

c/o: Mpho Raboeane, Attorney

Email: mpho@nu.org.za,

c/o: Danielle Louw, Attorney

Email: danielle@nu.org.za



18 ROELAND STREET
CAPE TOWN 8001
tel: +27 (0)21 012 5094
www.nu.org.za

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To: Portfolio Committee on Police for attention: Ms Babalwa Mbengo

By email: IPIDAmendmentBill@parliament.gov.za

Dear Ms Mbengo

**RE: NDIFUNA UKWAZI'S COMMENT ON THE INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE (IPID) AMENDMENT BILL, 2023
[B21-2023]**

1. Ndifuna Ukwazi is a non-profit activist organisation and law centre that combines research, organising and litigation in campaigns to advance urban land justice in Cape Town. Our primary mission is to expand and protect access to affordable housing and build an integrated and inclusive city.
2. Over the last seven years, Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised housing, the management of public land in a manner that prioritises socio-economic needs and the promotion of social, transitional and inclusionary housing. We have published several resource guides and research reports on these issues. Ndifuna Ukwazi has also been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative

Ndifuna Ukwazi is
a not-for-profit trust
(IT 540- 2001)
(NPO 094 - 737)

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accommodation, and the state's constitutional and legislative obligation to combat spatial apartheid and promote spatial, economic and racial justice and equality through expanding access land and affordable housing.

3. This comment is made pursuant to the invitation for comments as a stakeholder identified by the Portfolio Committee on Police per email dated 21 September 2023. Ndifuna Ukwazi has read and considered the Amendment Bill and hereby makes this submission.

Yours faithfully,

Ndifuna Ukwazi

(Per: Mpho Raboeane & Danielle Louw, Attorneys)

**NDIFUNA UKWAZI'S COMMENT ON THE INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE AMENDMENT BILL**

Introduction

1. The Independent Police Investigative Directorate Amendment Bill 2023 ("the Amendment Bill") seeks to, *inter alia*, amend and insert certain definitions, entrench the institutional and operational independence of IPID, extend the mandate of IPID and strengthen provisions regarding the implementation of disciplinary recommendations from the Directorate.
2. While we welcome legislative review to make legislation constitutionally compliant, we are concerned that the Amendment Bill does not also include an expansion of the definition of 'municipal police service' as contained in the Independent Police Investigate Directorate Amendment Act of 2011 ("the Principal Act") to include Municipal Law Enforcement.
3. Currently, the definition says a 'municipal police service' "means a municipal police service established under section 64A of the South African Police Service Act ("SAPS Act")."
4. Section 64A(1) of the SAPS Act provides that any municipality "may... apply to the member of the Executive Council for the establishment of a municipal police service for its area of jurisdiction." The subsequent provisions contain certain requirements that a municipality must meet should it wish to establish such municipal police service.
5. In the City of Cape Town ("the City") there are two municipal police services. The first is the metropolitan police services ("metro police"). The metro police are subject to the jurisdiction of the IPID Act. The second, is the City's Law Enforcement Directorate which the City has, under the auspices of the Directorate of Safety and Security, and specifically the Law Enforcement, Traffic and Coordination Department, ostensibly constituted in terms of Section 64A of the SAPS Act. The Law Enforcement Service is responsible for enforcing the City's by-laws and traffic laws and its members conferred with powers in terms of Government Notice R209 Gazette 231243 of 19 February 2002 as amended by GN 1201 Gazette 23863 of 26 September 2002.

6. Moreover, there is a specialised unit within the City's Law Enforcement Directorate, the Anti-Land Invasion Unit ("ALIU"). The ALIU consists of 'specially trained' officers mandated by the City's Human Settlements Department to prevent unlawful occupation of land. While the ALIU falls under the Department of Human Settlements, they, at a bare minimum, need to account to this department. Yet, there is no evidence of such a mechanism being in existence. This is compounded by the lack of any independent, impartial and unbiased complaint mechanism available to members of the public affected by Law Enforcement officer misconduct.
7. The Portfolio Committee on Police has itself, in 2020, articulated the need for the inclusion of City Law Enforcement as contemplated above within the ambit of IPID's oversight and investigative mandates as part of the amendment process.
8. As such, Ndifuna Ukwazi recommends that the City of Cape Town's Law Enforcement be added to the definition of 'municipal police service' by means of the Amendment Bill.

No independent, Impartial and Effective Complaint Service Available to Affected Communities

9. The above recommendation stems from the fact that there are no accountable and independent complaint structures where complaints pertaining to Law Enforcement may be lodged. Law Enforcement sits under the Safety and Security Directorate and would also need to provide a minimum oversight role. However, there is no clear public channel to direct complaints to or report instances of abuse.
10. Section 64J(1) of the SAPS Act expands on the envisioned civilian oversight mechanism and states that a municipal council "shall appoint a committee consisting of members of the council and such other persons as may be determined by the municipal council to ensure civilian oversight of the municipal police service." The Regulations for Municipal Police Services of 1999 issued under the SAPS Act reiterates this obligation and regulation 1(2)(e) specifically states that any application for the establishment of a municipal police service must include:

b. [A] detailed description of the composition of the committee contemplated in section 64J(1) and which indicates how that composition will ensure proper civilian oversight over the said municipal police service.

11. To this end, the City has established a Civilian Oversight Committee to investigate the conduct and complaints against the City's Traffic Services Department, Law Enforcement and the Metro Police. This committee is made up of civilians who are recipients of a nominal stipend from the municipality and do the civilian oversight work on a part-time basis. Notwithstanding the complaint and investigative mandates, this committee, however, lacks the degree of transparency and accountability required of an oversight body as the committee does not publicly report its investigations and outcomes.
12. In addition, the ALIU specialised unit seemingly has no separate accountability mechanisms within the Human Settlements Directorate neither are complaints of misconduct acted upon by the Office of the City Ombudsman whose mandate is to investigate and help resolve complaints against the City administration through providing an independent, impartial, unbiased, non-prejudicial and apolitical service. This is despite the fact that complaints submitted to this office meet the requirements set out in The City Ombudsman By-Law, 2015.¹
13. There is thus an apparent lack of a functional, transparent, public facing (accessible) complaints structure in the context of community complaints of deteriorating relations between the City's Law Enforcement Agencies and affected communities. Such communities cite discrimination and lack of engagement in addition to allegations of violence and unlawful operations carried out by such agencies.
14. It has been our experience that the communities and persons we have assisted with complaints against this body have no effective complaint system or means of holding Law Enforcement officials accountable outside of costly, inaccessible court processes.

Legislative Ambit

15. This recommendation is further in line with the purpose and constitutional mandate of the Directorate with section 2 of the Principal Act being instructive in this regard. Section 2 delineates the objects, and by extension, of the Directorate. Specifically, subsection (b) requires:

“[...] the independent oversight of the South African Police Service and Municipal Police Services;”

¹ Promulgated 03 July 2015 in Provincial Gazette 7419; La 58145. See Sections 6-8.

while section 2(d)-(e) and (g) mandate the Directorate:

- “(d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service 20 and Municipal Police Services;
- (e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;
- (g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.”

16. The extension of the objects of the Principal Act to Law Enforcement (in an expanded definition of Municipal Police) is acutely required given the accounts of misconduct by Law Enforcement below.

Proliferation of Abuses and Misconduct necessitating IPID Oversight

17. Recent incidents involving unlawful discharges of firearms and murder of civilians have surfaced the inadequate training undergone by law enforcement officers through the Law Enforcement Advancement Plan (LEAP).
18. In January 2022 Dumisani Joxo, a homeless man was brutally murdered by LEAP officer, Luvolwethu Kati. Joxo was shot in the face and killed after an alleged argument between Kati and another homeless man, Linda Mbuqe which again calls into question the level of training and the skills held by LEAP officers and their competence in fulfilling duties reserved for national and municipal police officers.² While the City of Cape Town announced that it has done an “independent investigation” into the conduct of Officer Kati, the outcome of such investigation has not yet been released to the public.

² See article by Ground Up, 14 January 2022: <https://www.groundup.org.za/article/memorial-service-held-dumisani-joxo-who-was-allegedly-killed-cape-town-law-enforcement-officer/> (accessed 2 October 2023).

19. LEAP officers were introduced in 2020. LEAP is an initiative of the Western Cape Government (WCG) and is run in partnership with the City of Cape Town which has recruited extensively including 250 officers in 2021 alone and deployed 100 officers across the Metro in 2022. The unit has been described by the Western Cape Minister of Police Oversight and Community Safety, Reagen Allen as “ [...] a force multiplier to the South African Police Service (SAPS), while also working hand-in-hand with other City of Cape Town law enforcement agencies.” (emphasis added)
20. Given the stated mandate of LEAP officers, particularly noting the usurping of police functions, it is highly concerning that the training period is a mere 77 days, covering the role and functions of a Peace Officer and Traffic Warden, basic firearm competency, tactical and restraining techniques, first responder expertise to crime scenes, stop and search approaches and the powers and duties of law enforcement officers.
21. Mr Joxo’s murder epitomises the constant threat faced by marginalised communities such as the homeless at the hands of Law Enforcement Officers. Over the past 3 years our offices have received consistent accounts of harassment, disproportionate use of force and illegal eviction and demolition and destruction of personal property by Law Enforcement officers.
22. Following the murder of Mr Joxo, Ndifuna Ukwazi and various civil society organisations mounted a campaign supporting collective efforts calling for justice and an end to the brutality of Cape Town law enforcement officers. These efforts included a joint engagement with the South African Human Rights Commission (“SAHRC”) where we invited representatives of communities experiencing homelessness and civil society organisations to discuss the rising levels of brutality directed at poor families and people experiencing homelessness by Cape Town law enforcement officers. These discussions culminated in the [SAHRC hearings into attacks on Cape Town’s homeless](#) which were held across the Western Cape in 2022.
23. Further, the National Minister of Police has told parliament the City of Cape Town is running an “unconstitutional” law enforcement unit using powers reserved only for the national police service. “The functions of the municipal police service are traffic

policing, [enforcing] municipal bylaws and regulations ... A municipal police service does not have [a] legislative mandate to conduct criminal investigations or gather intelligence," Cele said. "This unit is not part of the municipal police service, but it is gathering crime intelligence..."³

24. He was concerned that the unit is acting outside the constitution and police legislation, which limits the powers of municipal units.⁴
25. In other instances, we have been compelled to bring several spoliation applications against the City due to the unlawful conduct of its Law Enforcement officers and have successfully established that in all instances the officers actions (forceful, violent removals and destruction of property) were outside the remit of the applicable By-Laws and as such were unlawful and unconstitutional.
26. Yet, despite relentless litigation in addition to the submission of complaints to the various bodies outlined in paragraphs 11 and 12 above, there has been no ostensible oversight or serious sanction of misconduct committed by Law Enforcement officers. Harassment, violence and discrimination continue to be the reality of many poor homeless and landless people in relation to the City's Law Enforcement Units.
27. This reality is reminiscent of the accounts of illegal and violent evictions interrogated during this Committee's engagement with the erstwhile Mayor of Cape Town, SAPS, IPID and Law Enforcement with the Minister and Deputy Minister of Police in 2020.⁵
28. During that committee meeting the Minister pointed out that the Western Cape had more law enforcement officers than metro police. He concluded that IPID could not conduct oversight over the law enforcement officers who outnumbered the metro police over which it has a mandate. The Minister took issue with the City's Law

³ Times Live, "Cele, Herron say Cape Town law enforcement unit is 'rogue'" (3 March 2022) Available at <<https://www.timeslive.co.za/politics/2022-03-03-watch-cele-herron-say-cape-town-law-enforcement-unit-is-rogue/>>

⁴ Id.

⁵ Portfolio Committee (National Assembly) on Police meeting dated 4 September 2020 available at <<https://pmg.org.za/committee-meeting/31043/>>.

Enforcement in as far as it had no monitoring mechanisms, especially during evictions.⁶

29. The Minister said that Councillor Smith could not give excuses for the actions of the law enforcement officers, and there were no charges against these law enforcement officers. The problems that had been raised were outside the formal metro police, and it would be easier to work with the metro police instead of structures that were not in the legislative and constitutional framework, which had been resourced and had no oversight from IPID, and caused problems when work had to be performed.⁷
30. It was in light of the concerns raised by the Minister of Police as echoed by other attendees of the Committee meeting such as the SAHRC that this Committee decried the lack of oversight on the City's Law Enforcement units and encouraged that such oversight be contemplated during the amendment process of the IPID Act.⁸
31. Perhaps one of the most recognisable cases of unlawful conduct by Law Enforcement was the violent eviction and assault of Mr Bulelani Qolani. The matter arises from the disturbing events of 1 July 2020 when armed Metro police, members of the City Anti-Land Invasion Unit (ALIU) accompanied by private contractors acting on the instruction of the City, arrived at the Ethembeni informal settlement in Khayelitsha, Cape Town. They proceeded to Mr. Bulelani Qolani's shack and dragged him out, naked and in full view of surrounding residents. The City officials proceeded to demolish his shack. None of this was authorised by a court order. The eviction was the subject of the *South African Human Rights Commission and Others vs The City of Cape Town and Others*⁹ where the Western Cape High Court has found that a series of demolitions and evictions that took place in 2020 by the City of Cape Town, including that of Mr Qolani in Khayelitsha, were unlawful and unconstitutional. It also found that the City's interpretation and application of counter-spoliation is inconsistent with the Constitution and is invalid insofar as it permits demolitions of and evictions from any

⁶ Id.

⁷ Portfolio Committee (National Assembly) on Police meeting dated 4 September 2020 available at <<https://pmg.org.za/committee-meeting/31043/>>.

⁸ Id.

⁹ *Case no 8631/2020 2021 (2) SA 565 (WCC)*.

informal dwelling whether occupied or unoccupied at the time of the eviction or demolition.

32. In the course of litigation of the above matter, the City of Cape Town was granted the opportunity to file a supplementary affidavit taking the Court into its confidence about what training it provides to the ALIU, how they determine whether a structure is occupied and whether any due process is observed when ALIU decides to demolish a structure. The City failed to do so despite the established duty of government officials at national, provincial and municipal levels to take the court into their confidence and fully explain the facts so that an informed decision can be taken in the interests of the public and good governance.¹⁰
33. This failure to account to the Court further illustrates the impunity the City's Law Enforcement and specialised ALIU units seemingly enjoy. It is therefore imperative that these units be brought under the legislative scope of oversight by IPID in order to curb the unfettered freedom and unchecked misconduct and harassment at the hands of Law Enforcement officers.
34. Taking this incident into account at the September 2020 Portfolio Committee meeting, the Chairperson of the Committee remarked that handling of the matter and suspension of officers were poorly handled [by the City] and that the amendment of the IPID Act was a priority for the Committee. She requested engagements with the Minister, the Mayor and law enforcement units on the integration of the law enforcement into the metro police while the IPID Act was undergoing amendment, which would ensure oversight.¹¹
35. In as far as the bill does not extend the mandate of this oversight body, particularly the extension of mandate contemplated by clause 16 amending section 28 of the principal act such offences as committed by Law Enforcement officers will continue to go unchecked or inadequately addressed as seen in Mr Qolani and Mr Joxo's cases. This underlines the need for a truly independent and impartial oversight body to hold

¹⁰ At para 49. See *Kalil N.O. and Others v Mangaung Metropolitan Municipality and Others* [2014] ZASCA 90 at paragraph 30 as referred to by Meer J.

¹¹ Concluding remarks of Chairperson Joemat-Pettersson at Portfolio Committee (National Assembly) on Police meeting dated 4 September 2020 available at <<https://pmg.org.za/committee-meeting/31043/>>.

the City's Law Enforcement units accountable and prevent the further subjugation of the poor of Cape Town who suffer the brunt of abuses by Law Enforcement officers.

Concluding Remarks and Recommendation

36. The fact of the matter is that bodies constituted by peace officers with opaque origins and unclear constituting documents has resulted in the creation of law enforcement units that are a law unto themselves and have inadequate oversight through poorly constituted civilian committees that consist of, and are beholden to, the very same safety and security council members and political heads they ostensibly are meant to hold accountable.
37. The practical result, as has been our experience, is the lack of a responsive, effective and impartial oversight body that investigates reports of misconduct by the City's Law Enforcement and Anti Land Invasion Unit bodies, moreover instances of civilian abuse at the hands of unchecked and undertrained law enforcement officers.
38. It is therefore our recommendation that clause 1 of the amendment bill be supplemented to contemplate municipal Law Enforcement in the definition of 'metropolitan police' or 'police officer', alternatively, that the integration of law enforcement into the metropolitan police be undertaken as instructed by the then Chairperson of the Portfolio Committee on Police and be detailed as such in the definitions.
39. It is further submitted that in the amendment of section 28 of the Principal Act, references to 'police officer' in the amendments contemplated by Clause 16 be extended to include Law Enforcement Officers.
40. The failure to remedy the impunity with which these units operate will further set our society down a path towards repression through discriminatory policing, signalling a failing state whose legitimacy pails in view of the lack of accountability, responsiveness and openness required of a democratic society. Existing levels of mistrust of these units by vulnerable communities including the homeless and landless are only set to rise where law enforcement units are allowed to usurp the role of a legislatively mandated

police service to exact a dirty war enabled by the state's monopoly on violence and continue to face no real consequence.

Ends.