

INFORMATION SERVICES: RESEARCH

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Annual Report of the Independent Complaints Directorate 2005/2006

1. Introduction

Independent Complaints Directorate

2005/2006	Final Allocation R 000	Actual Expenditure R 000
Administration	16 835	16 473
Investigation of Complaints	21 295	21 283
Information Management and Research	11 392	11 480
Total	49 522	49 236

The annual report of the Independent Complaints Directorate (ICD) for 2005/2006 provides an overview of the 2005/2006 financial year, in accordance with its programmes as indicated in the Estimates of National Expenditure (ENE), 2005 and the Strategic Plan, 2004-2007. In addition, the Report of the Auditor General is included.

Legislative Mandate

The ICD legislative mandate is as follows:

- Section 53, *South African Police Services (SAPS) Act 68 of 1995* provides that:
 - The ICD may investigate any misconduct or offence allegedly committed by a member of SAPS, either of its own accord or upon receipt of a complaint.
 - The ICD must investigate any death in police custody or as a result of police action.
 - The ICD may investigate any matter referred to it by the Minister or a Member of the Executive Council.
- Section 18, *Domestic Violence Act 116 of 1998*. The section provides that it is misconduct for a member of the SAPS to fail to comply with an obligation imposed on him or her in terms of the DVA or the National Instructions issued in terms thereof. The ICD must be informed of any such failure reported to

the SAPS and that, unless the ICD directs otherwise, disciplinary action must be implemented against the offending member.

- *Section 64 (O) of the SAPS Act, read with Regulation 9 and Annexure 5 of the Regulations for Municipal Police Services extends the ICD's civilian oversight duties to the Municipal Police Services (MPS).*

2. Structure

The activities of the ICD are organised in the following programmes:

- **Programme 1: Administration.**
- **Programme 2: Investigation of Complaints.**
- **Programme 3: Information Management and Research.**

3. Strategic Priorities

According to the Estimate of National Expenditure (ENE), 2005 the ICD has the following strategic priorities:

3.1. Broadening the scope of investigation

The ICD has committed itself to independently investigate all complaints (deaths, criminal offences and cases of corruption and misconduct) against the SAPS and the MPS by 2005. In the past, the ICD only investigated SAPS related deaths and some serious criminal offences within a 250km radius of the nearest provincial ICD office, although it monitored other serious offence cases and all cases of misconduct investigated by the SAPS.

3.2. Monitoring

Although the Investigations of Complaints programme has been extended, the ICD's monitoring function remains central.

3.3. Cooperation with policing bodies and monitoring

Despite the focus on investigations, monitoring remains an important function of the ICD. It is possible that internal monitoring may even increase given the expansion of SAPS and the MPS and the possible consequent increase in the number of cases of alleged police related misconduct.

3.4. The Domestic Violence Act

The ICD continues to monitor the implementation of the *Domestic Violence Act*.

Issue for Consideration

- *The issue of human resources capacity is raised several times as being problematic. Has the ICD sufficient human resource capacity to undertake investigations while still being able to maintain its monitoring capacity? If not, what does the ICD intend doing to combat this problem?*

4. Overview of Service Delivery for 2005/2006

4.1. Vision 2005

When it was first established, the ICD was unable to execute its mandate of investigating all complaints lodged with it that fell within its mandate. Consequently, the SAPS investigated complaints of a less serious nature, while the ICD monitored the outcomes. Vision 2005 envisaged that by 2005 the ICD would become a fully-fledged investigative body, capable of investigating all complaints that fell within its mandate, regardless of their seriousness.

However, the ICD's staff structure has not increased in relation to the number of complaints it receives for investigation, negatively impacting on the ICD's performance and prompting reconsideration of Vision 2005 feasibility. Consequently, in November 2005, at a senior management meeting, the decision was taken to abolish Vision 2005. This decision was motivated by the realisation that introducing Vision 2005 would entail an increase in the already heavy workload of the ICD's investigators, creating new backlogs and affecting the morale of investigators. It was agreed that the ICD would investigate all forms of serious misconduct, while all complaints of poor service delivery would be dealt with by the Secretariat for Safety and Security and a memorandum of understanding is being finalised in this regard.

The ICD hosted a workshop late in the financial year to confirm the establishment of a cordial relationship between the ICD, the SAPS and the Secretariat; to streamline the intake of cases for investigation by the ICD; and to ensure that there is no duplication of functions.

4.2. Investigation of Complaints

- The number of complaints falling within the ICD's mandate decreased by 12% compared with the previous year (from 5 709 cases recorded in 2004/2005 to 5 119 cases in 2005/2006).
- With regard to deaths in police custody or as a result of police action, a decrease of 5% was recorded (from 652 cases received in 2004/2005 to 621 cases in 2005/2006).
- A total of 1 643 cases of serious criminal offences allegedly committed by SAPS members were reported. This represented a decrease of 5% when compared to the previous reporting period. The majority of these cases

related to assault on suspects (42.9%). Allegations of corruption accounted for 8% of cases, while theft accounted for 6% of cases. Abuse of power appears to be another problem requiring management intervention.

- A total of 2 855 cases of police misconduct were reported to the ICD. Incidents of misconduct reported to the ICD decreased by 16 % when compared with the 3 407 complaints received in 2004/2005.
- With respect to deaths, a finalisation rate of 93% was achieved; with regard to cases of criminality, 62% of eligible cases were finalized; and, finally, 73% of misconduct cases were finalized. These rates include the cases received in the previous financial year but finalised in 2005/2006.

4.3. Police Oversight in Africa

- In January 2004, the ICD hosted a conference on 'Policing Oversight in Africa' where a resolution for the establishment of the African Policing Civilian Oversight Forum (APCOF) was adopted. Subsequently an interim steering committee was established. During August 2005, the Steering Committee members met for a second meeting. At this meeting, sub-committees reported on their various activities. A draft constitution was discussed and adopted with minor amendments.
- Funding for audit of oversight bodies in East and West Africa was secured from OSJI. Both audits have been completed and reports on the findings are available from the Secretariat.
- A number of presentations have been made by APCOF:
 - In May 2005, a (second) presentation was made to the 37th session of the African Commission on Human and People's Rights on behalf of APCOF.
 - In October 2005, APCOF presented to Commonwealth Human Rights Initiative workshop on the theme of police accountability in the Commonwealth in Acra, Ghana.
 - In October 2005, a presentation was made at the International Conference on 'Police Accountability and the Quality of Oversight: Global Trends in National Context' held at The Hague, Netherlands.

3.1. Establishment of the Proactive Oversight Unit (POU)

- The Proactive Oversight Unit (POU) was established. In the period under review the POU produced four projects.

3.2. Policies

- The Anti-Corruption Command Policy Framework was developed.
- The ICD's Legal Services department drafted and updated the Protocol on Co-operation between the ICD, SAPS and the MPS.
- The Integrity Office was responsible for updating the following policies:

- Sexual harassment.
- Gift and gratuities.
- Conflict of interest.
- Protected disclosure.
- Information technology security.

4. Some Concerns raised by the Portfolio Committee During the Course of 2005¹

Although the Portfolio Committee did support the 2005/06 budget allocation for the ICD, during 2005 it raised a number of concerns regarding perceived problems within the ICD, including:

- High expenditure on travel. (The Committee recommended that travel expenditure for the ICD's National Office be investigated).
- Insufficiency of statistics and information provided by the ICD, including details regarding the nature of the cases reported to it, the breakdown of cases per province, problems faced at a provincial level, the breakdown of the budget to the provinces.
- The provision of services to rural areas.
- The ICD's failure to submit its research reports to Parliament, including those relating to the Domestic Violence Act.
- The ICD's monitoring of the implementation of the Domestic Violence Act.
- The lack of data in the ICD's reports.
- The lack of media desks in the Provinces.
- A lack of presence at police stations.
- The establishment of a Proactive Oversight Unit in light of proposed restructuring and possible duplication of functions with the Secretariat for Safety and Security.
- Restructuring of the ICD.
- Overlap between the research function of the Secretariat and that of the ICD.

In addition, the provincial ICD heads identified a number of concerns, including:

- Staff shortages.
- The extent to which the ICD is accessible.
- Measures aimed at attracting and retaining staff.
- The centralisation of certain decision-making powers in the National Office.
- Discrepancies between provincial offices.

¹ See the Minutes of the Portfolio Committee obtainable from the Parliamentary Monitoring Group. Minutes of the Portfolio Committee for Safety and Security.
<http://www.pmg.org.za/>

- The lack of consultation with ICD staff regarding policies.
- Training opportunities for ICD staff.
- Obtaining policing powers and appointment certificates.
- Anti-Corruption Command.
- Relationship with the SAPS.

Issue for Consideration

- *The Minister indicated that investigators would be located in the provinces with the result that all 43 police areas would have ICD investigators. The whole restructuring process was expected to be finished by the beginning of 2006. Has this restructuring process been completed? What are the implications in terms of capacity – are there sufficient investigators and other resources for the restructuring to be feasible?*

5. Key Departmental Challenges for 2005/2006

5.1. Capacity constraints

The lack of sufficient human resource capacity is identified as the chief challenge facing the ICD. This lack of capacity has numerous implications for the ICD's performance, for example:

- Vision 2005 had to be abandoned.
- Dealing with the number of new cases received is challenging, particularly so in light of the existing backlog of cases and a lack of available resources.
- The Anti-Corruption Command (ACC) has only two investigators. The vastness of area to be covered by members of the ACC, as well as the fact that these cases require sufficient time to investigate. The shortage of personnel was such that the manager was required to undertake investigative work, thereby adversely affecting managerial responsibilities.
- Two in-house training courses were conducted to enhance the skills of investigators. However, this has posed a challenge, as there are too few investigators for it to be possible for investigators to undertake training without it having a detrimental affect on the caseload.

The lack of capacity is even more problematic, as the Minister for Safety and Security has urged for the restructuring of the ICD in order to extend its services to rural areas.

5.2. Progress with financial management improvement

- Capturing data to ensure that the case-load management system is up to date is a challenge that the ICD hopes to address by employing data

capturers in the provincial offices to ensure that the databases are updated regularly.

- As Logis was meant for procuring goods and not for managing assets, it is sometimes problematic to manage assets using this system.

5.3. Relocation

- The National office acquired an additional building to accommodate Administration. Staff members relocated in the first week of August 2005. This affected service delivery as Administration was brought to a halt during that week. Similarly, the Free State office also relocated in March 2006 to a newly leased building.

5.4. Intranet

- Development of an intranet began in November 2005, and should be fully operational in 2006. It is anticipated that this should significantly improve internal communications among all the components and offices of the ICD.

5.5. Staff morale

In addition to the problems surrounding capacity constraints, the vacant position of the Head of Department and various investigations launched against the ICD may reportedly have contributed to low staff morale amongst senior staff members.

Issues for Consideration

- *The ICD indicated in its presentation to the Portfolio Committee that the approved staff establishment is for 535 posts. The annual report indicates that 175 posts were filled in 2005/2006, with 28 vacancies. Have the vacancies been filled. If not, what is the explanation for this? Have any steps been taken to obtain funding for the filling of more posts?*
- *What steps have been taken to implement the human development plans for individual staff members? What training measures are available to staff generally?*
- *The ICD states that retaining its staff is an imperative. What is the ICD's retention strategy? Has the ICD experienced problems regarding staff turnover? Compensation of employees remains at approximately 60% of the total budget. Is this sufficient to attract the skilled staff required for the ICD to fulfil its mandate?*
- *What steps is the ICD planning to ensure that the ACC is able to deal with the additional workload?*

- *Does the problem of poor staff morale still exist? If so, what has been done to address the poor staff morale,*

6. Programmes

6.1. Programme 1 - Administration

Administration encompasses the overall management and organisation of the ICD (programme management, policy formulation, and corporate services).

- **Purpose:** To render a comprehensive service to the line function within the parameters of good governance.
- **Measurable Objective:** To provide for the overall management and organisation of the Directorate.
- **Responsibility:** Executive Director, Chief Financial Officer, Manager: Support Services, Provincial Heads.

In the Strategic Plan, 2005-2008, the following were identified as key challenges with regard to Administration:

- Full implementation of the Supply Chain Management.
- Full implementation of the Human Resource Development Plan, based on the results of the Skills Audit (finalised in 2005/2005).

Administration has four sub-programmes, namely Human Resource Management; Supply Chain Management; Financial Management and Internal Audit.

Each of these sub-programmes reported being able to fulfil their service delivery objectives by the end of the financial year, although in some instances timeframes were not met:

- **Staff Development Plans.** Staff personal development plans were implemented.
- **Supply Chain Management System.** A consultant was appointed to assist with the development of policies and procedures for the implementation of the Supply Chain Management (SCM). An advert was placed in July 2005 inviting suppliers to register on the ICD's database, and the database was updated accordingly. In order to implement SCM, all staff received some training. According to the annual report, compliance, implementation and rollout of SCM occurred by March 2006.

- **Asset Management Policy.** The Asset Management policy was also approved and implemented. A unique number was allocated to all assets and were pasted on individual assets. Provincial offices were visited in February and March 2006 to verify the asset register. The department also installed NETSTAR tracking system into all its official vehicles.
- **Staff Training and Awareness Campaigns.** Several training and awareness campaigns were conducted to increase awareness and prevent the spread of HIV/AIDS among employees. Activities were conducted during youth development month, Women's month, and the 16 days of activism on no violence against women and children.
- An **Anti-Corruption Policy** was developed.

Issues for consideration

- *Have the policies on leave, resettlement and overtime been implemented? If so, why did the Auditor General draw attention to the lack of independent management review and monitoring of leave benefits?*
- *The ICD reports that the Supply Chain Management System was ready for implementation and rollout in March 2006? The report also states that all employees have received training on the SCM. Yet, the Acting Accounting Officer reports that 'due to limited hands and knowledge available in the newly established component: Supply Chain Management, the project to administer and finalise the unique numbering of all ICD assets as well as updating the electronic ICD asset Register was completed towards the end of December 2005. The full implementation of the Supply Chain management System and further decentralisation of the Logis electronic procurement system to other provincial offices could not be entertained. A plan has been put forward to fully implement the Supply Chain Management System within the next financial year and to continue the decentralisation of the Logis procurement system. Please clarify to what extent the SCM System has been implemented and the Logis system been decentralised, as well as what still needs to be done for full implementation to occur? What are the timeframes. Capacity has been identified as a challenge – both in terms of a lack of staff and a lack of training – how does the ICD intend addressing this problem?*
- *The ICD reported that more than 48% of its suppliers were from identified BEE sources. The intention is to improve this to at least 55% in the next year. What steps have been taken to improve this in order that the ICD might meet its target of 55% for 2006/2007?*
- *Does the ICD have sufficient support/administrative staff? Has a lack of support staff been identified as a potential threat to the effective*

functioning of the ICD? If so, what measures have been taken to address this problem by increasing the number of such posts within the ICD?

6.2. Programme 2 - Investigation of Complaints

- **Purpose:** To investigate complaints of brutality, criminality, corruption, and misconduct perpetrated by members of SAPS and Municipal Police Services.
- **Measurable Objective:** To, within 180 days of reporting, finalise investigations into all police related deaths and allegations of criminal offences and misconduct, thus maintaining the integrity of independent police oversight.
- **Responsibility:** Executive Director, Head: Operations Management, Manager: Investigations, Provincial Heads.

Legal Services

- Legal services assisted the State Attorney in defending 4 cases against the ICD, instituted by SAPS members, involving civil claims for damages for their unlawful arrest and detention. These cases were still pending at the end of the reporting period.
- Legal services was instrumental in compiling a draft Standard Operating Procedure for the reporting and Handling of cases of Corruption, as well as the Transport policy for the ICD.
- It has progressively become involved in rendering assistance to HRM in the handling of disciplinary matters.
- Legal Services drafted an amended and updated Protocol on co-operation between the ICD, SAPS and the MPS.
- Legal Services also took part in the deliberations of the task team for the amendment and eventual finalisation of the regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002.

Skills development

- All 43 investigators were sent on in-house training, conducted in September 2005 and February and March 2006. These training sessions were conducted in conjunction with Justice College.
- The ICD also intends issuing firearms to its investigators. Two handgun-training sessions have been provided to investigators in June and July 2005. Eleven investigators attended the training in June 2005, while 8 attended in July 2005.

Integrity Strengthening Unit (ISU)

The Unit was launched in October 2005. Since then the ISU has developed a values-based Code of Ethics for internal as well as external stakeholders. In addition, the ISU has implemented a formal ethics and anti-corruption training programme.

Investigations

- ICD received 714 notifications of death in police custody. 48% of these cases were dismissed, as police involvement was not established. The majority of deaths were attributed to suicide, natural causes, injuries sustained while in custody, as well as injuries sustained prior to custody (the majority of these were attributed to vigilantism). Negligence or blatant disregard for Standing Orders and Regulations was for the most part a root cause in those cases where police involvement was established.
- 1 473 complaints of criminality, including corruption, were investigated.
- ICD investigated 54.6% of the 3 716 complaints relating to misconduct / service delivery. The rest were monitored. The majority of these complaints stem from a combination of factors including lack of knowledge of processes, failure to show interest in the complaint reported, negligence in the performance of duty, discourtesy, or the deliberate refusal to perform services. The ICD noted that in some cases the problem lies in a lack of skills and that to prevent a reoccurrence of the offending behaviour, training and not punishment would be the preferable intervention. Unfortunately, the ICD's recommendations are punitive, which means that an opportunity to make a meaningful contribution to improved service delivery and the reduction of complaints has been overlooked. The ICD has identified this as a challenge that it intends overcoming in the next financial year.

Challenges

- The programme still experiences backlog challenges.
- Establishing the ACC within the National Office, as opposed to capacitating provincial offices, encountered some opposition. However, it is envisaged that this capacity will be eventually moved to the traditionally bigger provinces such as the Gauteng, Kwa-Zulu Natal and Western Cape. Budgetary constraints are a factor in relocating the ACC to provincial offices. To date the ACC operates with a mere 3 investigators and has not grown since 2004 when it was first established.
- Retention of investigators has proved a problem (5 investigators left the ICD).
- Attracting experienced persons to senior investigator positions is also proving to be a problem as the salaries offered is not attractive to potential employees.

Issues for Consideration

- *The section on the Programme: Investigation of Complaints does not provide service delivery targets. Elsewhere in the annual report, targets relating to finalisation of cases are set out. No information, however, is provided regarding backlog. According to the ENE 2005, the key measurable objective for the investigation of complaints for 2005/06 was 85% of all complaints of criminality by the SAPS and MPS within 180 days. An additional objective was that 85% of all police officer conduct reports are accepted and implemented by the Commissioner of the SAPS and the National Director of Public Prosecutions. Was the ICD able to meet its targets? What are the targets for this programme? Have they been met? Can the ICD please provide information regarding the number of cases that it has carried over from previous years, as well as how long have these investigations been outstanding?*
- *Government corruption is seen by many as one of the biggest hurdles in the way of effective service delivery, and it is especially worrying when, instead of protecting people, the law enforcement agencies are seen to be extorting bribes. What is the precise role of the Anti-Corruption Unit? What are its measurable objectives and what has been its output in the past year?*

6.3. Programme 3 - Information Management and Research

- **Purpose:** The programme is divided into two sub-programmes - Information Management System and Research. IMS has three components, namely Complaints Registry, Information technology and Communication.
- **Measurable Objective:** To maintain an updated register of complaints; register, allocate and follow-up on cases; oversee the implementation of the Domestic Violence Act; and analyse all data on the database – producing at least four reports annually, recommending interventions to enhance the human rights focus in policing service delivery. A further objective is to improve the management and dissemination of information through technology in order to market the organisation to various stakeholders.
- **Responsibility:** Executive Director, Head: Operations Management, Manager: Research and Development, Provincial Heads.

Monitoring and Development is responsible for registering complaints received from the community, the Minister for Safety and Security and from provincial MEC's for Safety and Security. Cases that the ICD refers to SAPS for investigation as well as the implementation of the DVA are monitored. Systemic