

Civilian Review: A proposed role for civilian oversight committees in promoting accountability in municipal police departments

by

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Research report written for the Centre for the Study of Violence and Reconciliation, December 2002.

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Acknowledgements

Thanks to Antony Altbeker and Janine Rauch for comments and suggestions on drafts of this paper.

A. Introduction

Over the last few years municipal police services have been established in several of South Africa's metropolitan areas.¹ Section 64J of the South African Police Service Act,² provides that where they establish police services, municipal councils must appoint a committee 'to ensure civilian oversight of the municipal police service'.

One of the shortcomings of Section 64J is that it only defines the role of the civilian oversight committees (OCs) in very general terms.³ In so far as these committees base their role directly on the legislation they will be hampered by the fact that their role is vaguely defined and can be interpreted in very broad terms. Up to this point however most of the cities where municipal police services have been established have based their business plans for the committees on the wording of section 64J. As a result these committees have lacked direction and focus, and have been largely ineffective as instruments of governance over municipal police services.

This paper therefore puts forward an argument that the role played by these committees should be modelled on that of the 'civilian review' agencies which have emerged in many countries. This would involve these agencies in focusing on questions of alleged or possible wrongdoing by the police. Their function would not be an investigative one but would involve ensuring that the municipal police department is taking appropriate steps to minimise wrongdoing by their members and taking proper steps against members who are implicated in wrongdoing.

B. The international trend towards civilian review

Internationally there has been a trend towards the establishment of bodies which are often called civilian oversight bodies and which are responsible for ensuring that proper steps are taken in relation to *alleged or possible police wrongdoing*.

One examples of such a body is the [Independent Complaints Directorate](#) (ICD) in South Africa. Other international examples include:

- Police Ombudsman's offices in Northern Ireland and in 9 of the 27 states in Brazil;
- The Police Complaints Authority in England and Wales and the Commission for Public Complaints Against the Royal Canadian Mounted Police in Ontario, Canada;
- The Special Counsel to the Los Angeles Sheriff's Department.

These bodies are therefore distinct from other governmental structures, such as parliamentary committees, secretariats and the designated minister, in relation to the oversight function which they perform. While the latter are concerned with a wide range of questions including effective use of budgetary allocations and service delivery, these bodies, which we will call *civilian review bodies*, to distinguish them from other bodies exercising an oversight function, are generally primarily concerned with one or both of the following two functions:

- Ensuring that individual cases of alleged or possible police misconduct are properly investigated and that appropriate disciplinary and/or criminal charges are implemented; and/or
- Ensuring that police departments are taking proper steps to prevent wrongdoing (brutality, corruption or other crime or misconduct) by their officers.

The motivation for these bodies relates to the following considerations:

- There is evidence that internal investigative structures within police organisations are often ineffective in investigating alleged wrongdoing by their members;
- Whether these internal investigative bodies conduct rigorous investigations or not, members of the public, including people who have lodged complaints against the police, are likely to believe that these bodies are biased against them and in favour of police members and will not investigate the complaint in an impartial manner.

While review bodies are often established to ensure that investigations are carried out properly, this does not necessarily mean that they carry out investigations themselves. Some police agencies do manage to establish effective internal investigation systems and the civilian review body in these cases primarily functions in an oversight or monitoring role. The primary purpose of these review bodies is therefore to serve as an impartial and independent body which can serve to verify whether or not the police services are dealing with alleged wrongdoing in an appropriate manner.

While some civilian review bodies investigate some or all cases reported to them, other review bodies focus on monitoring internal police investigations and/or reviewing the findings made through these investigations. Another option is for complainants to appeal findings by the police departments to the review bodies, who then review the findings and make their own recommendation to the police department.

While there may be exceptions, review bodies however usually do not have the final say in deciding to discipline a police officer. Their recommendations are usually advisory in this regard.

C. Approaches by law enforcement agencies to the question of civilian review

Very broadly there are two ways in which law enforcement agencies can respond to civilian review.

The history of civilian review in countries such as the US has often been characterised by *resistance* from law enforcement agencies. Often police appear to fear that civilian review agencies will be biased against the police. In addition police leaders often tend to see civilian review as interfering with their authority to exercise discipline in police organisations. As a result civilian review has often been implemented in the face of resistance from the police and civilian review agencies often encounter suspicion and distrust from police members.

On the other hand the experience of police leaders who have worked with civilian review agencies has often been that civilian review makes a *positive contribution* to policing, and so, in the US and other countries, more forward looking police chiefs are often receptive to the idea of civilian review and see it as something which can complement their work, and strengthen their authority, in trying to ensure that police members observe high standards of conduct.

D. Benefits of civilian review for law enforcement agencies and others

According to Finn (2001,p.8) some of the benefits of civilian review for police agencies are to:

1. Improve the department's relationship and image with the community by:
 - a. Helping to establish and maintain its reputation for investigating alleged officer misconduct with fairness and firmness;
 - b. Helping to reduce community concerns about possible police cover-ups in high profile cases.
2. Increase the public's understanding of police work, including the use of force.
3. Promote the goals of community policing.
4. Improve the quality of the department's internal investigations of alleged misconduct.
5. Reassure the public that the department's internal investigations of citizen complaints and its process for disciplining officers already are thorough and fair.
6. Help subject officers⁴ feel vindicated.
7. Help discourage misconduct among some officers.
8. Improve department policies and procedures.

Elected and appointed officials in city governments have also indicated that civilian review has benefited them by demonstrating their concern for police conduct to constituents as well as in that it can contribute to reducing the number, success rates, and award amounts of civil suits against their governments (Finn, p.2).

The introduction of civilian review does not guarantee that complaints by members of the public will be sustained and civilians are not necessarily satisfied with the outcome of the process even if the complaint has been investigated properly. Even if the investigation is

conducted in a professional manner the evidence might not support the complainants version of events or there simply may not be enough evidence to make a finding either way. Nevertheless civilian review increases the potential for civilians to feel that their complaints have been dealt with in an objective manner. Also some civilian review bodies (including the ICD in South Africa) have promoted the use of mediation procedures in appropriate cases. These have the potential for positive outcomes for both parties.

More broadly civilian review has the potential to contribute to reassuring members of the public that appropriate discipline is being handed out for police misconduct (Finn, p.2).

Where the idea of civilian review has been presented to people involved in the municipal police service civilian oversight committees which have already been established, it is sometimes greeted with some trepidation. One of the anxieties that people appear to have is that the focus on allegations of wrongdoing is a negative role. It appears that people involved in these structures want to be seen to be supporting the police by giving advice to them and in other ways. There appears to be a concern that the focus on wrongdoing will undermine morale in the municipal police service and place the committee in conflict with it.

However the 'review' role need not be seen as a negative role or as one which undermines the work of the police. As can be seen it can be regarded as having a wide range of potential benefits. In supporting the need for members of municipal police agencies to observe high standards of conduct, the committee is also supporting those police who want their police agency to be respected for observing these types of standards.

E. Civilian review as an option for local councils and police agencies

Rather than opposing civilian oversight, police leaders who are informed about its potential benefits may want to have the best possible system of oversight for their agencies. However, for the municipal police services established in South Africa their options are likely to be restricted as there is likely to be limited financial support available for civilian review from local governments.

While the ideal option may be to establish separate civilian review bodies for these police agencies this is not currently being considered in South Africa. However one way in which civilian oversight committees may be able to enhance their effectiveness is by taking on the functions of a review body.

F. How civilian oversight committees could enhance their role by taking on some review functions

According to section 64J (2)(d) of the South African Police Service Act one of the responsibilities of the civilian oversight committee is to 'promote accountability and transparency in the municipal police service'.

One of the ways in which civilian oversight committees can do this is by taking steps to ensure that the municipal police agencies are taking proper steps to investigate alleged or possible police wrongdoing. Through doing this they would be sending out a clear message

that they expect police to perform in terms of professional standards.

G. How would the civilian oversight committee play this review role?

Civilian oversight bodies could play this role by focusing on the three issues of (i) alleged misconduct by MPD members,⁵ (ii) alleged offences by MPD members, and (iii) deaths linked to MPD members. The role of the oversight committee would be to ensure that the police department has:

- Proper channels available for people to lodge complaints against police members; and
- That these channels are accessible and user friendly for members of the public; and
- That complaints by members of the public and other allegations of misconduct or crime against police officials are investigated properly; and
- That cases where offences are allegedly committed by police members, or where they are linked to deaths, are referred to the SAPS and ICD in the proper way; and
- That proper disciplinary steps are taken against members who are found to be guilty of wrongdoing; and
- To assess the proactive measures being introduced to reduce offending and misconduct by members; and
- To assess proactive measures being taken to prevent unnecessary deaths (this includes a concern for police safety).

The civilian oversight committee could do this by:

- Requiring that the police chief provide it with regular reports on complaints lodged against municipal police officials and on other cases where members are allegedly linked to misconduct, offences or where deaths have occurred as a result of municipal police action or in their custody. The reports would categorise the complaints lodged, and indicate the outcome of investigations, and disciplinary or other corrective steps taken where a finding has been made against a police officer.
- Requesting the ICD to provide it with reports on complaints lodged with the ICD against municipal police officials, and on deaths as a result of the actions of members or in their custody and on the outcome of investigations relating thereto;⁶
- Requiring the municipal police chief to provide reports on his or her agencies response to recommendations made by the ICD;
- An additional measure that the committee could look into is that of appeal procedures for complainants who are not satisfied with how their complaint has been dealt with by the municipal police agency. Where the committee is informed of such cases, and where the committee is not satisfied with the investigative response from the police service the committee could refer the complaint to the ICD in order for the ICD to investigate it.

The attached table compares the proposed role for oversight committees with the different roles to be played by the [Independent Complaints Directorate](#) (ICD), [South African Police Service](#) (SAPS) and municipal police departments in dealing with deaths in police custody or as a result of police action, alleged offences, and alleged misconduct linked to Civilian Oversight Committees.⁷ As can be seen the oversight committees would not have an

investigative role.⁸ However municipal police chiefs would have to provide an account to them of how they are dealing with misconduct and of proactive measures which they are taking to reduce deaths, offences and misconduct.

Through playing this type of role the civilian oversight committee would be playing a role which complements that of the ICD and would not be duplicating the ICD's role. The ICD does engage with issues relating to the functioning of the police internal systems in relation to complaints and other cases which it receives. However most complaints against police are not received by the ICD but are received by the police agencies themselves. The ICD does not play a general role in overseeing the functioning of the internal systems for complaints management and investigation within these police agencies, and this is the role, which, in terms of this proposal, the oversight committee would be responsible for.

H. Implications of the review role for the composition of the committee

Section 64j(1) states that 'A municipal council shall appoint a committee *consisting of members of the council and such other persons as [may be] determined by the municipal council* to ensure civilian oversight of the municipal police service' (italics added). According to the legislation therefore the involvement of members of the council is mandatory while that of 'other persons' is an option which the council may consider.

However in order for the committee to play the review role effectively and with legitimacy it is necessary for it to be able to make decisions in an impartial manner and not be concerned to win the favour either of the police or members of the public. In so far as the committee is composed of representatives of political parties it will be unlikely to be able to make decisions in this way. In order to function as a review body the committee should primarily be composed of civilians who are not members of the council and who are appointed to the committee on the basis of their willingness to be impartial (i.e. the majority of members should not be councillors).

Furthermore in so far as it is necessary to have councillors amongst its members, the committee should seek to ensure that these represent a range of political parties. The committees should also consider adopting a rule to the effect that members should seek to make findings on a consensual basis and that its work will be dealt with in an apolitical fashion.

I. A final warning – caseloads may increase as review and improved investigations contribute to increased public confidence.

One thing that civilian review bodies who may be considering making use of these review procedures should take note of is that improvements in the effectiveness of systems for receiving complaints and for investigating them may contribute to an increased level of complaints against members of the police agency.

In so far as there is a solution to this problem, this is not to try and force the number of complaints down, but to address the problems that contribute to complaints. But the fact that complaints are being received and that the number increases can also be seen as a positive indicator of increased trust and confidence in the mechanisms established to deal

with complaints, and, in this sense at least, may be seen as reflecting positively on the police.

Notes:

¹ Up to this point (early 2003) municipal police services have only been established in metropolitan areas (Johannesburg, Tshwane (Pretoria), Ekurhuleni, Cape Town and Durban) where they are often referred to as 'metropolitan' rather than 'municipal' police.

² Act 68 of 1995. The current section 64, which deals with Municipal Police Services, was inserted in terms of the South African Police Service Amendment Act, 83 of 1998.

³ The functions of the committees are outlined in Section 64(2) which provides that the committee shall (a) at the request of the municipal council in question, advise the council on matters relating to the municipal police service; (b) advise the chief executive officer with regard to the performance of his or her functions in respect of the municipal police service; (c) perform such functions as the member of the Executive Council, the municipal council or the chief executive officer may consider necessary or expedient to ensure civilian oversight of the municipal police service; (d) promote accountability and transparency in the municipal police service; (e) monitor the implementation of policy and directives issued by the chief executive officer and report to the municipal council or chief executive officer thereon; (f) perform such functions as may from time to time be assigned to the committee by the municipal council or the chief executive officer; and (g) evaluate the functioning of the municipal police service and report to the municipal council or chief executive officer thereon.

⁴ The term 'subject officers' refers to police officers who are the subject of a complaint or investigation.

⁵ As used here the term misconduct refers to breaches of police internal regulations while the word offences refers to breaches of the criminal law. Wrongful acts are often both offences and misconduct at the same time. Where they are 'offences' they may lead to prosecution in a criminal court. Where they are misconduct they may lead to internal disciplinary procedures.

⁶ In terms of section 53(2)(b) of the SAPS Act, the ICD is responsible for investigating all deaths in police custody or as a result of police action. However in terms of an agreement reached between the ICD and SAPS – see footnote 8 – the two bodies appear to have agreed that where the death is linked to a municipal police service, the investigation will be conducted by the SAPS.

⁷ The latter roles are those defined in the document 'Protocol for and Minute of Understanding Between the [Independent Complaints Directorate](#) (ICD), [South African Police Service](#) (SAPS) and Metropolitan Police Services/Departments (MPS) in respect of the application and implementation of section 53 of the South African Police Service Act, No 68 of 1995 (as amended), vis-à-vis Municipal Police Services. (Version of 31 May 2002).

⁸ One of the characteristics of Metropolitan Police Services is that they do not have the authority to carry out criminal investigations. One consequence of this is that where allegations are made that MPS members have committed criminal offences these investigations must be conducted either by the SAPS or ICD. However internal investigative units in the MPS may be responsible for investigations in so far as these relate to evidence of misconduct.

Bibliography

Finn, P (2001) Citizen Review of Police: Approaches and Implementation. National Institute of Justice. (<http://virlib.ncjrs.org/LawEnforcement.asp>)

Miller, J (2002) Civilian Oversight of Policing – Lessons from the literature. Conference paper presented at the Global Meeting on Civilian Oversight of Police, Los Angeles, May 5-8.

Proposed role of Metropolitan Police Department oversight committee's (OCs)

	Investigation of deaths as a result of police action and in custody	Monitoring of investigations of deaths	Investigation of alleged offences committed by MPD members	Monitoring of investigation	Investigation of alleged misconduct by MPD members	Monitoring of investigations and disciplinary system
Protocol and minute of understanding – SAPS, ICD, MPS, 31 May 2002	SAPS unless instructed otherwise by ICD – ICD refers cases it receives to SAPS unless it wants to investigate		SAPS unless instructed otherwise by ICD - ICD refers cases it receives to SAPS unless it wants to investigate	ICD monitors effectiveness of some SAPS investigations	MPD	If cases are reported to ICD, ICD monitor the
Proposed role for civilian oversight committee (s 79)		OC to receive reports and assess proactive measures being taken to prevent unnecessary deaths (includes concern for police safety)		OC to receive reports and assess trends and proactive measures being taken to reduce offending by members.		OC to receive reports and assess accessibility complaints system, effectiveness of investigations and disciplinary system (with inputs from ICD) and proactive

						measures b taken to rec misconduct
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