



African Policing Civilian Oversight Forum

Report on a roundtable discussion on Independent Police Investigative Directorate (IPID) and the broader challenges related to its current modelling and performance 22 October 2019

1. Introduction

Recent allegations of malpractice at the Independent Police Investigative Directorate (IPID) regarding the inappropriate closure of cases casts light both on the importance and the vulnerability of the institution. IPID is a key mechanism of police oversight in South Africa and a leader on the continent. IPID is also bracing for the appointment of an Executive Director, the recent history of which exposed a further fault line in its independence. Despite the opportunity provided to Parliament to craft a provision for a transparent process for the appointment of the Executive Director based on merit, with a strong role for Parliament, the appointment process remains firmly in the purview of the Minister, who is also the Minister of Police.

On 22 October 2019, APCOF facilitated a roundtable discussion on the Independent Police Investigative Directorate. The discussion was attended by key stakeholders from various civil society organisations and representatives of other interested groups, which include Social Justice Coalition, Western Cape Police Ombudsman and Western Cape Department of Community Safety.

During the discussion, presentations were made on the capacity of IPID to discharge its duties as set out in the law, the power of parliament to exercise legislative oversight over IPID and its operations and the question of the independence of IPID and the significance of broadening the concept to cover other vital processes such as appointment and resourcing. Alternative models available for independent police oversight were also examined.

APCOF is grateful to the support of the Open Society Foundations of South Africa for supporting this dialogue.

2. Presentations

David Bruce, an independent researcher, noted that allegations of inappropriate closure of cases made against IPID are indicative of a serious, underlying problem of police criminality in the country. In his view, the key question is whether IPID is making any significant contribution to improve the conduct of police officials. In his opinion it is questionable whether IPID is making any substantive contribution to ensure improvement in the conduct of police officers. He noted further that allegations of inappropriate case closure raise concerns about the manner in which IPID determines which cases to pursue. As a result, he argued that IPID should be more transparent about the criteria it applies to prioritize cases; provide evidence that such criteria are being applied in a consistent fashion and inform the complainants about this process. He also emphasised that instead of embracing a general assumption that police cannot investigate themselves and that one needs an external oversight body to conduct investigations, there is need to exert more pressure on police themselves to demonstrate that they are doing what is necessary to ensure proper conduct on their part and that IPID's mandate should empower it to verify this. For him, the present police oversight system is grappling with a number of challenges, which include the following. Firstly, he posited that IPID is significantly under-resourced. He demonstrated this point by providing a comparative analysis between IPID's annual budget with that of Police Ombudsman for Northern Ireland (PONI), a body that performs similar oversight functions as IPID. PONI is allocated a budget of R133m to oversee complaints against police force of 6774 personnel while IPID is allowed R197m to conduct oversight over a police force of approximately 150,885 SAPS members and 10000 MPDs. PONI receives approximately 2600 complaints annually while IPID faced 5829 cases in 2018/19 reporting year. Secondly, he asserted that IPID's performance management system is problematic. Instead of focusing on the quality of investigations conducted, it emphasizes on the number of cases completed. Finally, he observed that the present system shifts the responsibility of improving police conduct from police to a poorly-resourced IPID. Additionally, he underlined that given the financial circumstances in which South Africa finds itself, it is inconceivable that IPID's challenges will be addressed through resourcing. In conclusion, he presented the following recommendations:

- Replace 'police can't investigate themselves' model with 'police must be fully accountable for adhering to high standards of conduct' model
- Reject assumptions and establish system in which IPID is better able to contribute to ensuring that SAPS and MPSs are held fully accountable for the conduct of their members
- IPID's responsibilities should include ensuring that cases are properly investigated (not the same as being responsible for investigations) and that communication with complainants adheres to consistent standards.

Chumile Sali, Project Officer at APCOF, made a presentation on the independence of IPID. He stated that the IPID Act requires more extensive amendment than what has presently been suggested to secure compliance with Constitutional Court Judgement, which declared that the

IPID Act does not contain sufficient safeguards to ensure the independent functioning of IPIDs Executive Director and IPID itself. He observed that there are three essential conditions of independence, as identified by the Constitutional Court: Independence regarding security of tenure, which dictates the availability of legislative and institutional mechanisms that protect the primary decision maker of an institution from dismissal without just cause; institutional independence, which require structural relations that secure the independence of the institution from undue influence in the performance of its functions; and financial independence and security, which demands the institution to have the necessary funds to execute its constitutional obligations without arbitrary interference by the executive. He emphasised that ideally a parliamentary committee should be established to initiate the appointment of the Executive Director of IPID in an open, transparent and competitive recruitment process. This, he noted, should be followed by a confirmation by the National Assembly, and only then should the Minister of Police take steps to formalise the appointment. Further, he voiced concern that no criteria has been established for the suspension, discipline or removal of the Executive Director on grounds such as; misconduct, incapacity, incompetence or if the individual is no longer fit and proper to hold the office of the Executive Director. He submitted that it is vital for such a process to be established in the IPID Act.

Annelize Van Wyk, a former member of parliament and past chair of portfolio committee on police, discussed the role of parliament in holding IPID accountable. She highlighted that the Constitution does not establish IPID as a chapter 9 institution and remarked that it may be apposite to include IPID in chapter 9 institution to strengthen its independence. She argued that oversight is a continuous and consistent monitoring of actions of government against its targets and that this is done to ensure government is answerable to the people. She observed that in addition to drafting the legislation that governs the affairs of IPID, parliament oversees the institution's functions. This, for instance, include through examining the entity's budget and annual performance plan – in which the body sets out its target for the next financial year; scrutinising its annual report – which is a vital tool for oversight as it serves as a link between achievement of outcomes and money spent; visiting the offices of IPID both at the national and provincial level; and questioning the executive. She noted that in exercising its oversight functions, portfolio committee on police is impeded by, inter alia, a complex policing environment in the country and a dearth of research. She recommended that the portfolio committee should enhance its research capacity and forge partnership with civil society organisations and academics.

3. Conclusion

In conclusion, stakeholders agreed that there is need establish mechanisms to ensure IPID effectively performs its oversight functions as set out in the law. It was felt that improved resource allocation may be a viable way of strengthening the institution, but that it is debatable whether this will be obtained. Stakeholders also identified the need to require police officers to take necessary steps geared towards improving their actions, to ease IPIDs workload.