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**SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON POLICE ON THE PROCESS TO  
DETERMINE THE RENEWAL OF THE CONTRACT OF THE EXECUTIVE DIRECTOR OF THE INDEPENDENT  
POLICING INVESTIGATING DIRECTORATE**

**INTRODUCTION**

1. Corruption Watch is a registered civil society organisation that opened its doors to the public in January 2012. We are registered as a non-profit company in terms of the Companies Act 71 of 2008. Corruption Watch seeks to expose corruption and the abuse of public funds. We encourage and enable the public to report incidents of corruption to us and we use these reports as an important source of information to fight corruption in South Africa and to hold leaders accountable for their actions. We achieve this through policy advocacy, public mobilisation, strategic litigation and select investigations.
2. Since our inception in 2012, Corruption Watch has received 24 922 whistleblower reports from across the country that allege rampant corruption in both the public and private sectors. In relation to the public sector, our whistleblowers have reported that corruption is rife in the very public institutions that have been specifically mandated to combat crime and graft, in particular institutions of the criminal justice system, including policing services. Since 2012, Corruption Watch has received over 1 300 reports from the public that expose corruption in the South African Police Service (SAPS). The majority of reports (39%) relate to bribery in the SAPS which refers to officers accepting bribes from drug dealers and other so-called 'petty' criminals. These reports also highlight how police extort bribes from refugees and asylum seekers, small businesses and motorists. The second highest reporting trend (23%) is the abuse of power by police officials. This particularly relates to police officers who use their power to obtain money or sexual favours from the public in exchange for not reporting illegal activities or expediting

bureaucratic processes. Dereliction of duty (18%) is the third highest form of corruption reported to us which refers to officers who fail to act upon grievances that are reported to the SAPS.

3. The impact of police corruption is rendered all the more severe inasmuch as it is the police and other institutions of the criminal justice system who are responsible for holding perpetrators of corruption accountable. Impunity is prevalent when the police are derelict in their duty by failing to act against corruption, or worse, when they actively collude in criminal activities.
4. In 2017, Corruption Watch launched a public mobilisation campaign which focuses on corruption in the SAPS. Our campaign has highlighted the importance of transparent and merit-based appointments of key leadership positions within the SAPS, such as the National Commissioner of Police as well as the head of the Directorate of Priority Crime Investigations (DPCI). We have also developed programmes around public awareness about police corruption and we are in the process of conducting rights training with communities. Our public engagements have highlighted concerning trends of vulnerable groups being targets for police corruption and misconduct, as well as the police being complicit in criminal behaviour. The devastating impact of widespread police corruption cannot be overstated, These are public officials imbued with vast power. Abuse of the publicly entrusted power – the standard definition of corruption – enjoyed by the police embodies particularly severe consequences, such as deaths in police custody, unwarranted and unlawful incarceration and gross sexual abuse.
5. To this end, we keenly appreciate the role of oversight institutions such as the Independent Policing Investigative Directorate (IPID) and its commitment to ensuring public policing promotes respect for the rule of law and human dignity.<sup>1</sup>

## **INDEPENDENT POLICING INVESTIGATIVE DIRECTORATE**

6. IPID is constitutionally mandated<sup>2</sup> to investigate alleged misconduct by members of the police service. Effective discharge of this function requires insulation from undue political interference, and independence.
7. It can be inferred that the proper exercise of the functions of IPID necessitates competent and independent leadership. This is particularly important in light of the wide powers conferred on

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<sup>1</sup> IPID is established under section 3(1) of the Independent Police Investigative Directorate Act, 1 of 2001.

<sup>2</sup> Section 206 (6) of The Constitution of the Republic of South Africa, 1996

the Executive Director by the Independent Police Investigative Directorate Act, 1 of 2001 (“IPID Act”);<sup>3</sup> which amongst other things requires that he/she directs and manages investigations.

8. However such independence does not mean that IPID is also insulated from oversight and accountability.<sup>4</sup> It too must be held accountable for its actions, which is why it is required to submit reports to Parliament as well as the Minister of Police.<sup>5</sup> Such oversight mechanisms are important for good governance, as recognised by the Constitutional Court.<sup>6</sup>
9. The aforementioned oversight function is evident in the powers afforded to the relevant Parliamentary Committee in its role in the ultimate appointment of the head of IPID in terms of section (6)(1) of the IPID Act, and by necessary implication, the decision to renew such appointment in terms of section 6(3)(b) of the Act.

#### **CWs INVOLVEMENT AS AMICUS CURIAE**

10. Given our mandate to combat corruption, Corruption Watch intervened in the legal matter of *Robert McBride and another v Minister of Police and another* Case No. 6175/2019 in light of the important constitutional issues that this matter raises regarding the separation of powers and the consequent impact they have on the independence of bodies like IPID. We have an interest in the effective functioning and independence of oversight bodies due to their accountability function. A corrosion of such independence undermines the effectiveness of oversight mechanisms and facilitates corruption.
11. In our court papers, Corruption Watch submitted that the Portfolio Committee has important elements of the necessary information at its disposal to make a decision on the renewal of the current head of IPID’s term on or before 28 February 2019. This is due to the fact that over the last five years, the Portfolio Committee has sat to discuss IPID at least 43 times. .
12. The Portfolio Committee is constitutionally and legislatively obligated to determine the renewal of the incumbent’s post by 28 February 2019. A failure to do so will mean the Portfolio Committee has defaulted on its oversight duties. A failure to exercise this function cannot create

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<sup>3</sup> Sections 7, 22(1), 24(1), 28(1)(g) and (h).

<sup>4</sup> *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC), para 216.

<sup>5</sup> *McBride v Minister of Police and Another* 2016 (2) SACR (CC) para 28

<sup>6</sup> *Ibid*

a vacancy as envisaged under section 6(4) and accordingly cannot be 'cured' by the Minister's power to appoint an acting Executive Director.<sup>7</sup>

13. Accordingly, the purpose of Corruption Watch's submission to the Parliamentary Portfolio Committee on Police is, respectfully, to contribute to ensuring that due process is followed by Committee when discharging its oversight function in the decision of whether or not to renew the contract of the current IPID Executive Director.

#### **CONSIDERATION FOR CONTRACT RENEWAL**

14. In applying its collective mind on whether or not to renew the contract of Mr McBride, the Portfolio Committee has to give due consideration to the following:
  - 14.1. The performance of the incumbent as the Executive Director and Accounting Officer of IPID over the last five years;
  - 14.2. The performance of IPID under the leadership of the incumbent over the last five years;
  - 14.3. Whether the incumbent has executed his work with independence, integrity, conscientiousness, honour and is considered to be fit and proper;
  - 14.4. The advantages and disadvantages associated with the renewal of the incumbent's contract;
  - 14.5. The advantages and disadvantages associated with the non-renewal of the incumbent's contract; and,
  - 14.6. The preliminary recommendation provided by the Minister of Police to not renew the contract of the incumbent, and whether this decision can be considered as reasonable and rational;
  - 14.7. The views of the incumbent, particularly his response to the reasoning underpinning the Minister's preliminary recommendation.
  - 14.8. The views of the South African public.
15. It is important that the Committee's deliberations are centred on fact and merit-based criteria when determining the outcome of the renewal process. We propose that the Committee should further engage experts in human resourcing in order to establish measures that could be considered when deliberating on the performance of the incumbent. Proper consideration would

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<sup>7</sup> We submit that sections 6(4) and 6(5) of the IPID Act envisage a vacancy that arises in a situation out of the control of the Minister, despite all statutory obligations having been fulfilled, and in emergency circumstances such as ill-health or death.

ensure that the decision of the Committee will not contribute towards public discord and the instability of IPID.

## **AMENDMENT OF THE IPID ACT AND PROPOSED APPOINTMENT PROCESS**

16. While we recommend that the process outlined above should be followed in deciding whether or not to renew the present incumbent's contract, we also recommend that urgent consideration be given to amending those sections of the IPID Act governing the manner in which the Executive Director is appointed and removed, as well as the process of renewal, in order to avoid similar challenges in future.
17. In relation to the appointment of the Executive Director according to the IPID Act, it stipulates that the Minister of Police can nominate a "suitably qualified person" in "accordance with a procedure determined by the Minister". The Portfolio Committee on Police thereafter has 30 working days to either confirm or reject the Minister's nomination.
18. If the Committee chooses not to renew the contract of the current Executive Director, the abovementioned process will be applicable in appointing the new head of IPID. Corruption Watch submits that there has to be a transparent and public participatory process to ensure that the best possible candidate is appointed as the Executive Director of IPID. This would render the following outcomes:
  - 18.1. Both the public and IPID officials would be better appraised of the abilities and characteristics that the new appointee would bring to the job. An appropriately experienced appointee whose integrity was beyond reproach would therefore enjoy an enhanced level of support from both the public and relevant stakeholders, and thus would be more likely to effectively drive plans aimed at improving the performance of the organisation that they are tasked with leading; and,
  - 18.2. Proper screening and vetting would ensure that the individual selected is less likely to become embroiled in scandals that may emerge after their appointment, thereby resulting in distraction and discord at a senior leadership level.
19. Corruption Watch envisions that a transparent and public participatory process in appointing the Executive Director of IPID should include:
  - 19.1. The establishment of a panel of experts and key stakeholders who can develop key selection criteria for the position of Executive Director. There are currently no criteria in

- the IPID Act that prescribe the qualifications and / or experience required in order to effectively lead the institution;
- 19.2. Publicly advertising the position and making the selection criteria known;
  - 19.3. Shortlisting the best possible candidates and releasing their CVs for public comment / objection;
  - 19.4. Conducting the interview process in public and objectively assessing the candidates against the selection criteria;
  - 19.5. The panel should present no more than three of the best candidates to the Minister of Police to consider for nomination;
  - 19.6. In making the recommendation to Parliament, the Minister must provide rational reasons for his/her decision in the nomination of a particular individual.

## CONCLUSION

20. The Portfolio Committee is urgently required to decide whether or not to renew the present incumbent's tenure for a further five-year term. We have recommended a process which we believe accords with the minimum requirements for fairness and transparency.
21. While the task of the Portfolio Committee is significantly alleviated by its previous interactions with IPID and the incumbent executive director, it may well transpire that it is unable to complete the decision making process by the 28<sup>th</sup> February 2019. Should that occur, we submit that the Portfolio Committee should follow due process as outlined in the Court Order of 12 February 2019.
22. In addition, we have recommended that the Committee consider amending the IPID Act in order to strengthen the procedures for appointing and removing, and for considering the renewal of the contract of the Executive Director of IPID. Our recommendations are intended to support the development and application of merit-based criteria and a transparent and fair selection process.
23. We cannot overstate the importance of building the trust of the public in the South African Police Service. This urgent task will be enormously facilitated if the public are persuaded that the police are subject to an oversight mechanism that is independent of the executive branch of government, that pursues its mandate without fear, favour or prejudice and that is led by a competent, fearless South African of unimpeachable integrity.