



African Policing Civilian Oversight Forum

15 December 2022

Mr N Mtawana

Civilian Secretariat for Police Service

By email: Comments.lpidBill@csp.gov.za

Dear Mr Mtawana

Re: Submission in response to invitation for public comments: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL 2022

We refer to the invitation for public comment on the draft Independent Police Investigative Directorate Bill, published in the Government Gazette Vol. 47373 on 28 October 2022. The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to make this written submission to the Civilian Secretariat for Police Service, which it attaches below. APCOF is available to make further written or oral submissions on the draft Bill, or to answer any questions or provide any additional information in follow up to this submission.

Yours sincerely,

Sean Tait
Director
African Policing Civilian Oversight Forum
sean@apcof.org.za
0828525772

African Policing Civilian Oversight Forum

Building 23B, Suite 16, Waverley Business Park, Wyecroft Road, Mowbray, Cape Town, 7925

PostNet Suite 63 Private Bag x11, Mowbray, 7705

Tel: +27 21 447 2415

www.apcof.org.za

Trust no. IT1900/2012

PBO 930041858, NPO 119 688- NPO

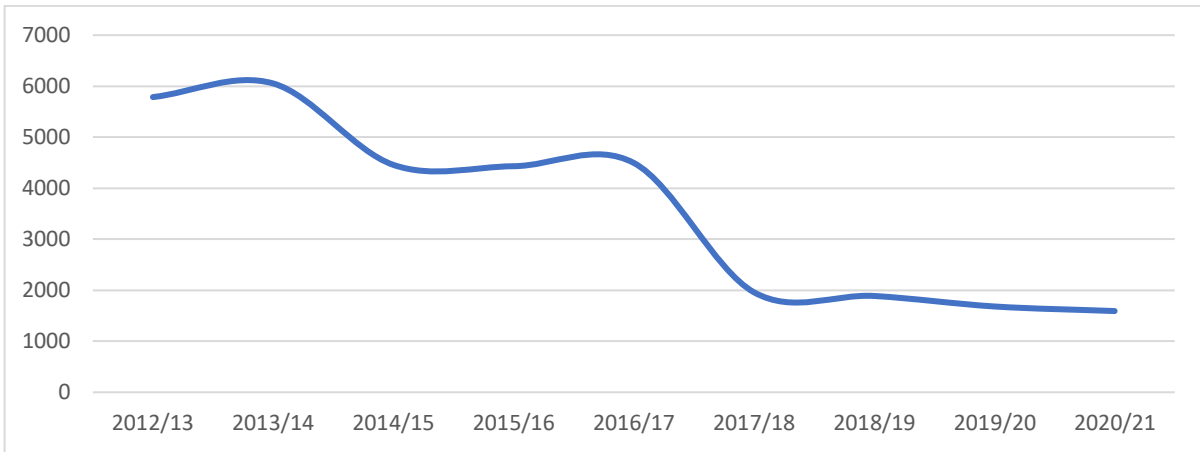
Trustees: T Gandidze (Chair), G Cronje (Treasurer), P Tlakula, E van der Spuy, A Van Wyk, S Africa

1. Introduction

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to provide this written submission in response to the call for public comment on the Independent Police Investigative Directorate Bill (the Bill). APCOF commends the Civilian Secretariat for Police Service (CSPS) for inviting public comment in respect of this draft Bill. We are encouraged by the stated aim of the Bill to:

- Amend the Independent Police Investigative Directorate Act, 2011 (the Act) to provide that the Directorate must be impartial and must exercise its powers and functions without fear, favour, prejudice, or undue influence in order to give effect to the judgment of the Constitutional Court in the case of *McBride v Minister of Police and Another*;
- Provide for a more open and transparent process for the appointment of the Executive Director of the Directorate;
- Amend other provisions of the Act to ensure that the Directorate executes its mandate effectively and efficiently; and
- Provide for matters connected therewith.

However, APCOF is disappointed that once again the CSPS has opted for a minimalist approach to the amendment of the Act. This, despite undertakings of the Portfolio Committee on Police at the time of debate and passing of the Independent Police Investigative Directorate Amendment Act 27 of 2019 that a comprehensive review of the Act was necessary. APCOF submits that the Act requires broader amendment than what is currently proposed in order to ensure full implementation of the Constitutional Court decision. This is particularly so when read alongside subsequent judgments of the Gauteng High Court, and the findings of the Marikana Commission of Inquiry. We have sought to limit our comments only in respect of independence, the appointment, suspension and removal of the Executive Director from office. However, given the current challenges in internal discipline with the SAPS and the significant and consistent decline in disciplinary cases in SAPS over recent years as per the table below, we also propose consideration be given to section 30, Disciplinary Recommendations.



Data of total SAPS Disciplinary cases analysed by the African Criminal Justice Reform based on SAPS Annual reports

2. Independence

We submit that Section 4 can be strengthened by the inclusion of the following;

(a) by the substitution of subsection (1) of the following paragraph:

“(1) The Directorate functions institutionally and operationally independent[**Iy**] from the South African Police Service.”.

(b) by the addition of the following subsection after the proposed subsection (2) -

“(3) The Directorate has full legal capacity, independent and is subject only to the Constitution and the law, including this Act; and”;

3. Appointment of the Executive Director

We submit that the appointment process proposed in the Bill effectively removes Parliament from the process. In order to give full effect to the Glenister and McBride Judgements, it is critical to bolster the independence of the process, and that Parliament is functionally and effectively involved in the process of nominating the successful candidate for subsequent consideration by the Executive. In the case of IPID, which continues to fall under the line responsibility of the Minister of Police, we contend that this is essential.

While we appreciate the responsibility of the Minister, we are equally informed by the current crisis - real and perceived - in terms of police integrity and corruption. According to Corruption Watch, the policing sector accounted for the highest percentage of reported cases of alleged corruption in 2021. If we are seeking to build trust in the IPID as an organisation to fulfil its role, and the ownership of South Africans in the institution as a whole, of the appointment process and the person to lead this essential institution, is needed.

We therefore propose that the recruitment process be amended as follows.

6(1) Whenever there is a vacancy, a committee established by the National Assembly shall initiate the appointment of the Executive Director through an open, transparent and competitive recruitment process.

(2) The recruitment process referred to in subsection (1) shall be by way of applications, invitations or nominations.

(3) The Executive Director must -

(a) be a South African citizen;

(b) be a fit and proper person;

(c) be a suitably qualified person and must possess an appropriate qualification in law, administration of criminal justice or forensic investigation; and

(d) have knowledge and experience in the administration of justice, public administration and public finance management for a cumulative period of at least 10 years.

(4) The Executive Director shall be appointed for a period of non-renewable fixed term of not shorter than seven years and not exceeding ten years.

(5) The period referred to in subsection (4) is to be determined at the time of the appointment.

(6) The committee must submit its report and recommendations relating to the provisions of subsections (1) and (4) to the National Assembly after concluding the recruitment process.

(7) The report and recommendations referred to in subsection (6) shall be submitted within 14 days to the National Assembly if Parliament is in session or if Parliament is not then in session, within 14 days after its next ensuing session.

(8) The National Assembly shall, within 30 working days of the receipt of the report and recommendation by the committee referred to in subsection (6), confirm or reject such recommendation which shall be adopted with a supporting vote of at 60% of the members of the National Assembly.

(9) The period of 30 working days referred to in subsection (8) shall mean the period when Parliament is in session.

(10) The Executive Director shall not perform remunerative work outside his or her official duties.

(11) The Minister shall after confirmation of the National Assembly take steps to formalise the appointment of a person as the Executive Director.

(12) In the case of a vacancy, the National Assembly shall, fill the vacancy within a reasonable period of time, which must not exceed six months.

(13) While the appointment of a person to the office of the Executive Director is pending, any of the persons appointed in terms of section 8(1)(b), (c), (d), (f) or (g) respectively, shall be appointed by the Minister subject to the approval of the National Assembly to perform such functions.

We further submit that the process referred to in 6 (1) mirror that of the Auditor General and Public Protector as set out in Section 193(4)-(5) of the Constitution. This provides that the Public Protector and Auditor-General are appointed by the President, (or in this case the Minister) after nomination by a committee of

the National Assembly composed proportionally of members of all political parties represented in the National Assembly and approved by a resolution adopted with a supporting vote of at least 60% of all members of the National Assembly. Section 193(6) provides further that the recommendation process must allow for the involvement of civil society.

4. Removal and suspension of the Executive Director

We note that the operationalisation of section 6A of the Independent Police Investigative Directorate Amendment Act 27 of 2019 is still outstanding. The Amendment Act was gazetted on 3 June 2020 and we are now at the close of 2022. In this regard, we observe that section 237 of the Constitution requires all constitutional obligations to be performed diligently and without delay. We further submit that the yet to be operationalised provisions contained in section 6A of the Amendment Act, that seek to regulate the removal and suspension of the Executive Director of IPID, do not provide clear guidance. We are disappointed that this was not considered by the CSPA in drafting the Bill. We believe these provisions can be strengthened.

5. Disciplinary Recommendations

We submit that the following definition is inserted after the heading of section 30:

(a) For the purposes of this section the following definition is inserted:

“initiate” means the initiation of the disciplinary proceedings based on the investigation report by the Directorate by –

(a) appointing the chairperson and the employer representative;

(b) serving the charge sheet upon the member; and

(c) holding the first sitting within 30 days of the receipt of the recommendations from the Directorate.

(b) by the substitution of section 30 of the following section:

6. Conclusion

We welcome the opportunity to make this submission and remain available to provide any further motivation or provide an oral submission as may be required.

7. About APCOF

The African Policing Civilian Oversight Forum (APCOF) is a not-for-profit trust working on issues of police accountability and governance in Africa. APCOF promotes the values which the establishment of civilian oversight seeks to achieve, namely: assisting to restore public confidence; developing a culture of human rights, and promoting integrity and transparency within the police; and maintaining good working relationships between the police and communities.

While APCOF is active in the field of policing, its work is located in the broader paradigm of promoting democratic governance and the rule of law. APCOF emerged from the recognition of the need to promote police accountability in Africa. The establishment of APCOF was driven by the view that African knowledge, expertise and networks were essential drivers for achieving greater accountability. APCOF was established in 2004 as a coalition of police oversight bodies and practitioners and was registered in 2006 as a not-for-profit company under South African company law. In 2012, APCOF was reregistered as a trust in a move that shifted the role of APCOF's continental network from a fiduciary role to a strategic one. This allowed flexibility for new members to join while maintaining a cost-effective system of administrative governance, which is now invested in the APCOF Trust.

Objectives of APCOF:

- Promote police accountability;
- Advocate for, and support the development of, institutions and mechanisms for oversight of the police;
- Create and sustain public confidence in the police;
- Develop a culture of good governance, human rights, integrity, transparency and accountability within the police; and
- Promote good working relationships between the police, civil society and community.