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Submission on the Independent Police Investigative Directorate Bill 26 July 2010

1. Introduction

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to comment on the Independent Police Investigative Directorate Bill. APCOF has worked closely with the Portfolio Committee on Police, the Independent Complaints Directorate (ICD) and the Secretariat of Police since its inception in 2004 to support building police accountability in South Africa.

This submission provides a brief introduction to contextualise police accountability. It identifies key principles for effective external civilian oversight of police and reflects on the Independent Police Investigative Directorate Bill against these headings. The submission raises a number of observations against specific clauses and provisions in the Draft Bill and concludes with several general observations.

2. APCOF

APCOF is a network of African policing practitioners drawn from state and non state institutions. It is active in promoting police reform through civilian oversight over policing. It believes that the broad values behind establishment of civilian oversight are to assist in restoring public confidence, develop a culture of human rights, integrity and transparency within the police and promote a good working relationship between the police and the community. It achieves its goal through raising awareness and sharing information on police oversight and providing technical assistance to civil society, police and new and emerging oversight bodies in Africa. APCOF was established in 2004 as a coalition of police oversight bodies and practitioners in Africa and was registered in 2006 as a not for profit company (section 21) under South African company law.

The objectives of APCOF are to:

- Create and sustain public confidence in police
- Develop a culture of human rights, integrity, transparency and accountability within the police
- Promote a good working relationship between the police and the community

APCOF works on issues such as:

- Promoting fair treatment of citizens by police agencies on the continent

- Exchange of information and better practices among oversight bodies
- Advocating for the establishment of police oversight bodies in countries where they do not currently exist
- Advocating for improved resource allocation to police oversight bodies
- Standard setting for policing and civilian policing oversight bodies in Africa

3. Police Accountability

The extent to which the police are accountable to the public has been described as a measure of a society's freedom.¹ Systems of accountability are key mechanisms for developing greater respect for fundamental human rights and freedoms in policing.²

The African Commission on Human and Peoples Rights confirms the importance of police oversight noting;

“ that accountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing rule of law and assisting in restoring public confidence in police; to develop a culture of human rights, integrity and transparency within the police forces; and to promote a good working relationship between the police and the public at large.”³

The obligation on the state for effective and independent investigation into the police is found in a number of the treaties and protocols that articulate the international human rights framework.

Particularly relevant to the Independent Police Investigative Directorate Bill are:

- The Convention against Torture and Other Cruel Inhumane and Degrading Treatment or Punishment (CAT), which requires states to ensure effective measures are taken to prevent, investigate, prosecute and punish perpetrators of torture and ill treatment.
- The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which sets out principles for the effective investigation of death and injuries as a result of use of firearms and
- The UN Principles on the Effective Prevention and Investigation of Extra – Legal, Arbitrary and Summary Executions which notes the importance of thorough, prompt and impartial investigation of all cases of extra–legal, arbitrary and summary executions.

Common across these conventions are the duty to investigate promptly, independently and impartially.

¹ Institute of Race Relations, 1987 quoted in Policing and Human Rights, Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work, United Nations Research Institute for Social Development, Programme paper 4, May 2004

² Ibid P 17

³ African Commission on Human and Peoples Rights at its 40th Ordinary Session, Banjul, The Gambia from 15 – 29 November 2006

Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions notes the most successful external oversight mechanisms will :

- have adequate powers to carry out comprehensive investigations of police abuses,
- be sufficiently independent from the police and the government,
- be adequately resourced,
- operate transparently and report regularly,
- have the support of the public and the government, and
- involve civil society in its work.⁴

Graham Smith, Rapporteur for the European Commission for Human Rights on Police Complaints identifies five principles for the effective investigation of complaints against the police identified through the jurisprudence of the European Court of Human Rights namely;

- Independence,
- Adequacy, meaning the capacity and capability for investigating complaints,
- Promptness,
- Public scrutiny and
- Victim involvement.⁵

4. Developments in police oversight in South Africa

Policing in South Africa over the last 10 years has seen a shift from an initially human rights centred approach to a law enforcement agenda. These developments have impacted on police oversight. The Secretariat for Safety and Security was downscaled and the ICD, since its inception, never fully resourced⁶ and left rudderless for almost five years before an Executive Director was appointed.

In 2005 the Open Society Foundation for South Africa (OSF-SA) examined the state of police oversight in South Africa in its project report on strengthening police oversight in South Africa and recommended, among others;

- *Relevant legislation be clarified.* Lack of clarity regarding the scope and powers of those engaged in police oversight has reduced the dynamism of certain bodies.
- *Increase oversight capacity.* Oversight bodies confront limited material resources and staff capacity. Overburdened and under-resourced personnel may fail to coordinate their activities, resulting in the duplication of some services, and little communication and follow-up in relation to others. The result is that there is little

⁴ Report to Human Rights Council, Fourteenth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Study on police oversight mechanisms. Geneva, 28 May 2010

⁵ Smith, G, 2008 European Commissioner for Human Rights Police Complaints

⁶ In 1998 the Department of Public Service and Administration conducted a work-study of the ICD's structure. The approved staff establishment consisted of 535 posts that would be phased in over three years effective from the 1st of April 1998. But in 2004/5 the ICD employed less than one third of this number.

scope to evaluate the impact of the work of many of these bodies and little opportunity to build confidence in communities.⁷

In October 2005 the Portfolio Committee for Safety and Security made far-reaching recommendations to the Minister of Safety and Security advocating a restructuring of the ICD.

In a 2006 review of the ICD, Mistry and Lue recommended:

- The mandate and scope of investigative functions of the ICD be refined. They believed one of the most important decisions to be made is the development of a system of prioritisation of complaints.
- The level of cooperation the ICD receives from the SAPS is unsatisfactory and needed to be improved.
- The Portfolio Committee should support the ICD as a key mechanism of police accountability.
- Accessibility of the ICD needed to be addressed.
- Investigative capacity of the ICD need to be improved with respect to
 - Number of investigators
 - Qualifications of investigative personnel
 - Training of investigative personnel
 - Information management. The use of the database as an effective management tool and research tool is being compromised by failure to input and update data.
 - Setting of realistic targets⁸

The portfolio committee on Police in its review of the 2004 -2009 term notes key issues for consideration by the incoming committee in relation to the ICD are:

- Enforcement of ICD recommendations.
- Removal of ICD from the SAPS Act: The proposed draft legislation should remove the ICD's location from the SAPS Act; and to increase the powers of the Inspectorate to include powers of search and seizure and enforcement.
- Tabling of ICD Reports: Parliament should monitor the timeous tabling in Parliament of the DVA Reports, Budget and Strategic Plans, Annual Reports and Financial Statements and ensure that sufficient details of programmes and alignment of spending are reflected for comparative and evaluation purposes.
- Review of the Domestic Violence Act: Parliament should consider reviewing the DVA in order to determine problems experienced in the implementation of the Act, as well as the reasons why many police stations are not complying with the Act. The

⁷ Civil Society Oversight over the Police in South Africa, Strengthening Police oversight in South Africa, 2002-2004 OSJI and OSF-SA Cape Town 2005

⁸ An Overview of The Independent Complaints Directorate (ICD) In The Light Of Proposals To Restructure The Directorate, Prepared For The Open Society Foundation Of South Africa, By Duxita Mistry & Melanie Lue-Dugmore, Institute For Security Studies, 25 April 2006

possibility of amending the Act should be considered in order to make compliance practical and effective.

- Implementation of key recommendations: Parliament should also follow-up on the implementation of key recommendations made in ICD Research and Annual Reports.
- Expand financial management staff structure: Parliament should continue to scrutinise progress in expanding the financial management staff structure and the implementation of sound practices to ensure that the ICD receives unqualified audit reports.
- Establishment of satellite offices and staff retention: Parliament should continue to monitor progress in the establishment of satellite offices, and measures to retain staff.⁹

5. The Independent Police Investigative Directorate Bill

5.1. Objectives

The Independent Police Investigative Directorate Bill represents a milestone in the development of independent investigative capacity in South Africa that begun with the establishment of the Police Reporting Officer and the Independent Complaints Directorate (ICD). APCOF commends the Minister of Police for taking up this challenge and initiating the Independent Police Investigate Directorate Bill.

APCOF submits that the Bill begin with a clear statements of objectives and functions of the Directorate and setting out the importance of police oversight. This can then be followed by the administrative issues relating to the appointment of the Executive Director, the national and provincial offices etc.

APCOF submits that the ss.24 and 25 relating to powers and functions be brought to the fore of the Bill and that this be preceded by a section on objectives which will at minimum include that the objective of the IPID as;

- 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

5.2. Independence

APCOF supports the development of separate legislation for the Independent Police Investigative Directorate. This promotes the idea of its independence.

⁹ Mpsi M and Whittle P, Review of the Portfolio Committee on safety and Security 2004 -2009, Parliamentary Research Unit, 7 July 2009

However, according to Alston (2010), in order to be “independent”, there must be “practical independence” and a “lack of hierarchical or institutional connection” between investigators and those implicated in abuses. Thus, there must be independence in law and in fact.¹⁰

APCOF believes the independence of the Independent Police Investigative Directorate (IPID) can be strengthened by:

1. Appointment of the Executive Director

APCOF welcomes the clear articulation of the appointment of the Executive Director. However, APCOF submits that the appointment of the Executive Director of the IPID, s.5(1) should be made in consultation with Parliament and allow for sufficient opportunity for public participation. This will strengthen the functional independence of the IPID and guard against potential conflict of interest and the perception of a conflict of interest of the IPID residing under the same ministry as that of the police.

The five year delay in the appointment of an Executive Director by the previous administration caused significant damage to the ICD and should not be allowed to be repeated. Regarding s.5(2), APCOF submits that a maximum of six months should be allowed between the departure of one executive director and the appointment of the next.

Furthermore, regarding s.5(4), the term of an Acting Director should not be longer than six months.

Likewise the removal of the Executive Director pursuant to s.5(5) should be made in consultation with Parliament, in accordance with the laws governing the public service and subject to the substantive and procedural fairness determined by appropriate disciplinary procedures.

2. Responsibilities of the Executive Director

APCOF welcomes the inclusion of s.6(3)(e) which states that the Executive Director will provide guidelines for the training of staff. APCOF believes that this facility will promote the independence of the IPID investigators and address capacity constraints. Training however needs to be independent of police institutions and must be adequately enabled and resourced through appropriate budget allocations. The Head Office component should include a training function.

APCOF submits that the IPID report to parliament and that s.6(6) be amended to clearly articulate that the Executive Director report on the activities of the

¹⁰ Report to Human Rights Council, Fourteenth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Study on police oversight mechanisms. Geneva., 28 May 2010

Directorate to Parliament on a biannual basis linked to the submission of Budgets and the tabling of Annual Reports in addition to any ad hoc request by Parliament.

3. Reporting

APCOF submits that s.9(1) compelling the IPID to report on a regular basis to the Secretariat of Police creates the potential for dual lines of accountability and should be deleted. The IPID must report to Minister of Police and Parliament. The regular meetings between the Secretariat and the ICD provided by the Consultative Forum in Chapter 4 is sufficient to maintain communication between the Secretariat and the IPID.

5.3. Powers

5.3.1. Public Prosecutions - Cooperation and Assistance

The powers of the ICD with respect to co operation and assistance are set out in Chapter 10 of the South African Police Services (SAPS) Act, 1995. Section 50(4) provides that all organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the directorate in the exercise and performance of its powers and functions. Section 53(6)(d) provides that the Executive Director may request and obtain the co-operation of any member as may be necessary to achieve the object of the Directorate.

The ICD has however noted that in exercising these powers that:

- there are often excessive delays by the Director of Public Prosecutions (DPP) in the decision to prosecute; and
- the relationship between certain DPP's and some SAPS specialised units' impact on the partiality and perception of partiality of some prosecutors.¹¹

APCOF submits that

1. Provision be made in the legislation for potential conflict of interest by the DPPs office in relation to the prosecution of cases is addressed by providing that the Executive Director be consulted on the allocation of prosecutors to cases.
2. Cases referred to the DPP by the IPID be prioritised.
3. That in order to improve co operation between the IPID and the DPP, the DPP form part of the Consultative Forum contemplated in Chap. 4.

¹¹ Investigating Torture: The New Legislative Framework and Mandate of the Independent Complaints Directorate, ICD, Wednesday 24 and Thursday 25 March 2010.

5.3.2. SAPS Cooperation and Assistance

International law requires that investigations are effective, comprehensive and independent, as well as prompt and transparent.

The ICD has noted concerns with provision of docket and evidence by the SAPS. Furthermore, ongoing problems with identification parades have been raised. Non-suspect SAPS members have been known to be reluctant to stand in parades. Tactics to delay identification parades have also been used to frustrate investigations.

In order to address often cited delays by the police to provide evidence vital to cases, APCOF submits that

1. The SAPS be compelled to assist the IPID with information, access to docket, identification parades and any material relevant to the case within two days of the request being made.
2. IPID Investigators have the powers of subpoena.
3. That penalties for non-compliance should be set out in the Bill.

5.3.3. Reporting on Compliance

APCOF welcomes the role the Secretariat of Police will play in monitoring the recommendations made by the IPID. However, APCOF believes that the legislation could be strengthened by compelling the police in s.9 to report to both the Secretary of the Police and IPID on the implementation of recommendations made to it by the IPID.

The SAPS must be compelled to report on compliance with IPID recommendation in their annual report and articulate the reasons why recommendations for discipline were not upheld and on the outcome of cases where disciplinary hearing were instituted.

It is proposed that 30 days is sufficient time within which the SAPS and municipal police services need to report on the implementation of recommendations when requested.

Further, if the IPID and Secretariat of Police do not accept the reasons provided by the SAPS on whether or not to institute disciplinary proceedings, these be referred to the Minister for decision.

Clause s.9(3) is a duplication and, as it is addressed in Chap. 4, can be deleted

5.4. Matters to be investigated

5.4.1. Reporting of cases

The SAPS Act, 1995 obliges the SAPS to report incidents of deaths in custody or as a result of police action to the ICD. Section 53(8) provides that the National or Provincial Commissioner shall notify the directorate of all cases of death in police custody or as a result of police action.

APCOF submits that a provision be included in the Bill to make it compulsory for the SAPS and the municipal police services to report all cases received and relating to the matters to be investigated and as set out in s.25 and that failure to do so is subject to sanction.

5.4.2. Criminality

APCOF submits that allegations of criminality against SAPS and municipal police services be subject to investigation. The IPID should be notified accordingly

5.4.3. Torture

5.4.3.1. Definition

APCOF submits that in the absence of legislation criminalising torture, torture be defined in the Bill and that the UN Convention Against Torture (UNCAT) definition of torture as set out in article 1(1) be used, namely,

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third party has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting on official capacity.”

5.4.3.2. Cruel Inhumane and Degrading Treatment

The UNCAT maintains that there is an indivisible and inter-related obligation to prevent Cruel, Inhuman or Degrading Treatment (CIDT) when committed by or with acquiescence of public official. APCOF submits that the matters to be investigated by the IPID in relation to s.25 (e) include CIDT.

5.4.3.3. Accusation of torture

According to the UNCAT, whenever there are 'reasonable grounds' to believe that torture and/or CIDT have taken place, the state has a duty to ensure that this is promptly investigated by competent authorities in an impartial manner. The threshold of 'reasonable grounds' for initiating an investigation is important, as it does not require a complaint to be lodged by the victim. Victims often do not report victimisation for fear of reprisal, or they are not able to complain. For the purposes of initiating an investigation, it really does not matter where the suspicion comes from. APCOF submits that s.25(e) should be expanded to allow the IPID to investigate any allegation of torture received from any source including reasonable suspicion by the IPID that torture is taking place.

5.4.3.4. Acts related to torture

According to UNCAT, not only is the act of torture prohibited, but also the attempt, instigation, incitement, superior order and instruction, consent and acquiescence, concealment, and other forms of complicity and participation must be criminalised. The UNCAT considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities. APCOF submits that these related acts be stipulated in relation to s.25(1)(e).

5.5. Rape

The IPID Bill proposes the mandatory investigation of rape by a police officer on or off duty and the rape of a detainee by other detainees in police custody. While APCOF welcomes the attention placed on these crimes, the inclusion of these crimes which will include rape in marriage by police officers will place a significant burden on IPID investigators. At minimum, the fact that the ICD are not located in every community will delay access to investigators or mean that victims will need to be interviewed twice. The Sexual Offences Act (SOA) and best practice in investigating sex crimes place a number of duties on investigators. This includes the need minimize secondary trauma, provide seamless one stop service to survivors and the positive legal duties imposed on the SAPS as provided in the SOA including assisting complainants get medico-legal examination or medical attention, are informed of their rights, and applying for and assisting in the application of compulsory HIV testing.

APCOF believes it is important that rape by police officers or in police custody be subject to independent oversight and investigation. However, given the fact that only a fraction of reported cases of rape ever result in a conviction and the capacity constraints facing the ICD are likely to continue to be faced by the IPID, this needs to be balanced with the rights of the victim. APCOF submits that regarding the mandate to investigate rape;

- The capacity of the IPID to professionally and effectively investigate rape be built as a matter of priority.

- The police *must* inform complainants of their right to lay a complaint and to contact the IPID when police members are accused of a sexual offence or the facilitation of sexual offence
- The SAPS and municipal police services must inform the IPID of all allegations of rape by a police officer on or off duty and the rape of a detainee by other detainees in police custody.
- Until a core of investigators skilled in investigating rape has been established, Investigations should remain with the SAPS but:
 - the allocation of investigating officers is agreed by the IPID
 - that only senior investigating officers with Family Child and Sexual Offences (FCS) unit be allocated such cases.
 - That the IPID will monitor these cases and/or enter cooperative arrangements with the FCS detectives and/ or be empowered to take over the investigation of the case as required.

5.6. Transnational Policing

In recent years, SAPS has become increasingly involved in joint policing and peacekeeping operations with other countries and in particular in the region. This regionalisation and transnationalisation of policing has introduced new challenges for accountability.

The accountability structure for SAPS' involvement in cross border operations depends on the nature of their contribution and the agreement with the institution/state concerned. Responsibility for accountability and discipline for misconduct by SAPS personnel generally remains with the SAPS. The SADC Agreement in Respect of Co-Operation and Mutual Assistance in the field of Crime Combating. Article 4(5) provides that hosting country will report any official who acts contrary to the agreement to the contributing country who will take the necessary action in consultation with the hosting country.

Delays, lack of transparency common to any internal system of discipline, difficulty in calling witnesses, police culture and codes of silence are perennial concerns regarding the effectiveness of internal oversight mechanisms in a domestic context and are likely to be magnified if the alleged offence occurred outside of South African territory. Effective oversight should be multi-faceted and comprise of both internal and external mechanisms. In the case of transgression outside of the territory of South Africa and in the context of cross border and peacekeeping operations, both the internal and external oversight mechanism should apply.

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

5.7. Resourcing

“An external agency must be adequately resourced and funded. There should be sufficient resources to employ skilled investigators, and the agency should have the financial capacity to undertake serious investigations. Adequate resources are essential to allowing an agency to fulfil its mandate, and can impact upon the independence of the body which, if under-resourced, may be forced to rely on the police for investigative services.”¹²

APCOF notes with concern that the budget of the ICD has not kept pace with the police budget and that as police numbers and budgets have grown the resourcing of the ICD taking into account inflation has in fact shrunk. The success of external police investigation is dependent on its capacity.

APCOF submits that the IPID must be given the resources required to fulfil its mandate. The 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.

The functions of the National Office should be expanded to include in relation to s.8(j) the submission of an annual budget to Parliament.

5.8. Public scrutiny, support and involvement of civil society

“Transparency and public reporting are of vital importance to the long-term success of an external civilian oversight agency.” “An external oversight mechanism will be more successful where it has community and political support, and where it involves civil society in its work.”¹³

APCOF welcomes the provision in ss.8(d) and (e) to provide for the analysis of information on investigations and the identification and review of legislative needs. Proactive oversight is recognised as an important tool in effective police oversight and the proactive oversight unit has produced several reports on deaths as a result of police action, non-compliance with ICD recommendations, femicide in the SAPS, suicide on the SAPS and factors contributing to SAPS non-compliance with the Domestic Violence Act. These research projects identify contributing factors to police abuses and non-compliance and allow for proactive action to be taken.

The reporting on such matters to the Secretariat promotes the uptake of the recommendations into policy inputs into policing in South Africa.

1. APCOF submits that the capacity to analyse and review in the IPID will be strengthened with the establishment of clear partnerships with civil society and

¹² Report to Human Rights Council, Fourteenth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Study on police oversight mechanisms. Geneva,, 28 May 2010

¹³ *ibid*

research organisations as provided for in the reference groups mooted in the Secretariat of Police Bill s.5(2)(a)(v)

2. Furthermore certain obligations such as the investigation of torture require public scrutiny. APCOF submits that a special subcommittee be established under the auspices of the consultative forum and be empowered to scrutinise investigations. This subcommittee must comprise of representatives of civil society, retired judges and persons whose expertise is relevant to the type of case being investigated.

5.9. Victim Involvement

APCOF submits that the IPID Bill provide for regular and consistent involvement of victims in feedback on the progress of cases. The provisions of the victim charter in respect of a victim centred and service oriented approach should be enshrined in the IPID. These provision are of particular significance to the IPID given its role in investigating particularly serious crimes of murder, rape and torture.

5.10. Witness Protection

APCOF submits that the IPID Bill clearly ensure that the complainant and witnesses are protected against intimidation as a consequence of his complaint or any evidence given. Specific facilities for witness protection need to be established in the Bill.

5.11. Management Committee

The management committee provided in Chap. 3 should be expanded to include the national office's corporate services unit, investigation and information management unit and legal services unit and training unit.

5.12. Consultative Forum

The Consultative Forum provides for the initiation of special investigations s.17(c). The matters for which the IPID is empowered to investigate is set out in s.25 and includes any matter referred to it by the Minister or MEC. This provision for the Consultative Forum to initiate investigations should therefore be deleted.

Furthermore APCOF notes that police oversight occurs at many levels and involves many agencies. Each of these agencies speak to a particular audience and play an important role in police oversight They include the Auditor General, the South African Human Rights Commission, the Public Protector and the Planning and Evaluation Unit in the Presidency. It is important that these agencies meet on a regular basis and, where necessary, collaborate and co-ordinate in the fulfilment of their mandates. APCOF submits that the consultative forum be expanded to include these entities

6. Internal Police Oversight Systems

Effective policing oversight operates on three levels, State and Government control, Social or Civilian Control and Internal Control.¹⁴ Each of these spheres of oversight is important and together is able to provide for a comprehensive system of accountability.

Without strong external systems, the police are simply left to police themselves. Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result.¹⁵

Without a strong internal system of oversight within police services for example, external systems are hamstrung. In such cases, external oversight bodies are often unable to secure the cooperation required from the police to be able to take corrective action. Action which does not require prosecution but internal discipline goes unchecked. The absence of an internal system also has the negative effect of reducing the need of the police organisation to take ownership for managing the errant behaviour of its members.

Likewise social or civilian control is important in communicating actions and outcome. It is an important facility in promoting confidence in the work of civilian oversight bodies and can play a significant role in advocacy efforts for reform.

APCOF believes effective police oversight occurs when systems of internal and external accountability are strong.

However police often attempt to avoid accountability of internal enquiries through:

- Cover up, misplacing and destroying evidence;
- Delaying and avoiding internal disciplinary processes;
- Superficially applying the internal disciplinary processes;
- Limiting access by the complainants to the disciplinary process; and
- Inappropriate sanctions

APCOF submits that 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.

The Police Service Commission of Nigeria is a civilian structure and has the power to appoint persons to offices (other than the Inspector-General of Police) in the Nigeria Police Force and to dismiss and exercise disciplinary control over persons holding the said office.

¹⁴ Stone, C and Ward, R, "Democratic Policing, A framework for action," *Policing and Society* 10, 2000

¹⁵ Report to Human Rights Council, Fourteenth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Study on police oversight mechanisms. Geneva, 28 May 2010

It is also able to formulate policies and guidelines for the appointment, promotion, discipline and dismissal of officers of the Nigeria Police Force and to identify factors inhibiting and undermining discipline in the Nigeria Police Force.

7. Conclusion

APCOF welcomes the opportunity to comment on the IPID Bill and we remain willing to assist the Committee and state our intention to make an oral submission to the Committee.