



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



SUBMISSION

to the

Portfolio Committee on Police

on the

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL (B21 – 2023)

2 October 2023

Introduction

1. The Catholic Parliamentary Liaison Office (CPLO) welcomes the opportunity to comment on the Independent Police Investigative Directorate Amendment Bill (B21 – 2023).

2. The CPLO is an office of the Southern African Catholic Bishops' Conference. It is tasked with liaising between the Church and Parliament/Government, commenting on issues of public policy, and making submissions on legislation.

Main Concerns

3. We do not intend to comment on the many technical and definitional changes proposed. Instead we wish to comment on two main points: the provisions regarding the independence of IPID; and those expanding some of its investigative powers.

Independence

4. The introductory note to the Bill states that one of its purposes is *“to provide that the Directorate must be independent, 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”*. It is therefore expected that the Bill should enhance the independence of IPID, and that it should constitute a genuine attempt to follow the judgement of the Court.

5. It is thus disturbing to note that, while the section in the principle Act that allowed the Minister to summarily dismiss the Director of IPID (s6(6)) has been removed, its proposed replacement does little or nothing to guarantee IPID's independence; indeed, it renders the Director – and thereby the organisation – even less independent of the Minister than was previously the case:

5.1. the principle Act provides that the Minister may nominate a suitable person and that Parliament then has 30 days to confirm or reject such nomination (s6(1&2)). The proposed amendments remove Parliament's already limited role; now, the Minister appoints the Director, and merely has to table a notice of the appointment in Parliament. The Police Portfolio Committee's oversight role has been done away with.

5.2. It is telling, in this regard, that the Minister must have the concurrence of Cabinet in the appointment. This clearly indicates the overarching authority of the executive branch of government in the appointment. This is incompatible with IPID's institutional independence.

6. Moreover, this cannot be reconciled with the judgement of the Constitutional Court in **McBride**, which said, when referring to the Minister's power of dismissal over the IPID Director,

“this state of affairs creates room for the Minister to invoke partisan political influence to appoint someone who is likely to pander to his whims or who is sympathetic to the Minister's political orientation. This might lead to IPID becoming politicised and being

manipulated. Is this compatible with IPID's independence as demanded by the Constitution and the IPID Act? Certainly not." (Para 38)

7. It is perfectly clear that the power to appoint someone unilaterally allows just as much for 'partisan political interference' as does the power to dismiss him or her.

8. The proposed new s6, therefore, far from respecting the Constitutional Court's judgement, in fact attempts to subvert it; the Committee ought to have no hesitation in rejecting this provision.

9. In this regard it is noted with great concern that, according to reports, both the State Law Advisor and independent counsel consulted by the Minister advised that the Bill in its present form is unconstitutional; and that, despite this clear advice, the Minister has insisted on tabling it.¹ Under the circumstances it is unavoidable to conclude that the Minister, and the Cabinet, are acting in bad faith. When this happens, Parliament, in the form of this Committee, must step in and refuse to pass legislation that offends against the Constitution.

Matters to be Investigated

10. We support the proposed widening of the scope of investigations to be carried out by IPID, as set out in the amendments to s28 of the principle Act. In particular, we support the extension of IPID's investigative jurisdiction to municipal police services; and the inclusion

¹ <https://www.news24.com/news24/politics/parliament/anc-forces-through-unconstitutional-bill-that-strengthens-celes-grip-on-ipid-20230907>

of deaths resulting from the actions of officers irrespective of whether or not they were on duty.

11. We question, however, why it is proposed to replace “any complaint of... assault” with “any complaint of assault of any person with the intention to cause grievous bodily harm...” (proposed new wording for s28(1)(f)). This seems to imply that ‘ordinary’ or ‘common’ assaults by members of SAPS or a municipal police service are, if not acceptable, at least not worthy of investigation by IPID.

12. If the answer is that it is necessary to focus only on the more serious category of assault in order to prevent IPID from being overwhelmed with complaints of ordinary assault, then there is all the more reason, we suggest, to empower IPID to look into the situation.

Conclusion

13. With reference to the question of securing IPID’s independence in accordance with the ruling of the Constitution Court in *McBride*, it would be constitutionally irresponsible for the Committee to pass this Bill in its current form. We sincerely hope that members of the Committee will carry out their duty to reject constitutionally unsound Bills, and that they will not allow themselves to be swayed by Executive pressure or party-political considerations.

14. We wish the Committee well in its deliberations, and we would appreciate the opportunity to address the Committee orally.

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