



African Policing Civilian Oversight Forum



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Dear Mr Ramafoko

### **Submission on the draft Independent Police Investigative Directorate Regulations**

#### **Introduction**

The African Policing Civilian Oversight Forum (APCOF) and the Institute for Security Studies welcome the opportunity to make this submission on the draft IPID regulations 2025.

APCOF is a civil society organisation based in Cape Town that works to strengthen police accountability and promote rights-based policing in Africa. Since 2004, APCOF have contributed to legislative, policy, and institutional reform processes in South Africa, drawing on comparative experiences and international standards.

The Institute for Security Studies (ISS) is a Pan African, Non-Profit Organisation (NPO) that aims to build knowledge and skills to enhance human security and achieve sustainable peace and prosperity. The aim of the ISS is to support African policy and strategy development and implementation, enabling informed decisions on how to address Africa's human security challenges. The ISS's Justice and Violence Prevention Programme (JVPP) focuses primarily on policing, criminal justice, and the prevention of violence and corruption in South Africa.

This submission:

- Motivates that the Regulations should be amended to provide that case prioritisation be included as a mandatory part of the case intake process. We are aware that this is included in the 2024 IPID Standard Operating procedure (SOP), but we believe it should also be provided for in the Regulations to become fully formalised as part of the case management system. The current draft regulations imply that the screening of cases by IPID focuses solely on whether they fall within IPID's mandate.
- Proposes revisions to regulation 29 regarding deaths as a result of police action and regulation 30(2)(d) regarding the investigation of police corruption.

## Definitions

In line with our submission the the Regulations should be amended to provide that case prioritisation be included as a mandatory part of the case intake process, we propose that the following definitions be incorporated in Chapter 1 as part of Regulation 1.

- **Case screening** - A system for assessing whether cases fall within IPID's mandate and classifying them in terms of **priority**. The screening process for a case that falls within IPID's mandate is completed when a case is classified as 'top priority', 'high priority' or 'general investigation' and referred for investigation, in line with this classification, to an appropriate component of IPID's investigative staff. Case screening may be completed either through the assessment of a case upon receipt or following a preliminary investigation. Guidelines with regard to the determination of cases as 'top priority', 'high priority' or 'general investigation' are provided in Schedule 1 to these Regulations.
- **Preliminary investigation**– An investigation that forms part of the case screening process that is intended to assist the Case Intake Committee (CIC) in making an initial determination as to whether a case should be classified as 'top priority', 'high priority' or 'general investigation'.
- **Priority Assessment** - Key factors to assess when screening cases are, the seriousness of cases, the solvability of cases and other factors including: evidence that deaths may be related to criminal conduct, where cases are linked to 'repeat offenders' including South African Police Service (SAPS) or Metro Police Service (MPS) members, units, stations or types of operations that are repeatedly linked to cases; whether cases are, or are likely to become high profile cases attracting public and media interest; serious cases involving members of senior rank; referral in the public interest by the Minister, Member of Parliament or the Presidency.
- **High profile case** – a serious case that has also attracted or is likely to attract substantial public and media interest and be the subject of ongoing public media attention. Some cases are already 'high profile' when they are received by IPID. Serious cases involving members of SAPS or metro police top management should also be expected to be 'high profile', and be classified as such, as they are likely to attract media interest.
- **High value case** - corruption case involving an amount of money greater than R50 000.

- **Seriousness** – determination of cases’ priority status (see Schedule 1) is influenced by the seriousness of the case as well as other factors. Guidelines on the determination of seriousness are provided in Schedule 2.
- **Solvability** – cases are either high, medium or low solvability depending on whether:
  - It is likely that the case involves a criminal offence and/or disciplinary violation.
  - The available evidence shows that the alleged act (or omission) was committed by a SAPS or MPS member.
  - It is likely that the police member(s) responsible can be identified and charged (where a suspect is deceased, this possibility is eliminated).
  - Evidence can be found that may corroborate the complainant's account (particularly if the complainant is an individual).
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### Case Screening

We propose a new subclauses 5 and 6 be included under Case screening (currently Section 27) as follows:

(5) Following receipt of a case, and determination that it falls with IPID’s mandate the Case Intake Committee, Provincial Management or the Executive Director must assign a case **priority** status to the case. Cases are to be classified as top priority, high priority or general investigation. Top priority cases should be allocated to more experienced investigators or to the National Specialised Investigation Team (NSIT). Prioritisation may be assigned on the facts available or by assigning the case for preliminary investigation to assess factors relevant to prioritisation.

(6) Factors to be considered when assigning the case priority level include:

- Seriousness – guidelines on the determination of seriousness are provided in Schedule 2.
- Solvability - as defined under Regulation 1.
- The seniority of SAPS or MPS personnel involved or other reasons as a result of which cases are or are likely to be high profile.

### Referral for investigation

In light of the above we recommend that sub clause 2 in sections *Investigation of Deaths in Custody* (currently Section 28 of the regulations), *Investigation of Deaths as a result of Police Action* (currently Section 29), *Investigation of Criminal Matters* (currently section 30), *Investigation of Attempted Murder* (currently clause 31) and *Investigation of Referred Matters* (currently section 32) be amended to the effect that *The Executive Director or the relevant provincial head, as the case may be, must on the recommendation of the case intake committee designate an investigator to investigate.*

## Incorporation of Schedule 1 and 2

In line with the above proposals we propose that the attached Schedule 1 and Schedule 2 be added as addendums to the regulations. The Schedules are intended to support IPID CIC's and other personnel in applying consistent criteria with respect to assigning case priority.

## Proposed revisions regarding the investigation of deaths as a result of police action and police corruption

### Investigation of deaths as a result of police action

Draft Regulation 29(1) and 29(2) imply that the IPID mandate to investigate death as a result of police action in terms of Section 28(1)(b) of the IPID Act should be modified to refer to the 'death of a person as a result of police or municipal police action or omission or both'. We believe that this modification should not be retained for the following reasons:

- i. It is reasonable to hold SAPS and MPS members accountable for omissions that lead to the death of a person who is in custody. The obligations of SAPS members to provide the necessary care to people in their custody are outlined in national instructions relating to arrest and the provision of medical care to people in custody. Any deaths as a result of their omission to uphold such standards of care would be investigated under Section 28(1)(a) of the IPID Act.
- ii. However beyond this the concept of 'deaths as a result of omissions' by the police is potentially infinite and may in theory apply to a murder committed by any person, and even acts of suicide or accidental death, in South Africa in so far as they may be seen to be related to shortcomings of police crime investigation, or inadequate implementation of legislation such as the Firearms Control Act. The reference to deaths related to omissions therefore creates a situation where there is no practical limit to deaths which fall within the IPID mandate.

### Investigation of corruption

Read with the opening line, draft Regulation 30(2), sub-regulation(d) provides that 'The [IPID] Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a complaint... that a member of the South African Police Service or the Municipal Police Service is involved in corruption where the value of the corruption is equal to the value of R 5000 or above, where the value is below R 5000, the Executive Director or the relevant provincial head may consider the matter to be investigated.

We believe that this provision is not motivated for and is likely to be counterproductive. Reasons for this include that:

- i. There is no clear or obvious motivation for this approach. All corruption cases are serious cases. We believe that the level of investigative attention that cases receive should include considerations of seriousness (which is not limited to the amount of money involved) as well as solvability. In particular cases linked to organised crime networks should all be regarded as being of a high level of seriousness. The amount of money involved may be seen as one indicator, but cases of small value, possibly involving requests or demands for small bribes, and possibly involving elements of extortion, should not necessarily be regarded as of lower priority, particularly where there is a strong possibility of solving these cases.

- ii. The National Anti-Corruption Advisory Council (NACAC) report recommends the establishment of a case management committee comprised of senior representatives from IDAC, the NPA, DPCI, SAPS, IPID, and the (still to be established) Office of Public Integrity in order to ‘coordinate investigations, allocate cases, and monitor progress’.<sup>1</sup> Along with IPID, IDAC, the DPCI, and the SAPS Anti-Corruption Investigation Unit, all are currently involved in investigating police corruption. It is essential that questions about the allocation of cases, particularly complex ones that involve elements of police corruption, are assigned to the agency best equipped to investigate them.

We therefore propose that this regulation be amended to provide that

‘The [IPID] Executive Director or the relevant provincial head, as the case may be, may designate an investigator to investigate a complaint... that a member of the South African Police Service or the Municipal Police Service is involved in corruption or may refer the matter to Directorate for Priority Crime Investigation, the Investigating Directorate Against Corruption, or the South African Police Service Anti-Corruption Investigation Unit subject to the direction of any Case Management Committee that is established to coordinate investigative responses to corruption by these agencies.

## Conclusion

Again, APCOF and the ISS welcome the opportunity to make a submission on the Draft Regulations and are available to provide further input should this be necessary.

Yours sincerely

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<sup>1</sup> National Anti-corruption Advisory Council, Final Report To the President, the Cabinet, and the Country, August 2025, page 7, <https://www.thepresidency.gov.za/sites/default/files/2025-08/National%20Anti-Corruption%20Advisory%20Council%20Final%20Report%202025.pdf>

Proposed Schedule 1 – Guidelines for classifying cases as top priority, high priority and general investigation

Priority	Cases to be included
Top priority	<ul style="list-style-type: none"> <li>• High value corruption cases (see definition of ‘High value’) involving police of senior rank.</li> <li>• Other <b>serious</b> cases involving senior police (less-<b>serious</b> cases are either ‘high priority’ or ‘general investigations’ depending on criteria provided below unless determined otherwise by the ED).</li> <li>• High profile <b>serious</b> cases (see definition of ‘high profile’).</li> <li>• Rape cases falling under Section 28(1)(d).</li> <li>• Torture cases.</li> <li>• Any death incident involving more than one death.</li> <li>• Other cases determined by the ED.</li> </ul>
High priority	<ul style="list-style-type: none"> <li>• High solvability cases (not already classified as top priority) including both <b>serious</b> and less <b>serious</b> cases.</li> <li>• Deaths in custody and as a result of police action where <b>preliminary investigation</b> provides evidence or allegations of criminal conduct or breach of National Instructions by police.</li> <li>• Other <b>serious</b> low solvability cases involving allegations of attempted murder, assault GBH, rape falling under Section 28(1)(e), or corruption.</li> <li>• Cases linked to problem officers, units, stations or operations.</li> </ul>
General investigation	<ul style="list-style-type: none"> <li>• Deaths in custody and as a result of police action where <b>preliminary investigation</b> does not provide evidence or allegations of criminal conduct or breach of National Instructions by police.</li> <li>• Other low solvability cases <u>not involving</u> allegations of murder, attempted murder, rape or corruption.</li> </ul>

Guidelines on determination of cases as ‘most serious’, ‘serious’ or ‘less serious’ are provided in Schedule 2.

Schedule 2 – Proposed guidelines regarding determination of case seriousness

Categories of cases falling within IPID mandate as provided for in Section 28 of the IPID Act	Main scenarios	Seriousness (guideline)	Remarks
<p>(1) (a) any deaths in the custody of a member of the SAPS, or a member of a municipal police service</p>	<p>1. Person in custody dies following an assault by a police officer (assault may be in or outside of custody) or by another person</p>	<p>Serious</p>	<p>Whether cases should be investigated under Scenario 1, 2, 3 or 4 is to be determined by preliminary investigation.</p> <p>Scenario 3 is classified as serious not because of offence seriousness but in terms of protection of life principle.</p>
	<p>2. Person in custody dies following torture.</p>	<p>Most serious</p>	
	<p>3. Preliminary investigation indicates possibility of misconduct related to death in custody linked to failure to adhere to National Instructions regarding provision of medical treatment or other provisions for ensuring safety of persons in custody.</p>	<p>Serious</p>	
	<p>4. Preliminary investigation indicates death from natural causes, suicide, or injuries sustained before custody, not linked to police failure to adhere to National Instructions.</p>	<p>Less serious</p>	
<p>(1) (b) deaths as a result of the actions of a member of the SAPS or a member of a municipal police service, whether such member was on or off duty</p>	<p>5. Death linked to police action in the line of duty involving multiple (more than 1) deaths.</p>	<p>Most serious</p>	
	<p>6. Death linked to police action in the line of duty involving live ammunition (whether on or off duty).</p>	<p>Serious</p>	
	<p>7. Death linked to police action not in the line of duty (may be on or off duty) involving use of live ammunition including</p>	<p>Serious</p>	

	intimate-femicide or other dispute.		
	8. Same as previous but including suicide by the perpetrator following the incident.	Serious	SOPS provide that case must be referred to SAPS following preliminary investigation. <sup>i</sup>
	9. Death following assault by police	Serious	
	10. Death resulting from police use of rubber bullets (fired by shotgun) or other less-lethal weapons allegedly resulting in fatality.	Serious	Solvability potential is extremely low (see solvability discussion).
	11. Police vehicle driven by police officer involved in fatal accident (may be on or off-duty).	Serious	
	12. Private vehicle driven by police officer involved in fatal accident.	Serious	Some IPID personnel question whether this falls within IPID mandate
(1) (d) rape by a member of the SAPS or a member of a municipal police service, whether such member was on or off duty;	13. Any rape by a police officer on duty or off-duty whether victim is in custody or not	Most Serious	
(1) (e) rape of any person while that person is in [police] the custody of a member of the SAPS or a member of a municipal police service.	14. Cases recorded in this category generally involve persons in custody who are raped by other persons in custody or where the identity of the alleged perpetrator is unknown. If the alleged perpetrator is a police officer IPID records this under Section 28(1)(d).	Serious	The IPID investigation typically focuses on the police culpability (usually focused on compliance with National Instructions). The criminal case (if it does not involve a police member) is

			referred to the SAPS.
(1) (f) any complaint of —  (i) torture, as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), committed by a member of the SAPS or a member of a municipal police service; or  (ii) assault of any person, with the intention to cause grievous bodily harm, by a member of the SAPS or a member of a municipal police service	15. Torture.	Most serious	
	16. Other cases of assault qualifying as cases of assault GBH.	Serious	
	17. Cases of assault not related to performance of police duties qualifying as alleged assault GBH.	Serious	
(1) (g) corruption matters within the police <sup>ii</sup>	18. Corruption cases involving procurement, collusion with gang members or other organised crime groups or large amounts of money (amounts of R50 000 or above).	Most serious	
	19. Other corruption cases involving requests or demands for bribes and possibly involving element of extortion.	Serious	
(1) (gA) attempted murder in	20. Complaint relating to person injured non-fatally by discharge of an official firearm (live	Serious	

relation to a discharge of a firearm, or through the use of any weapon or instrument, by a member of the SAPS or a member of a municipal police service; and	ammunition) during arrest, investigation or other law enforcement action.		
	21. Complaint relating to person injured non-fatally by discharge of an official firearm (live ammunition) linked to domestic violence or other interpersonal dispute involving police member.	Serious	
	22. Complaint similar to Scenario 20 or 21 involving use of personal firearm	Serious	Does not fall under Section 21(c) but should be treated as serious and investigated under 28(1)(h).
	23. Complaints relating to discharge of rubber bullets (fired by shotgun) by police involving non-fatal injury but leading to potential loss of eyesight, other permanent disability or other serious injury. <sup>iii</sup>	Serious	This should be investigated under Section 28 (1)(f)(ii) if it is not a case of attempted murder
	24. Complaints relating to use of rubber bullets (fired by shotgun) by police involving less-serious non-fatal injury.	Less serious	This should be investigated under Section 28 (1)(f)(ii) if it is not a case of attempted murder.
	25. Complaints similar to Scenario 23 or 24 involving use of weapons or instruments that do not qualify as firearms.	Serious or less serious depending on type of injury.	This should be investigated under Section 28 (1)(f)(ii) if it is not a case of attempted murder.

<p>(1) (h) any other matter referred to it under this section.<sup>iv</sup></p>	<p>26. Death cases registered and investigated under Section 28(1)(h) as provided for in 2021 IPID SOPS.<sup>v</sup></p>	<p>Serious</p>	
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<sup>i</sup> See IPID, 2021 draft SOPS [Note 14], 8.10.5

<sup>ii</sup> Section 28(1)(g) refers in full to ‘corruption, as contemplated in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and any other applicable law, within the South African Police Service, or a municipal police service, initiated by the Executive Director, or a provincial head, on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC, the National Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, executive head of the relevant municipal police service, municipal manager or the Secretary, as the case may be;

<sup>iii</sup> The CSPS use of force policy defines serious physical injury as ‘any injury that results in hospitalization and that creates a substantial risk of death, serious disfigurement, disability or serious loss or impairment of the functioning of any body part or organ or involves serious concussive impact to the head. (Civilian Secretariat for Police. Professional Use of Force – Policy and Guidelines for the SAPS, September 2018, 22 [http://www.policeseecretariat.gov.za/downloads/policies/Use\\_Force\\_Policy.pdf](http://www.policeseecretariat.gov.za/downloads/policies/Use_Force_Policy.pdf)).

<sup>iv</sup> Section 28(1) (h) refers in full to ‘any other matter referred to it as a result of a decision by the Executive Director, or a provincial head, or if so requested by the Minister, an MEC, National Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, executive head of the relevant municipal police service, municipal manager, or the Secretary, as the case may be;

<sup>v</sup> See IPID, 2021 draft SOPS [Note 14], at 8.4.7.