INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE BILL, 2010

ISS CONFERENCE - POLICING IN SOUTH AFRICA

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Kloofzhich Lodge
MULDERSDRIFT

Presented by
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The main objective of the Independent Police Investigative Directorate Bill is to make provision for the establishment of the Independent Police Investigative Directorate to ensure effective independent oversight of the South African Police Service and the Municipal Police Services.
Change in name

- The name of the ICD will be changed to the INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID).

- The rational of the name change is to rebrand the Directorate to focus on investigations rather than being merely a recipient of complaints.

- The IPID will be an investigative driven organisation.

- The thrust of the work of the Directorate is to address systemic problems within the police service.

- The refocusing of the Directorate ensures that the police service operates within the norms and standards of the Constitution and ensures an ethos that promotes proper police conduct.
The Bill envisages to—

- make provision for the establishment of an Independent Police Investigative Directorate;
- regulate the functions of the Directorate;
- provide for the establishment of a Management Committee and Consultative Forum and their respective functions;
- provide for the appointment and powers of investigators;
- provide for reporting obligations and cooperation by members of the South African Police Service and Municipal Police Services;
- to provide for transitional arrangements; and
- to provide for the repeal and amendment of certain laws; and to provide for matters connected therewith.
The objects of the Bill are to –

- give effect to the provision of section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;

- ensure Independent oversight of the South African Police Service and Municipal Police Services;

- align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;

- provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;

- make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;

- provide for close co-operation between the Directorate and the Secretariat; and

- enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.
Definitions

- Committee
- Directorate
- Executive Director
- Forum
- Investigator
- MEC
- Minister
- Municipal Police Service
- Organ of State
- Provincial Head
- Public Finance Management Act
- Public Service Act
- Secretariat
- Secretary
- Security Clearance Certificate
- South African Police Service Act
The Independent Police Investigative Directorate ("Directorate") is established

Structured at a national level with provincial offices

Functions independently from the SAPS

Each organ of state must assist the Directorate to—
  ◦ maintain its independence and impartiality; and
  ◦ perform its functions effectively
National office

- National office is established
- It is headed by the Executive Director
The **Minister** must appoint a suitably qualified person, in accordance with a procedure to be determined by the Minister.

The relevant **Parliamentary Committee** must, within 30 parliamentary working days of nomination, confirm/reject the nomination.

**Person is appointed** –
- subject to the laws governing the public service; and
- for a term (5 years), which is renewable for one additional term only.
Appointmen of Executive Director – cont

- The Minister may appoint an acting Executive Director –
  - if the Executive Director is unable to perform the functions of office; or
  - during a vacancy in the Directorate.

- In the case of a vacancy –
  - The Minister must fill the vacancy within a reasonable time, which period may not exceed one year.

- The Minister may remove the Executive Director from his or her office on account of –
  - misconduct;
  - ill health; or
  - inability to perform the duties of that office effectively.
Responsibilities of Executive Director

The **Executive Director**

- is the **accounting officer** of the Directorate;

- must ensure that –
  - proper records of all financial transactions, assets and liabilities of the Directorate are kept;
  - annual financial statements in respect of the financial year in question are prepared and submitted to the Minister for approval; and
  - the financial affairs comply with the PFMA.

- is responsible for the **appointment of the provincial heads** of each province;

- must **appoint staff** which is established in accordance with the Public Service Act;

- must direct that a **register of declaration of interest** by managers and investigators be kept in the prescribed form and manner;

- must **give guidelines** with regard to the investigation and management of cases, administration and training of staff on national and provincial level;
Criminal Offences

- The Executive Director must refer criminal offences revealed as a result of an investigation, to the **National Prosecuting Authority** for criminal prosecution and notify the Minister of such referral.

- The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy thereof to the Secretary.

Disciplinary matters

- The Executive Director must ensure that complaints regarding disciplinary matters are referred to the **National Commissioner** and where appropriate, the relevant **Provincial Commissioner**.

- Once a month the Executive Director must submit to the Minister a summary of the disciplinary matters and provide a copy thereof to the Secretary.
All recommendations which are not of a criminal or disciplinary nature must be referred to the Minister and a copy thereof must be provided to the Secretary.
Complaints – any offence

- The Executive Director may upon receipt of a complaint, cause to investigate any offence allegedly committed by any member of the South African Police Service or Municipal Police Services, and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned.

Criminal matters which fall outside scope of Directorate

- The Executive Director must refer criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation.
The Executive Director must at any time when requested to do so by the Minister or Parliament report on the activities of the Directorate to the Minister or Parliament.
Composition of national office

Consist of –

- Executive Director;
- Corporate Services Unit;
- Investigation and Information Management Unit;
- Legal Services Unit; and
- Any other unit established, subject to the approval of the Minister and Parliament.
Composition of national office - cont

- Members appointed by the **Executive Director**

- Members appointed only if member has undergone a **security screening investigation**

- The Executive Director must issue a **security clearance certificate**

- A member may at any time be subjected to a **further security screening**

- The Executive Director may, after consultation with the National Intelligence Agency (NIA), **withdraw a certificate** if he or she obtains information which causes him or her to believe that the person in question—
  - could be a security risk; or
  - acted in any manner prejudicial to the objectives of the Directorate

- If the certificate is withdrawn,
  - the person concerned is unfit to continue to hold such office; and
  - the person must be **discharged** from the Directorate
Functions of national office are to –

› give **strategic leadership** to the Directorate;

› develop and implement **policy** for the Directorate;

› oversee and monitor **performance** at provincial level and intervene to rectify challenges where necessary;

› gather, keep and analyse **information** in relation to investigations;

› identify and review **legislative needs** and report on such matters to the Secretariat;

› do **internal auditing** of the Directorate;

› provide **administrative support** to the Directorate;

› strengthen the **co-operative relationship** between the Directorate and the Secretariat;
Functions of national office – cont.

- report to the relevant MEC on matters referred to the Executive Director by the MEC;

- submit an annual report to the Minister and to Parliament;

- implement information measures to develop public awareness of the provisions of this Act;

- deal with any other matter referred to it by the Minister;

- make recommendations to the South African Police Service resulting from investigations done by the Directorate; and

- report twice a year to Parliament on the number and type of cases investigated, the recommendations, the detail and outcome of those recommendations.
The Executive Director may delegate functions.

A delegation must be in writing and –
- may be subject to any conditions or restrictions determined by the Executive Director;
- does not prevent the exercise of any power of the Executive Director; and
- may be withdrawn or amended by the Executive Director

There are powers, functions and duties listed in the Bill which may not be delegated
CHAPTER 3

MANAGEMENT COMMITTEE
A management committee is established.

The Committee consists of—
  ◦ the Executive Director (chairperson); and
  ◦ the provincial head for each province

The Executive Director may invite any person not mentioned above to a meeting of the Committee
Functions of committee

- To ensure co-ordination and alignment within each province regarding—
  - strategic and performance plans;
  - priorities, objectives and strategies across national and provincial levels;
  - adherence to financial requirements prescribed in terms of the PFMA; and
  - interaction between the various provincial directorates;

- to identify any other matter of strategic importance within each province;

- to discuss performance in the provision of services in order to detect failures and to initiate preventative or corrective action when necessary;

- to raise national management issues; and

- to ensure regular reporting on matters specific to the performance of the respective provincial directorate’s functions
Meetings of committee

- meets at least four times every year, at such time and place as the Executive Director may determine.
- may determine its own procedure to follow at its meetings.
CHAPTER 4
CONSULTATIVE FORUM
A Consultative forum is established

The forum consists of—
- the Executive Director and
- the Secretary.

The Executive Director or Secretary (in consultation with one another) may invite any person not mentioned in above to a meeting of the forum.
The functions of the forum are to—

- facilitate closer cooperation between the Secretary and the Executive Director;

- discuss issues relating to trends, recommendations and implementation of such recommendations.
The Secretary must—
  ◦ convene the first meeting of the forum; and
  ◦ preside at that meeting

The Secretary and the Executive Director must—
  ◦ alternate as chairperson of the meetings.
  ◦ meet at least four times a year on issues of common interest

The forum determines its own procedure and agenda for its meetings
CHAPTER 5
PROVINCIAL OFFICES
Each provincial office is headed by a provincial head

Provincial head is appointed—
- by the Executive Director
- on a permanent basis on the level of Chief Director
- in accordance with the laws governing the public service
Provincial office and provincial heads - cont

- Provincial head must conclude a written performance agreement with the Executive Director—
  - within a reasonable time after the appointment; and
  - thereafter, annually

- The performance agreement must include—
  - measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met;
  - standards and procedures for evaluating performance and intervals for evaluation; and
  - the consequences of substandard performance
Responsibilities of provincial head

A provincial head is responsible for the following:

- Appointment and performance management of staff at provincial level;
- to facilitate investigation of cases and to perform any other function incidental to such investigations;
- to control and monitor active cases;
- to refer matters investigated by the provincial office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution;
- to report to the Executive Director on matters investigated;
- to facilitate cooperation between the provincial head and the provincial police secretariat;
- to report to the Executive Director on recommendations and finalisation of cases;
- to report to the Executive Director on the management of provincial offices and their finances;
to report to the relevant MEC on matters referred to the Provincial Head by that MEC;

to ensure adherence to guidelines issued by the national office relating to the investigation and management of cases by officials within the respective provincial offices;

to keep proper financial records in accordance with the prescribed norms and standards;

to prepare financial statements for submission to the Executive Director within two months after the end of the financial year;

to ensure compliance with administrative guidelines issued by the Executive Director; and

to manage the provincial office.
CHAPTER 6

APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS
Executive Director, in consultation with the provincial head, must appoint a fit and proper person as an investigator of the Directorate.

A person appointed as an investigator—
- must have at least a grade 12 certificate or, a relevant diploma or degree; and
- must have knowledge and relevant experience of—
  - criminal investigation; or
  - any other relevant experience.
Appointment as investigator = subject to a security screening investigation by the National Intelligence Agency (NIA).

The Executive Director or official so delegated by him or her must issue a security screening certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an investigator.

Any investigator may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening.

A person must be discharged from his or her position as an investigator if he or she fails to conform to the security clearance prescripts.

An investigator is given policing powers by the Minister, within three months after his or her appointment.

The Executive Director must issue a document in the prescribed form, which shall serve as proof to certify that an investigator has been duly authorised to exercise policing powers and functions.
The conditions of service, including the salary and allowances must be on par with members appointed as detectives in terms of the South African Police Service Act.
Functions and investigative powers

- An investigator
  - may, subject to the control and direction of the Executive Director or the relevant provincial head, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under this Act or any other law; and
  - must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions under the Act.
Functions and investigative powers – cont

- An investigator has the powers as provided for in the Criminal Procedure Act, which are bestowed upon a peace officer or a police official, relating to –
  - the investigation of offences;
  - the ascertainment of bodily features of an accused person;
  - the entry and search of premises;
  - the seizure and disposal of articles;
  - arrests;
  - the execution of warrants; and
  - the attendance of an accused person in court
Functions and investigative powers
- cont

- An investigator may direct any person to:—
  ◦ submit an affidavit;
  ◦ affirm a declaration;
  ◦ appear before him or her to give evidence; or
  ◦ produce any document in that person’s possession or under his or her control which has a bearing on the matter being investigated, and question such person thereon

- An investigator or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated
Conflict of interest, disclosure of interest and limitation of liability

- No member of the Directorate
  - may conduct an investigation; or
  - render assistance
    in respect of a matter which he or she has a financial or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner

- If, during an investigation, it appears to a member of the Directorate that a matter concerns a financial or other interest of that member that member must
  - immediately and fully disclose the fact and nature of that interest to the Executive Director; and
  - withdraw from any further involvement in that investigation

- The Minister may prescribe measures of integrity testing of members of the Directorate.

- An investigator is not liable in respect of an omission in good faith and without gross negligence in performance of functions.
Types of matters to be investigated

CLAUSE 28
The Directorate must investigate –

- any deaths in police custody;
- deaths as a result of police actions;
- any complaint relating to the discharge of an official firearm by any police officer;
- rape by a police officer, whether the police officer is on or off duty;
- rape of any person while that person is in police custody;
- any complaint of torture or assault against a police officer in the execution of his or her duties;
- corruption matters within the police initiated by the Executive Director 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 or the Secretary, as the case may be; and
- any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be.
The Directorate may investigate –

- matters relating to *systemic* corruption involving the police.
CHAPTER 7
REPORTING OBLIGATIONS AND COOPERATION BY MEMBERS OF THE SAPS AND MPS AND DISCIPLINARY RECOMMENDATIONS
The Station Commissioner, or any member of the SAPS or MPS must –

- immediately after becoming aware, notify the Directorate of any matters that must be investigated by the Directorate; and
- within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any such matter.

The members of the SAPS or MPS must provide their full cooperation to the Directorate, including but not limited to –

- the arrangement of an identification parade within 48 hours of the request made by the Directorate;
- the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member’s possession or under his or her control which has a bearing on the matter being investigated; and
- any other information or documentation required for investigation purposes.
Disciplinary recommendations

The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, must –

- within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary;

- quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary; and

- immediately on finalisation of any disciplinary matter referred to it by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary.
CHAPTER 8
FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT
The Directorate is financed from money appropriated by Parliament.

The Directorate is subject to the PFMA.

The Executive Director –
- is responsible for the accounting for money received or paid out for or on account of the office of the Directorate;
- must keep necessary accounting and other related records; and
- may exercise such powers and perform such duties as may from time to time be conferred upon or assigned to him or her, and in respect thereof be accountable to the Minister.

The accounting records must be audited by the Auditor-General.
The Executive Director must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year.

The annual report must include the following documents:

- The audited financial statements;
- the Auditor-General’s report; and
- a detailed report on the activities of the Directorate undertaken during the year to which the audit relates.

The Minister must table a copy of the annual report within one month after receipt thereof.

The Executive Director must publish the annual report.
Offences and Penalties

Any -

- person or private entity, who **interferes, hinders or obstructs** the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions;

- member of the Directorate who willfully **discloses information** in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Directorate of the powers and functions;

- police officer who fails to comply with **section 29** (reporting obligations and cooperation);

- member who fails to make a **disclosure of interest**, or fails to withdraw from a matter in which he/she has an interest;

- person who **pretends to be an investigator** in terms of this Act;

is guilty of an offence and liable on conviction to a fine or to imprisonment for period not exceeding two years.
CHAPTER 10
REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT
The Minister may, after consultation with the Executive Director, make regulations regarding –

- access and control of confidential information and records
- the procedure to be followed when investigating matters
- the procedure to be followed when reporting on cases
- the procedure to be followed for referring, receiving, registering, processing and disposing of complaints
- the procedure to be followed when investigating criminal matters
- the procedure to be followed for initiating special investigations
- the measures for integrity testing of members of the Directorate
- the measures to ensure the confidentiality of information
- any issues to be contained in the annual report
- the procedure and format to be followed regarding reporting to the Directorate
- the procedure to be followed for the arrangement and the holding of identification parades
- the procedure to be followed for the taking of an affidavit / affirmed declaration or to give evidence or produce any document which has a bearing on an investigation
- the procedure to be followed for the submission of any other information or documentation required for investigation purposes
- the procedure to be followed in respect of disciplinary recommendations
- the manner and procedure to secure a crime scene
- any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.
Transitional arrangements, amendment and repeal of laws

Transitional arrangements
- Pending investigations to be finalised as if the Act has not been passed;
- The Act will have no effect on the validity of any investigation or prosecution conducted, pending or under investigation by the ICD on or before the Act comes into effect; and
- Remuneration, allowances and conditions of service: The SAPS Act will prevail if it is more favourable than those under the Act.

Amendment of laws
- Domestic Violence Act 116 of 1998 – Section 18

Repeal of laws
- South African Police Service Act 69 of 1995 – Chapter 10
THE POLICE INVESTIGATIVE DIRECTORATE ACT, 2010

Shall come into operation on a date determined by the President by proclamation in the Gazette