

## Ranks issue in court

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Police union Popcru says the decision to introduce “military” ranks to the SA Police Service could make police regress to the sort of “corrupt, ill-disciplined and unaccountable” structure seen during apartheid.

The union has filed papers in the Pretoria High Court in an application seeking an order declaring the rank changes introduced by Minister of Police Nathi Mthethwa and National Police Commissioner Bheki Cele unlawful.

In April last year police announced an overhaul of their ranking structure, with Cele taking on the title of general.

At the time, police leaders said the intention was to crack down on violent and organised crime.

However, Police and Prisons Civil Rights Union (Popcru) has argued that the new rank structure flies in the face of an ANC resolution to demilitarise the police and warns that civilian rights could be trampled on as a result of a change in mentality among officers.

In papers filed at the court, the police say the need for discipline was the main reason for the change in rank structure.

However, the union says the change is unconstitutional: Section 199 of the constitution said “the defence force is the only lawful military force in the Republic”.

“While I accept there is a need for effective discipline in the SAPS, I deny that there is a rational connection between military ranks and effective discipline, such that the former is capable of promoting the latter,” Popcru secretary general Nkosinathi Theledi says in papers.

“During the apartheid era, the SA Police was a highly militarised institution. It was also profoundly corrupt, ill-disciplined and unaccountable.”

Referring to the 1995 ANC policy paper entitled “Policing the Transition: Transforming the Police”, Theledi says, “It was precisely in order to break with the ‘soldiers at war’ mindset and to build a police service that was democratic and accountable that demilitarisation of the police was such a crucial part of ANC policy”.

In his affidavit he also refers to a 103-page report by Washington-based think tank The Cato Institute, which warns against the militarisation of police.

The study, *Overkill: The rise of paramilitary police raids in America*, says the most obvious problem with the militarisation of civilian policing is that the police and military have two distinctly different tasks.

“The military’s job is to seek out, overpower and destroy the enemy. Though soldiers attempt to avoid



DISCIPLINE: National Police Commissioner Bheki Cele faces opposition for reinstating military ranks. Picture: Jason Boud

them, collateral casualties are accepted as inevitable.

“Police, on the other hand, are charged with ‘keeping the peace’, or ‘to protect and serve’,” writes policy analyst and researcher Radley Balko.

“Given civilian police now tote military equipment, get military training and embrace military culture and values, it shouldn’t be surprising when officers begin to act like soldiers, treat civilians like combatants, and tread on private property as if it were part of a battlefield,” Balko says.

In recent weeks, cellphone and CCTV footage has surfaced of police Tactical Response Team (TRT) members assaulting restaurant patrons in raids.

Footage has also surfaced showing heavily armed TRT members forcing an Ermelo resident to roll on the ground on a dusty section of road, while they follow on foot and in a police vehicle.

Last week the Independent Complaints Directorate said it had noted “numerous reports of unwarranted attacks on civilians by police officers attached to special units, especially the Tactical Response Teams, with concern. Such reports range from assault to torture and even murder.”

The ICD said it was investigating these complaints and said 15 TRT and Crime Intelligence members in KwaZulu-Natal had been arrested for murder in November 2010.

The Balko paper makes a case for a clear separation between military and policing methods and training.

“To put it most bluntly, in its most basic iteration military training is aimed at killing people and breaking things... Police forces on the other hand... have to exercise studied restraint that a judicial process requires.”

Quoting various excerpts of the Balko paper, Theledi argues that when the “language, designation and culture of a police service become increasingly militarised it is not unreasonable to expect that some officers – especially when under stress – will start behaving as if they are in the military”.

In responding papers, head of the personnel services division, Lieutenant-General Johannes Phahlane, denies that the new ranks are military in nature and says the union has failed to prove that military ranks have been introduced.

Phahlane argues that the current police ranks differ from those of the defence force and says Mthethwa is empowered under the SAPS act to make changes to regulations.

“The ranks/rank structure introduced by the 2010 Regulation are not the sole preserve of the military.

“There is nothing... in law that prevents the SAPS or, for that matter, any other organisation, from using the ranks introduced by the 2010 Regulation,” Phahlane says.

In explaining the reasons for the change, Phahlane says that “after experiencing and observing the operation of the rank system introduced by the 1995 amendment, the government took stock of how effectively the new rank structure contributed to the disciplined performance and operations of the SAPS.

“It was observed that there was not the desired culture of discipline and the smooth function of the required chain of command.”

The police argue that institutions such as the Independent Complaints Directorate, community policing forums and the Secretariat for the Police would ensure the police remained accountable to the South African public.

No trial date has been set.

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