Police Reform and South Africa's Transition

by

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Paper presented at the ***South African Institute for International Affairs*** conference, 2000.

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1. Introduction

At the time of Nelson Mandela's release from prison in 1990, there were eleven police forces in South Africa, each constituted under its own piece of legislation, operating within its own jurisdiction. The largest of these was the South African Police (SAP) with approximately 112 000 members, the other ten were the homeland[1] police forces. The most significant group were the police agencies of the four "independent homelands"[2] - Transkei, Bophutatswana, Venda, Ciskei - which operated with less interference from the SAP than those in the "self-governing" homelands of KwaZulu, Lebowa, QwaQwa, KwaNdebele, KaNgwane and Gazankulu. In total, there were over 140 000 police personnel[3] in South Africa.

The homeland police forces had been created during the 1970s and 1980s, with the core members being drafted from the SAP. These members were either black members of the SAP, who were identified on the basis of their ethnicity, skill, and perceived loyalty to the apartheid model;[4] or more senior white officers who were "seconded" to the homelands on the basis of lucrative fixed-term contracts. Apart from the financial benefits of being deployed to the homelands, the founder members of the homeland forces found themselves the beneficiaries of rapid promotions, and were able to operate with unusual autonomy from the police headquarters in Pretoria - which often allowed the creation of the networks of patronage and corruption which came to characterise the homeland forces. Despite nominal political independence, the ethnic homeland forces were subject to significant control[5] by the SAP, which continued to control access to financial and technical resources.

By the early 1990s, (all) the police in South Africa had acquired a reputation for brutality, corruption and ineptitude. Police organisations were militarised, hierarchical, and ill-equipped to deal with "ordinary crime". Street-level policing was conducted in a heavy-handed style, with bias against black citizens and little respect for rights or due process. Criminal investigations were largely reliant on confessions extracted under duress, and harsh security legislation provided or tolerated various forms of coercion and torture. Their policing techniques were outmoded, partly as a result of the campaign for international isolation of the apartheid government. However, despite their lack of skill in dealing with crime, the South African Police were notoriously effective against their political opponents. It never occurred to the leaders and members of the African National Congress (ANC) - the main democratic opposition party - that the police who had been so ruthlessly effective against them would be any less effective against criminals in the new era. However, coping with the political transition and adapting to policing in a democratic society have been

difficult for the police service. In this paper we review the process of transforming an illegitimate police organisation into one which is legitimate; and reflect on some of the possibilities for, and implications of, rapid change.

2. Organisation and Control of the Police in South Africa

2.1 The Beginning of Reform

The main police force in South Africa, the SAP, had, during 1991, embarked on an internal reform initiative - a response both to the changing political environment signalled by the release of Mandela and the unbanning of the liberation movements in 1990, and to pressure of changing crime trends and international scrutiny. The SAP's 1991 Strategic Plan highlighted five areas of change:

- depoliticisation of the police force
- increased community accountability
- more visible policing
- establishment of improved and effective management practices
- reform of the police training system (including some racial integration)
- restructuring of the police force

The 1991 plan indicated the force's intention to "manage change itself, in the hope of ensuring that it would not have change thrust upon it later".[6]

2.2 The National Peace Accord

The National Peace Accord was a multi-party agreement (subsequently enacted as legislation) created in 1991 to address high levels of political violence in the early transition period. The Peace Accord introduced a range of structures and procedures to prevent and deal with inter-group conflict, many of them focussed on policing:

- a "Police Board" made up of equal numbers of police Generals and civilian experts on policing matters, nominated by the signatory parties to the Peace Accord. The Board was to "advise" the Minister of Law and Order on policy matters.

- Local and Regional Peace Committees,[7] made up of representatives of signatory parties to the Accord. These were the primary implementation bodies, and were supported by full-time Regional Peace Secretariats.

- Police Reporting Officers, civilian lawyers, who would receive and investigate complaints against the police. They would then make recommendations to the SAP about steps to be taken in respect of each incident.

- A code of conduct for police and one for members of political parties, to enable free political association and to reduce police misconduct;

- A system of monitors, whose task was to observe and report on the conduct of signatory parties and security forces.

The most significant contribution of the Peace Accord in terms of policing was to create new procedures for policing handling of actual or potential political violence, and to introduce the notions of independent monitoring of police action and of multi-agency problem-solving. While the presence of peace monitors did lead to improvements in certain aspects of policing (notably the policing of public gatherings), the Peace Accord code of conduct and the mechanisms for dealing with reported misconduct had little impact.

2.3 New Political Arrangements

The first post-election Cabinet was made up of Ministers and Deputy Ministers drawn from the three main political parties: the majority African National Congress (ANC), the National Party, and the Inkatha Freedom Party (IFP). The Ministry responsible for policing[8] was renamed the Ministry for Safety and Security, a symbolic move away from the previous title - Law and Order. At the provincial level, each Provincial Cabinet appointed a Minister responsible for Safety and Security.

The various components of the police command structure were accustomed to operating under the dictates of undemocratic administrations. The implications of a democratic style of governance for policing were profound. Apart from the political significance of the ANC being in control of the police service, one of its key policies was to institutionalise civilian oversight and control, and thereby separate the (civilian) policy function from the operational command function of police management. This remains an area of some debate and fluidity, with the new police leadership appointed after 1999 more credible, thus less emphasis is placed on the need for civilian oversight and policy-making.

2.4 The New Legal Framework: SAPS Act

After a lengthy drafting and consultation phase, the SAPS Act was enacted in late 1995. Among the significant innovations contained in the Act were:

- Restructuring the Police Service into National Divisions, Provincial demarcations to match the new provincial boundaries, "Areas" (groups of stations in a district) and Stations, with various types of command and public scrutiny at each operational level.

- the creation of National and Provincial "Secretariats for Safety and Security", which would advise the political executives in the provinces on police policy matters and would monitor the adherence of the police to new policy. This was motivated by the ANC's desire to see policy control of the police in civilian hands.

- the requirement that the National Commissioner of Police should every year publish his plans, priorities and objectives for the year. This was intended to enhance transparency in police policy-making and to enable monitoring of the efficiency and effectiveness of the police service.

- the creation of statutory "Community-Police Forums" where local police station commissioners would liaise with, and account to, the local community.

- the creation of a statutory "Independent Complaints Directorate" which would

receive and investigate public complaints of police misconduct. The Directorate would be independent of the police and would report directly to the Minister of Safety and Security.

Although certain aspects of the Act have been amended, and the entire piece of legislation is currently under review to ensure congruence with the final Constitution of South Africa, major changes to the Act are not envisaged in the foreseeable future.

3. Creating a New Police Service Out of the Old

The job of the police under apartheid was to enforce laws of racial segregation, to secure the minority government, and to protect the white population from crime and political disruption. This did not require traditional policing skills, and instead rewarded political loyalty and allowed large-scale abuses of powers. The new government faced the mammoth task of transforming the police service into one which would be both acceptable to the majority of the population, and effective against crime.

3.1 The Campaign for Police Legitimacy

The ANC had recognised the importance of transforming the police before the election, and embarked on a "confidence-building" campaign with the security forces during the negotiations period. This entailed building the confidence of the police in the ANC as the likely future leaders of the country, and also building the confidence of the populace in the hitherto alienated police forces. President Mandela, in his inaugural address in 1994, paid special tribute to the good work done by the police in helping ensure the success of the election.

After his appointment as Minister of Safety and Security, Mufamadi embarked on a nation-wide series of mass meetings with police personnel, to reassure them about the ANC's intentions to reform the police gradually, rather than radically; and to spread the message that, although the ANC would not tolerate abuses of human rights, it would not victimise perpetrators of such abuses committed in the past, is the perpetrators abided by new government doctrine. This series of meetings was also critical in giving a human face to the new ANC government, and identifying the ANC as the stable political authority during the insecure period of amalgamation of the police forces.

The appointment of Fivaz as the first National Commissioner of the new SAPS was a crucial moment in the transformation process. At the time of his appointment, Fivaz emphasised the need to make the new SAPS legitimate and acceptable in the eyes of the majority of citizens, and for the SAPS to make a "clean and definite break with the past" - which was to remain one of the themes of his leadership. He identified a number of other challenges for his new management team:

- curbing crime and improving levels of safety and security;
- improving police-community relations;
- removing all forms of discrimination within and by the police service;
- adopting a new "mindset" within the police forces;
- restoring discipline and morale among police personnel;
- establishing a culture of fundamental rights within the police organisation.

With the establishment of the Truth and Reconciliation Commission, the ANC government also had to emphasize its position on previous abuses by police officials:

Mandela insisted[9] that his government was opposed to, and had no intention of conducting, a witch-hunt against the police as a result of activities arising from orders given to the police by the apartheid regime. He urged police officers not to dwell on possible investigations by the TRC, and instead to get on with the job of law enforcement and community policing.

Less than two years after the election, the politicians felt that the transformation of the police service was well under way. In a speech to the top police Commissioners in late 1995, Mufamadi acknowledged that, despite the huge pressures they faced, the police leadership had achieved a great deal. Less that two years previously, the police service was regarded as a department which could pose a threat to democracy. "Today, the relative credibility and legitimacy enjoyed widely by the police service is one of the more clear indicators of the successful transition to democracy which our country has made."[10]

The discourse of politicians and government regarding policing has taken on a rather different tone since the second election in 1999. The new Minister of Safety and Security, Steve Tshwete, has emphasised the crime fighting role of the police, and has encouraged a more strong-arm approach to criminals, with far less emphasis on the internal problems of police reform. This discourse has found favour with the South African public which is was increasingly concerned about crime, and with a police service which had felt disempowered by the period of police transformation following the first election.

3.2 Symbols of a New Order

The new government moved swiftly to change some of the symbols associated with apartheid policing after the 1994 election:

- The name was changed to the South African Police Service, to symbolise the shift "from a force to a service" which was a key component of the ANC's policy approach.

- A new police leadership was appointed, with the National Commissioner appointed directly by the President.

- The rank system was changed from the previous military ranks to a rank system based on the British model. For example:
  General = became Commissioner
  Brigadier = became Director
  Colonel = became Senior Superintendent
  This change did encounter some resistance from within the police organisation, and to this day, informal use of the old ranks continues in many areas.

- The uniform was changed. In the old dispensation, each of the eleven police forces had its own uniform and insignia. A new uniform was designed for the new SAPS, which was slightly less militaristic.

- A new insignia was created for the SAPS, to replace that of the eleven former police forces. The new badge consists of the image of an aloe (an indigenous South African plant with healing properties) with nine spikes, to symbolise the nine new provinces.

- The colour of police vehicles changed, with all new vehicles being painted white with blue lettering, instead of the bright yellow which had become associated with fire-brigade style police in armoured vehicles.

- In some provinces, the names of police stations were changed, where they had previously been named after apartheid-era politicians or police leaders. The most notable was the "John Vorster Square" police station, where numerous detainees had been tortured and killed by Security Police, which became the "Johannesburg Central" police precinct.

These symbolic changes, while superficial, did contribute to changing public perceptions of the police service. They also required a great deal of internal negotiation and had quite severe financial implications for the new police service.

3.3 A New Profile for the Police Service

Perceptions of the racial profile of the police in apartheid South Africa were constructed around the iconic image of a rather brutish, uneducated, working-class, white, Afrikaans-speaking policeman. In fact, (viewed together), the police agencies were, at the time of the 1994 elections, pretty representative of the racial make up of the South African population - 64% of the combined personnel of the police organisations was black. Even the SAP alone (which contributed 80% of the personnel to the total), was not as dramatically unrepresentative as many observers had believed - 55% of its members were black. What did characterise the SAP, however, was the dominance of white Afrikaner males in its senior ranks. The upper echelons of the smaller, homeland police agencies were dominated by members of black ethnic groups, according to the ethnic composition of each of the forces. In the 1995, personnel holding the rank of "Brigadier"[11] were 80% white, with only one female Brigadier out of the 202 Brigadier posts in the combined police forces. Women made up 18% of total police strength, and only 11% of the officer ranks. In 1998, women made up 20% of the police service, and 16% of the officer ranks.

Even though the issues of race and gender composition of the police service were not discussed during the pre-election negotiations, the new Constitution, with its requirements for equality and for affirmative action for "previously disadvantaged" groups, would have profound implications for the new Police Service. These implications have become more real to the police organisation in recent years, with the imposition of government-wide targets for more representative composition of the senior ranks of the public service. By mid-2000, the SAPS had achieved most of its targets, with the management ranks now being over 50% black.

3.4 Working with the Enemy

One of the agreements reached in the negotiations process was to incorporate members of

the former liberation movements' armed forces[12] into the new South African security forces. This was a key dimension of negotiations around the future of the military, but was far less significant in the negotiations about the police, for a number of reasons:

- while the liberation movements did have trained soldiers and intelligence operatives, they had not trained any exiled members in policework.

- the main political concern of most of the liberation movements was with the possibility of a right-wing coup from within the military; and thus with the transformation of the defence force;

- traditional alienation of the police from the black majority made the prospect of working in the police a far less attractive one than working in, say, the army or the intelligence services, which was likely to have some senior officers from the former liberation movements.

The ANC and PAC reached agreements with the National Party Government negotiators as to the numbers of their members who would be integrated into the Police Service. The following groups entered the police:

- approximately 200 bodyguards were integrated into the VIP Protection Service

- a number of ANC intelligence personnel were posted to the Crime Intelligence Department of the SAPS - the reformed Security Branch. This Department, and the police intelligence component responsible for "Internal Security", were both placed under the command of ANC appointees. The entry of trusted ANC personnel went some way to re-establishing public credibility for these hated units;

- a small number of young people who had been members of the ANC's "self-defence units" (SDU's) and the IFP's "self protection units" (SPU's) were integrated into a "community constable" group;

- A small number of civilians were recruited into middle and senior posts in the SAPS during the competitive "senior appointments process". These individuals, largely from legal, academic or NGO backgrounds, took positions in the police Legal Service, Human Resources and Training components. Although some of these 'lateral entrants' were ANC supporters, lateral entry was not fully exploited by the new government as an opportunity to change the composition of the SAPS senior ranks, until 1999. This was partly due to the historical resistance of the police leadership to the notion of civilian lateral entry, and partly to the lack of policing expertise in South Africa outside of the ranks of the apartheid police agencies. The relatively low salaries offered by the SAPS, and the unpleasant image of the police, meant that the ANC government was unable to recruit high-calibre civilians into influential managerial positions in its new police service until quite long after 1994.

4. Improving Police Community Relations

The role of enforcing unpopular laws, assigned to the police agencies during the apartheid

years, created a profound crisis of legitimacy for the police in South Africa. In many respects, the police played a military role, crushing popular protest and engaging in South Africa's de-facto domestic civil war as well as being deployed in support of white regimes in independence struggles in neighbouring states. This resulted in large-scale alienation of the police from the majority black population. Police officers were not just unpopular, they were the targets of abuse and violence from pro-democracy quarters.

Notions of "community policing", gleaned from contact with the international police fraternity, gained currency in enlightened SAP circles in the late 1980s. It was, in part, the influence of international policing models[13] on both the SAP and on local academics, which led to the introduction of the first community policing structures in the early 1990s. The SAP established a Division for Community Relations in late 1992. This Division then set about establishing Police-Community Forums at local level in all areas of SAP jurisdiction.[14] However, the fact that the SAP deployed a large number of former Security Branch officers[15] into the new Division created immediate suspicion from black communities about the initiative.

The Interim Constitution, which came into effect in April 1994, contained a detailed requirement that the new police service should establish a "Community Police Forum" (CPF) at every police station. At the same time, some of the Local Peace Committees were still functioning; after their formal disbandment, these formed the core of the new CPF's. Unlike Peace Committees, the membership of CPF's was not limited to political parties, but could include any community group and interested individual. The role and function of the CPF's was not laid down in official policy - other than the SAPS Act, which basically repeated the wording of the Interim Constitution - until April 1997.[16] The Community Policing policy is currently under review, and is expected that regulations governing the functioning of CPF's will be issued in the coming months.

5. Ensuring Police Accountability

The apartheid police forces were notoriously unaccountable and unconstrained in their use of force. Most of the research and advocacy work done in the area of police reform prior to the 1994 election had focussed on human rights violations by the police; and numerous international human rights bodies highlighted the violations committed by the various police forces in South Africa.[17] As a result of this focus, the agenda of the ANC (the main negotiating party in the transition) focussed on establishing satisfactory mechanisms for police accountability in the post-election period. The ANC wanted to ensure police accountability on five fronts:

- to the Constitution, and in particular the Bill of Rights;
- to the Legislation governing the police;
- to the elected Government;
- to communities;
- to internationally accepted notions of police professionalism.

The emphasis of the ANC's policies in the transition period lay on community-level accountability - unsurprising, given that it did not yet have control over executive or legislative functions, but could rely on its support base in the majority of South African

communities. The ANC also emphasised the need for independent structures to deal with the abuses of power which had come to characterise policing under apartheid.

By 1997, the discussion around police accountability had become far more sophisticated, and the Draft White Paper released in 1998 proposed that performance against crime, and accountability for expenditure, should be used as devices for holding the police leadership accountable to the government.

With the appointment of a new National Commissioner from the senior ranks of the ANC in 1999, the pressure for police to be seen to be accountable to the government has been dramatically reduced. There is a strong relationship between the new Minister and National Commissioner, and police accountability is no longer an issue of concern, except perhaps to human rights watchdogs and organisations concerned with rising levels of police brutality in recent years.

6. Dealing with Crime

The imperatives of the early transition period were to build legitimacy for the police, to introduce a culture of human rights to the police, and to improve relations between the police and the black community in South Africa. Ironically, after four years of image-building, the South African police once again found themselves facing a crisis of public confidence. Surveys[18] conducted in South Africa's major cities prior to the second election found that public attitudes towards, and satisfaction with, the police remained low.

Levels of reported crime rose significantly during the 1990s. At the same time, conviction rates in criminal trials were dropping, and a crisis of confidence began to shake the entire criminal justice system. This was compounded by a steady stream of media stories about police corruption.

Early attempts to tackle the growing crime problem were bifurcated into an attempt to emphasise crime *prevention* and to reform the *criminal justice* system - contained in the 1996 National Crime Prevention Strategy (NCPS); and increasingly authoritarian policing operations conducted with the assistance of the South African National Defence Force - first evident in the 1996 "Community Safety Plan".

Feeling the effects of a devastating post-transition crime wave, the South African public began to demand tougher action against criminals; and the Bill of Rights became a popular scapegoat for police inadequacy. Even the rhetoric of former human-rights advocates in the Cabinet began to harden, and the political language of "war on crime" began to pervade official discourse around crime in the later 1990s. This language of "tough on crime" has become standard government issue in the post-1999 period. It has had the effect of increasing public confidence in the police and in the government's policy approach, but some of its negative consequences are beginning to be evident. These include

- lengthy delays in the criminal courts,
- massive overcrowding in South Africa's prisons,
- an ever-increasing number of awaiting-trial prisoners, increasing numbers of deaths as a result of police action and in police custody

- rising xenophobia resulting from the notion that "foreigners" are responsible for South Africa's growing crime problem
- increasing numbers of arrests in certain crime categories, resulting in rises, rather than declines in official "crime figures" (recorded police statistics).

Recent policy approaches to the problem of crime have largely abandoned any commitment to social crime *prevention* by the police, attempting to shift this responsibility instead to the "social" cluster of government departments such as housing, health, welfare and education. The two-pronged crime reduction approach of government now revolves around sustained *heavy policing* operations (currently known as "Operation Crackdown"), and ongoing reform of the *criminal justice system*.[19] The heavy policing approach is underpinned by an ongoing process of internal police reform, most notably an emphasis on improved service delivery to the public, but this is no longer vehemently marketed to the public, as police reform was in the early days of South Africa's new democracy.

In recent years, the police have experienced a severe resource squeeze, which has had the positive effect of forcing some long-overdue prioritisation in policing strategies, but has also had many negative effects. The loss of personpower in key areas has had a profound impact on police performance (for instance in criminal investigations, criminal records and crime intelligence). However, the police have succeeded in communicating their resource constraints to the public and the politicians, and, as a result, there is some sympathy and understanding for poor police performance. In line with its "tough on crime" policy, it seems likely that the new government will be allocating more resources to policing (and criminal justice in general) in the near future.

Notes:

[1] One of the most visible symbols of grand apartheid was the creation of the "homeland" system, which segregated black South Africans into ethnic groups, assigned each group a small piece of land, and created some form of administration for each "homeland". This system was brutally enforced, and fiercely resisted. The end of apartheid would have to entail the abolition of the homeland systems and their re-incorporation into a united South Africa.

[2] These homelands had acquired "independent" status through the logic of grand apartheid, which saw Africans not as citizens of a common South Africa, but as a collection of separate ethnic nations which were to be led to full and separate statehood. The goal of this approach was to force all Africans to exchange their citizenship for that of an "independent state", thus ensuring that there would be no black South African citizens. The "independent" homelands were entitled to issue passports, create defence forces, attempt "foreign affairs" etc

[3] This figure excludes Traffic Police employed by various Municipalities. The regular police do not deal with traffic or by-law offences.

[4] Marais 1992:5

[5] Marais 1992:7

[6] Shaw M, (1994) "Point of Order: Policing the Compromise" in South African Review 7 Ravan Press, Johannesburg

[7] First termed Dispute Resolution Committees

[8] There are Ministries for Safety and Security (police), Justice and Correctional Services.

[9] Mandela, Address to the Opening of Parliament, 17 February 1995

[10] Mufamadi Address at the SAPS Leadership Development Programme, 10 November 1995

[11] Brigadier was then the fourth highest rank in the police organisation.

[12] Also referred to as the "non-statutory forces".

[13] In particular, the UK model of police-community consultative groups.

[14] This precedent was not followed by the homeland forces.

[15] The motivation for using former Security Branch (political intelligence) personnel was that these were often the "cream" of the SAP personnel, who were politically aware and had the political skills to deal with black communities.

[16] Community Policing: Policy Framework and Guidelines SAPS 1997

[17] c.f. Amnesty International, Human Rights Watch, The International Committee of Jurists

[18] Institute for Security Studies Victim Surveys 1997/8 in Johannesburg, Durban, Cape Town and Pretoria find that the public image of the police is generally poor, and that negative views of the police are held equally by victims of crime and non-victims, although blacks are more likely to have negative views than whites.

[19] Criminal justice reform, through the inter-departmental "integrated justice system" programme, is the only surviving component of the 1996 National Crime Prevention Strategy in terms of national government programmes. Most of the more "social" aspects of crime prevention have been assigned to other government departments or to provincial and local spheres of government.