

INFORMATION SERVICES: RESEARCH

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Budget Vote 21: Independent Complaints Directorate (ICD)

1. 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 (DVA)* 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. In terms of the *South African Police Service Act, 1995*, the ICD is empowered to investigate all cases of misconduct against the SAPS and Municipal Police Service (MPS), including the following categories of offences and misconducts:
 - Where a member of the SAPS kills or causes the death of any person involved with him or her in a domestic relationship, such as a spouse.
 - Where a member commits an offence such as assault, rape, etc. against a person in a domestic relationship with a member, such as a spouse.
 - Where a member neglects or refuses to assist a victim of domestic abuse.

Furthermore, the *Domestic Violence Act, 1998*, provides that when a member of the SAPS fails to comply with an obligation imposed on him or her in terms of the Act or in terms of the National Instruction, his or her actions constitute misconduct. The ICD must be informed of any such failure reported to the SAPS. The ICD must report to Parliament on a six monthly basis. Such reports should set out the number and particulars of the cases received by the ICD regarding

non-compliance with the Domestic Violence Act, as well as its recommendations in such matters.

- *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 MPS.
- Note that from 2007/08, the ICD will be also investigating complaints of misconduct, criminality and corruption committed by a member of the Directorate of Special Operations ('The Scorpions').

2. Aim

The ICD's aim remains unchanged from that contained in its Budget for 2006, namely:

- To investigate complaints of misconduct, corruption and criminality allegedly committed by members of the SAPS and the MPS.
- To make appropriate reactive and proactive recommendations to reduce the incidence of the behaviour that gives rise to such complaints.

3. Programmes: Structure and Measurable Objectives

The 2007/08 Vote, with measurable objectives, is divided into three programmes, namely:

- **Administration:** To provide for the overall management, policy development and organisation of the ICD.
- **Investigation of Complaints:** To investigate deaths in police custody and as a result of police action, and any complaints of police misconduct, criminality and corruption allegedly committed by any police officer.
- **Information Management and Research:**
 - To receive, register and process complaints of misconduct, criminality and corruption committed by a police officer, as well as notifications of police related deaths.
 - To monitor the implementation of the DVA by the South African Police Services and the Municipal Police Services.
 - To manage all information.
 - To recommend solutions to inherent policing problems.

3. Priorities, as per the State of the Nation Address (SONA) 2007

In 2006, President Mbeki identified a high level of public dissatisfaction with the functioning of the criminal justice system and committed government to respond aggressively to this challenge. In 2007, while acknowledging the contribution of officials within the JCPS cluster, the President highlighted the need for 'effective organisation, mobilisation and leadership of the mass of law-enforcement, intelligence and corrections officers, and functionaries of the justice system'. Although SONA makes no specific mention of the ICD, given the emphasis on efficacy and service delivery, many of the identified priorities are of relevance to its work.

4. Some Concerns raised by the Portfolio Committee During the Course of 2006¹

Although the Portfolio Committee supported the ICD's 2006/07 budget allocation, it has raised a number of concerns during 2006 regarding perceived problems within the ICD, including:

- Underspending of the budget.
- The accessibility of the ICD's services to the public, including the provision of services to rural areas.
- Backlogs in finalising complaints.
- Staff vacancies, particularly in finance.
- Loss of staff, particularly investigators.
- The need for a skills audit.
- The ICD's monitoring of the implementation of the Domestic Violence Act. There are many irregularities at station level in the way in which such complaints are dealt with.
- The anti-corruption command.
- The ICD's relationship with SAPS.
- The lack of media desks in the Provinces.
- A lack of presence at police stations.
- Restructuring of the ICD.
- Fostering a (co-operative) relationship with the Secretariat, particularly with regard to DVA compliance.
- Cell inspections.
- Implementation of ICD's recommendations.

For the most part these concerns are not new and, in previous years, the Portfolio Committee had raised many similar concerns with regard to the ICD's functioning.

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/>

Possible Questions

- What is the current status with regard to the restructuring process? Towards the end of 2005, the Minister indicated that investigators would be located in the provinces with the result that all 43 police areas would have ICD investigators. At present the ICD has 70 posts for investigators (63 are filled) and intends to hire another 25 investigators. The ICD also intends establishing more satellite offices (an amount of R4 million has been allocated for the opening of satellite offices). However, the whole restructuring process was expected to be finished by the beginning of 2006. What are the reasons for the delays?
- The Estimates of National Expenditure (ENE) reports improved co-operation between the ICD and Secretariat regarding possible overlap of functions, particularly with regard to referral of complaints. Does the ICD have any means of tracking complaints that are referred to the Secretariat to ensure that they are dealt with?

5. Budget 2007: Key Policy Issues Affecting the Vote

• Role and functions

The enormous number of backlogs has necessitated that the ICD review its strategy for investigating misconduct and service related complaints. Accordingly, there has been need of improved co-operation between the ICD and the Secretariat particularly with regard to the referral of complaints. The agreement is that the ICD will refer service related complaints to the provincial secretariats, while the National Secretariat will refer complaints of criminality and misconduct to the ICD.

• Improved capacity for investigations

There is growing emphasis on increasing the ICD's investigative capacity. The appointment of more investigators and the establishment of more satellite offices accompany this.

An Integrity Strengthening Unit was established in 2004/05 and was instrumental in developing a code of ethics, leading to a confidential ethics telephone hotline and email facility for whistle-blowing by employees,

The ICD's Anti-Corruption Command was established in 2004/05.

The establishment of a new Proactive Oversight Unit in April 2005, which carries out targeted research on operations and systems and undertakes trend and case analyses, has strengthened the increased emphasis on proactive interventions.

- **The Domestic Violence Act**

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

Reducing deaths in police custody and due to police action

Senior managers of the ICD serve on the SAPS-ICD joint committee to monitor deaths. There has been a reduction in the number of deaths in police custody, which is argued to confirm the ICD's commitment in this regard.

Possible Questions

- In six of the nine provinces, the ICD and the Secretariat have concluded MoUs. In which Provinces have such MoUs not been concluded and what is the reason for the delay?
- The ENE 2007 states '[t]he constant flow of complaints against police criminality and misconduct emphasizes the public's trust and confidence in the ICD's ability to treat them with dignity and promptly attend to their complaints'. Given the number of backlogged cases and the reduction in the number of complaints, as well as queries regarding the ICD's visibility and accessibility, is this statement correct?
- 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 capacity of the Anti-Corruption Unit? It was envisaged that the ACC would eventually be relocated to the provincial offices. Has this been done?
- What steps has the ICD taken to promote awareness with regard to the implementation of the Domestic Violence Act? To what extent have awareness campaigns affected the reporting of alleged misconduct or non-compliance on the part of SAPS members with the provisions of the Domestic Violence Act? How are the effects of such awareness campaigns being monitored?
- Given its mandate to monitor the implementation of the Domestic Violence Act, as well as the establishment of a Proactive Oversight Unit, is the ICD able to comment on the findings of a recent study, which reported a high incidence of femicide (the killing of one's female partner) within the security sector.² Has the ICD undertaken any further investigation into this finding to uncover the factors that might contribute to this? Have any recommendations been made as to how families-at-risk can be identified and assisted? In addition, the study highlighted

² Matthews, S; Abrahams, N, Martin; L. Vetten, L; van der Merwe, L; & Jewkes, R. Every Six Hours a Woman is Killed by her Intimate Partner. A National Study of Female Homicide in South Africa. MRC Policy Brief. No. 5, June 2004.

poor handling of such cases on the part of SAPS? Has the ICD undertaken any research into this?

- What has been the focus of its Proactive Oversight Unit's targeted research thus far, and what interventions have been identified as needing to be made? What has been the outcome of any recommendations made? How does the ICD intend measuring the success, or otherwise, of any interventions made as a result of the Unit's recommendations?

6. Expenditure Trends

Table 1

Vote 21: Independent Complaints Directorate R thousand	Adjusted Appropriation 2006/ 2007	Medium-Term expenditure estimate			Nominal% Change from Last Year	Real % Change from Last Year
		2007/ 2008	2008/ 2009	2009/ 2010		
Administration	20777	29499	31338	34704	30% 42%	37%
Investigation of Complaints	29058	35663	46427	54093	23%	18%
Information Management and Research	12071	15729	17602	21866	12% 30%	25%
Total	61906	80891	95367	110663	31%	26%
Change to 2006 budget estimate	-4000	7000	12000			

Real percentage change is calculated by deducting the Consumer Price Index of 5.1% from the nominal percentage change.

Table 2

Vote 21: Independent Complaints Directorate R thousand	Medium-Term expenditure estimate	% of Total Budget Allocation
	2007/ 2008	
Administration	29499	36 %
Investigation of Complaints	35663	44 %
Information Management and Research	15729	19 %
Total	80891	

Note that the % of Total Budget Allocation is rounded off

The ICD's total budget for the financial year 2007/08 has increased from a revised adjusted appropriation of R 61.9 million in 2006/07 to R 80.8 million in 2007/08. This represents a nominal increase of 31% and a real increase of 26%. Since 2003, the ICD's budget has reflected an average annual increase of 16.9%.

At least half of this expenditure is on compensation for employees. Over the MTEF, all the programmes are expected to grow strongly, particularly Investigation of Complaints (23%).

The 2007 Budget provides for additional allocations of R 7 million in 2007/08; R 12 million in 2008/09 and R 16 million in 2009/2010 for setting up two new satellite offices, better remuneration of investigators and more administrative support to ensure better compliance with the PFMA.

*Revised
Structure of
ICD Insert*

Note. According to the ENE 2006, additional allocations were made in the 2006 Budget of R4 million for 2006/07, R7 million for 2007/08 and R13 million for 2008/09. These were to be used primarily to increase its internal capacity to handle a higher caseload.

Note. There is projected underspending of R 4 million in the 2006/07 financial year.

6.1. Programme 1: *Administration*³

Table 3

Programme: Administration R thousand	Adjusted Appropriation 2006/ 2007	Medium-Term expenditure estimate			Nominal% Change from Last Year	Real % Change from Last Year
		2007/ 2008	2008/ 2009	2009/ 2010		
1. Management	5227	5541	6981	7330	6%	1%
2. Corporate Services	11835	17768	17696	20028	50%	45%
3. Property Management	5715	6190	6661	7346	8%	3%
Total	22777	29499	31338	34704	30%	25%
Change to 2006 Budget Estimate		1397	1831			

Real percentage change is calculated by deducting the Consumer Price Index of 5.1% from the nominal percentage change.

Administration comprises 36% of the total budget allocation for 2007/08. This programme demonstrates a nominal increase of 42%, and a real increase of 37%. Expenditure increases from R 22.8 million in 2006/07 to R29.5 million in 2007/08 to provide greater capacity in support services and to cater for support staff in the newly established satellite offices. Expenditure on compensation of employees comprises 52.6% of the total programme expenditure, as compared to 55.6% for 2005/06.

From 1 April 2006, the cost of leases and accommodation costs devolved to the responsible department from the Department of Public Works. Accordingly, the ICD has received R 6.1 million from Public Works to cover these expenses.

Possible Questions

- Has the Service Commitment Charter and Service Delivery Plan been fully developed and implemented?
- Has the Supply Chain Management been fully implemented?

³ It should be noted that key challenges and tasks of the *Administration* programme that were identified in the ICD's strategic plan 2006 - 2009 included:

- Development and full implementation of Service Commitment Charter and Service Delivery Plan by 2006/07.
- Full implementation of learnerships.
- Staff shortages, as against the approved establishment (structure of 535 posts).
- Full implementation of supply chain management.

- Has the Human Resource Development Plan been fully implemented?
- What has been done to redress the scarcity of required skills?
- What learnership programmes have been implemented? How many learners are there?
- The ICD states that the recruitment and retention of staff is an imperative. The ICD has claimed that it is unable to attract senior staff, as the salaries it offers are not sufficiently competitive. In addition, it was unable to attract/retain senior investigators, who leave the ICD for better paying positions elsewhere. The ICD, however, has decreased its expenditure on compensation of employees in the past three years, shifting funds from personnel to goods and services and capital. What is the explanation for this?

6.2. Programme 2: *Investigation of Complaints*⁴

Table 4

Programme: Investigation of Complaints	Adjusted Appropriation	Medium-Term expenditure estimate			Nominal% Change from Last Year	Real % Change from Last Year
		2006/ 2007	2007/ 2008	2008/ 2009		
R thousand						
1. Investigation of Complaints	27755	34831	45553	53175	25%	20%
2. Legal Services	1303	832	874	918	-36%	-41%
Total	29058	35663	46427	54093	23%	18%
Change to 2006 Budget Estimate		4716	8150			

Real percentage change is calculated by deducting the Consumer Price Index of 5.1% from the nominal percentage change.

The budget for the programme *Investigation of Complaints* for 2005/06 has continued to grow rapidly with an increase in expenditure from R 29 million in 2006/07 to R 35.6 million

⁴ Key challenges and tasks in the *Investigation of Complaints* programme that were identified in the ICD's strategic plan 2006 – 2009 included:

- Anti-Corruption Command (ACC). The ACC was established during the 2004/05 year. Staffing at the ACC is/was a huge challenge – there is need for credible, experienced and skilled investigators. Training of representatives in the provincial offices is another challenge.
- Service-related complaints. Process of referring service-related complaints to the Secretariat required consultations with the Secretariat at both national and provincial level.
- Integrity Strengthening Unit will have to address specific forms of corruption included in the Public Service Anti-Corruption Strategy, such as conflicts of interest, fraud, bribery and insider trading. To be achieved through development of policies, fraud and corruption risk assessment, ethics audit, as well as comprehensive ethics training and awareness campaign. To ensure that ethics hotline is attended to at all times during official hours, and that it operates as an extension of the National Anti-Corruption hotline.

in 2007/08. This represents a nominal increase of 23% and a real increase of 18%. The programme comprises 44% of the total ICD budget allocation for 2007/08.

As with *Programme 1: Administration*, the item compensation for employees dominates this programme's budget.

A note regarding performance targets

While the ENE reports that the ICD met its targets for the year 2005/06, in fact these targets had been revised downward during the relevant year. The ENE 2007 sets the following targets:

- 60% of investigations into deaths where there is no police involvement within 30 days.
- 60% of investigations into deaths where there is police involvement within 120 days.
- 50% of investigations into police criminality within 120 days.
- 50% of investigations into cases of police misconduct within 60 days.

According to the Treasury submission, the ICD had a backlog of 5 541 cases as of 31 March 2005, which meant that the total number of cases was 10 660 (during 2005/06, the ICD received 5119 new cases). Approximately half of the new cases (2 532) were finalised. Of the cases carried forward from previous years, only 179 cases were finalised. Thus, the backlog as at 31 March 2006 was 7 949 cases.

Possible Questions

- What is the current backlog of cases?
- How many cases were investigated in 2006/07 and what was the outcome of these investigations? How many cases were finalised?
- What proactive investigations have taken place? What has been the outcome of such investigations?
- Problems were being experienced in the appointment of skilled investigators to the Anti Corruption Command. Has this problem been successfully addressed?
- How many appointments of new investigators will be made in 2007/08?
- What initiatives are intended to ensure that staff capacity is built and to ensure that investigators are abreast of new developments within their field?
- Does the ICD meet resistance from stakeholders, such as the SAPS and MPS when investigating complaints? Does the ICD National Office continue to maintain that its

relationship with key stakeholders is optimal, when provincial heads indicate that they have experienced a lack of co-operation from the SAPS?

6.3. Programme 3: *Information Management and Research*⁵

Table 5

Programme: Information Management and Research R thousand	Adjusted Appropriation 2006/ 2007	Medium-Term expenditure estimate			Nominal% Change from Last Year	Real % Change from Last Year
		2007/ 2008	2008/ 2009	2009/ 2010		
1. Monitoring and Research	1573	1753	1840	1932	11%	6%
2. Information Management System	12498	13976	15762	19934	12%	7%
Total	14071	15729	17602	21866	12%	7%
Change to 2006 Budget Estimate		887	2019			

Real percentage change is calculated by deducting the Consumer Price Index of 5.1% from the nominal percentage change.

The increase in the *Information Management and Research* programme budget reflects a nominal change from last year of 11%, and a real change of 6%. This programme sees steady growth in the MTEF of 15.8% as compared to 21.7% between 2003/04 and 2006/07.

Expenditure on goods and services will increase by 17% over the medium term to support more traveling for research projects and printing costs. An increase of 65.7% in expenditure for machinery and equipment over the medium term is to support the extended monitoring of the implementation of the Domestic Violence Act.

The ENE reports that the ICD failed to meet its target of six reports on systemic problems in policing – it produced three reports in 2005/06. It should be noted that the Minister of Safety and Security allowed the ICD to revise its targets during the 2005/2006 financial year. The revised targets were for four reports on systemic problems in policing, as well as one report workshop report.

According to the ENE 2007 targets for this programme include:

- 5 police station audits per quarter per province.
- 4 reports on custody management and non-compliance with the DVA .
- 5 cell inspections per quarter per province.
- 5 community outreach programmes per quarter per province.

⁵ Key challenges and tasks in Information Management and Research programme that were identified in the ICD's strategic plan 2006 - 2009 included:

- Maintaining an up-to-date database.
- Improved relationship between police, Secretariat and civil society.

Possible Questions

- From what source do the majority of complaints arrive – public or internal?
- What initiatives has the ICD undertaken to inform the public of the services it offers? How is public access to the ICD facilitated, particularly in rural areas? Is there a toll free number available?
- Does the ICD have a mechanism to deal with complaints regarding its own services – or are these referred to the Secretariat. If so, what are the implications for independence?
- What provision has been made for increased co-operation/collaboration with civil society?
- Has provision been made for collaboration with similar institutions that promote democracy?
- Can the ICD explain the decrease in the number of complaints it has received in past years?
- Does the ICD have sufficient resources to communicate effectively so that the issues with which it is engaged are clearly understood by the public?
- Why was the ICD unable to meet its targets to produce reports on domestic violence and systemic problems in policing?
- Has the ICD undertaken any steps to follow up on the implementation of its recommendations?

7. Notes on the National Treasury's Comments on the Budget 2007/08

The National Treasury raises a number of concerns relating to the ICD's Budget 2007/08:

- The ICD expenditure for 2006/07 could see a savings/underspending of its budget of R4 million, of which a projected savings of R3 million comes from spending on compensation of employees. Treasury is concerned at the shift from personnel to goods and services and capital.
- It should be noted that this is not a new concern. When considering the budget for 2006/07, Treasury raised the same concern, namely that the huge increases in the MTEF Budget of the ICD are mainly aimed at increasing the ICD staff establishment in order to become a fully-fledged investigative agency. The ICD

continuously identifies its biggest challenges as insufficient capacity, shortage of investigators and the huge backlog in the finalisation of cases due to budgetary constraints. In past years, the baseline of the ICD has been increased well above the rate of inflation (there is an average annual growth of 18.89% over the MTEF period). Yet allocations for compensation of employees over the past years consistently reflected under expenditure and were used by the ICD to fund capital expenditure.

- In the past, the ICD's vacancy rate was 13.7% (as at 31 March 2006). The vacancy rate at 28 February 2007 is considerably reduced – 6.49%. However, vacancies in investigations are still present – of 70 investigators there are 7 vacancies (a vacancy rate of 10%). The Table below shows the number of vacancies on the ICD establishment as at 28 February 2007:

Table 6

Total Posts	Filled 28 February 2007	Vacancies
231	216	15

8. Provision for Gender, Youth and Disability in the Budget⁶

There is no identifiable provision for gender, youth or disability in the budget.

Youth and disability

It is arguable that despite the limited nature of the ICD's legislative mandate, as children, youth and persons with disabilities are all potential customers, its activities do have implications for children, youth and persons with disabilities. In this regard, the ICD could ensure that its services are more readily accessible to the public at large, and to children, the youth and persons with disabilities.

In addition, as an employer, the ICD could ensure that it employs more persons with disabilities, and that the working environment meets the needs of such employees. It could also include more information in its annual report on initiatives in this regard, as well as on its internship programme.

Gender

Although a measurable objective for the programme *Investigation of Complaints*, the ICD has no specific allocation for monitoring the implementation of the Domestic Violence Act. The issue of access is a serious one, particularly access for women living in rural areas. Although the ICD has a 24-hour access cellular number lodged at all police stations for SAPS members to contact the ICD when there is a death in police custody, this is not

⁶ Sourced from the Gender Advocacy Project. Making the Act Work. A Research Study into the Budget Allocations for the Implementation of the Domestic Violence Act.

appropriate for victims of domestic violence who wish to lay a complaint against the police. The existence of toll free numbers would to some extent address this problem but specific provision is not made for this service.

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