

**ICD WORKSHOP ON ESTABLISHING A CORDIAL  
RELATIONSHIP BETWEEN THE POLICE, ICD AND CIVIL  
SOCIETY: PROBLEMS AND PROSPECTS**

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## **SUMMARY**

The Independent Complaints Directorate (ICD) serves as an external, independent and policing accountability mechanism geared towards holding police accountable to the South African people for the way in which they exercise their powers. Accordingly, the legal mandate of the ICD requires it to investigate all cases of deaths in police custody and as a result of police action; criminal offences and misconduct allegedly committed by members of the South African Police Service (SAPS) and Metro Police Service (MPS). In order to execute this mandate effectively and improve our common service delivery standards, it is essential that there be a cordial relationship and ongoing communication between the Police, ICD and civil society and other oversight structures. As a result, the Proactive Research Unit of the ICD presented a workshop which highlighted the problems and prospects of fostering a reciprocal relationship between these stakeholders.

### **Objectives**

- To give special attention to ways in which working relations between various stakeholders within the criminal justice sector (e.g. ICD, SAPS, MPS) can be enhanced.
- To provide an opportunity to assess the strengths and weaknesses of the working relationship between the police, ICD and civil society.
- To minimize and ultimately eliminate the “we-they” attitude characterizing oversight bodies and the police.
- To identify possible overlaps in terms of the mandate of the ICD and the Secretariat.
- Identify how the role of the ICD is perceived, notably by civil society and the police.
- To highlight the importance of strengthening police oversight and accountability.
- To explore a basis for future co-operative work among stakeholders.

## **Participating organizations**

This workshop incorporated representatives from a number of organizations who play a role within the criminal justice sector. Among these participating organizations were delegates from the Ministry for Safety and Security, the Secretariat, the Portfolio Committee, SAPS, and MPS. A number of members from civil society organizations are also represented at the workshop, namely: the Open Society Foundation for South Africa (OSF-SA), the Centre for the Study of Violence and Reconciliation (CSVR), the Institute for Security Studies (ISS), the Institute of Criminology, the South African Human Rights Commission (SAHRC), Lawyers for Human Rights, the Centre for Policy Studies, Police and Civil Rights Union (POPCRU), South African Police Union (SAPU) and the Tshwane University of Technology.

## **Proposal**

The proposal was to engage a diverse group of participants from the criminal justice sector in order to share perspectives, experiences and insights on issues. The purpose of this collaboration was to gain feedback regarding the relationship between these stakeholders and finding a way to strengthen the communication between these organizations in the attainment of their common goals. The workshop incorporate papers presented by experts and practitioners focusing on the mandate of the ICD, the importance of police oversight and accountability, the need to strengthen the SAPS accountability system, as well as improving the role and image of the ICD.

A recommendation that stemmed from the group discussions was the establishment of a task team comprising representatives from the ICD, SAPS, MPS, Secretariat, Portfolio Committee and civil society groups. The aim of this task team would be to ensure ongoing communication between the various criminal justice role players.

## **1. Welcome address by Mr. Charles Nqakula – Minister for Safety and Security**

Minister Nqakula said that many government departments have good strategy, but the reason why they fail in the attainment of strategic objectives is because of a lack of proper assessment. He said that it is important to remember where we came from so that we don't repeat past mistakes. We therefore need to have a structure which works with the people to ensure that we work together against crime and criminality and to ensure that, at no time, the police would veer off the path of the constitution. It is for that reason that we have various oversight structures such as the ICD, Portfolio committee, Community Policing Forums (CPFs), the Secretariat for Safety and Security and the Public Protector.

We must look at better ways to strategise and discharge our obligation of reporting how the police do their work. The Minister further stated that this workshop would be enriching if at the end of the workshop we came out having strengthened the strong points of our respective programmes.

## **2. Brief discussion of the workshop objectives – Shireen Lakhi, ICD Provincial Head: KZN**

In order to assess where we are going, it is important to remember where we are coming from. Everyone in the room is mindful that there are relationships but we need to concretize the relationships. We need to participate and assess our strengths and weaknesses.

Seven objectives were set forth for this workshop (refer to the summary on page 3). The need for police accountability is very pressing at the present time in South Africa and we have to ensure that we iron out our problems. Since the establishment of the ICD there is no doubt that they have encountered difficulties along the way but we need to work together because each and every one of us is accountable for the criminality that we encounter. Networking is therefore essential and we must not squabble about who handles which complaints against the SAPS. We need to look at a basis of exploring co-operative relationships between organizations.

### **3. The importance of police oversight and accountability - Sean Tait, Criminal Justice Initiative, OSF**

The Strengthening of Police Oversight in South Africa project was a joint initiative of the Open Society Foundation South Africa and the Open Society Justice Initiative in New York. South African state institutions have undergone profound change since the end of apartheid. In conjunction with civil society and the international community, the new government embarked on a very ambitious programme of public sector reform. The new ethos stressed human rights, the rule of law, and the democratic principle of accountability.

South Africa's Constitution and Bill of Rights enshrines a system of government that is held accountable at all levels. South Africa stands out among transitional countries for the impressive architecture of police accountability established at national, provincial, municipal, and local levels, involving specialized accountability bodies such as the ICD, independent human rights institutions, elected authorities, and local community members in oversight of the SAPS.

From their origins in 1994, the oversight mechanisms established as part of a new democratic police service rapidly came under pressure. In face of very high rates of crime and social violence, as the government gained confidence in its control of security forces, its focus shifted from an initial emphasis on police accountability to a tough-on-crime policy that appeared to be relegating accountability issues to second place. Furthermore, with a few notable exceptions, civil society actors seemed to pay relatively little attention to this dynamic.

#### **Project on Strengthening Police Accountability**

##### **Consultation**

In 2002, the OSF-SA and the Open Society Justice Initiative proposed a project to examine and strengthen police accountability in South Africa.

Recognizing the importance of co-operation and participation, the project, from the beginning, attempted to involve the full array of organizations and personnel whose work impinges on police oversight and accountability.

An intensive consultative process brought together non-governmental organizations and experts as well as government stakeholders and personnel of police accountability bodies in South Africa. From the outset, the project partners were convinced that without extensive consultation with those stakeholders who had an interest in promoting and supporting democratic and effective policing, no sustainable and effective project would be possible.

### **Sub-projects**

The project was comprised of a number of stand-alone projects:

- Research into the National and Provincial Secretariats for Safety and Security as mechanisms to provide government with civilian policy management capacity (independent of the SAPS), and the role of these bodies in monitoring police performance. The ISS in Pretoria undertook this task.
- The development and piloting of a local-level monitoring tool for CPFs to monitor the police. This work was undertaken by the Cape Town based U-Managing Conflict (UMAC).
- The development and piloting of a capacity-building strategy and monitoring tool for municipal council oversight of municipal police services. The CSVR in Johannesburg was contracted to fulfill this task.
- The development of indicators for civil society monitoring of “Democratic Policing”. The CSVR took charge of this part of the project.
- The establishment and maintenance of a website on Policing Accountability. This was developed by the Institute of Criminology at the University of Cape Town.
- Support for the development of a proactive monitoring at the ICD – supported by Umhlaba Consultants.
- Support for the development of the African Policing Civilian Oversight Forum (APCOF) and its secretariat at the ICD.

## Findings

Some of the project's main findings on the current state of policing oversight in South Africa today are:

- 1) *Clarify the relevant legislation.* The legislative mandates of police oversight bodies are ambiguous and sometimes weak. Lack of clarity regarding the scope and powers of those engaged in police oversight has reduced the dynamism of certain bodies. A clear and unambiguous legislative statement of their powers and duties would help considerably. Furthermore, ten years into the South African democracy opportunity exists to reflect on the oversight architecture developed at a very particular point in the country's history and to refine and consolidate this on the experiences of the past decade and the normalization that has been achieved in many areas of governance.
- 2) *Increase oversight capacity.* Oversight bodies also confront limited material resources and staff capacity. Over-burdened and under-resourced personnel may fail to co-ordinate their activities, resulting in the duplication of some services, and little communication and follow-up in relation to others. The result is that there is little scope to evaluate the impact of the work of many of these bodies and little opportunity to build confidence in communities.
- 3) *Improve access to information.* Inadequate information flows also constitute a major obstacle to the effectiveness of oversight. Access to information is notoriously difficult. There is a pressing need for improvements in information collation, analysis, and dissemination of data regarding police misconduct. Oversight personnel struggle to ascertain how receptive the relevant authorities are to their recommendations and have no way to monitor compliance with recommendations. Often the way in which relevant information is captured and presented is problematic. A single database on police complaints is not available.
- 4) *Conduct research on policing.* In general, the quantitative monitoring of police work in South Africa remains underdeveloped. Thus, detail is lacking, for example, on internal disciplinary process and outcomes that could inform and support desirable reforms in South African policing practices. SAPS capacity is also a problem in this regard, as the SAPS



statistical monitoring unit continues to grapple with the generation and use of information of this kind as a management tool to improve accountability.

- 5) *Strengthen local level oversight.* The CPFs that were, in part, intended to act as grassroots oversight mechanisms have, in general, not performed this task effectively. While they can and do consider police accountability issues on an ad hoc basis, they are unable to deliver more structured and systematic oversight and monitoring of policing.

## **Evaluation**

Antony Albeker, in his evaluation of the intervention, finds that while there were areas in which some of the projects were less than entirely successful, as a whole the impact of the programme was significant and, as importantly, will continue to be significant in the months and years to come.

- In relation to the conceptualisation of the programme and its sub-projects, he concluded that although the approach taken in developing the programme might be criticised in failing to ensure overall coherence, comprehensiveness and consistency among individual projects, the organic emergence of project ideas meant a higher level of buy-in into the programme from partner institutions and allowed the consultation process itself to act as a spur to civil society's increased engagement with questions of police oversight.
- The reviewer had differences with the conceptual and legal interpretations of the nature of the oversight challenges offered by the drafters of some of the police reports. However, the generation of new data and the opening up of space for people and institutions in civil society to engage in a critical debate about oversight, has meant that a valuable service has been rendered in these projects even when some areas are not, in his opinion, dealt with entirely successfully.
- The future impact of most projects, and certainly of the programme as a whole, is likely to be significant and positive.

## **Conclusion**

In conclusion, some issues stand out in relation to the current discussion:

- The project was initiated in a climate of generally acknowledged slippage in policing oversight. As more attention and pressure is brought to bear on policing oversight and the stakes increase the space for co-operation could become more difficult but also more important
- Effective oversight is an oversight at internal, external and social levels operating effectively. We need to pay attention to all three spheres.
- Flow of information and a mature relationship between stakeholders is essential.
- Take stock of and maximise resources – avoid duplication.

#### **4. Staggering under the burden: ICD policy on the receipt of complaints and investigations and its negative impact on the ICD, on public confidence, and on police discipline - David Bruce, CSV**

### **Introduction**

This paper is not intended to discuss the legal mandate of the ICD but to rather discuss how the ICD has interpreted this mandate. The ICD has increasingly emphasized its own role as a body for receiving complaints and in recent years has adopted an approach in terms of which it aims to investigate all cases which it receives. ICD policy seems to give no priority to how to strengthen the SAPS and municipal police systems for receiving and investigating complaints. The approach is not legally necessary, it is not justified in terms of practical or theoretical considerations and it is self-defeating, contributing to inadequate investigations of complaints against the police.

The core objective of the ICD should be to ensure that the optimal system is in place to ensure that complaints are investigated in an effective and efficient manner. It is not obliged to receive or investigate these cases itself.

### **Other legal obligations of the ICD**

Section 53(2) of the SAPS Act states that 'In order to achieve its object, the directorate –

- a) May mero motu or upon receipt of a complaint, investigate any misconduct or offence allegedly committed by a member, and may, where appropriate refer such investigations to the Commissioner concerned;
- b) Shall mero motu or upon receipt of a complaint, investigate any death in police custody or as a result of police action; and
- c) May investigate any matter referred to the directorate by the Minister or a member of the executive council.

The ICD 2004-2005 annual report indicates that under a list of 'Main services provided and standards' that its 'Main services' include

'The investigation of all deaths in police custody and as a result of police action and, misconduct or offences committed by SAPS and MPS members'

Underpinning ICD investigative policy over recent years seems to be an understanding that the ICD has some type of obligation to investigate as many of the cases which it receives as possible. The key consequence of this must inevitably be that the ICD spreads its investigative resources more and more thinly and that, rather than becoming more effective and efficient, the quality of investigations gets worse and worse.

Clearly an effective system should seek to make optimum use not only of the ICD's resources but also of the capacity of the police themselves to receive and investigate complaints.

A different system which would be far more productive in leading to public satisfaction with the resolution of complaints, in promoting police discipline, and in strengthening the effectiveness and credibility of the ICD, would not necessarily involve changing current legislation but would include the following elements:

- Complainants would be encouraged to lodge their complaints with the SAPS by both the ICD and SAPS;
- Provision would be made for a complaints desk at all police stations but in addition the SAPS would have an obligation to establish accessible systems for lodging complaints against SAPS members at a level equivalent to the Area level. This would increase the accessibility of facilities for lodging complaints and the complainants would also have alternative localities to report complaints other than the police station where the complaint derived from;
- Clear, visible information on how to lodge complaints would be placed at all police stations. This information would also encourage people to take their complaints to the ICD if they are not satisfied with SAPS handling of these complaints.
- The SAPS, MPS and ICD would conduct research on how police services manage effective internal investigative systems and such systems would be established on the basis of good practice internationally;
- The ICD would adapt its role accordingly. It would focus on ensuring that police internal systems are operating effectively. It would strengthen both its monitoring and research and investigative capacity. But rather than investigating as many cases as possible, and as a result spreading itself very thinly, it would carry out investigations much more selectively, and ensure that these investigations are consistently of a high quality. In addition to focusing on cases which its legal mandate obliges it to investigate it would also investigate other cases which are deserving of special attention.

Such a system would create a synergy between the ICD and police internal investigative systems. The ICD would be able to be more selective about which cases it investigates and thus focus its investigative resources on a narrower number of cases thus ensuring high quality ICD investigations. The ICD would 'interfere' in cases when there is reason to believe that the police have not dealt with cases properly. The police would thus want to ensure that complainants are satisfied that cases have been dealt with properly. ICD investigations would consistently be of a higher standard with the result that the police would want to avoid having the ICD

come in to investigate cases as this would result in their own investigations being exposed as deficient. The police would therefore be motivated to conduct high quality of investigations.

## **5. Strengthening democratic policing in South Africa: Enhancing accountability systems of the SAPS - Themba Masuku, CSV**

### **Introduction**

- **Need to account**

In democracies there is general agreement about the need for the police to account for how they do their work and how they seek to protect its citizens.

- **Risk Management**

It is generally agreed that the amount of power and the discretion police exercise in the execution of their duties makes policing a high-risk and hazardous occupation, with potential for high levels of abuse of power.

- **Clarifying Direction**

Clarifying direction relates to the monitoring of the 'core businesses' of police organizations. This means that the legal and policy frameworks must provide the police with sufficient direction and guidance about the way they are expected to behave. In modern democracies, the powers given to the police are not punitive, which means that the police do not have powers to arrest suspected offenders merely for the purpose of punishment. Any punitive exercise of power by the police would be regarded as a serious abuse of power because innocence or guilt should be assessed in a court of law.

- **Providing Assurance**

Police accountability provides a level of transparency to communities and also gives them a sense that nobody is above the law, including those who apply and enforce it.

### **Purpose of the Study**

- To explore how the SAPS data relating to misconduct and discipline is managed and used in the formulation of regulations, standing orders and policies;
- To examine how the SAPS accountability mechanisms interface with external oversight bodies;
- To promote insight and debate around strengthening democratic policing in South Africa;
- To make recommendations based on international best practices around strengthening democratic policing in South Africa.

### **Research Methodology**

- Primary data was gathered through in-depth interviews with the following;
  - SAPS disciplinary managers (All levels)
  - ICD senior managers (Head Office)
  - National Secretariat senior managers
  - National Parliamentary Oversight Committee on Safety and Security
- Secondary data was obtained from docket analysis – a small sample of 20 finalised dockets from different police stations in the Johannesburg area were analysed.

### **Sampling**

- Purposive sampling
- 18 In-depth interviews
- 20 finalised dockets

### **Legislative Framework**

- Government's White Paper (No. 18340) on 'Batho Pele' Principles which are concerned with putting people first;
- The Public Finance Management Act (PFMA) of 2000 that has set reporting guidelines and standards for all public institutions;

- Public Service Commission to ensure that the government's principles of good governance, accountability and transparency in all public institutions are realized.

### **Key Accountability Systems in the SAPS**

- National Commissioner
- Provincial Commissioners
- Area Commissioners
- Station Commissioners
- Police Unions at all levels

### **Disciplinary Data and Records; Challenges**

- Quality of disciplinary records at station level – sometimes they are incomplete;
- Lack of adequate supervision during disciplinary investigations;
- Lower levels feeling disempowered;
- Disciplinary procedures take long to finalise
- Inconsistent application of disciplinary procedures
- Inadequate recording of 'minor' disciplinary offences
- Under trained and inexperienced 'disciplinary investigating officers'
- 'Passing the buck'

### **Improvements in the recording of data on discipline**

- Creation of Special Units to deal with disciplinary matters;
- Prosecution of Commanders who fail to exercise discipline where necessary;
- Improvements in the management of data relating to misconduct and discipline within the SAPS;
- Appointment of Disciplinary Investigating Officials in every police station;
- Investment in technology and centralised data management systems;