities as the Head of the Department of Police (which does not exist currently) and the SAPS National Commissioner to only account for the operational budget that will be transferred to SAPS from the main appropriation budget vote of the Department of Police. The idea of having two Accounting Officers in the Department of Police is not a viable and sustainable option if the governing party is serious about transforming the SAPS.

g) If the status quo on the non-alignment between policy and legislation remains, the CSPS would not be able to function effectively to drive the transformation of the SAPS and influence policy and strategic decisions of the executive authority.

5.4 Recommendations

The following are recommended:

a) Proper integration, collaboration and synergy of efforts is critically important amongst civilian oversight institutions (e.g. CSPS, IPID, SAHRC, CPF, Provincial Secretariats and Parliament) towards strengthening oversight over the police service, accountability, transparency and good governance in the context of SAPS transformation.

b) The integration of institutional arrangements should be done through review of the *South African Police Service, 1995* to have legal standing. A benchmark with the institutional model in the Department of Defence and Military Veterans, and other international models of police oversight is crucial considering that both the CSPS and Defence Secretariat are expected to play similar roles from a constitutional perspective. Due to the historical resistance by the SAPS to acknowledge and work with the CSPS, consideration should be made for the inclusion of punitive clause(s) so that consequence management can be applied in cases where police members fail to provide the necessary assistance and support for the exercise of civilian oversight. This will also contribute positively to instilling a culture of respect by police members towards the CSPS.

c) The political will of the Minister is crucial to drive the full implementation of the *White Paper on Policing* to propel SAPS transformation trajectory especially from an institutional arrangement perspective, and practical segregation of high-level policy from police operations. The current debate and engagements within government regarding the trimming of the executive and by implication government departments is an opportunity to explore to revive and revitalise the role of the CSPS to be influential and propel SAPS transformation.

d) There is a need for a national policing policy that fully appreciates the constitutional imperatives of the Minister's political responsibilities. The *White Paper on Policing* exists but it is not clear whether it constitute the national policing policy envisaged in the *Constitution*. The flip-flop on policy by Ministers of Police on policy approach is a consequence of lacking a national integrated vision.

e) The NPC recommended that the police service be demilitarised and civilianised, and the *White Paper on Policing* makes reference to SAPS transformation without narrating what it entails. There is a need to clearly articulate the policy and operational imperatives of SAPS transformation and develop high-level strategic performance indicators that will be used to track progress over time.

f) The approach where the police service is the first responder to public demonstrations and disperse demonstrators/crowds should be reconsidered. There is a need for an integrated approach to how all stakeholders e.g. the police members, public officials and public representatives respond to public demonstrations especially in the context that almost all the public demonstrations are service delivery oriented than criminal driven activities whether premeditated or consequential. This can contribute positively to limiting the use of force (excessive or minimal) and improving the credibility of the police service including trust deficit and confidence by the citizenry.

5.5 Further Research

The credibility of the police service is crucial for the reform of the security sector. With the exception of former National Commissioner G. Fivas and current National Commissioner K.J. Sitole, all other National Commissioners who served in a democratic government have fallen on their sword mainly as a result of poor leadership, maladministration, fraud and corruption. Further, there is a trend of police members in the senior echelon of the SAPS that are investigated by the IPID and arrested for fraud and corruption.

Some of the senior and other police members have been convicted for the crimes they have committed. All these unethical and criminal conduct by the most senior in the police service have tainted and continue to taint the credibility of the police service and diminishing the morale of the less senior and committed members of the police. It would be prudent to conduct a research study to interrogate the underlying factors that entice the senior leadership of the police service to commit criminal acts including in-depth assessment of the extent to which the current functioning of the CSPS contributes to this trend.

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APPENDIX A: RESEARCH QUESTIONNAIRE

1. Generic questions on police transformation:
    a) What is your understanding of the militarisation and demilitarisation of the SAPS?
    b) What is your view on the current status of the militarisation and/or demilitarisation of the SAPS in the context of the NDP?
    c) What would you consider to be the governance framework for the demilitarisation of the SAPS?

2. Powers of the CSPS on SAPS institutional transformation:
    a) What do you think is the role of the CSPS in the context of SAPS institutional transformation?
    b) What is your view on the legislative powers of the CSPS to exercise civilian oversight over the SAPS?
    c) To what extent do you think the CSPS has contributed in the development and implementation of SAPS institutional reform agenda?
    d) What are the skills, competencies and expertise that the CSPS need to contribute effectively to SAPS institutional transformation?

3. SAPS role in policy development and institutional transformation:
    a) What role should the SAPS play in the development of a policy on police institutional transformation?
    b) In you view, has the SAPS embraced the reorientation of police culture from being military agency (a Police Force) to a service delivery oriented government institution? Provide reasons for your answer.

4. Power of the Minister of Police on the CSPS:
    a) What are the powers of the Minister in championing the police institutional transformation agenda?
    b) What is your view on the posture of the Minister, former Ministers and government in pertaining to civilian oversight and demilitarisation of the SAPS?

Provide any additional views that may be helpful to further interrogate the role of the CSPS on the institutional transformation of the SAPS.

APPENDIX B: LIST AND SCHEDULE OF INTERVIEWEES

NAME AND SURNAME	POSITION/LOCATION	APPOINTMENT DATE
1. J. Burger	Senior Researcher at the Institute of Security Studies	05-May-18
2. Phenyo*	Official in the Chief Directorate: Intersectoral Coordination and Strategic Partnerships in the CSPS	21-May-18
3. S. Tait	Director at African Police Civilian Oversight Forum	23-May-18
4. Cachalia	Judge of the Supreme Court of Appeal and Former Secretary for Police Service	24-May-18
5. M. Rogers	Former Director for Policy Development at the Civilian Secretariat for Police Service and currently a Director at the DNA and Ethics Board	28-May-18
6. Christine*	Official in the Chief Directorate: Civilian Oversight, Monitoring and Evaluation in the CSPS	28-May-18
7. G. Newham	Head of the Justice and Violence Prevention Programme at the Institute of Security Studies	31-May-18
8. Soman	Former Director for Legislation at the Civilian Secretariat for Police Service in the CSPS	06-Jun-18
9. Mondi*	Official in the Chief Directorate: Legislation	06-Jun-18
10. Thabiso*	Official in the Office of the Secretary for Police Service in the CSPS	07-Jun-18
11. Z.N. Mbhele	Member of the Parliament serving in the Portfolio Committee on Police from 2014	13-Jun-18
12. A. Faull	Former Senior Lecturer at University of Cape Town	14-Jun-18
13. I. Kinnes	Content Advisor to the Portfolio Committee on Police and Former Chief Director for Policy & Research at the Civilian Secretariat for Police Service	14-Jun-18
14. G. Cawthra	Retired Professor from the University of Wits in the School of Governance	16-Jun-18
15. A. Van Wyk	Former Member of the Parliament who served in the Portfolio Committee on Police until 2014	19-Jun-18
*** names are pseudonyms to maintain anonymity of the interviewees**		

APPENDIX C: LETTER OF PERMISSION

civilian secretariat
for police service

Department:
Civilian Secretariat for Police Service
REPUBLIC OF SOUTH AFRICA

Private Bag X922, PRETORIA, 0001 Van Erkom Building, Van Erkom Arcade, 7th Floor, 217 Pretorius Street
PRETORIA, Tel: (012) 393 2500/2/3, Fax (012) 393 2536/8, WEB: www.policesecretariat.gov.za

Ref: 7/1/1_MMPP
Enquiries: Mr AP Rapea (012) 393 2500/2520

TO WHOM IT MAY CONCERN

GRANTING OF PERMISSION TO CONDUCT INTERVIEWS WITH DEPARTMENTAL EMPLOYEES IN PURSUIT OF THE MASTER DEGREE IN PUBLIC POLICY

The research student, **Mr Mothupi Stacious Mafologela; ID No. 820227 5647 083**, has registered to study the Master Degree in Public Policy with the University of Witwatersrand. The objective of this research is to analyse the role played by the CSPS on the institutional transformation of the SAPS focusing on institutional policy analysis in the historical and social context. The completion of the research project and its outcomes will further assist the Department in the development, review and implementation of the police transformation trajectory.

I have considered this research project in terms of the benefits for the Department, and decided to grant the research student permission to interview relevant employees within the Department in order to solicit views related to the research objective. I appeal to all employees that are approached by the research student to participate in the structured interviews to the extent possible.

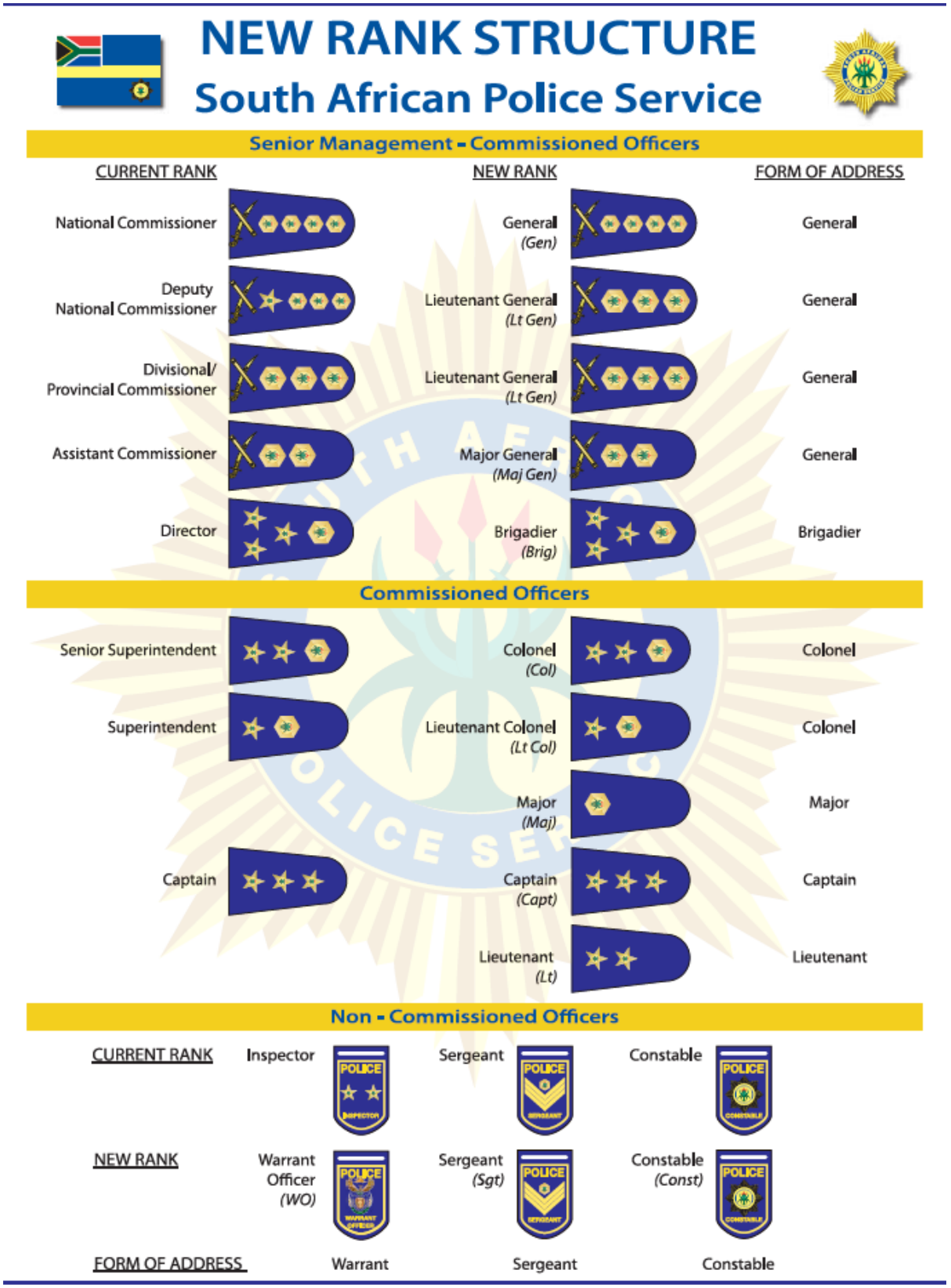
The ethical dimensions with regard to confidentiality and disclosure of personal information have been considered. Therefore, the data collected in this regard will be solely used for research purposes and that personal information of participating employees will not be disclosed.

I trust you find the above in order.

Kind regards,

MR AP RAPEA
SECRETARY FOR POLICE SERVICE
Date: 13/12/2017

APPENDIX D: 2010 SAPS MILITARY RANK STRUCTURE



APPENDIX E: 2016 SAPS MILITARY RANK STRUCTURE

SCHEDULE

COLUMN 1	COLUMN 2
General (National Commissioner)	General (National Commissioner)
Lieutenant General • Deputy National Commissioner • Divisional Commissioner • Provincial Commissioner	Lieutenant General • Deputy National Commissioner • Divisional Commissioner • Regional Commissioner • Provincial Commissioner
Major General	Major General
Brigadier	Brigadier
Colonel	Colonel
Lieutenant Colonel	Lieutenant Colonel
Major	
Captain	Captain
Lieutenant	
Warrant Officer	Warrant Officer
Sergeant	Sergeant
Constable	Constable

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