**4. Report by the Portfolio Committee on Police on the referral by the Speaker of the National Assembly on the recommendation by the Minister of Police, Hon. B. Cele, MP dated 05 February 2019, not to renew the employment contract of the Executive Director of the Independent Police Investigative Directorate, Dated 28 February 2019.**

1. **Introduction**

On 05 September 2018, Mr RJ McBride, the Executive Director of the Independent Police Investigative Directorate (IPID) wrote a letter to the Minister of Police, Mr B Cele, enquiring whether the Minister intended to “retain or renew” his contract. It appears that the Minister never provided a reply to this letter. Again on 13 November 2018, Mr McBride addressed a second letter to the Minister making reference to his 06 September 2018 and enquiring about the status of his contract. Interestingly, Mr McBride ends his letter by making a recommendation to the Minister that the “… process of advertising the post and selecting a suitable candidate commences at the earliest convenience.”

On 24 January 2019, the Minister addressed to Mr McBride a letter informing him that his term is coming to an end on 28 February 2019 and further that he is not intending to renew his contract. Consequently, Mr McBride addressed two letters to both the Minister and the Chairperson of the Portfolio Committee on Police (Chairperson) where he expressed a view that the Minister does not have the power to make such a decision and that only the Portfolio Committee is empowered to make that decision. The Minister at the same time also addressed a letter to the Chairperson wherein he requested the Committee to consider the matter and to confirm or reject his recommendation regarding Mr McBride’s contract.

Upon becoming aware of the direct referral by the Minister to the Committee, the Speaker of the National Assembly (Speaker) addressed a letter to the Minister requesting him to address his request to her as the Speaker for onward referral to the Committee. On 04 February 2019, the Minister wrote a letter to the Speaker wherein he formally tabled his recommendation to the Speaker for referral to the Committee. On 6 February 2019 the Speaker formally referred the matter of the renewal of the contract of Mr McBride to the Committee for its consideration and report to the National Assembly (NA).

Parallel to this, Mr McBride had initiated an urgent application to the North Gauteng High Court. The Committee was cited as the Second Respondent in these urgent proceedings instituted by Mr Robert McBride, in the Gauteng Provincial Division, Pretoria under case no. 6175/2019. The Minister of Police is the First Respondent in the said proceedings. Consequently, an order was granted by agreement in the matter on 12 February 2019, *inter alia*, in the following terms:

*“2. It is recorded that the Second Respondent intends to take a decision regarding the renewal of the First Applicant’s appointment on or by 28 February 2019.*

*3. The matter is postponed to the urgent roll on 26 February 2019 and for that purpose:*

*3.1 The Second Respondent will report on affidavit by 22 February 2019 on the progress on taking a decision regarding the renewal of the First Applicant’s appointment; and*

*3.2 All parties will be entitled to make submissions to this Court on whether any further just and equitable orders should be granted, including but not limited to whether the Second Respondent should be given a further period to make a decision on the renewal of the First Applicant’s appointment and whether the First Applicant’s term of office ought to be extended pending the Second Respondent’s decision.”*

In pursuance of the referral of the matter by the Speaker to the Committee and the execution of the court order, the Committee then determined a process and programme to deal with the matter with the view to having it finalised on or about 28 February 2019. Please refer to the attached timetable marked “Annexure B”

1. **Methodology**

The methodology employed by the Committee was to invite the Minister to provide his written reasons underpinning his preliminary decision. Once these were received, they were sent to Mr McBride and he was invited to respond and make his own submissions as to why he should be granted a renewal. The Amici Curiae were also afforded an opportunity to make submissions to the Committee on the matter of the renewal of the Contract of McBride. Additional information was called for as and when it was required. The deliberations of the Committee were based purely on these aforementioned written submissions and information and documents at the disposal of the Committee. The list of all documents that were considered by the Committee during its deliberations are attached and marked as “Annexure A”.

1. **Regulatory Framework**

Section 57 of the Constitution provides that Committees of Parliament can determine their own internal mechanisms and these mechanisms are set out in the Rules of the NA and various resolutions and orders of the Assembly. Where the law is silent on a matter being processed before the Committees of the Assembly, the relevant Committee must rely on the Rules and other mechanisms of determining own internal mechanisms.

The rules of the National Assembly (“Rules”) 167 regulates referral of matters to Committees by the Speaker of the National Assembly. Rule 167 empowers the Committee to determine its own processes and procedures in dealing with any matter serving before the Committee.

Section 6(1) of the IPID Act provides that the Minister must nominate a suitably qualified person for the position of the Executive Director (ED) of IPID and empowers the Committee to either confirm or reject the nomination by the Minister. Section 6(3)(b) of the IPID Act states that on appointment, the ED must occupy office for a period of 5 years, and that this period is renewable. Notably, the Act is silent on the process for renewal.

On 12 February 2019, the North Gauteng High Court directed the Committee to make a decision on the renewal/non-renewal of the contract of Mr McBride

1. **Legal Advice**

Mr McBride in his submissions 21 February 2019 to the Committee raised the issue of being granted an opportunity to make oral submissions to the Committee should the Committee be inclined not to renew his contract.

The Committee resolved to seek an urgent legal advice with regard to its procedure, more particularly whether an oral hearing should be held. The legal opinion was sought and provided by Adv. D. Potgieter SC dated 22 February 2019 and it concludes that:

“It follows that if it appears during the Committee’s deliberations that there are specified complex issues that could be clarified through oral representations and which would assist the Committee in deciding the issue, that it would be justifiable to conduct an oral hearing only in respect of such specified issues. Such a cause would be particularly prudent in the present matter where it is in the best interests of all the affected parties as well as the public interest for the matter to be finalised without any undue delay.

Whether and to what extent oral representations should be allowed can accordingly only be finally decided as the Committee process unfolds and members have had an adequate opportunity to consider the papers. This would be entirely within the discretion of the Committee.”

1. **Committee Process**

On Wednesday, 6 February 2019 and in terms of Announcements, Tablings and Committee Reports No. 7 of 2019, the Speaker of the National Assembly made the following referral to the Committee:

**“TABLINGS**

**National Assembly**

**1. The Minister of Police**

*(a) A letter dated 5 February 2019 has been received from the Minister of Police, requesting the National Assembly to consider his recommendations regarding the contract of employment of the Executive Director of the Independent Police Investigative Directorate (Ipid).*

*Referred to the* ***Portfolio Committee on Police*** *for consideration and report.”*

The referral by the Speaker was tabled in the Committee on Tuesday, 12 February 2019. NA Rule 227 regulates matters of this nature and, *inter alia*, empowers the Committee to determine the procedure to be followed in dealing with the referral. The proposed process and programme were duly adopted by the Committee on Thursday, 14 February 2019. The applicable process entailed the steps set out below.

On Wednesday, 13 February 2019 a letter was forwarded to the Minister of Police by the Committee requesting reasons for the Minister’s recommendations regarding the contract of employment of the Executive Director (“the First Applicant”) of the Independent Police Investigative Directorate (“IPID”). Monday, 18 February 2019 at 17h00 was set as the deadline for the Minister’s response.

On Thursday, 14 February 2019 the Committee forwarded letters to two organisations which had applied and were admitted by the court in the aforementioned matter before the Gauteng High court as *amici curiae*, the Helen Suzman Foundation and Corruption Watch, inviting them to make written submissions with regard to the renewal of the First Applicant’s appointment. The *amici curiae* were invited to submit their written representations to the Committee by 17h00 on Wednesday, 20 February 2019.

The response from the Minister setting out reasons for his recommendations was received by the Committee on Monday, 18 February 2018 in the late afternoon. The response was, however, incomplete in that not all of the annexures referred to were annexed to the submission. This was brought to the Minister’s attention. The incomplete response was nevertheless forwarded to the First Applicant during the course of the morning on Tuesday, 19 February 2019 pending receipt of the omitted annexures. The annexures were received later in the day on 19 February 2019 and were also immediately forwarded to the First Applicant still on 19 February 2019. In the covering letter the First Applicant was required to submit his written response to the Committee by 17h00 on Thursday, 21 February 2019.

The requested written submissions were duly received from the First Applicant and the *amici curiae* substantially in compliance with the respective deadlines.

For the record, the Committee received a voluminous set of documents more especially from Mr McBride in the form of supporting documents to his written submission.

The Committee conducted its processes in an open and transparent manner in line with NA Rule 184(1) pursuant to section 59(1)(b) of the Constitution of the Republic of South Africa (the Constitution). Section 59(1)(b) of the Constitution provides that the NA must conduct its business in an open manner, and hold its sittings and those of its committees in public, but that reasonable measures may be taken to regulate public access, including access to the media.

1. **STAKEHOLDER’S SUBMISSIONS**

**6.1 Minister’s Reasons**

In brief the Minister, in his submissions dated 18 February 2019, submitted that serious allegations have been lodged with him against Mr McBride. In particular, the Committee was referred to a complaint that was lodged by a certain “Concerned Staff” relating to a certain alleged conduct of Mr McBride. In particular, it was alleged that:

He paid himself RI 00 000 for unused leave credits without approval;

He paid himself a HOD allowance while on suspension without approval;

He granted himself a salary progression without complying with the

Performance Management Policy and without conducting a

Performance Assessment;

He paid several employees leave pay-outs for unused leave credits

While on suspension, which was contrary to the advice of the

Department of Public Services and Administration and legal

prescripts;

He side-lined the Chief Financial Officer (CFO) for refusing to approve the above-mentioned payments and instead appointed Ms

Netsianda, Head of Corporate Services to approve the payments

despite it being a function of the CFO;

He oversaw a number of irregular staff appointments;

He abused his power in a number of respects relating to, inter alia,

irregular transfers of IPID staff;

He forced IPID staff who refused to falsely implicate former Director

Kgomotso Phahlane of maladministration to leave 'PID;

He irregularly reinstated IPID staff who had been charged with

misconduct and dismissed by IPID;

He ignored recommendations of the Public Service Commission that

action be taken against IPlD's Accounting Officer, CFO, and Director

of Legal Services for irregularly payments of approximately R500

000; and



He oversaw irregular procurement processes for the purchase of

firearms and surveillance devices.

Further to the above, the Minister relied on allegations made by a certain Mr Cedrick Nkabinde in terms of which the following allegations were made against Mr McBride:

allowing a private investigator, Mr Paul O'Sullivan, to conduct IPID investigations;

divulging official and confidential information to Mr O'Sullivan;

leaking official and confidential information to the media;

conducting investigations through the media in order to deliberately tarnish the reputations of targeted individuals;

obtaining evidence unlawfully, including unlawfully intercepting and monitoring cellphone communications;

unlawfully declining to investigate particular complaints for personal gain; and

abusing authority by transferring and seconding IPID staff for ulterior reasons.

**6.2 Mr McBride’s Submissions**

In reply to the Minister’s reasons, Mr McBride submitted firstly that the Minister’s reasons are anchored on mere allegations which have not been established or verified by any credible institution. To that extent he submitted that these allegations must be ignored by the Committee.

Secondly, Mr McBride submitted that the allegations of the “Concerned Staff” were already investigated by the Public Service Commission (PSC). To this end, the Committee was provided with a copy of a letter from the PSC wherein the PSC concludes that it found the allegations to be “unsubstantiated”. On this basis Mr McBride submitted that given the fact that these allegations were already investigated by an appropriate statutory body the Committee should ignore the allegations for the purposes of its decision.

Thirdly, Mr McBride submitted that the allegations of Mr Nkabinde were withdrawn by means of a Settlement Agreement entered into between IPID and Mr Nkabinde. To this effect Mr McBride submitted to the Committee a copy of the purported Settlement Agreement. Indeed, the purported Settlement Agreement indicates that Mr Nkabinde unconditionally withdraws his allegations against Mr McBride. The Committee has no means to verify the authenticity of the purported Settlement Agreement. It is appropriate at this stage to mention that the Committee directed a letter to Mr Nkabinde to confirm or deny the existence of this Settlement Agreement. On 26 February 2019, Mr Nkabinde responded to the Committee and has re-confirmed his allegations against Mr McBride and re-iterated his interest on the matter being finalised expeditiously by the Committee.

In addition to the above, on 21 February 2019, Mr McBride took the opportunity to make substantive submissions as to the reasons why his contract should be renewed. *Inter alia* these submissions dealt with his personal performance and functioning of IPID under his leadership. He also alluded to high level investigations that he is currently managing which he felt will be disrupted if his contract is not renewed.

**6.3 Amici Curiae**

**6.3.1 Helen Suzman Foundation (HSF)**

HSF persisted with the position it had adopted in the litigation before the High Court. Its position was briefly that the agreed court order impermissibly undermines the independence of the IPID and is based on an unconstitutional interpretation of the Independent Police Investigative Directorate Act, 2011 ("IPID Act").

The HSF further submitted that the Constitutional Court has on more than one occasion stated that renewals left to the discretion of political actors struck at the very heart of independence and are inconsistent with the Constitution.

Consequently, they did not make any submissions on whether Mr McBride’s contract should be renewed or not. They registered their intention to appeal the order of the High Court.

**6.3.2 Corruption Watch (CW)**

CW *inter alia* submitted that the Committee has to give due consideration to the following issues in making its decision:

“The performance of the incumbent as the Executive Director and Accounting Officer of IPID over the last five years;

The performance of IPID under the leadership of the incumbent over the last five years;

Whether the incumbent has executed his work with independence, integrity, conscientiousness, honour and is considered to be fit and proper;

The advantages and disadvantages associated with the renewal of the incumbent’s contract;

The advantages and disadvantages associated with the non-renewal of the incumbent’s contract; and,

The preliminary recommendation provided by the Minister of Police to not renew the contract of the incumbent, and whether this decision can be considered as reasonable and rational;

The views of the incumbent, particularly his response to the reasoning underpinning the Minister’s preliminary recommendation.”

The views of the South African public.

In particular, CW submitted that the Committee’s deliberations must be centred on fact and merit-based criteria when determining the outcome of the renewal process.

1. **COMMITTEE DELIBERATIONS**

**7.1 OBSERVATIONS**

1. **Minister’s Reasons**

The Committee observes that it is common cause that there is an employment contract that exists between the Minister of Police and the Executive Director (ED) of the IPID. There is a series of letters dated 06 September 2018, 13 November 2018 (both by the ED) and 18 January 2019 (by the Minister) which bear testimony to this and therefore this matter is not in dispute. The Committee further notes that the Minister, in his letter dated 16 January 2019, was in essence responding to the ED’s letters of September and November 2018 by the ED wherein he enquired about the renewal/non-renewal of his contract.

The Committee notes that Section 6(3)(b) of the IPID Act provides for an appointment term of five years for the Executive Director, which may be renewed for one additional term only. While the IPID Act provides for such a renewal, the appointment letter does not speak to the either the renewal or process to be followed in making this decision.

The ED in his court papers acknowledges that he has no right or entitlement to a renewal and that the authority to determine whether the contract is renewed or not lies with the Portfolio Committee on Police. The Committee recognises that the ED indicated that he was concerned that the matter of the contract renewal was not concluded. This therefore is not a matter of removal as decided in the McBride’s judgment but that of whether a contract should be renewed or not beyond its mutually agreed fixed term.

The Committee notes that the process of renewal / non-renewal or a new appointment should have started six months ago and in this respect, the Committee flagged the issue in its Legacy Report adopted on the 30 November 2018.

The Committee notes that the Minister is concerned that there are serious allegations against the ED that are being investigated by the Office of the Public Protector. The Committee further notes that there were other serious allegations that were investigated by the PSC against the ED. The latter allegations were found to be unsubstantiated by the PSC and therefore dismissed. The Committee, nonetheless, views these allegations in a serious light.

The Committee further notes that the PSC had on a different labour malpractice matter (Saohatse matter) found that the ED had acted outside his powers and specifically informed the Minister to advise the ED to refrain from harassing Ms Saohatse. The Committee again views these findings of the PSC in a very serious light.

The Committee also noted that the SSA Appeals Committee had also made a finding that the withdrawal of Ms Saohatse’s security clearance by the ED was irregular and therefore invalid.

The Committee observes that according to the Minister’s reasons it is the confluence of some of these matters that has undermined his trust in the ED and led to the apparent breakdown in the relationship.

1. **ED’s Response**

The ED submits that the reasons of the Minister for non-renewal are based on untested allegations that have either been already investigated by the PSC or withdrawn by Mr Nkabinde and he implores the Committee to ignore these allegations as they have not been verified by a credible institution.

The Committee notes that there have been further allegations of unethical conduct against the Executive Director by a Mr Nkabinde, a former employee of the IPID. These allegations are currently the subject of an investigation by the Public Protector.

The Committee takes note that the PSC made a finding that the allegations by a “Concerned Staff” were unsubstantiated and therefore the PSC closed their investigation on the allegations. The Committee, however, takes cognizance that Mr Nkabinde notwithstanding the Settlement Agreement (19 September 2018) entered into with the ED persists with the substance of his allegations and wishes to the Committee to investigate the matter further. In an e-mail to the Committee, dated 26 February 2019, Mr Nkabinde has confirmed that he has never withdrawn the substance of his allegations of unethical conduct by the ED.

The Committee therefore notes that while the PSC may not have been able to verify the allegations against the ED and Mr Nkabinde may have withdrawn the complaint in the context of a settlement of a labour dispute the substance of the allegations still lingers on and is serious. Further the Committee notes that there is still the pending investigation by the Public Protector.

Notwithstanding the above, Committee notes that the allegations and counter allegations are complex and may raise issues of factual disputes that cannot be resolved in the context of an exercise like this. The Committee therefore refrains from making a finding on the matter save to state that it views the state of affairs from which these allegations emanate worrying to say the least.

1. **IPID Act**

The Committee notes that there are some grey areas with respect to the IPID Act in that it does not provide an explicit process for the renewal and appointment of the ED. There is no alignment with similar institutions that are meant to be independent such as the Directorate of Priority Crimes Investigation (DPCI) and the Auditor General of South Africa (AGSA).

Inasmuch as the IPID is not a Chapter 9 institution, the Committee is of the view that useful lessons could be drawn from such institutions in as far as the issue of term and non-renewability are concerned. While noting the Constitutional Court judgement on the independence of the IPID, it is not correct to suggest that the IPID should not have Executive Authority/have no relationship with the Minister. It is enough that IPID is insulated from political interference but it must still be held accountable for the resources entrusted in its care. Whilst noting the Constitutional Court judgement on the independence of the IPID, currently is one of the Departments with the Minister of Police as the Executive Authority.

The Committee notes that there has to be some review of the relevant provisions of the Act to provide to enhance independence and provide some clarity in respect of some governance issues.

1. **Appointment Letter**

The Committee notes that the letter of appointment of the ED was signed and counter-signed 01 March 2019 both the Minister Nathi Mthethwa, MP and the ED. The letter of offer included specific conditions which should have been implemented by the ED. These were that he should have a valid security clearance and a signed performance agreement. These were obligations placed on the ED through acceptance of the employment contract.

1. **Performance Agreement**

The Committee notes with concern that there was no signed performance agreement between the ED and the previous three Ministers. It remains the obligation of the HOD of any department to draft the Key Performance Indicators and how these are going to be achieved for the concurrence of the Minister responsible. This should be signed and counter-signed by both.

The Committee notes that there was no signed performance agreement between the ED and the Minister(s), except that one agreement which was only signed by former Minister F. Mbalula.

1. **Performance Assessments**

The performance assessment of the ED was not undertaken. The Committee has had sight of a retrospective assessment that was signed by the ED, but was not counter-signed by the Minister. In other words, regular performance assessments were not done as it is the norm in the public sector, even though there were directives from the DPSA on 5 June 2018.

The Committee is of the view that performance assessments are a critical measuring tool to assess the effectiveness of an incumbent. While the Committee notes that the Auditor General of South Africa has given the IPID an unqualified report with findings, that reflects on the overall performance of the institution rather the incumbent of the ED position.

The improvement in the performance of IPID was expected from the ED and was part of his job. The fact that three Ministers did not sign the Performance Agreement of the ED may be symptomatic of the fractious working relationships between the Ministers and the ED.

1. **AGSA Reports / AGSA Notes**

As indicated above, the Committee observed that the IPID received unqualified audit opinions with findings which included material misstatements from the AGSA in the 2017/18 financial year.

1. **Committee Reports**

The Committee noted that there were concerns raised in the Committee Budget Review and Recommendation Reports relating to material misstatements, accruals, expenditure and the vacancy rates. There were also concerns about the budgeting process and the consistent failure to meet performance targets by IPID. This resulted in the target being lowered at some point.

The Committee expressed its concern about the repeat recommendations in the Committee reports.

1. **Briefings to the Committee**

The Committee notes that IPID provided regular briefings to the Committee including on high profile cases, but the convictions rate is not satisfactory.

1. **IPID Amendment Act**

The Committee is of the view that the delay in the drafting and introduction of the IPID Amendment Bill was due to a failure in both the IPID and the Civilian Secretariat for Police Services (CSPS) and as a result the Committee had to intervene and prepare a Committee Bill.

1. **Applications for SAPS Posts**

The Committee notes that the ED had applied for posts in the DPCI and Crime Intelligence Services of the South African Police Service (SAPS). The Committee notes it’s concern that the ED applied for these posts in mid-term of his contract and that could be interpreted that he was not committed to the IPID.

The Committee also notes that he stated that he was willing to remain in the IPID if his contract was renewed. The Committee observes that the ED stated that he did apply while serving as the ED of the IPID.

1. **Security Clearance**

The Committee notes that the ED does not have a current and valid security clearance as the previous security clearance lapsed in 18 November 2018. The Committee also notes that a re-vetting process by the State Security Agency is currently underway.

The Committee notes that a security clearance is a prerequisite and is not automatic on application.

1. **PSC Report**

The Committee notes that according to the PSC, the actions of the ED in the transfer of Ms Saohatse were in violation of the transfer policy of the IPID. The withdrawal of the security clearance of the staff members of the IPID by the ED was a violation of section 33 of the Constitution and irregular. Further notes that the ED’s actions constituted harassment in terms of section 1 of the Protection of Harassment Act, 2011.

The Committee further notes that while a Committee of IPID made the recommendation to withdraw the security clearances confirmed by the ED, the IPID does not have the mandate or authority to withdraw the security clearances. The Committee accepts the finding by the PSC that the withdrawal of the security clearance of Ms Saohatse amounts to harassment and intimidation.

The Committee further notes that the PSC made clear recommendations which were not implemented.

1. **Executive authority/Accounting Officer Governance Framework**

The Committee notes that the relationship between the Minister and the ED is governed by the IPID Act and the Public Service Act and applicable regulations.

The Committee further notes that the position of the Minister and the ED are structurally adversarial with respect to protecting the members of the public and investigations into members of the police.

The Committee notes that the IPID is not a Chapter 9 institution but is regulated by the Constitution and the IPID Act and the Public Service Act and applicable regulations.

1. **Trust relationship - Executive Authority / Accounting Officer**

The Committee observes that there is a clear breakdown of the trust and relationship between the ED and the Minister. This is apparent from the tone of the correspondence that the Committee was privy to in the process of determining the matter of renewal of the ED’s contract.

The Committee also notes that the ED has in his submission stated that should he not be re-appointed, the Minister would appoint a person sympathetic to his own political views. This is a remarkable political statement which is evidence of this breakdown in trust and relationship between the two.

1. **Public Protector Investigation**

The Committee notes that serious allegations have been made against the ED which is the subject of investigation by the Public Protector. While they are being investigated, they remain allegations until proven. The Committee, however, notes the seriousness of the allegations with concern.

The Committee also notes that it cannot trivialise the allegations despite the fact that the PSC has found that they are unfounded.

1. **Independence of the IPID**

The Committee notes that to view the IPID as a Chapter 9 institution is in conflict with the IPID Act as there is an accountability mechanism. It is a government department and does not function like the office of the Public Protector. The Committee recognises that there were three instances where the ED has driven litigation to defend the independence of the IPID. Despite this, the Committee views the IPID as a government department with a recognition of the role of the Minister and notes that the operational decisions of the IPID are protected from interference as per the IPID Act. Section 4 of the IPID Act clearly provides for the independence of IPID.

1. **Current Political Context**

The Committee observes the important role of IPID in combating corruption by members of the SAPS, without fear and favour.

1. **Case Law**

The Committee observes that the issue of a renewable term for the ED should be reconsidered with respect to either lengthening the contract to seven years, and having it as a non-renewable contract.

1. **COMMITTEE FINDINGS**
2. **Minister’s Reasons and ED Response**

Having considered and extensively deliberated on the Minister’s reasons for his recommended non-renewal of the ED IPID’s contract of employment, the Committee made the following findings:

1. it is common cause that the contract of employment entered into between the Minister and the ED IPID was for a period of 5 years and was entered into on 1 March 2014 and expires on 28 February 2019, the said contract makes no express provision and is non-prescriptive on renewal.
2. there was no proper consultation on the withdrawal of the security clearance of Ms Saohatse by the ED IPID and his conduct herein was unprocedural and irregular and therefore *ultra vires*;
3. there was failure on the part of both the Minister and the ED IPID to sign a performance agreement as well as performance assessments which is are both stated requirement in terms of applicable regulatory framework;’
4. the PSC conducted an investigation of impropriety within the IPID and found that the conduct of the ED IPID violated the applicable policies as well as the IPID Act;
5. there is a breakdown of the Trust relationship between the Minister and the ED IPID;
6. the Minister responded to the letter of the ED dated 16 September 2018;
7. there was failure by the ED IPID to implement clear directives from the Department of Public Service and Administration;
8. the allegations by Mr Nkabinde which are a subject of further investigation by the Public Protector are concerning and very serious;

1. **Independent Police Investigative Directorate Act (IPID Act)**

With respect to the IPID Act, the Committee find in the following:

1. the IPID Act is not clear on the procedure to be followed with respect to renewal of the contract of the ED;
2. there is a need to re-align the IPID Act with the Constitutional Court judgement to further enhance the independence of IPID, in this regard, the PC Police has sponsored a Bill to enhance the independence of IPID.
3. **Appointment Letter**

On the appointment letter of the ED IPID, the Committee find:

1. that the appointment letter of the ED was signed with the condition that the ED would in due cause undergo a security clearance and enter into a performance agreement, detailing KPI’s;
2. the security clearance expired and the performance agreement was unsigned, except for one that was under Minister, Mr Fikile Mbalula.
3. **AGSA Reports / AGSA Notes**

On the report of AGSA, the Committee finds that:

1. IPID receive unqualified audits with findings, which was below the expected standard of a clean audit.
2. **Committee Reports**

The Committee finds that in a number of its BRRR reports, there were a number of repeat findings on accruals, vacancy levels and budgeting. This was unsatisfactory performance on the part of IPID.

1. **Briefings to the Committee**

The Committee finds that the IPID was responsive to the reports of the AGSA and included progress reports on high profile cases.

1. **Applications for SAPS Posts**

The Committee finds that the ED applied for the Head of the DPCI and Divisional Commissioner for Crime Intelligence posts. The ED motivated the reasons for his application and the Committee finds that the ED applied while his contract was still in place to which consequences could have been leaving the post in the middle of the contract period. This is a matter to be further regulated to ensure that there is no disturbance in the performance of IPID within the period that the ED is employed.

1. **Security Clearance**

The Committee finds that the ED IPID has no valid security clearance as his lapsed in 30 November 2018; the duration of a security clearance is five years. The fact that security clearance lapsed has been corroborated by the SSA.

1. **PSC Report**

Regarding the PSC report, the Committee finds in the following:

1. there was a violation and breach of the IPID transfer policy by the ED IPID;
2. the ED of the IPID also breached section 33(1) of the Constitution and the IPID Act in his irregular implementation of the transfer policy;
3. ED IPID irregularly withdrew the security clearance of Ms Saotashe and that this irregular conduct is in the process of being remedied by the relevant state agency.

1. **Executive Authority/Accounting Officer**

The Committee finds that the IPID is a government department in terms of the applicable law and must report to the Minister. There are obligations and duties of the ED which are clearly set out in the regulatory framework.

In terms of section 7 of the IPID Act, the ED reports to the Minister on regular intervals.

1. **Current Political Context/Conclusion**

The Committee finds that IPID remains a very key institution to combat corruption within the SAPS.

1. **Conclusion**
   1. The Committee carefully considered all of the submissions and additional relevant documentation and information provided to it.
   2. In deciding the issue concerning the renewal of the appointment of the Executive Director, the Committee had regard to its findings as set out above, including:

9.2.1 the breakdown of trust and in the working relationship between the Minister and the Executive Director the existence whereof is in the public interest and indispensable for the proper and effective functioning of IPID and for proper service delivery;

9.2.2 the findings of the Public Service Commission of serious irregularities concerning the complaint of Ms Saohatse;

9.2.3 the failure to fulfil the requirements of the employment agreement with regard to the conclusion of a performance agreement and the conducting of assessments;

9.2.4 the pending investigation by the Public Protector into serious allegations of misconduct, *inter alia*, by members of staff of IPID;

9.2.5 the fact that the Executive Director has no security clearance.

1. Committee Decision

In the result the Committee has concluded that the appointment of the Executive Director of IPID, Mr Robert McBride, should not be renewed for a further term.

Report to be considered.