

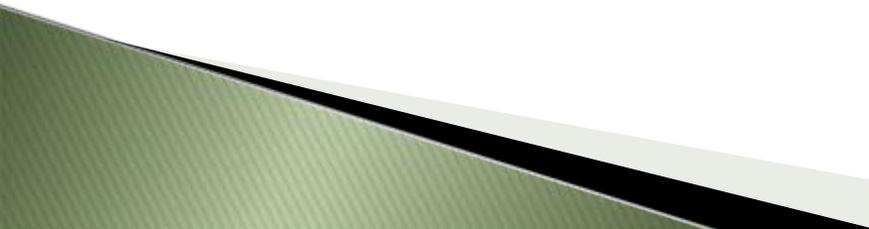


AFRICAN POLICING CIVILIAN OVERSIGHT FORUM

# Submission on Independent Police Investigative Directorate Bill

6 August 2010

# Benchmarks for Police Civilian Oversight Bodies

- ▶ Independence
  - ▶ Power
  - ▶ Capacity
  - ▶ Support of public and government
  - ▶ Involvement of civil society
  - ▶ Victim Involvement
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# Objectives of the IPID

- ▶ To promote accountable democratic policing that operates within the rule of law and is compliant with, upholds and promotes human rights in South Africa.
- ▶ To provide effective efficient and independent civilian oversight of police and municipal police services.
- ▶ To promote confidence in the police by effectively addressing police and municipal police service abuses through prompt independent impartial and credible investigations.

# Independence – Executive Director

- ▶ Appointment of the Executive Director in consultation with parliament and allowing for input by civil society.
- ▶ Minimize delays in appointment
- ▶ Removal of office in consultation with Parliament
- ▶ Limit the term of the Acting Executive Director

# Independence – Training

- ▶ Training should be independent of the SAPS
- ▶ Mandate of the Executive Director to develop and oversee training development of the IPID

# Powers – SAPS

- ▶ The SAPS be compelled to assist the IPID with information, access to dockets, identification parades and any material relevant to the case within two days of the request being made.
- ▶ That penalties for non-compliance should be set out in the Bill.
- ▶ Regular consultative meetings between IPID and SAPS

# Powers – IPID

- ▶ IPID Investigators – the conferring of policing powers should not be subject to unnecessary delay

# Powers – DPP

- ▶ The Executive Director be consulted on the allocation of prosecutors to cases.
- ▶ Cases referred to the DPP by the IPID be prioritised.
- ▶ The DPP form part of the Consultative Forum contemplated in Chap. 4.
- ▶ All cases of suspected torture must be referred for criminal investigation

# Functions

- ▶ Compulsory reporting on all cases set out in s25
- ▶ Criminality be included in cases that must be investigated
  - Attempted murder
  - Assault
  - Malicious damage to property
  - Armed robbery
  - Drunken driving
  - Defeating the ends of justice
- ▶ Shooting by Police officers must be subject to review

# Torture

- ▶ Follow the provision of UNCAT
  - Definition
  - Cruel and Inhumane treatment
  - Investigation of all cases of reasonable suspicion
  - Acts related to torture
  - Develop in tandem with the Combating of Torture Bill

# Transnational Policing

- ▶ The mandate of the IPID be made explicit that any violations of a serious nature including death, rape and torture and criminality at the hands of the SAPS or serving members, occurring outside of the territory of South Africa, should be reported to the IPID for investigation.

# Resourcing

- ▶ Public Service Commission must be requested to conduct a work study and appropriate costing of the IPID and these be used as a guide budget considered by Parliament with any deviation downward requiring motivation.

# Collaboration with Civil Society

- ▶ Capacity to analyse and review in the IPID will be strengthened with the establishment of clear partnerships with civil society and research organisations as provided for in the reference groups mooted in the Secretariat of Police Bill s.5(2)(a)(v)
- ▶ Special Committee to scrutinise investigations ie Torture

# Victims, Witnesses and Whistle Blowers

- ▶ The provisions of the victim charter in respect of a victim centred and service oriented approach should be enshrined in the IPID.
- ▶ Provision for witness protection and whistle blowers be established in the Bill

# Collaboration with other oversight bodies

- ▶ The consultative forum be expanded to include the Auditor General, the South African Human Rights Commission, the Public Protector and the Planning and Evaluation Unit in the Presidency.

# Civilian Secretariat for Police Service

# Policing

- ▶ Policing – is multi faceted and provided by multiple actors including volunteer civil society groups and private security industry often working in partnership with the South African Police Services and municipal police services.
- ▶ The scope of the objectives of the Secretariat of Police be broadened in clauses 4 and 5 to include all policing agencies.

# Cooperation

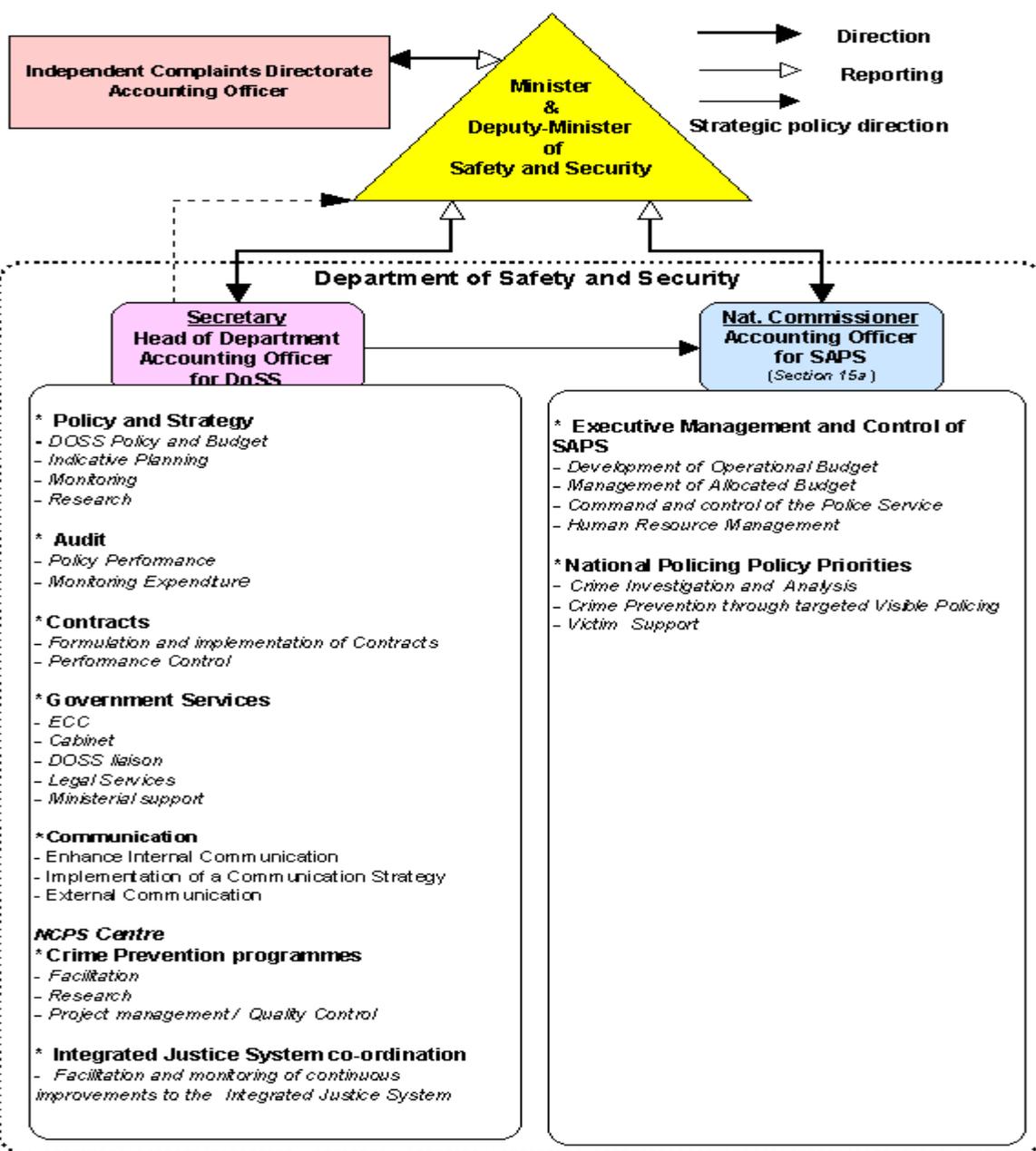
- ▶ Co operation between the Secretariat the Independent Police Investigative Directorate (IPIID) and the SAPS should be broadened to include the South African Human Rights Commission, the Public Protector, the Planning and Evaluation Unit in the Presidency and the Auditor General.

# Transparency

- ▶ All reports investigations conducted by the Secretariat for Police are public and accessible via the Secretariat web site and in hard copy

# Safety and Crime Prevention

- ▶ The role of the Secretariat of Police as a knowledge leader in crime prevention and safety promotion is clearly articulated in the functions of the Secretariat.



\* The DoSS will be funded via a single budget vote consisting of two parts: 1. an allocation for the Department and 2. an allocation for operational policing

\* The National Commissioner of the SAPS is accountable for the management & expenditure of the SAPS operational budget and will report to the Minister on police operations

# National Crime Prevention Strategy Centre

- ▶ Establishing a national vision and the identification of priorities. This will involve a strong research, monitoring and information component.
- ▶ Mobilising other government departments such as Justice, Correctional Services, Welfare, Education, Public Service and Administration and Transport who have a role to play in crime prevention initiatives.
- ▶ Assisting provincial and local government in preventing crime by providing research, technical guidance, training and the sharing of best practice.
- ▶ Working in partnership with the provinces, local government and civil society to develop crime prevention programmes.
- ▶ Providing seed funding for targeted social crime prevention programmes.
- ▶ Continuous improvements to the criminal justice system to effectively assist in, among other areas, case, offender, victim and workload management.
- ▶ Assist in co-ordinating and managing the prevention of certain priority crimes as identified in the annual planning process.

# Compliance with Recommendations

- ▶ Recommendations for discipline – SAPS report both to IPID and Secretariat within of 30 days of report on recommendations
- ▶ The power of the minister to decide the institution of disciplinary proceedings if disputed between SAPS and IPID
- ▶ Other – Police and policing agency responses to any recommendations made in monitoring reports or reviews should articulate clear plans for implementation or reasons as to why such recommendations cannot be implemented

# DVA

- ▶ Do not repeal S 18 of the DVA in its entirety
  - ▶ Clearly set out the duties of the Secretariat in the Legislation
  - ▶ Strengthen sanctions
  - ▶ Additional Training for investigators
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# International Obligations

- ▶ The Secretariat of Police should regularly assess the contributions made by the SAPS to foreign and transnational policing operations in terms of the compliance with and promotion of domestic policy, impact, value of money and the management and oversight of such operations.

# Investigative Powers

- ▶ Chapter 4 14 (2) (a) ii provides that the Provincial Secretariat can investigate police conduct. The powers and scope of such investigation need to be set out in detail in the Bill and clear distinction drawn between the role and function of the investigators of the IPID.

# Pre-emptive Oversight

- ▶ Civilian Secretariat and IPID provide for regular station and police cell visit and establish a NPM.
- ▶

# Internal Police Oversight

- ▶ The functioning of the internal discipline system in the SAPS be reviewed in the review of the SAPS Act and that consideration be given to the establishment of a police service commission that will place recruitment, promotion and discipline under civilian oversight.



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# Investigation of rape in the IPID Bill

Samantha Waterhouse

# Nature of the offence included

- ▶ We welcome the inclusion of rape in clause 25(1)
- ▶ Concern that other sexual offences are excluded.
- ▶ Recommend that the word rape be replaced with the term 'sexual offences'.
- ▶ At a minimum 'sexual assault' be included with rape.
- ▶ However this would exclude offences such as sexual exploitation of children and creating child pornography amongst others.
- ▶ Recommend committee consider the range of sexual offences in the Criminal Law [Sexual Offences and Related Matters] Amendment Act no. 32 of 2007 (SOA).

# Sexual offence investigations in South Africa

- ▶ High rates of sexual offences in South Africa.
- ▶ SO are complex to investigate resulting in low prosecution and conviction rates and ultimately a failure of justice.
- ▶ SOA creates framework for standards of investigation.
- ▶ SAPS FCS services recognise need for specialisation.
- ▶ This Bill recognises the seriousness of this offence committed by police but is silent on questions of quality investigation.
- ▶ Risk that investigation standards by IPID could be lower than those established under the SOA for SAPS.
- ▶ We recommend that standards created by SOA apply to IPID investigations.

# Notification of IPID investigations to the public

- ▶ Members of the public must be made aware of the fact that IPID investigates these matters
- ▶ This should be in writing and visible in the CSCs and other community centres.
- ▶ This applies especially and equally to SO and Torture
- ▶ Could be included in policy directives discussed below.
- ▶ Duty must be place on police to report all allegations re clause 25(1) and (2) to the IPID

# Capacity and Quality of Investigations

- ▶ Currently the Bill allows in clause 31 that the minister may develop regulations on investigation procedures.
- ▶ We submit that this is insufficient
- ▶ To avoid lower standards of investigation than in the SOA we propose a section in this Bill similar to the SOA regarding the development of national instructions and policy directives.
- ▶ Or, an amendment to the SOA to include a subsection on IPID investigations.

# Provisions in Criminal Law [Sexual Offences and Related Matters] amendment Act No. 32 of 2007

- ▶ Section 66 requires SAPS, NPA and DoH to develop national instructions/directives
- ▶ Adapted here to read in line with IPID bill.
  - Executive Director of the IPID, after consultation with key institutions must issue and Gazette national instructions/directives on:
  - Manner in which reporting of SO must be dealt with by IPID investigators (can address concerns raised in committee here)
  - Manner in which SO matters must be investigated.
  - Manner in which provisions relating to compulsory HIV testing of accused are dealt with.

# Provisions in Criminal Law [Sexual Offences and Related Matters] amendment Act No. 32 of 2007

- ▶ Note also that SAPS have subsequently issued National Instruction 2/2008 Sexual Offences.
- ▶ IPID directives could be based on this, cannot be of a lower standard.
- ▶ SOA also requires that training be developed on these and on social context issues.
- ▶ S66(4) provides for Parliamentary oversight in that instructions/directives and training must be tabled in parliament within timeframes stipulated.

# Transitional measures

- ▶ IPID unlikely to immediately have the capacity to undertake good quality investigations into these complex matters.
- ▶ We propose the following:
  - A co-operative agreement between SAPS (FCS) and IPID that investigators undertake sexual offence investigations jointly.
  - FCS detective to be approved by IPID
  - Only senior FCS and IPID investigators
  - FCS detectives must not come from the same jurisdiction of the police official accused.
- ▶ For **Consistency** we recommend that directives be considered for all offences under 25(1) (a), (b), (c) and (e).
- ▶ Especially in respect of torture as many difficulties experienced by SO victims may be experienced by torture victims.