

Report of the Portfolio Committee on Police on Public Participation: Independent Police Investigative Directorate Amendment Bill [B21 – 2023] (National Assembly – sec 75), dated 08 November 2023

The Portfolio Committee on Police (the Committee), having engaged in public participation on the Independent Police Investigative Directorate Amendment Bill, 2023 [B21 – 2023], referred to and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports as follows:

1. Introduction

The Independent Police Investigative Directorate (IPID) Amendment Bill, 2023 [B21-2023] (“the Amendment Bill”) was approved by the Cabinet for introduction in Parliament on 24 May 2023. Prior notice of its introduction was published in the Government Gazette No 48756, dated 07 June 2023. The Amendment Bill was subsequently introduced by the Minister of Police and referred to the Portfolio Committee on Police on 20 July 2023 (ATC No 96 – 2023) as a proposed Section 75 Bill (not affecting provinces). The Amendment Bill was officially tagged as a section 75 Bill by the Parliamentary Joint Tagging Mechanism (JTM) in terms of Joint Rule 106(6) on 16 August 2023 (ATC No. 100 - 2023). The Amendment Bill proposes amendments to various sections of the Independent Police Investigative Directorate Act, 2011 (Act No. 01 of 2011) (“the Principal Act”).

2. Objectives of the Amendment Bill

The objectives of the Amendment Bill are to amend the Independent Police Investigative Directorate Act, 2011, so as to:

- amend and insert certain definitions;
- provide for the Directorate’s institutional and operational independence;
- provide that the Directorate must be independent, impartial and must exercise its powers and functions without fear, favour, prejudice, or undue influence in order to give effect to the judgment of the Constitutional Court in the case of *McBride v Minister of Police and Another*;
- amend the provisions relating to the appointment of the Executive Director of the Directorate;
- broaden the Executive Director’s responsibilities in respect of the referral of complaints regarding disciplinary matters;
- provide for pre-employment security screening investigations to be conducted by the Directorate;
- provide for the conditions of service of investigators to be determined by the Minister;
- provide for the Directorate to investigate any deaths caused by the actions of a member of the South African Police Service or a member of a municipal police service, whether such member was on or off duty;
- provide for the Directorate to investigate a rape by a member of the South African Police Service or a member of a municipal police service, whether such member was on or off duty;
- strengthen the provisions relating to the implementation of disciplinary recommendations;
- provide for a savings provision regarding the conditions of service of existing investigators and provincial heads;
- amend other provisions of the Independent Police Investigative Directorate Act, 2011, so as to ensure that the Directorate executes its mandate effectively and efficiently; and to provide for matters connected therewith.

3. Constitutional Mandate and Parliamentary Rules

Public participation in Parliament’s legislative process is guided by the Constitution of the Republic of South Africa and the Rules of the National Assembly.

Section 59 of the Constitution deals with public access to and involvement in National Assembly. It states:

- (1) The National Assembly must-
 - (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
 - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken -
 - (i) to regulate public access, including access of the media, to the Assembly committees; and
 - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of any person.
- (2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

Rule 286 of the National Assembly deals with the processing of legislation by Committees. It states:

- (1) If a Bill has been published for public comment in terms of Rule 276 or 295, the Assembly committee to which the Bill is referred must give interested persons and institutions an opportunity to comment on the Bill.

4. Public participation on the IPID Amendment Bill

4.1. Advertisement calling for public comments

The call for public submissions was opened on 12 September 2023 and the advertisement was published in all official languages in national and regional newspapers. The deadline for submissions was set for 02 October 2023 and was extended to 06 October 2023 to allow for late submissions.

The call for public comment was published in the following newspapers:

- Cape Times (English/National)
- Die Burger (Afrikaans)
- Isoleswe (isiZulu)
- Isolezwe (isiXhosa)
- Business Ink (se Tswana)
- Bushbuckridge News (xiTsonga)
- Coal City News (siSwati)
- Ngoho News (tshiVenda)
- Nthavela News (sePedi)
- Thembisile Hani News (isiNdebele)
- Free State Sun (seSotho)

The total cost of advertisements amounted to R132,584.33.

Additional to the publication of the call for submissions, a social media campaign was launched to create public awareness of the Amendment Bill, several media statements were issued by the Committee's Chairperson and the Committee directly invited 17 stakeholders in the policing environment to comment on the Bill.

4.2. Public submissions received by the Committee

The Portfolio Committee on Police received 22 substantive public submissions on the IPID Amendment Bill, 2023 [B21-2023], including the following (listed in alphabetical order).

- 1) Africa Criminal Justice Reform (ACJR) (Dullah Omar Institute at the University of the Western Cape)
- 2) Action Society
- 3) AfriForum
- 4) African Policing Civilian Oversight Forum (APCOF)
- 5) Association for the Prevention of Torture (APT)
- 6) Centre of Criminology (University of Cape Town)
- 7) Southern African Catholic Bishop's Conference Parliamentary Liaison Office (CPLO)
- 8) Daneel Knoetze (View Finder)
- 9) Mr Emmanuel Chauke
- 10) FW de Klerk Foundation
- 11) Freedom of Expression Institute (FXI)
- 12) Gun Free South Africa (GFSA)
- 13) Helen Suzman Foundation
- 14) Independent Policing Union of South Africa (IPUSA)
- 15) Institute for Security Studies (ISS)
- 16) Ms Mary de Haas
- 17) Ndifuna Ukwazi
- 18) Police and Prisons Civil Rights Union (POPCRU)
- 19) South African Human Rights Commission (SAHRC)
- 20) South African Policing Union (SAPU)
- 21) Western Cape Government (WCG)
- 22) Willy Dithlakel (Mr)

The Committee received 37 non-substantive submissions through the organisation Dear South Africa, of which all were not in favour of the Amendment Bill. Based on previous precedents set, non-substantive submissions from Dear South Africa are dealt with as a single submission.

Most submissions highlighted the high crime rate, increase in police criminality and misconduct as well as the effect thereof in eroding public trust, highlighting the importance of an independent police investigative Directorate. Coupled with this is the significant power vested in law enforcement agencies to use deadly force and deprive citizens of liberty. Submissions also raised concern about the fact that the IPID Amendment Act, 2019 (Act No. 27 of 2019), which was assented to by the President, has still not been operationalised by the gazetting of the date into which it comes into operation (insertion of Section 6A). The Committee's attention was further drawn to South Africa's obligations under a number of the treaties and protocols that articulate the international human rights framework to which South Africa is a signatory, notably the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT), which was ratified by Parliament in 2019 and is yet to be domesticated in national legislation.

The majority of submissions were based on clause 4 relating to the appointment, term of office and remuneration of the IPID Executive Director, and clause 16 amending section 28 of the Principal Act related to the categories for IPID investigations. However, submissions were received on all clauses and the diversity of comments and identified areas of concern illustrate the usefulness and value of public participation in Parliament's legislative process.

4.3. Public hearings held by the Committee

The Portfolio Committee on Police hosted two days of public hearings on the Amendment Bill. In an effort to accommodate stakeholders that requested oral presentation, the Committee had one public hearing on a virtual platform on 18 October 2023 and the other during a physical meeting of the Committee held in Room S12A, NCOP Building on 25 October 2023. In total, the Committee heard 17 oral presentations on the Amendment Bill.

4.4. Clause-by-clause summary of public submissions

The table below provides a summary of public submissions that were received per individual clause. The section further provides the responses from the Civilian Secretariat for Police Service (CSPS) on the submissions received.

Objects of the Amendment Bill

ORGANISATION	COMMENT
APCOF	APCOF proposes that the word 'impartial' be replaced or strengthened by the inclusion of the word 'independence' to give full effect to the spirit of the judgement.
APT	<p>The APT proposes the inclusion of two additional paragraphs under Section 2 "Objects of the Act" that make explicit:</p> <ul style="list-style-type: none"> • IPID's role as a constituent body within the South African NPM established under the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT). • The requirement for cooperation, coordination and regular sharing of information between IPID and other NPM constituent bodies, particularly the South African Human Rights Commission, as the national NPM coordinating body. <p>Furthermore, the APT suggests that the Bill's introductory paragraph be amended to make explicit reference to the OPCAT and to the preventive approach that guides the work of National Preventive Mechanisms (NPMs) under the treaty.</p>
FW de Klerk Foundation	Clause 4 undermines the structural and operational independence of IPID as stated in the objectives of the Amendment Bill.

4.4.1. Clause 1: Definitions

Clause 1 of the Bill seeks to amend section 1 of the Act through the insertion of certain new definitions, such as the definition of a firearm, Municipal Manager and the Executive Head of Municipal Police Service.

ORGANISATION	COMMENT
APCOF	<p>APCOF proposes the inclusion of the following definitions:</p> <ul style="list-style-type: none"> • Definitions related to the functions of IPID as part of the National Preventative Mechanism should be provided as: <ul style="list-style-type: none"> National Preventive Mechanism is an independent mechanism for the prevention of torture, either designated or established in accordance with Article 18 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Preventative Monitoring is making announced and unannounced visits to places where there are or may be persons deprived of their liberty to strengthen their protection and includes accessing all relevant documentation and persons and the ability to conduct confidential interviews. • Operational Independence means the ability of the organisation to fulfil its mandate using the legislated powers and means assigned to it, without undue influence from external parties. • Institutional Independence is the ability of the organisation to

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	<p>insulate its role, function and decision making through being able to provide an independent process for appointment of its leadership, security of tenure, adequate resourcing and financial security.</p> <ul style="list-style-type: none"> • Initiate means the initiation of the disciplinary proceedings based on the investigation report by the Directorate by: <ul style="list-style-type: none"> (a) appointing the chairperson and the employer representative; (b) serving the charge sheet upon the member; and (c) holding the first sitting within 30 days of the receipt of the recommendations from the Directorate; (c) extend the invitation to IPID to bring evidence before the enquiry.
APT	<p>In order to further clarify the role and functions of IPID under the OPCAT, the APT proposes the following in terms of additional definitions under Section 1.</p> <ul style="list-style-type: none"> • National Preventive Mechanism (NPM) is an independent mechanism for the prevention of torture, designated or established in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. • Place of deprivation of liberty is any form of detention or imprisonment from which a person is not permitted to leave at will by order of any judicial, administrative or other authority. In the context of IPID's work as part of the NPM this includes, <i>inter alia</i>, police cells and offices, police vehicles and any other places where the police may or are depriving people of liberty.
SAHRC	<p>The SAHRC submits that the Committee should consider extending the NPM mandate to IPID as an NPM institution to be able to conduct preventive monitoring in conformity with the provisions of the OPCAT.</p> <p>The proposed amendment is critical to guarantee the Directorate's independence (operational, functional and financial). This will enable the IPID to fully function as an NPM institution as envisaged in the OPCAT.</p> <p>This would also mean that reference to the NPM would need to be made as part of the proposed amendments to Section 1 of the principal Act.</p>
Ndifuna Ukwazi	<p>The definition of Municipal Police Service should include the definition for Municipal Law Enforcement (City of Cape Town).</p>
IPUSA	<p>The definition for Programme Manager in 1(g) should be removed as this is a structural position. There can be many Programme Managers in an organisation. The definitions should be specific in defining the relevant Post Title as it appears on the organisational structure of IPID.</p>
WCG	<p>The words "Unit" and "Programme" in 1(g) should not be capitalised. Amend as follows:</p> <ul style="list-style-type: none"> • "Programme Manager means a person to head a unit or

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	programme of the Directorate”.

Response from the CSPS: The section will be reviewed in order to take into account of a proposal in the public comments, to further clarify the role and function of IPID by defining the meaning of operational and institutional independence.

4.4.2.Clause 2: Constitutional Obligation

Clause 2 of the Bill seeks to amend section 3(2) of the Act in order to provide that IPID must exercise its functions in accordance with the Constitution.

ORGANISATION	COMMENT
GFSA	GFSA welcomes the proposed amendments that strengthen the institutional and operational independence of the Directorate, including provisions for it to operate in accordance with the Constitution and to exercise its powers and functions without fear, favour, prejudice, or undue influence.
POPCRU	POPCRU welcomes amendment of Section 3 with the insertion of, <i>the Constitution of the Republic of South Africa, 1996</i> , in the subsection 2 of the Principal Act.

4.4.3.Clause 3: Independence

Clause 3 of the Bill seeks to amend section 4 of the principal Act in order to provide that IPID is institutionally and operationally independent from the South African Police Service (SAPS). Section 4 of the principal Act is further amended in order to provide that IPID must be independent, impartial and must exercise the powers and perform the functions of office without fear, favour, prejudice or undue influence. This proposed amendment is in order to give effect to the *McBride* judgment in which Judge Bosielo AJ pronounced that the public should have confidence that IPID will be able, without undue political interference, to investigate complaints against the police fearlessly and without favour or bias.

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ACJR	The ACJR draws attention to the establishment of IPID under section 206(6) of the Constitution and the fact that the Constitutional Court in <i>Glenister II</i> paid particular attention to the issue of independence, and the perception of independence. In support, the ACJR states that the proposed amendment by clause 3 to section 4(1) of the Principal Act and the insertion of section 4(3) therein would then be supportive and enabling of this requirement. These set clear requirements that must be applied in assessing the merits of other amendments in the Bill.
APCOF	APCOF states that Section 4 can be strengthened by the inclusion of the following: (a) by the substitution of subsection (1) of the following paragraph: <i>(1) The Directorate functions institutionally and operationally independent[ly] from the South African Police Service, the Municipal Police Service, and or any structure associated with the National or Provincial Secretariat of Police Services or Ombudsman where it exists.</i> (b) by the addition of the following subsection after the proposed subsection (2) - <i>(3) The Directorate has full legal capacity, is independent and is subject only to the Constitution and the law including this Act</i>

ORGANISATION	COMMENT
POPCRU	POPCRU welcomes the insertion of the subsection 3, which they believe would enhance the independence and impartiality of the IPID. POPCRU believes that the IPID must be an institution that must perform its mandate without any undue influence.
SAPU	SAPU welcomes the amendment to section 4(a) of the Principal Act to the effect that the Directorate is institutionally and operationally independent as well as the inclusion of subsection 4(3) regarding the impartiality of the Directorate. This amendment will go a long way in ensuring that the Directorate operates independently as envisaged in the Constitutional Court ruling in <i>McBride v Minister of Police</i> .
WCG	It is proposed that subsection (2) of the IPID Act be amended as follows: “(2) Each organ of state must assist the Directorate to maintain its <u>independence and its impartiality</u> and to perform its functions effectively.” The section currently only refers to impartiality.

Response from the CSPS: It is important to note that a proposal was made in the public comments for amendment of the Constitution in order to fortify the independence and impartiality of IPID by elevating it to a Chapter 9 Institution. This proposal was considered, however, it was decided that this matter needs a policy decision and consideration by Cabinet.

4.4.4. Clauses 4: Appointment of the IPID Executive Director

Clause 4 is the most contentious clause of the Amendment Bill as it deals with the appointment and removal from office of the Executive Director (ED) of IPID. The proposed amendment, as currently contained in the Bill before the Committee, goes against a Constitutional Court judgement (*McBride Judgement*). It is on this basis that the Office of the State Law Advisor refused to certify the Amendment Bill as Constitutionally sound and drafted properly in the form and style which conforms to standard legislative practice in accordance with Rule 279(2) of the NA Rules. The Amendment Bill proposes that the appointment of the Executive Director is made only by the Minister of Police with the concurrence of Cabinet- thereafter Parliament is informed. Parliament will have no role in the appointment of the Executive Director.

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ACJR	<p>The appointment of the IPID ED by the Minister with the concurrence of Cabinet is rejected as it structurally undermines the independence of IPID and excludes Parliament from the selection process. Having the Minister appoint the ED raises the question of whether IPID can be independent, as required by section 206(6) of the Constitution.</p> <p>No provision is made for any public participation and the selection criteria would easily enable the appointment of former SAPS staff. The appointment of former police staff to police oversight agencies is generally regarded as a less than ideal practice and jurisdictions like England and Canada are drawing at least on a mix of staff from policing and other backgrounds.</p> <p>The Amendment Bill excludes Parliament entirely from the selection and appointment process. This fundamentally undermines independence of IPID and would seriously damage public perceptions about its independence, as was alluded to above in respect of <i>Glenister II</i>.</p> <p>The proposed amendment in section 6(4) also proposes that the Minister sets the remuneration, benefits and terms of service of the ED, which further infringes on the independence of the IPID.</p>

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Action Society	<p>Action Society expresses concern about the amendments under clause 4 based on the infringement on independence, executive authority over IPID, undermining the doctrine of the separation of powers, reduced Parliamentary oversight, and lack of public participation.</p> <p>The perceived erosion of IPID's independence under the current Bill stands as a pivotal concern, primarily due to the extensive authority it bestows upon the Minister of Police, including the power to appoint and dismiss the ED of IPID. These provisions do not merely sow seeds of doubt regarding IPID's independence but pose substantial risks of actually compromising it. The extent of control given to the Minister of Police, through the current provisions of the Amendment Bill, can potentially lead to situations where the direction, scope, and outcomes of investigations are unduly influenced, manipulating the agency's core objectives and operations. Therefore, maintaining a clear demarcation between the powers of the Minister of Police and the operational autonomy of IPID is crucial to preserve the integrity and credibility of the institution and to fulfil its mandate of ensuring accountable policing effectively.</p> <p>Action Society proposes that the IPID becomes a Chapter 9 Institution which will ensure independence, protect from arbitrary removal, enhance oversight (Parliament), public participation in appointments, budgetary autonomy, and separation from the National Executive. Establishing IPID as a Chapter 9 Institution through these proposed amendments is a decisive step towards securing its independence and efficacy.</p>
AfriForum	<p>AfriForum expresses concern that the proposed Amendment Bill appears to contradict the explicit directives of the Constitutional Court's Judgement and states that the cornerstone of the IPID's effectiveness lies in its independence. The proposed amendment, specifically regarding the appointment of the ED of the IPID, must ensure that the IPID remains insulated from political interference. The current amendment, which centralises control over the appointment process in the hands of the Minister of Police and the Cabinet, raises concerns regarding potential bias and influence over the IPID's operations.</p> <p>AfriForum recommends that the appointment process of the ED should be transparent and incorporate opinions from a broad spectrum of stakeholders, ranging from community leaders to legal experts. Such an approach would bolster public trust and ensure the best-suited individual is chosen for this critical position.</p> <p>AfriForum suggests that clear boundaries should be set to ensure the IPID's operational independence, shielding it from potential political interference, which will ensure that the IPID can carry out its mandate without fear or favour, placing justice above all else.</p> <p>To ensure the IPID's unbiased functioning, AfriForum suggests introducing mechanisms or additional provisions that underpin its mandate. This could include regular third-party audits, the establishment of an oversight committee comprising members from varied backgrounds, and mandatory public reporting of major findings, thus enhancing transparency and accountability.</p>
APCOF	<p>APCOF proposes that the recruitment process of the ED mirrors that of the Auditor General and Public Protector as set out in Sections 193(4)</p>

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	<p>to (5) of the Constitution. This provides that the Public Protector and Auditor-General are appointed by the President, after nomination by a committee of the National Assembly composed proportionally of members of all political parties represented in the National Assembly and approved by a resolution adopted with a supporting vote of at least 60% of all members of the National Assembly. Section 193(6) provides further that the recommendation process must allow for the involvement of civil society. APCOF proposes the specific wording to be included in their submission. Kindly refer to the submission.</p>
<p>APT</p>	<p>APT states that the Amendment Bill falls short in both actual and perceived independence, including by maintaining the IPID’s attachment to the Ministry – a failing which risks significantly undermining the credibility and effectiveness of the future institution in the eyes of key stakeholders, as well as failing to meet the criteria outlined in Article 18 of the OPCAT.</p> <p>In particular, as currently drafted, Section 6 on “Appointment, remuneration and conditions of service of Executive Director” makes it difficult for anyone except a senior police officer to meet the criteria for appointment. While recognising the value of police experience in the work of the body, there is nevertheless a danger that appointing only former police officers to the position will result in a strong perception that the institution is not independent among key stakeholders. We thus suggest that the criteria outlined in Section 6 paragraphs (c) and (d) be broadened to maximize the number of potential candidates from a wide range of societal groups who are eligible to apply and be appointed.</p> <p>As such, APT recommends that paragraph (c) be amended to read: “possess an appropriate qualification in law, criminal justice, <u>or other field relevant to the mandate</u>”.</p> <p>In terms of the appointment of the ED, APT states that the Amendment Bill would be significantly enhanced by either retaining and strengthening the existing model, with a clear and strong role for Parliament in the process; or by going even further and replacing paragraph (1) with the details of a an open and transparent selection process under the control of an independent and credible body, such as a Committee of Parliament, and, ideally, involving open and fair consultation with a range of stakeholders, including civil society.</p>
<p>Centre of Criminology</p>	<p>The Centre of Criminology expressed concern about the shrinking of parliamentary responsibility for oversight over the Executive and the IPID. Clause 4 is a direct attempt to undercut the role and responsibility in Parliament and leads one to the conclusion that the Bill will fall foul of the Constitutional Court judgement. The exclusion of the parliamentary oversight process is an assault on the Constitution, and an assault on the Constitution is an assault on our democracy. It is more than clear that this Bill before this Committee is unconstitutional and if passed will fall short of constitutional muster.</p>
<p>CPLO</p>	<p>The CPLO raises concern that while the section in the Principal Act that allowed the Minister to summarily dismiss the Director of IPID (s6(6)) has been removed, its proposed replacement does little or nothing to guarantee IPID’s independence; indeed, it renders the Director – and thereby the organisation – even less independent of the Minister than was previously the case.</p> <p>The CPLO states that it is clear that the power to appoint someone</p>

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	<p>unilaterally allows just as much for ‘partisan political interference’ as does the power to dismiss him or her. The proposed new section 6 disrespects the Constitutional Court’s judgement, in fact attempts to subvert it. The CPLO submits that the provision should be rejected. The CPLO further refers to the opinions expressed by the State Law Advisor and independent counsel consulted by the Minister advised that the Bill, in its present form, is unconstitutional; and that, despite this clear advice, the Minister has insisted on tabling it. The CPLO states that (under the circumstances) it is unavoidable to conclude that the Minister, and the Cabinet, are acting in bad faith. When this happens, Parliament, in the form of this Committee (the Portfolio Committee on Police), must step in and refuse to pass legislation that offends against the Constitution.</p>
<p>Emmanuel Chauke</p>	<p>Concerns raised on structural and operational impence of the IPID. Mr Chauke proposes that the IPID ED should report directly to the Presidency. Mr Chauke also stated that IPID Investigators must be protected against intimidation from SAPS. Provision for this protection by the State Security Agency (SSA) must be made.</p>
<p>FW de Klerk Foundation</p>	<p>The Foundation raises concern that the current Bill is substantially different from the version that was issued for public comment in 2022 and that it aimed to create a more transparent and independent selection process for the ED of IPID. However, the final version presented to Parliament deviates significantly from this intent, maintaining significant appointment powers vested in the Minister of Police and Cabinet, limiting Parliamentary oversight and involvement in the appointment process. Clause 4 grants the Minister of Police substantial authority in unilaterally appointing the Executive Director of IPID with Cabinet concurrence, and such provision may potentially be at odds with democratic principles and constitutional checks and balances, raising important constitutional and governance considerations. Clause 4 of the Bill is also in stark contrast to Section 1(c) of the Constitution as it undermines the foundational principle of the separation of powers, a cornerstone of democratic governance. This concentration of power in the executive branch contradicts the principle of separation of powers, as it bypasses a more inclusive and balanced appointment process involving other branches of government, particularly the legislative branch.</p> <p>Furthermore, the current Amendment Bill before Parliament does not align with the Constitutional Court’s judgment in <i>McBride</i>, as it fails to conform to the spirit and essence of the Court’s directives.</p> <p>The Foundation thus recommends the following revisions to Clause 4:</p> <ul style="list-style-type: none"> • The appointment of the Executive Director of IPID should involve a consultative and merit-based selection process, with input from multiple stakeholders, including the National Assembly and civil society organisations specialising in law enforcement oversight. • The appointment should require the approval of the National Assembly, reinforcing democratic accountability and reflecting the importance of legislative oversight in critical appointments within the criminal justice system. • The appointment process should be guided by transparent and objective criteria, ensuring that the candidate possesses the necessary qualifications, experience, and commitment to uphold IPID’s independence and impartiality.

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FXI	<p>The FXI contends that the provisions set out in clause 4 fall short of the constitutional requirement of an independent directorate. Political interference must be tempered to safeguard the independence of the ED of IPID. The FXI submits that Parliament must play an active role in the appointment of the ED. The Portfolio Committee on Police must be given the role of dealing with the shortlisting of candidates, conducting interviews, and making recommendations for adoption by the President as head of cabinet. This process will ensure independence of the institution.</p> <p>The FXI proposes that the Directorate should investigate all complaints received against members of the SAPS or municipal police services. On completion of the investigation, the report must be submitted to the Civilian Secretariat, which must commence a disciplinary process. In this way IPID has the freedom to complete an investigation unhindered and ensures that the disciplinary processes do take place.</p>
GFSA	<p>GFSA strongly opposes the amendment of section 6(1) of IPID Act. This amendment has two serious effects: Firstly, it removes Parliament from the appointment process and, secondly, in so doing, it concentrates power over the appointment process in the hands of the executive, which increases IPID's vulnerability to political interference.</p> <p>GFSA strongly urges for the inclusion of civilian oversight in the process of appointing IPID's Director. In line with the proposed provisions of the IPID draft bill circulated by the Civilian Secretariat for Police Service in 2022 which provided for a panel to advise on the appointment process. Kindly refer to GFSAs submission for the wording.</p>
Helen Suzman Foundation	<p>The Foundation raises concern about the removal of Parliament from the appointment process of the ED entirely, without explanation, concentrating appointment power in the executive by proposing that the Minister appoint the IPID ED in concurrence with Cabinet. This runs counter to the notion of IPID's institutional independence from the executive developed by the Constitutional Court and the Supreme Court of Appeal.</p> <p>The Foundation states that the IPID ED should instead be appointed by the Portfolio Committee on Police in consultation with the Minister, after a panel of suitably qualified persons that the PCP appoints, also in consultation with the Minister, recommends a candidate. This will not only to entrench IPID's independence but to give the public confidence that the IPID ED is appropriately qualified.</p> <p>The Foundation argues that if the IPID ED is ultimately accountable to Parliament, it should be able to screen potential appointees, <i>as well as</i> remove appointees who have failed in their constitutional duties. Sensible, transparent appointment processes are not nearly as fraught and should be used as far as possible to prevent improper appointments, rather than relying on parliamentary removal processes that, in any event, generally commence when the institutional damage is done.</p> <p>The Foundation further states that the IPID ED's remuneration should be set to a statutory minimum and not as the Amendment Bill currently proposes that it be determined by the Minister in consultation with the Minister of Finance.</p>

ORGANISATION	COMMENT
IPUSA	<p>IPUSA states that the IPID will never be independent from SAPS so long as they report under the Executive Authority of SAPS. IPID investigators are easily coerced by SAPS not to act impartially or independently against certain members and the IPID Act is not consistently applied. In its submission, IPUSA alleges collusion between the SAPS, IPID and the Minister's office in applying discipline in the SAPS and municipal police services.</p>
ISS	<p>There is no provision that is more important to ensuring IPID's independence than that dealing with the appointment of the Executive Director. Notwithstanding the fact that the Objects of the Bill include <i>'to provide for the Directorate's institutional and operational independence'</i> the Bill proposes to weaken protection of the independence of the IPID ED. The importance of the appointment process was repeatedly demonstrated during the 'state capture era', when Executive influence over appointment provisions was repeatedly abused in order to compromise the functioning of criminal justice agencies</p> <p>The ISS proposes specific amendments to the wording. Kindly refer to their submission.</p> <p>The current Act does not say anything regarding the remuneration of the ED and the Amendment Bill proposes to add a provision to this effect. This is a gap in the Act that needs to be rectified. However, the provision in the Amendment Bill would serve to entrench the power of the Minister to determine (with the concurrence of the Minister of Finance) the remuneration of the Executive Director.</p> <p>The scope of responsibility exercised by the IPID Executive Director is not same as that exercised by the Head of the Hawks. IPID is responsible for investigating alleged offences committed by police organisations employing in the while the DPCI is responsible for investigating 'national priority offences, in particular serious organised crime, serious commercial crime and serious corruption.' This is reflected in the fact that the budget of the Hawks is more than six times greater than the IPID budget. While it continues to be important to improve budgetary support to IPID, the threshold set for the minimum remuneration of the IPID ED need not be the same as that for the Head of the Hawks. It is suggested that it should be set at the average level of remuneration of a Divisional Commissioner in the SAPS</p> <p>The proposed Section 6(5) is the same as Section 6(4) of the current IPID Act. The proposed Section authorises the Minister to unilaterally appoint an Acting Head of IPID 'When the Executive Director is unable to perform the functions of office, or when the Executive Director position is vacant'. There are no constraints on who he/she may appoint. Section 6(5) should provide that the person appointed should be a senior member of the national IPID office or provincial director, and that the acting appointment should be subject to approval by the relevant parliamentary committee.</p>
Mary de Haas	<p>Ms de Haas states that the IPID cannot be independent when Minister appoints the ED. The criteria for qualifications included in the Amendment Bill are too vague and a law degree in itself does not necessarily equip someone for the position of ED. This should be coupled with expertise in criminal law and the law of evidence. Currently, many graduates in law have little practical experience as they go on to higher degrees without practicing law.</p>

ORGANISATION	COMMENT
	<p>Furthermore, it must be stipulated that no former serving police members may be appointed as IPID ED or to any management positions.</p> <p>Ms de Haas questions the rationale for the appointment period extended beyond five years. This suggestion of seven to ten years raises question about whether there may be an intention to make a political appointee when the legislation is finalised to ensure political control of state institutions which, by their very nature, should act independently of whoever is in government (which they are not doing currently, and that is why state capture was allowed to take root).</p>
POPCRU	<p>This section is contentious, as was the source of the court applications lodged by the former Executive Director of the IPID. In ascertaining the independence of the IPID, the Constitutional Court, in defining the concept independence, especially for corrupt-fighting institution like the IPID, argued that the following factors must be considered.</p> <p>POPCRU, in concurrence with this observation, welcomes the substitution of Section 6 in the Principal Act. POPCRU however, note with a concern, the absence of subsection in the new section 6 dealing with the removal of the Executive Director and the independence of the institution. The new section 6 is silence on the removal of the Executive Director and emphasis on the independence of the IPID. This silence still takes away or compromises the independence of the IPID. Note: <i>Section 6A as inserted by the IPID Amendment Act, 2019 is retained in the Amendment Bill.</i></p>
SAHRC	<p>The SAHRC states that the proposed ministerial appointment process that seems to suggest the exclusion of a substantive parliamentary function is inimical to the independence of the Directorate. A new clause should be added to a provision on the protection of the Executive Director from undue political interference; and that as a key element to guarantee the independence of the Directorate, IPID should be empowered to determine the remuneration and conditions of service of investigators independent of the Minister.</p> <p>Further to the appointment process, the SAHRC recommends that:</p> <ul style="list-style-type: none"> • Clause 4 should include a provision that the remuneration of the Executive Director may not be reduced, nor may the allowances and other terms and conditions of office and service benefits be adversely altered during their term of office. • For consistency and to rule out any ambiguity, it is recommended that the appointment of the ED should be fixed to a non-renewable term of seven (7) years. An alternative to be considered by the Committee is that the ED could be appointed for a term of five (5) years renewable once (instead of the proposed period of seven to ten years). • In addition to the eligibility criteria in clause 6 (2) (a-e), it is further recommended that the Committee should consider criteria of exclusion for ineligibility but not limited to persons in the employ of the police and municipal police to ensure any perceived or real conflict of interest is eliminated. • A procedure should be established to determine incompetence and incapacity. This is a process which must be established based on facts (factual inquiry). It is then recommended that a provision should be included for a Committee inquiry to assess

ORGANISATION	COMMENT
	<p>the fitness of the incumbent. The Committee must adopt a resolution after the said inquiry recommending the removal of the Executive Director. Such a resolution should have a threshold of adoption. This will provide a guarantee that the ED enjoys adequate structural and operational independence and to ensure that it is effectively insulated from undue political interference.</p> <ul style="list-style-type: none"> • In line with the concept of independence and to ensure the operational independence of the IPID, the Committee should consider the inclusion of a provision that allows the IPID to submit its budget request informed by its operational and strategic plans. • In the interest of transparency and accountability, this clause should include a provision on disclosure of financial interests and any other interest, and such information must be accessible to the public. <p>The Committee should be mindful of the potential adverse implications on the NPM's independence and compliance with the OPCAT if the proposed provisions of clause 4 are accepted in their current form.</p>
SAPU	<p>SAPU expresses concern about the amendment and that the appointment process be debated. They indicated that they do not wish to enter a political debate on this matter (as they are a non-political entity).</p>
WCG	<p>The WCG proposes that the appointment process as contained in the 2022 version of the Amendment Bill be retained in terms of the appointment process to include an independent panel to interview prospective candidates to be appointed by the Minister in concurrence of Cabinet.</p> <p>The WCG proposes that the amendment in relation to section 6(3) be deleted (Minister to table a notice in Parliament on the appointment of the ED). The WCG states that Parliament's oversight role will be initiated by the proposals referred to above concerning the Parliamentary appointed panel and the confirmation or rejection by Parliament of the appointment.</p>

Response from the CSPS: In response to concerns in the public comments regarding the lack of Parliamentary oversight over the processes for appointment of the Executive Director, section 6 of the principal Act has been amended. The result is that subsections (1) and (2) which provides for confirmation of appointment of the Executive Director by a relevant Parliamentary Committee have been retained. The remainder of the subsections of section 6 of the principal Act have been strengthened.

The proposal that the remuneration of the Executive Director should be set to a statutory minimum has not been accepted as there are administrative processes that deal with such issues outside of an Act.

The clause has been amended further in order to provide for initiation of investigation by the Executive Director “upon becoming aware” of a complaint against a member of SAPS or Municipal Police Service and not only upon receipt of a complaint.

4.4.5. Clauses 5: Disciplinary recommendations and complaints

Clause seeks to amend section 7 of the Act in order to ensure that disciplinary matters are referred to all the relevant authorities. The section is further amended in order to provide for initiation of

investigation by the Executive Director of IPID upon becoming aware of any alleged commission of an offence by a member of the South African Police Service or Municipal Police Service, and not only upon receipt of complaints.

ORGANISATION	COMMENT
AfriForum	AfriForum states that the responsibilities of the Executive Director should not only be limited to referrals regarding disciplinary matters but should encompass a broader oversight role. This would enable a more proactive approach to identifying and addressing issues within the SAPS and MPS before they escalate into more severe matters.
FXI	FXI questions why an independent structure should refer complaints to National or Provincial Commissioner of the Police and questions the purpose thereof. Section 206 (6) of the Constitution provides that on receipt of a complaint the independent complaints body must investigate. The FXI submits that this amendment will severely undermine and interfere with the investigation. This amendment is an interference in the operations of IPID and impedes its independence.
IPUSA	IPUSA submits that the National Commissioner should be the only authority to receive such and record the recommendations as such. Secondly, IPID investigation is only concerned with findings if there is/was misconduct by a police officer and if so, it recommends further action to be taken by SAPS or Municipal Police. This process is defeating by itself, the disciplinary process defined to be undertaken internally by colleagues must be changed to be independently done. IPUSA suggests the establishment of a Professional Police Association or ombudsman, to give relief to members of the service or public who are let down by IPID. IPUSA further states that international benchmarks support this suggestion.
ISS	The amendments proposed by Clause 5 of the Bill proposes the insertion of section 7(6). Both section 7(6)(a) and 7(6)(b) of the Bill should presumably refer to ' <i>recommendations regarding disciplinary matters</i> '. This would bring them in line with the reference to Section 7(6) in Section 30 as well as the reference to 'recommendations' in Section 7(8).
POPCRU	POPCRU concurs with the insertions made by clause 5 to section 7(6)(a) of the Principal Act.
Ms M de Haas	Referral for disciplinary action is already allowed for but what is lacking is it being effected by the SAPS. What is required is a report back from the SAPS about action taken following referral.

4.4.6.Clause 6: Appointment of investigators

Clause 6 proposes the deletion of section 8(1) of the Act, which provided for the composition of the national office of IPID, as it is a matter that could be dealt with through IPID's internal policies and procedures. The clause further amends subsection (4) of this section of the Act, and it provides for the conducting of pre-employment security screening investigation by the Directorate and not by the State Security Agency (SSA) as provided for in the Act. The rationale for this amendment is that it is not necessary for the SSA to conduct security screening investigation, as it merely involves criminal and credit record checks. In subsection (5), a provision is made for the issue of a security clearance certificate by the Directorate, in respect of the security screening investigation.

ORGANISATION	COMMENT
POPCRU	POPCRU welcomes amendments made to section 8, including the heading of the section. In subsection 5, POPCRU submits that the reasonable turnaround time be attached to the issuance of the security clearance certificate. A situation must be avoided where a person is

ORGANISATION	COMMENT
	employed for more than a year without a security clearance.
SAPU	SAPU submits that the insertion of subsection 3(b) to the effect that once a person has been appointed, he or she must be issued with a security clearance certificate after a vetting investigation, is welcomed, save to submit that without a time period coupled to the issuing of such certificate, the clause will be toothless. It is common knowledge that there is a serious backlog in the vetting of public servants, including SAPS members, due to capacity constraints. The subsection, in its current format, will have the practical effect that a member can be appointed to the Directorate, but the issuing of a security clearance can be in abeyance for years, whilst such member is performing duties, awaiting the issuing of a clearance.
Ms M de Haas	This 'screening' vests too much power in the hands of the Director. The SSA is facing challenges, but the point of the Expert Panel on State Security report, which was finalised three years ago, was to enact legislation to undo the immense damage done during State Capture, and restore Intelligence structures to <i>civilian oversight</i> . The Zondo Commission was extremely critical of the lack of intelligence oversight by the parliamentary committee. 'Screening' can easily be used in a politically partisan way and an increase in oversight would be welcomed.

4.4.7. Clause 7: Functions of the National Office

Clause 7 of the Bill seeks to amend section 9 of the principal Act in order to provide that the report on identification and review of legislative needs shall be reported to the Minister and not to the Civilian Secretariat for Police as provided for in the Act.

ORGANISATION	COMMENT
ACJR	The ACJR questions the proposed amendments contained in clause 7 which firstly require that the IPID review legislative needs in consultation with the Secretariat (an advisory body to the Minister) and then report on such matters to the Minister. The opportunity is then created for the Secretariat to play a gate-keeping function pertaining to legislative needs that IPID may identify. IPID is constitutionally mandated to be independent and must have the freedom to explore the legislative landscape as it sees fit without the requirement that it must do so in consultation with the Secretariat.
APCOF	APCOF submits that the identification and review of legislative requirements needs be done directly by IPID without the involvement of the Secretariat and reported directly to the Ministry. The current challenges in the IPID Amendment Bill including the delays in progressing this since 2019 demonstrates IPID and its independence is better served if this ability resides in the Directorate.
Ms M de Haas	All reporting must be to an independent body, ideally a Commission established by Parliament, and not the Minister.

4.4.8. Clause 9: Invitations to Consultative Forum

Clause 9 of the Bill seeks to amend section 16 of the principal Act in order to provide that the Executive Director and the Secretary may invite a person, Government Department or institution in a meeting of the Forum, if there is a matter which concerns such a person, government Department or institution. This is in order to cater for instances where the Forum needs to engage with a certain Government Department or institution on matters which concern the exercise by the Forum of its powers and duties.

ORGANISATION	COMMENT
ACJR	The ACJR states that the clause seemingly has an exclusionary effect and raises questions that if it is a consultative forum, the aim should rather be inclusivity.

4.4.9. Clause 12: Qualifications and pre-employment screening

Clause 12 provides for the deletion of paragraph (a) of subsection (2) of section 22 of the principal Act, which provides for qualification requirements of IPID investigators, as it has been considered that it is not necessary to provide for such in the principal Act. Amendments are also effected to subsection (4) of this section of the principal Act, in which it is provided that the pre-employment security screening investigation of IPID investigators must be conducted by the Directorate. Again, this amendment is informed by the fact that such screening consists of a mere criminal and credit record checks that may be conducted internally and not necessarily by the State Security Agency.

ORGANISATION	COMMENT
APCOF	In terms of the benchmarks for successful police oversight, adequately resourced institutions include financial and human resources and technical capacity. APCOF raises concern about the deletion of the criteria requirements for investigators to have at least a grade 12 certificate or a relevant diploma or degree. This will have the effect of <i>juniorising</i> the investigator core and what is essentially the backbone of IPID. APCOF submits that this criterion must be retained or preferably set higher.
IPUSA	IPUSA does not support the establishment of Vetting Officials countrywide.
POPCRU	POPCRU submits that section 22 on the appointment of Investigators be amended. The specific wording is available in their submission.
WCG	The WCG proposes that if paragraph (a) of subsection (2) are deleted, consideration must be given to how the educational requirements for the post will be retained.

Response from the CSPS: Section 22 has been amended in order to address the concern in the public comments that the deletion of qualification requirements of IPID investigators shall have the effect of “juniorising” the level of entry for investigators and this is essentially the backbone of IPID. As a result, a person to be appointed as an investigator must at least have a grade 12 certificate or equivalent and a relevant diploma or degree.

4.4.10. Clause 13: Remuneration and benefits

Amendments to section 23 of the Act through the published version of the Bill provided that the conditions of service including salary and allowances payable to investigators must be determined in terms of the Public Service Act. IPID investigators raised a concern in their comments on the Bill, in that being subject to the Public Service Act as envisaged in the published version of the Bill shall be detrimental to them as the Public Service Act salary scales are lower than their current salary dispensation. Further, that the Employer Pension contribution in terms of the Public Service Act is 13% whereas in terms of their current salary dispensation it is 16%. The Drafting Team has considered the concerns of IPID investigators and decided to amend section 23 of the Act in order to provide that their conditions of service including remuneration and benefits shall be determined by the Minister in consultation with the Minister of Finance.

ORGANISATION	COMMENT
APCOF	APCOF submits that the Committee not agree to changes in Section 23 to allow for salary to be determined by the Minister in consultation with the minister of Finance. We are concerned this will undermine the

ORGANISATION	COMMENT
	financial independence of IPID. Section 23 had originally been included to ensure that IPID Investigators' salaries and benefits are on par with SAPS Detectives to ensure that IPID Investigators do not leave their employment for better salary packages in the SAPS. Rather this provision can read that salary be set within the allocated budget voted for by Parliament.
FXI	The FXI submits that the executive director must have independence in determining the salaries of staff. Further, the determination of the remuneration and conditions of service ought to be removed from the office of the minister.
ISS	<p>The provision directly expands the power of the Minister in setting the salary levels of IPID investigators and therefore gives rise to the risk of abuse. The Bill proposes to delete provisions to the effect that the conditions of service of IPID investigators 'must be on par with members appointed as detectives in terms of the SAPS Act.</p> <p>The proposed provisions may be regarded as unconstitutional as it falls short in terms of the 'at least as' test. The comparable provisions relating to members of the Hawks is Section 17G of the SAPS Act. This provides that 'The remuneration, allowances and other conditions of service of members of the Directorate shall be regulated in terms of section 24 (regulations issued by Minister). It is thus subject to the requirements in terms of Section 17CA(17) that regulations that affect the DPCI 'shall be submitted to Parliament for approval'.</p> <p>It should also be noted that Provincial Heads of the Hawks also enjoy statutorily secured remuneration levels. Section 17CA(8)(b) deals inter alia with the remuneration of provincial heads of the Hawks. Section 17CA(8)(b) benchmarks these salaries against those of the highest paid Deputy Provincial Commissioner.</p> <p>The ISS proposes that the proposed amendment should be deleted from the Bill.</p> <p>A provision should be inserted setting a minimum level for the remuneration of IPID provincial directors.</p>
POPCRU	POPCRU welcomes the insertion of the subsection 6: <i>The conditions of service, including remuneration and benefits, of the staff referred to in subsection (1) are to be determined in terms of the Public Service Act.</i> Proposed wording for amendments is contained in POPCRU's submission.
SAHRC	The SAHRC submits that the proposed text to substitute section 23 of the principal Act goes against the real and perceived independence of the Directorate given that the power to determine the remuneration and conditions of service of investigators still resides with the Minister. The SAHRC submits that this power should reside with the Executive Director as the accounting officer of the Directorate. Consequently, the Committee should consider an amendment that would ensure the Executive Director is able to determine the remuneration and conditions of service of investigators without undue interference from the Minister. The case of the Judicial Inspectorate for Correctional Services may be instructive in this regard.
SAPU	The current section of the Act provides for the conditions of service, including salary and allowances, to be on par with members appointed as detectives in terms of the SAPS Act. A previous amendment entailed an amendment to this section, to the effect that the conditions of service

ORGANISATION	COMMENT
	must be regulated in terms of the provisions of the Public Service Act, 1994. The current draft affords the Minister of Police the power, in consultation with the Minister responsible for Finance, to determine the conditions of service of an investigator appointed to the Directorate. This latest amendment undermines the spirit and ethos of the Labour Relations Act, 1995 as well as other legislation and processes in the public service which subjects the determination of conditions of service to collective bargaining processes. The proposed amendment creates a serious precedent for the salaries of certain officials to be determined by Ministerial decree, whilst the majority of public servants enjoy the right to have conditions of service to be determined through the recognised collective bargaining structures within the public service. SAPU wants to call on all relevant role players to seriously reconsider the amendment in its current format.

Response from the CSPS: A concern was raised in the public comments that this proposed amendment creates a serious precedent for the salaries of certain officials to be determined by Ministerial decree, whilst the majority of public servants enjoy the right to have conditions of service to be determined through the recognised collective bargaining structures within the public service. This concern was considered, however, it was not accepted as IPID investigators are appointed in terms of the principal Act and not the Public Service Act, and therefore have a different compensation dispensation.

4.4.11. Clause 14: Protection of witnesses and taking of DNA samples

Clause 14 of the Bill seeks to amend section 24 of the principal Act in order to bestow upon IPID investigators, the power to take buccal samples in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995).

The clause further proposes the addition of subsections (6), (7), (8), (9), (10) and (11) in order to provide for procedural matters regarding the subpoena of persons for the purpose of conducting an investigation, as well as to prevent the disclosure of the contents of documents or records given during the investigation, and the disclosure of the contents of any interview or questioning conducted during an investigation. In order to ensure the protection of the rights of witnesses during such proceedings, the proposed subsection (9) provides that any person appearing before the investigator or a provincial head may be assisted by a legal representative at such examination.

ORGANISATION	COMMENT
IPUSA	IPUSA questions the provision for IPID Investigators to take buccal samples and questions how the provision is costed, and whether the analysis will be done by private laboratories or the SAPS Forensic Science Laboratories. IPUSA points towards an earlier cabinet decision that all legislation must be costed before being signed into law by the President. If Forensic Science Investigation is a mandate intended for IPID, due to its independence, it is implied that they must at least have a centralised Forensic Science laboratory for all the different focus, areas, Biology, Chemical, etc. Or do we prefer IPID to use private Laboratories for analysis instead of SAPS resources? If the legislation is passed, the IPID's Infrastructure Plan should include Laboratories. IPUSA concludes to say that this was possibly not the intention of the clause.
ISS	Section 24 and particularly Section 24(5) is discussed in some depth in the 2018 Report of the Panel of Experts on Policing and Crowd Management. As pointed out in the report, Section 24(5) of the IPID Act therefore confers voluntarily provide self-incriminating answers to

ORGANISATION	COMMENT
	<p>questions in the knowledge that they are protected by section 24(5) against these being used against them in criminal proceedings.</p> <p>Section 24(5) is not the same as the provisions in the NPA Act (Act 32 of 1998) regarding inquiries by an investigating director (Section 28). In Section 28(8)(a) “a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge.” The person is therefore legal compelled to answer questions. But Section 28(8)(b) provides that such answers may not be used in evidence against them (subject to specified qualifications).</p> <p>Based on the above, section 24(5) of the Amendment Bill appears to be an irrational provision. Ordinarily people enjoy the right not to incriminate themselves. However, if they voluntarily incriminate themselves, this may be used in evidence against them.</p> <p>Alternatively, as per Section 28 of the NPA Act, compelled answers may not be used in evidence against. But Section 24(4)(a) provides that a person being questioned by IPID is also “not obliged to answer any question if the answer is self-incriminating.”</p> <p>However, for reasons that are unclear, Section 24(5) also provides that, if they voluntarily incriminate themselves, this may not be used against them.</p> <p>As it stands, Section 24(5) also nullifies the purpose of the other proposed amendments to Section 24 as a person question is at liberty to not answer self-incriminating questions – but if s/he voluntarily incriminates him/herself, the answers may not be used against him/her.</p> <p>The ISS proposes that section 24(5) should be amended along lines similar to Section 28(8) of the NPA Act.</p>
Ms M de Haas	<p>Bearing in mind that when reports are made of abuses by police, IPID already has the powers to procure all necessary information from them. Ms de Haas raises concern that this provision could easily be abused, especially given that the type of interrogation it permits is usually carried out in a court of law, and the way in which the job description of the Director is currently described does not even guarantee that there will be sufficient supervision of ‘investigators’ by people who are experienced in court procedures. Investigators not properly trained.</p>

Response from the CSPS: Further amendments seek to address the concern in public comments about the fact that the Bill provides for inadmissibility in criminal proceedings of a self- incriminating answers, and this nullifies the purpose of the other proposed amendments to section 24 as a person questioned is at liberty to not answer self-incriminating questions. As a result, a decision has been taken to delete subsection (5) of this section of the Act.

4.4.12. Clause 15: Limitation of liability of IPID Officials

Clause 15 of the Bill seeks to strengthen subsection (1) of section 27 which provides for limitation of liability of IPID officials by providing that a member of IPID shall not be liable in respect of anything reflected in any report, finding, point of view, recommendation or investigation made or expressed in good faith and without gross negligence in performing a function in terms of the principal Act, and submitted to Parliament, the National Prosecuting Authority, or any other relevant authority.

ORGANISATION	COMMENT
WCG	To retain a measure of accountability on the side of the authors of the reports (members of the Directorate), it is proposed that the words, in respect of “anything” be removed from the subsection. With this in place, it becomes permissible for a determination to be undertaken on whether as report has been made in good faith as there will be a greater measure of accountability in respect of all the content of the report, findings or recommendations.

4.5. Clauses 16: Categories of alleged crimes to be investigated by IPID (Mandate)

Clause 16 of the Bill seeks to amend section 28 of the Act in order to indicate that IPID shall investigate the allegations of commission of crimes of rape and murder by the member of SAPS or Municipal Police Service, that have been committed off duty. Section 28(1) is further amended in order to provide that IPID shall investigate the allegations of assault only if it is with intention to cause grievous bodily harm. The proposal for investigation of only serious assault allegations is informed by concerns that IPID is inundated with minor assault allegations which takes away time and resources that could be used to investigate more serious allegations.

The complaint of a discharge of an official firearm has been deleted as it was thought that investigation should only be conducted if the discharge of an official firearm is linked to an allegation of attempted murder. As such, a new type of matter to be investigated by IPID, which is attempted murder in relation to a discharge of an official firearm, has been inserted in the Bill.

Furthermore, a provision is also made in this section of the Act for IPID to have a mandate to initiate investigation in instances where a member of SAPS or a MPS has allegedly committed an offence, together with a member of any other Law Enforcement Agency or a civilian.

Provincial heads of IPID as well as certain executive authorities of SAPS and MPS are also empowered to refer matters to IPID for investigation, this shall no longer be the responsibility of only the Executive Director of IPID.

SUB-CLAUSE	ORGANISATION	COMMENT
28(1)(a)	ACJR	The ACJR questions whether it is clear in law when a person is in the custody of a member of SAPS, as opposed to under the control of the police – is this when the person is stopped on the street, placed in a police vehicle, once booked into the cells and so forth.
28(1)(b)	CPLO	The CPLO supports the proposed widening of the scope of investigations to be carried out by IPID, as set out in the amendments to section 28 of the principle Act. In particular, the CPLO support the extension of IPID’s investigative jurisdiction to municipal police services; and the inclusion of deaths resulting from the actions of officers irrespective of whether or not they were on duty.
	APCOF	In relation to 28(1)(c) and 28(1)(gG), APCOF agrees that attempted murder be included as a category but this not be limited to use of firearm only , but include any allegation of attempted murder.
	WCG	The WCG submits that deaths in this provision is not limited to police action but may also occur as a result of “omissions”. It is proposed that section 28(1)(b) be amended as follows: “death as a result of [police] the actions <u>or omissions</u> of a member of the South African Police Service or a member of a municipal police service,

SUB-CLAUSE	ORGANISATION	COMMENT
		whether such member was on or off duty”.
28(1)(a) and (b)	Mr Willy Dithakel	<p>Consideration should be given to the following:</p> <ul style="list-style-type: none"> • the place of inquests courts on its mandate to inquire into the causes of death generally in respect of this area of the law as its jurisdiction lies with the specialised court; • the IPID must weigh options of the referral of death matters and this process must be well tailored; and • the issue of the jurisdiction in respect with the investigation of deaths and its inquiries thereto has to be a point to be straightened by IPID in respect with inquests courts.
	AfriForum	<p>The IPID’s role in investigating any deaths caused by the actions of SAPS or MPS members, on or off duty, as well as investigating allegations of rape, is of utmost importance. The amendment should ensure that clear protocols and procedures are in place to ensure these investigations are conducted with the utmost transparency and that findings are communicated to the public promptly.</p>
28(1)(c) / 28(1)(gG)	ACJR	<p>The ACJR points out that firearm management is already a problem with nearly two firearms going missing per day in the previous financial year; 712 in total. In 2021/22 a total of 830 complaints concerning the discharge of a firearm were received by IPID, the second highest category of all complaints. This is evidently an important part of the IPID mandate.</p> <p>The proposed amendment would only serve to further dilute the seriousness of firearm management violations in the SAPS, which is already an acknowledged weakness.</p> <p>It is furthermore not inconceivable that a police official may discharge his or her firearm with the purpose of at least intimidation – it would thus be difficult to prove that there was intention to murder. This would be an unlawful purpose and clearly not within the scope of legal use. To set the bar at attempted murder would simply encourage a culture of further impunity.</p>
	APCOF	<p>APCOF submits that any complaint relating to the discharge of an official firearm by any police officer be retained. There are very few checks and balances on the misuse of firearms that do not result in death. The ability of IPID to respond to complaints establishes a line of accountability that in all probability and unless in the most egregious situations, will amount to no more than a recommendation for administrative sanction. Such an intervention can provide SAPS management with additional tools to identify and correct inappropriate firearm usage before it could potentially lead to death.</p> <p>APCOF further submits that the term firearm in this</p>

SUB-CLAUSE	ORGANISATION	COMMENT
		context also be expanded to clearly understand the inclusion of less lethal weapons such as those that fire rubber bullets, teargas, tasers and pyrotechnic devices. These weapons are often misused in acts that amount to torture.
	Daneel Knoetze	The Bill proposes amendments to narrow which cases of “assault” and “discharge of official firearm”. It is clear that the outcome of such amendments would be to alleviate the caseload on IPID’s provincial offices, which may have the potential of improving these office’s investment in complex cases or cases of serious criminality. Mr Knoetze indicates that he can report that the large numbers of minor “assault” and unqualified “discharge of official firearm cases” serve to unduly inflate the caseload and overwhelm investigators. This is especially true in light of the vast distances which their jurisdictions cover. Carrying these case files often distract these investigators from giving due attention to cases of complexity or serious criminality.
	GFSA	<p>GFSA is deeply concerned at the proposed deletion of section 28(1)(c), which currently stipulates that the Directorate “must investigate any complaint relating to the discharge of an official firearm by any police officer”.</p> <p>GFSA notes that the Bill sees the deletion of section 28(1)(c) as being compensated for, even strengthened by, the inclusion of a new clause 28(1)(gA) under which the Directorate “must investigate attempted murder in relation to a discharge of a firearm by a member of the South African Police Service or a member of a municipal police service.”</p> <p>GFSA disagrees with this reasoning. The risk of replacing section 28(1)(c) with 28(1)(gA) is that only cases in which the discharge of an official firearm results in injury (“attempted murder”) will be investigated. GFSA asserts that this is reckless in the extreme. Every single time a firearm is shot there is the risk that someone will be killed or injured. As such it is imperative that clause 28(1)(c) at the very least remain, though we recommend that it be strengthened. GFSA proposes that the section not only be retained but that failure to report should constitute an offence - “Any offence involving a firearm as defined by the Firearms Control Act, 2000 (Act No. 60 of 2000) by any member of the South African Police Service or a member of a municipal police service, whether such member was on or off duty must be reported to the Directorate, which must investigate any such complaint. Failure to report such an offence to the Directorate constitutes an offence.”</p>
	ISS	The removal and amendments to investigations related to discharge of a firearm and all cases of assault narrows the mandate of IPID. The ISS contends that the IPID should be provided with greater flexibility so that it can use its investigative resources in a strategic manner. As provided for in the proposed amendments to Section 29,

SUB-CLAUSE	ORGANISATION	COMMENT
		<p>the SAPS and municipal police services should be obliged to report certain categories of cases to IPID. As provided for in Section 7(9) IPID should have the authority to determine whether to use its own resources to investigate a case or whether to refer it to the SAPS national or provincial commissioner for it to be investigated by the SAPS. Referrals are to be made by the National to the National Commissioner or by Provincial Directors to the relevant provincial commissioner. In the case of referral, the SAPS must provide a report on the outcome of its investigation, to the Executive Director or relevant Provincial Director, within 30 working days; Following referral and the receipt of the SAPS report, a provincial director may elect either for IPID to further investigate the matter or refer the matter for further investigation by the SAPS on specified terms and conditions.</p>
<p>28(1)(f)(i) and (ii)</p>	<p>ACJR</p>	<p>The proposed insertion of section 28(1)(f)(ii) seeks to set the bar for investigation at assault with intent to cause grievous bodily harm. This is contrary to the definition of torture as provided in the Prevention of Combating and Torture of Persons Act, 2013 (No. 13 of 2013) (“Torture Act”).</p> <p>It must be emphasised that torture, as defined in South African law, includes actions that do not involve physical harm. Threatening to rape a person or harm their family or child may very well meet the requirements of torture and it is simply not acceptable that the bar is set at assaults with the intent to cause grievous bodily harm. It is indeed the indulgence of lesser transgressions that lead to more serious transgressions and that the state has an obligation to take all necessary measures to prevent and combat torture and other ill treatment.</p> <p>Attention is furthermore drawn to the definition of torture in the national legislation which does not restrict the crime of torture to physical harm and is inclusive of “severe pain or suffering, whether physical or mental.” Setting the bar at attempted murder would simply exclude from the focus of IPID investigations a host of vile acts involving firearms (such as mock executions) that would meet the requirements of torture. As such the proposed deletion of section 28(1)(c) and the insertion section 28(1)(gG) would then be contrary to provisions made in the Torture Act.</p>
	<p>APCOF</p>	<p>In terms of torture, APCOF submits that the investigation of allegations of torture not be limited to only those that present grievous bodily harm, as the definition of torture includes psychological harm. APCOF submits that this provision read: <i>any complaint of torture, as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), committed by a member of the South African Police Service or a member of a municipal police service;</i></p>

SUB-CLAUSE	ORGANISATION	COMMENT
		In terms of assault, APCOF submits that all complaints of assault should be investigated by IPID and this be retained. Not only is assault an abuse of power, but the distinction between assault common and assault with intent to cause Grievous Bodily Harm (GBH) is often subjective and only based on visible injury.
	APT	The definition of torture is overly restrictive as currently drafted, e.g., "intention to cause grievous bodily harm". While taking into account the concerns raised in the explanatory section "that IPID is inundated with minor assault allegations" it is important that: torture and other ill-treatment are defined in line with the relevant regional and international standards and the Torture Act. The APT suggests that paragraph f(ii) be removed in order to avoid any confusion in this regard.
	CPLO	<p>The CPLO questions why it is proposed to replace "any complaint of... assault" with "any complaint of assault of any person with the intention to cause grievous bodily harm..." (proposed new wording for s28(1)(f)). This seems to imply that 'ordinary' or 'common' assaults by members of SAPS or a municipal police service are, if not acceptable, at least not worthy of investigation by IPID.</p> <p>If the answer is that it is necessary to focus only on the more serious category of assault in order to prevent IPID from being overwhelmed with complaints of ordinary assault, then there is all the more reason, the CPLO suggests, to empower IPID to look into the situation.</p>
	Daneel Knoetze	<p>The amendment should not be made without caution. In the current formulation of the IPID Act, Section 29 outlines the reporting obligations of the SAPS. Should an amendment be made to section 28 of the Act, there is the danger that Section 29 allows the SAPS - which are often the first recipient of an allegation and reporting authority to IPID - to adjudicate which assault cases qualify as "GBH" or which shooting cases qualify as "attempted murder". This discretion should not be afforded SAPS, as it may be easily abused to obfuscate cases of assault GBH and attempted murder by underplaying the severity of a complaint.</p> <p>Even if it is no longer mandated to investigate them all, IPID should, indeed, still receive sight of <i>all</i> assault and shooting allegations against the police. In short, an amendment to section 28 should not result in IPID receiving fewer reports from the SAPS of allegations of "assault" or "discharge of official firearms" from SAPS, even though it may mean that IPID commits investigative resources to fewer such cases.</p>
28(1)(gA)	APCOF	As stated above, APCOF agrees that attempted murder be included as a category but this not be limited to the use of a firearm only, but include any allegation of attempted murder.
	GFSA	GFSA welcomes the addition of sub-clause (1)(gA) to section 28 of the principal Act under which the

SUB-CLAUSE	ORGANISATION	COMMENT
		Directorate “must investigate— Attempted murder in relation to a discharge of a firearm by a member of the South African Police Service or a member of a municipal police service”. While GFSA recognises that the addition of (1)(gA) aims to replace the proposed deletion of (1)(c) – which we oppose (see above), GFSA welcomes this addition as it provides for investigations into attempted murders resulting from the discharge of <i>any</i> firearm, not just cases involving an “official firearm”. GFSA’s view is that any case of attempted murder involving the discharge of any firearm is a clear red flag that the member is not fit and proper for service, let alone personal or professional firearm ownership, and merits investigation by IPID.
28(3)	ISS	Proposed Section 28(3) provides that ““(3) The Directorate shall investigate allegations of the commission of an offence which a member of the South African Police Service or a member of a municipal police service committed together with any law enforcement agency or civilian.” The ISS states that it is unclear what the purpose of this provision is and it should be clarified as it is ambiguous. It may for instance be understood to imply agencies or civilians. It is not clear if this is the intention.
	POPCRU	POPCRU agrees with the amendments made to Section 28 (1) (a-h) relating to the type of matters to be investigated by the Directorate.

Response from the CSPS: Concerns were raised in the public comments regarding the deletion of a provision on investigation of complaints of assault. A proposal was made to retain the investigation of assault complaints by IPID, as not only is assault an abuse of power, but the distinction between assault common and assault with intent to cause Grievous Bodily Harm (GBH) is often subjective and only based on visible injury. The proposal was not accepted, as most common assault cases arise from a scuffle during the arrest and in some cases it is clear there is no evidence of physical assault. Therefore, the focus is mainly on assault GBH cases. Attempted murder in relation to discharge of official firearm was been inserted as a new paragraph (gA). The paragraph has been further amended in order to take into account of a proposal in the public comments, that attempted murder should not be limited to the use of firearms only. As a result, the wording “through the use of any weapon or instrument” has been inserted in paragraph (gA).

4.5.1. Other issues raised by public submissions on the mandate of IPID

APCOF: In terms of a systemic recommendations, IPID can make a meaningful impact on improving police performance by identifying tacking and responding to systemic challenges. An analysis of IPID data can improve understanding of the types of cases that IPID is dealing with that are linked to problem officers, stations, units and operations. Accordingly, APCOF submits that IPIDs mandate include a research component which can provide greater emphasis on proactive engagements with the SAPS about the problems highlighted.

Daneel Knoetze: IPID does not currently have a system for identifying and prioritising high-impact cases within its resource constraints. An amendment to the Act which allows for it to use discretion in prioritising certain cases, while referring others to a more well-resourced agency - such as SAPS - while providing oversight will be progressive.

FXI: In addition to investigating the police, the FXI submits that the remit of IPID should extend to the conduct of private security officers used increasingly by universities, colleges and some

government agencies. The aforementioned private security officers have, in some instances, similar powers to those of the police in the use of force. The outcome of the investigation should be submitted to the National Directorate for Public Prosecutions for further steps.

GfSA and Ndifuna Ukwazi: Both GfSA and Ndifuna Ukwazi urge that the IPID Act be amended to ensure that new policing bodies such as the Western Cape's Law Enforcement Advancement Programme (LEAP) officers and Gauteng's Crime Prevention Wardens fall under the Directorate's authority. While this would increase the responsibility put on IPD and require additional funding, it would mean that all policing structures fall under the same authority, thereby reducing the risk for loopholes and exceptions.

ISS: The effective investigation of corruption and sexual offences requires specialised investigative capacities. However, related to the diversity of its investigative mandate and its limited resources, IPID is not able to maintain the necessary specialised capacity for this purpose. As a result, IPID investigations into cases of these kinds may frequently be highly problematic. The proposed provisions would give IPID a discretionary capacity to establish partnership arrangements with other investigative agencies, where IPID believes that this will enhance its ability to carry out these investigations more effectively. An additional Section should be inserted that provides that:

- (1) For purposes of investigating corruption under Section 28(1)(g), including serious, high profile or complex corruption in the SAPS or municipal police services, the Executive Director may enter into a memorandum of understanding with the Directorate for Priority Crime Investigation or the Investigating Directorate in the National Prosecuting Authority.
- (2) For purposes of strengthening the investigation of offences of rape under Section 28(1)(d) and (e) a provincial director, subject to the approval of the Executive Director, may enter into a memorandum of understanding with one or more SAPS Family Violence, Child Protection and Sexual Offences Unit in province.

Any memorandum of understanding that IPID enters into under Section 28B(1) or (2) should ensure that IPID carries final decision-making authority regarding these investigations including regarding final disposal of the investigation.

Mr Willy Dithlakel: Mr Dithlakel pointed to the importance of Government's attempt to enhance coordinated service delivery. He pointed out that Government adopted a Stakeholder Analysis Programme to promote intergovernmental and other institutions' mandates. He indicated that the IPID and the NPA have interrelated and overlapping mandates. He states that the above points out to the need therefore that the scoping exercise in terms of the IPID's theory on the extent of its independence must be undertaken and this would call for the literature review of both the IPID's Act as well as the NPA's Act around this aspect of their mandates to investigated and to guide investigations respectively.

4.5.2. Preventative Custody Monitoring (APCOF, APT, ACJR and SAHRC Submissions)

South Africa ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) in June 2019. The OPCAT came into force for South Africa on 20 July 2019 and under article 3 of the OPCAT, States Parties must designate, maintain or establish a domestic mechanism to strengthen the protection of persons who are, or may be, deprived of liberty.

In the South African context, the National Preventive Mechanism (NPM) includes the following institutions:

- South African Human Rights Commission (SAHRC or Commission)
- Judicial Inspectorate for Correctional Services (JICS or Judicial Inspectorate)
- The Office of the Military Ombud (OMO)
- The Office of the Health Ombud (OHO)
- The Independent Police Investigative Directorate (IPID).

Although Parliament has ratified the OPCAT in 2019, South Africa does not have legislation governing the NPM and, in lieu thereof, agreements have been concluded with the JICS, IPID and the Military Ombud to provide interim mechanisms for reporting within the framework of the OPCAT.

According to the South African NPMs 2021/22 Annual Report, visits to police stations were undertaken by IPID as well as the SAHRC in its functional NPM role. IPID's scope of the monitoring visits focused on:

- Physical conditions of detention facilities
- Conditions and treatment of detainees
- Provision and access to meals
- Custody registers
- Procedural rights
- Separation of Juveniles/males and females
- Popularising the NPM mandate
- Detention of undocumented foreign nationals

The IPID does not have a specific budget allocation for the implementation of the NPM. However, according to the South Africa's NPM Annual Report, IPID included NPM targets in its 2021/2022 Annual Performance Plan (APP), which is linked to Stakeholder Management. Upon confirming with the IPID's 2021/22 APP, these targets could not be identified.

In order to give effect to South Africa's obligations under OPCAT, the mandate of IPID needs to be extended to include the ability to undertake preventive monitoring of all places of deprivation of custody under the management of the SAPS and MPS. APCOF submits that the mandate of IPID be extended to include the monitoring of all police custody. This will allow IPID to play its role as assigned through its participation on the National Preventive Mechanism established under South Africa's obligations following the ratification of UN OPCAT.

The APT submits that it is essential that IPID is able to conduct proactive and preventive investigations and monitoring work in relation to police legislation, practices, activities, vehicles and installations on matters of its own choosing, including those that fall below the threshold of torture and other ill-treatment. This will allow IPID to play its role as assigned through its participation on the National Preventive Mechanism established under South Africa's obligations following the ratification of the OPCAT. The APT thus propose that Section 28 be additionally amended to include, in a new subsection, explicit reference to the preventive mandate of IPID as part of the NPM.

In addition, the APT recommends the inclusion of a new section, alongside the existing section 24 on IPID's investigatory powers that enumerates the specific powers of IPID as part of the NPM, including those elements found in articles 19 and 20 of the OPCAT. This includes the power to:

- Make regular and unannounced visits to all places of deprivation of liberty, as defined in OPCAT Article 4;
- Make recommendations to all relevant authorities with the aim of improving the treatment and conditions of persons deprived of liberty;
- Submit proposals on existing or draft legislation relevant to the mandate;
- Access all information relative to persons deprived of their liberty and their treatment;
- Access to all places of deprivation of liberty; and
- Conduct interviews in private with detainees and any relevant persons of their choosing, including where necessary with an interpreter.

The ACJR states that it remains a fundamental weakness in the human rights architecture that police detention remains without a designated inspection and monitoring mechanism. A recent report by the SAHRC found abysmal conditions of detention at most police stations. The need for such a mechanism was realised more than 25 years ago in respect of prisons and saw the establishment of JICS with its system of Independent Correctional Centre Visitors. It is commonly

accepted in the literature that the period immediately after arrest poses the highest risk of torture and ill treatment, yet police detention remains without a basic monitoring and inspection mechanism. Consideration should consequently be given to IPID as part of the NPM under OPCAT, and its powers and functions in relation to the requirements under. Alternatively, serious consideration should be given to a lay-visitor scheme to enhance transparency around police detention.

Response from the CSPS:

- Proposals were made in public comments to incorporate in the Bill the preventive monitoring function of the National Preventive Mechanism (NPM). The NPM is an independent mechanism for the prevention of torture, designated or established in accordance with Article 18 of the Optional Protocol to the Convention against Torture Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- In terms of the Protocol State Parties are required to establish a system of regular visits to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- A decision has, however, been taken not to include OPCAT and NPM obligations in the Bill, but rather to include it in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013).
- The obligation of IPID to conduct the preventive monitoring of places of deprivation of liberty will be included in the next process of review of IPID Act.
- It is important to note that the non-inclusion of IPID’s NPM obligations in the current process of review of IPID Act will not cause any prejudice, as IPID already conducts regular inspection of police cells.
- This obligation is also provided for in IPID’s Annual Performance Plan and in their Key Result Performance Areas. IPID also reports on implementation of this obligations on a quarterly basis.

Actions taken by the Committee:

The Committee requested a legal opinion on the inclusion of this mandate in the Amendment Bill from the Parliamentary Legal Services. The opinion advised that the inclusion of this mandate expands the scope of the Amendment Bill and as such, the Committee must request permissions from the NA to expand the scope. If permission is granted, the Amendment Bill containing proposed further amendments must be published again calling for public comment. This matter is under consideration of the Committee.

4.5.3.Clauses 18: Disciplinary recommendations

Clause 18 of the Bill seeks to amend section 30 of the principal Act in order to strengthen the provisions relating to implementation of IPID recommendations. To achieve this objective –

- An obligation to submit a report of the outcomes of disciplinary matters to the Minister is placed to also the National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, and the Mayor or the Municipal Police Commissioner.
- In order to prevent the challenge of disciplinary proceedings being instituted before the Directorate can submit a report of the outcomes of its investigation, it is provided in the amendments that the immediate Station Commander or a Municipal Manager must only initiate disciplinary proceedings after the investigation of allegations has been finalised by the Directorate and upon receipt of an investigation report of the Directorate.
- Furthermore, it is also provided in section 30 that the report must specify whether the disciplinary recommendations of IPID were implemented and the extent of implementation thereof. If they have not been implemented, the reasons for not implementing IPID’s recommendations must be specified in the report. This is in order to ensure that IPID disciplinary recommendations are not only implemented, but also that IPID is informed of the reasons why its disciplinary recommendation/s are not implemented.

ORGANISATION	COMMENT
AfriForum	The amendment should strengthen and clarify the implementation of

ORGANISATION	COMMENT
	disciplinary recommendations. There should be clear consequences for failure to act on these recommendations to ensure accountability.
APCOF	<p>APCOF submits that the proposed provision to only initiate disciplinary proceedings after the IPID investigation has been finalised can lead to a significant delay in the disciplinary process and should be deleted. It is the responsibility of SAPS and the MPS to manage discipline in its ranks as expeditiously as possible. Issues of discipline should be addressed immediately. An IPID investigation, even in parallel, will determine whether the allegations warrant referral to the National Prosecuting Agency. If it is subsequently found that no action has been taken by SAPS or the MPS, IPID would have to power then to compel the initiation of a discipline process.</p> <p>APCOF further submits that the provisions in section 30 be expanded to empower IPID to compel SAPS to review cases where it is found the sanction of the Disciplinary Enquiry has been too lenient.</p>
Daneel Knoetze	<p>The provision that the SAPS or municipal police service would “only initiate disciplinary proceedings after the investigation of allegations has been finalised by the Directorate and upon receipt of an investigation report from the Directorate’ has the potential to do great harm by curtailing police management from initiating disciplinary steps or precautionary measures against officers with <i>prima facie</i> evidence of egregious criminality against them, thereby enabling such officers to remain on duty, pending the outcome of an IPID investigation.</p> <p>IPID investigations can take many months to complete, and a scenario where an officer implicated on the basis of strong <i>prima facie</i> evidence remains on active duty is undesirable. The provision should be deleted from the Bill.</p> <p>An additional provision might be considered which would require the Provincial Head of the relevant IPID office to give feedback, or indeed an <i>instruction</i> to SAPS to precautionary suspend or place on desk duty a member accused of serious criminal misconduct. This might be especially pertinent in instances where a member might be in danger of reoffending, such as in cases involving criminal interpersonal violence (assault GBH, rape, torture, attempted murder etc.) allegedly committed on duty.</p>
ISS	<p>The provision providing that the SAPS or municipal police service would ‘only initiate disciplinary proceedings after the investigation of allegations has been finalised by the Directorate and upon receipt of an investigation report from the Directorate’ is undesirable as many IPID investigations take an extended period of time.</p> <p>The provision would prevent the SAPS or municipal police service from initiating disciplinary action, even in the most serious cases. This would be the equivalent of virtually removing from the SAPS and municipal police the responsibility to enforce discipline on their members and would turn IPID, notwithstanding its constraints and resources, into the arbiter of whether this is done or not. It would be likely to further undermine the SAPS and municipal police disciplinary systems, which are in great need of being strengthened. It would also municipal police departments to manage discipline proactively.</p> <p>The ISS provides that the current provision should be deleted from the Bill. In its place a provision might be considered that would authorise the</p>

ORGANISATION	COMMENT
	<p>IPID ED to request the SAPS or municipal police service to suspend disciplinary steps pending the outcome of the IPID investigation in specific cases where the particular circumstance of the case arguably warrants such a suspension.</p>
<p>SAPU</p>	<p>The current section 30(a) of the Act provides for the institution of disciplinary proceedings within 30 days of the receipt of recommendations made by the Directorate. A new sub-clause (aA) is introduced in the Bill to the effect that the National Commissioner can only initiate disciplinary proceedings after the investigation of allegations has been finalised by the Directorate and upon receipt of an investigation report from the Directorate.</p> <p>This amendment is in conflict with the provisions of the SAPS Act as well as the SAPS Disciplinary Regulations, 2016 which enjoins a supervisor to institute disciplinary proceedings on receipt of a complaint of misconduct. SAPS (through its managers) remains the primary employer and the right to initiate disciplinary proceedings cannot be subjected/ curtailed by the actions of a third party, other than the employer.</p> <p>This clause is in conflict with the principles of the Labour Relations Act, 1995 as well as jurisprudence that affords the employer the right to manage discipline within a workplace. The fact that a potential challenge might be launched against the institution of disciplinary proceedings does not equate to that right that is afforded to an employer, to be restricted.</p>

Responses by the CSPS: In the published version of the Bill it was provided that SAPS / MPS must initiate disciplinary proceedings after the investigation of allegations has been finalised by the Directorate and upon receipt of an investigation report. A comment raised in the public comments was that this proposed amendment is “undesirable”, it has the potential to do great harm - by curtailing police management from initiating disciplinary steps or precautionary measures against officers with prima facie evidence of egregious criminality against them thereby enabling such officers to remain on duty, pending the outcome of an IPID investigation.

The proposal is that in its place the Bill should provide a clause allowing the IPID Executive Director “to request the SAPS or the MPS to suspend disciplinary steps pending the outcome of the IPID investigation in specific cases where the particular circumstance of the case arguably warrants such a suspension. Therefore, the word “must” was replaced with “may” in order to afford SAPS and MPS an opportunity to exercise a discretion as whether or not to suspend the initiation of disciplinary proceedings.

In order to address the proposal in the public comments that there should be clear consequences for failure to act on recommendations of IPID to ensure accountability, a new subsection has been inserted in which it is provided that where the sanction is considered not appropriate the Directorate may request the appropriate authorities of SAPS and MPS to review the sanction.

4.5.4. Section 33: Offences and penalties (New Clause 20)

Section 33 of the IPID Act provides for offences and penalties when a police officer fails to comply with section 29 of the Principal Act. Although section 33 of the Principal Act is not amended by the Amendment Bill, APCOF submitted that the range of the fine be established. Similarly, the WCG proposes that section 33 of the IPID Act be amended to specifically provide that any person who, without just cause, fails to comply with a direction or request under section 24(6) is guilty of an offence and liable on conviction to a fine of imprisonment not exceeding three years or both.

Section 33 states:

- (1) Any person or private entity, who interferes, hinders or obstructs the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.
- (2) Any member of the Directorate who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Directorate of the powers and functions, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.
- (3) Any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.
- (4) Any member who fails to make disclosure in accordance with section 25 (2) (a), or fails to withdraw in terms of section 25 (2) (b), as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.
- (5) Any person who pretends to be an investigator in terms of this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for period not exceeding two years.

Response from the CSPS: In order to further address the aforementioned proposal of consequences for failure to act on the recommendations of the Directorate to ensure accountability, section 33 of the principal Act has been amended to

4.5.5. Clause 21: Regulations

Provides for additional matters for which the Minister may make Regulations in relation to, such as the procedure to be followed in respect of the report to the Minister, the Executive Director and the Secretary for Police Service on the outcomes of disciplinary matters, as well as the format of such a report.

ORGANISATION	COMMENT
ISS	The Bill proposes that certain additional provisions be added to Section 34(1)(o). The critical issue here is not with the provisions of the Bill but with the provisions of Section 34 in the IPID Act. Section 17CA(17) of the SAPS Act provides that regulations that affect the DPCI 'shall be submitted to Parliament for approval'. The ISS proposes that in order for the IPID Act to conform to the 'at least as' standard outlined by the Constitutional Court, Section 34 should be amended along similar lines.

Response from CSPS: The clause has been further amended in order to empower the Minister to make Regulations in relation to a procedure to be followed in appointing investigators. The new insertion further strengthens the principal Act.

4.5.6. Clause 22: Savings

Clause 21 of the Bill seeks to substitute section 35 of the principal Act as the transitional provisions provided therein have now been fully implemented. Instead, a new saving clause in relation to changes to be made in determining the remuneration and benefits of investigators and provincial heads of IPID, has been inserted.

ORGANISATION	COMMENT
AfriForum	The proposed savings provision regarding the conditions of service for existing investigators and provincial heads should be crafted so that it retains experienced talent within the IPID and ensures that their expertise is harnessed to foster a culture of excellence within the Directorate.

4.5.7. Other matters raised in submissions

ACJR: The ACJR made the following additional comments:

- The quality, scope and depth of reporting by IPID and SAPS to Parliament can be improved. In particular, disaggregated data need to be made accessible and reporting needs to be done annually per precinct. There is a strong likelihood that a small number of police stations contribute disproportionately to IPID's case load and that targeted investigations, training and management interventions may have a positive impact.
- The NPA needs to report to IPID more comprehensively on decisions not to prosecute, or seeming delays to make a decision. The reasons need to be reflected in the IPID annual reports.
- There are major concerns about police performance with reference to deaths due to police action (especially in KwaZulu-Natal). There needs to be a thorough investigation into trends and underlying reasons.
- Consideration should be given to delegate some prosecutorial powers to IPID so that it is able to prosecute at least some less serious criminal matters. This may require establishing in-house legal capacity. The NPA Act enables this and possibilities in this regard need to be investigated.

AfriForum: Based on a comprehensive study done by AfriForum in 2023, a decentralised approach to policing was identified as essential for effective crime prevention and management. Thus, any proposed legislation or amendments should lean towards decentralisation rather than further centralising powers. This is in line with our belief that local authorities and communities should be empowered to address unique local challenges in the fight against crime. A federal approach would enhance the IPID's ability to operate independently and impartially, insulated from overarching centralised pressures.

5. Conclusion

Parliament's Portfolio Committee on Police is satisfied with the positive and detailed discussions that took place during public hearings. The Committee expresses its gratitude to the organisations and individuals that made submissions on the IPID Amendment Bill and reiterates the importance of public participation when Parliament deals with legislation.

The Democratic Alliance (DA) reserves rights on the report.

Report to be noted.