

insight@ipt

Editorial	1	<i>The Independent Projects Trust (IPT) is publishing this third edition of insight@ipt in an attempt to generate debate and discussion on the Independent Complaints Directorate (ICD), a statutory body under civilian control that is tasked with being the watchdog of the South African Police Service (SAPS).</i>
The Independent Complaints Directorate	2	<i>During July and August this year the ICD held numerous workshops as part of the procedure towards developing an ICD White Paper. A discussion document was issued at the workshops and with feedback from these discussions, as well as additional research, a Green Paper will be drafted. Officials from the directorate will use the Constitution, experience the ICD has gained in civilian police oversight since April 1 1997 and international experience, particularly from the United Kingdom, Canada and the United States of America. Further discussions and a parliamentary hearing will precede the release of a White Paper which is expected to provide policy structure for the ICD after next year.</i>
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The View of a SAPS assistant commissioner for legal services	4	<i>It is hoped that this publication will spur non-governmental organisations and other interested parties to voice their opinions on the ICD and the proposed changes.</i>
The View of the South African Police Union's KwaZulu-Natal regional secretary	6	<i>Written inputs on the ICD should be sent to Mike Kekana at the ICD, Private Bag X941, Pretoria, 0001; Facsimile: (012) 320 0431; Email: icdpta@wn.apc.org</i>
The View of a Sociology lecturer	7	<i>The deadline for submissions is August 31 1999. However, if you would like an extension contact Mike Kekana by telephone on (012) 3200431.</i>
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The Independent Complaints Directorate

The ICD is faced with the difficult task of keeping a close watch on members of the South African Police Services (SAPS) and tensions between the directorate and SAPS members have escalated recently. When the ICD arrested Western Cape policeman Inspector André Ferreira for allegedly using excessive force when he shot and killed a R1-million robbery suspect, members of the South African Police Union allegedly called on its members to arrest ICD officials who appear to be interfering in police work. This case, which made the media headlines, as well as others may have created the perception amongst many police officers, and some members of the public, that the ICD is more concerned about the rights of criminals than the rights of police officers.

The ICD has for some time found its efforts at promoting proper police conduct frustrated. ICD executive director Advocate Neville Melville has complained of the police resisting the ICD's endeavours. Speaking to the national parliamentary committee on safety and security in September 1998, Melville said that the ICD needed greater powers to force police officers to co-operate and give evidence in investigations. The relationship between the ICD and the police was described as "very worrying" by a directorate official at the KwaZulu-Natal discussion document workshop in July.

The work of the ICD is severely hampered by a lack of resources. While the police have over 130 000 members, the ICD has a staff complement of about 149 (of which 64 are investigators), with a budget of R28-million. To make matters worse, the government has indicated that this budget allocation will be fixed for the next three years. The Department of Public Service and Administration's Workstudy Report stated that the ICD needed 535 staff members. In KwaZulu-Natal the ICD has six full-time investigators who share five cars. In its first year of existence the ICD received 2 000 complaints. A further 2 860 were recorded in the second year.

Many cases are ongoing, but the ICD argues in its defence against public perceptions that the directorate's findings may be used by police in support of unfounded allegations. "A lot of our work has gone unnoticed because we don't call the media," one official has argued. This view is substantiated by statistics provided by the ICD. Of 2 240 cases that the directorate finalised in the 1998/9 financial year only

30% were found to have been substantiated. Almost 10% of the complaints were dismissed outright without investigation or monitoring. Speaking about these statistics, Melville said: "The action of investigating a case against a member of the SAPS does not presume guilt, but merely aims to gather all available evidence to enable a reliable and objective evaluation of the police conduct by the appropriate authority."

In a measure which could go some way to improve relations between the SAPS and ICD if it becomes more widely known, Melville recently announced that the ICD would give awards to SAPS members who have exceeded the call of duty.

The functions of the ICD

At present the ICD categorises complaints as follows:

1. A death in police custody or as a result of police action;
2. A complaint referred to the ICD by the minister or an executive council member;
3. A complaint which alleges that a member committed a serious criminal offence;
4. Any complaint which alleges that a member committed a less than serious offence or act of misconduct in violation of SAPS regulations; and
5. Complaints that are outside the mandate of the ICD.

In the case of (1) the ICD investigates; in the case of (2 and 3) the ICD either investigates or sets guidelines for SAPS investigators; in the case of (4) the ICD investigates only in exceptional cases, but usually monitors the investigation by SAPS members, with regards to (5) complaints are referred to other organisations.

These functions are determined by legislation governing the ICD. The directorate cannot investigate deaths of police officers or crimes committed by a civilian, for example, because it is simply not part of the body's mandate.

History of the ICD

The idea of forming a watchdog for the police service originated in Section 222 of the Interim Constitution which provides for: "an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner."

The ICD was later established in accordance with Chapter 10 of the South African Police Services Act (No. 68 of 1995). The directorate is accountable directly to parliament through the Safety and Security Ministry. Section 50(1) of the Act establishes the ICD and section 53(2) in particular, sets out the functions of the organisation.

The ICD had not been constituted when the National Crime Prevention Strategy, which provides a multi-departmental approach to crime fighting, was adopted in May 1996.

Countries such as Canada, England, Northern Ireland, Denmark, United States of America and New Zealand have structures similar to the ICD.

The Issues and Challenges, according to the ICD

- The ICD reports to the Minister of Safety and Security who is also the police's political head. This has the potential for a conflict of interests for the Minister.
- Should the ICD investigate or monitor complaints, or both?
- Do functions performed by the ICD and those by the Secretariat for Safety and Security overlap?
- Should the ICD intervene in the training of the police? If so, how?
- The ICD is governed by the same legislation as the SAPS which strengthens the perception that the ICD is a police unit.
- The ICD's powers are inadequate because the ICD cannot compel authorities to implement recommendations made by the directorate or furnish reasons for not implementing them.
- Role players need to take the high numbers of police-related and custody deaths seriously.
- The SAPS Act obliges police to report to the ICD deaths in custody or deaths which are a result of police action, but no offence is created for failure to report to the ICD.
- ICD officials have no legal protection. In particular, investigators are not protected from being charged in terms of Section 67 of the SAPS Act for interfering with the police and one member of the ICD has already been charged with defeating the ends of justice. Some bodies, such as the Public Protector,

have provisions in their legislation that make it an offence to insult that body.

- The ICD has no legislative powers to conduct search and seizures.
- The ICD does not have a witness protection programme that is controlled by the directorate.
- Who investigates allegations and complaints made against the ICD by the police or by members of the public?

Proposals made by the ICD

1. The ICD should have its own legislation, be fully independent from any state department and be accountable to parliament.
2. The ICD should be given more police powers such as powers to force a SAPS member to produce documents required and to hold boards of inquiries.
3. A legislative enactment is required to compel the SAPS to report all cases involving police corruption to the ICD.
4. Members of the ICD should in the performance of their duties be indemnified from the provisions of Section 67 of the SAPS Act where they exercise their powers in good faith.
5. The ICD should intervene in all forms of training of the SAPS.
6. The ICD should have unrestricted access to dockets containing police investigation.
7. The ICD should intervene in the appointment and promotions of certain senior positions.
8. The ICD should intervene in the SAPS especially in instances where their alleged misconduct relates to the performance of their work.
9. One option which could build public confidence in the ICD is to develop separate legislation which would confer adequate powers to the ICD.
10. A proper training programme for officials from the directorate needs to be developed because current training is on an ad hoc basis and there is no required standard training for investigators. This should include conflict resolution and training for investigators.
11. The ICD should be responsible in terms of participating in victim support programmes.

12. Co-operation ought to be forged with the prosecuting authority.
13. The ICD should develop sound service delivery standards and comply with these.
14. A number of community outreach programmes should be embarked on and the ICD should interact regularly with community police fora.
15. A more aggressive marketing approach should be put in place.
16. The ICD should be adequately funded to be accessible to every South African citizen.

Comments from the Independent Projects Trust on changes in the Independent Complaints Directorate

1. The Independent Projects Trust (IPT) is of the view that the Independent Complaints Directorate (ICD) should fall under the Ministry of Justice. This is due to the likelihood of a conflict of interests occurring with the ICD falling under the Safety and Security Ministry. However, IPT also concedes that similar problems could be experienced under the Justice Ministry, but these are likely to be much reduced. To be responsible to parliament, rather than to one department or ministry, the ICD would have to be written into Chapter Nine of the Constitution. This chapter provides for the establishment of independent institutions, including the Human Rights Commission, the Commission for Gender Equality and the Electoral Commission. A simpler route would be to have separate legislation governing the ICD and would require the directorate to fall under a ministry.
2. It is possible that many complaints that are monitored by the ICD would fall under the ambit of the Human Rights Commission (HRC). Should some form of co-operation between the two bodies be possible, the HRC could monitor some investigations leaving the ICD to focus on investigating others that cannot be dealt with by police.
3. ICD officials should have the same rights as police officers. The police should, however, be obliged to provide the directorate on request with justifiable written reasons for any actions or omissions taken by the SAPS in dealing with recommendations.

4. The ICD should be involved in training only to the extent of ensuring that the function, role and powers of the directorate form part of the SAPS curriculum.
5. Clear guidelines on how misconduct is defined, both by the ICD and SAPS, need to be developed.
6. It is vital that the ICD's role in the National Crime Prevention Strategy be made clear.

“Absolute Power Corrupts”: Cheryl Goodenough interviews the SAPS assistant commissioner of legal services in KwaZulu-Natal, Tommy Reed

Is there a need for a body such as the Independent Complaints Directorate (ICD) to investigate SAPS members? If so, why?

Yes, because there is always the perception, and no one can blame anyone for it, that if police officers are required to investigate themselves, the investigation is going to be biased.

In addition to the ICD, there are also the SAPS Anti-Corruption and internal investigation units. Are these units duplicating functions?

These units could all fulfil the same purpose if the ICD was sufficiently strong enough to undertake investigations themselves. If we want an independent body such as the ICD to investigate corruption, for example, it has to have access to logistical resources, manpower and investigation expertise -- people who know what police investigations are all about.

A large body is needed to investigate the SAPS which employs more than 130 000 personnel. The ICD do not come anywhere near to meeting those requirements.

What functions should the ICD perform?

The directorate's biggest focus should be deaths in custody which are a big concern to the SAPS. Next would be deaths arising out of police action and cases of alleged torture. Lastly the ICD should focus on serious complaints about bad service delivery.

Misconduct should not be investigated by the ICD. There are sufficient internal SAPS mechanisms to deal with misconduct. But one must differentiate between alleged misconduct and alleged criminal conduct. The latter may include torture and assault and should be investigated by an outside body.

There is a perception that the ICD is not liked by SAPS members. Have police officers on the ground genuinely accepted the directorate?

These are not perceptions. The criticisms relate to unnecessarily insensitive handling of cases. It is the same criticism that is often levelled against police officers. The point of arresting a person is to ensure that he or she is brought before court. Many complaints result from a policeman being arrested while on duty immediately after an incident when he has no reason whatsoever to try to avoid appearing in court. A hard-handed attitude is not necessary. If the ICD investigates and finds sufficient evidence for prosecution for murder or whatever, then the officer can be brought to court. The exception would be if the ICD had information that the police officer was going to abscond – that would be a different matter altogether. There has got to be justification for arrest, such as reasonable suspicion that a suspect is going to tamper with evidence or interfere with witnesses.

Should the ICD be located within the Ministry of Safety and Security?

There could be a conflict of interest with the ICD and SAPS both being located within the Safety and Security Ministry. I would not be opposed to the ICD residing under another government department, such as Justice.

What legal force and powers should the ICD have?

When it comes to the investigation of crime, the ICD should have the same powers as the SAPS. But it is a different matter when it comes to making recommendations. In a disciplinary matter against a SAPS member, if the ICD makes a recommendation to a disciplinary officer, for example, the police must use that recommendation as a guideline.

I have a problem with the ICD officials wanting additional powers and more clout. Power corrupts and complete power corrupts completely. If the ICD makes a recommendation and it is not carried out, the directorate has the full right to ask for reasons, in terms of existing legislation. If the reasons are found not to be acceptable, the ICD can approach the courts. In terms of existing legislation, the ICD may also take over investigations that the directorate believes have not been handled correctly.

Do ICD officials have the skills and training necessary to do their job?

While the ICD has seconded policemen to do their investigations, I think that they have not attracted a

sufficiently high calibre of investigators. The SAPS is reluctant to release highly trained investigators and the ICD will only attract them if the directorate pays better salaries than the police. That is not too difficult because SAPS members are not paid what they should be and we are losing to the private sector, but until they are offered something better they won't go to the ICD. The ICD is also very much dependent on existing SAPS expertise with regards to fingerprint, forensic and ballistics fields.

What other comments would you like to make about the discussion document on the ICD?

According to the discussion document, the ICD want to intervene in all SAPS training and in the appointment and promotions of certain senior positions. This would make them co-responsible. If an appointee they recommend blows it, the ICD won't be able to distance itself. The ICD must distance itself from the SAPS in total otherwise it would be part and parcel of the problem. The function of the ICD is to be a watchdog organisation.

What impact has the ICD had so far?

The directorate has not made a significant impact because it does not have the resources. If an incident happens in a rural area, ICD officials can't be on the spot. I'm not knocking them for it. I understand that they have limited capacity.

But what about the statistics of deaths in custody that have been published by the ICD?

The publication of those statistics creates the wrong perception. When deaths are categorised as being the result of police action, they could have occurred in numerous situations: If a police vehicle conveying prisoners is involved in a collision and the prisoners killed, that is regarded as being a death in custody. If a suspect has been badly beaten up by community members, as is happening very frequently these days, and is brought to the police, but dies as a result of those injuries, it is labelled as a death in custody. Suicides and deaths from natural causes that occur on police premises are all regarded as deaths in custody. The public hears the statistics which sound alarming, but when you analyse them, a different picture is painted. While there is an alarming number of people being killed as a result of police action, when you add up all these incidents that I've referred to they form a significant percentage. One also needs to look at South Africa today, where our police officers are often targets of attack.

Any final comments?

The SAPS management does welcome interaction such as the recent discussions with the ICD. We want them to know that they enjoy the full support of SAPS management and every honest dedicated police officer. If one police officer does something wrong it tarnishes the entire SAPS. It is the same with the ICD. They are living with the same kind of perceptions.

“Too many watchdogs for the police?”

Cheryl Goodenough interviews the KwaZulu-Natal regional secretary of the South African Police Union, Bill Dennis

Is a body such as the ICD needed?

Yes, there needs to be a watchdog of the police. But there also needs to be a watchdog of all institutions where complaints with regards to service and ill treatment by the State can be laid. A body to look after the interests of the ordinary citizen is needed. We need someone to look into, for example, corrupt prosecutors who are selling dockets in addition to investigating corrupt police officers.

There seems to be misdirected paranoia about the police. It is likely to be perceived because of what happened in the past, but there are so many bodies looking at the police. The SAPS has created its own bodies. The State has created bodies. It is an overkill situation. There's the ICD, investigating teams with the Justice Department, the police's internal investigation unit and the SAPS anti-corruption unit, and there's the Public Protector. If you confront a criminal you don't need six guns to immobilise him. You only need one. It also creates problems with regards to policing. Fears, such as those relating to how legislation is interpreted by these various bodies, may in some instances be justified.

Police question whether to use their firearms or not. They may even think that the safest thing is to let a criminal go. 'Maybe the criminal will be caught later. Maybe he won't, but at least I won't be charged with murder and go to jail.'

To make matters worse police officers have been told that they may not be defended by the State attorneys even when charged for incidents that occurred during the course of their duty. This has created an additional problem.

What powers should the ICD have?

The ICD should not have excessive powers. The directorate officials should have exactly the same powers as any police officer.

What functions should the ICD perform?

There is a need for one body to focus, not only on the police, but also on all government departments and government officials. There are so many commissions and bodies doing various little things.

What about the ICD's investigations into deaths in custody or as a result of police action?

There is always an inquiry into any unnatural death. That inquiry will either be by way of a criminal trial (if the person was murdered) or through an inquest.

An inquest has wider powers than any investigator. Investigation can be demanded into specific aspects and people can be summonsed to give evidence. I don't see why such inquiries into deaths in custody or due to police action can't be done through inquests.

There is a perception that the ICD is not liked by SAPS members. Have police officers on the ground genuinely accepted the directorate?

It's a question of attitude by the ICD. The perception is created that they are the beginning and end of everything, that they are better than everything. I think it is a question of arrogance. They portray the image that they are a law unto themselves. They are like the old security branch.

In a lot of incidents it seems that the ICD officials are so eager to show themselves doing something. Or maybe it's an awareness that there may be public criticism for not acting quickly, so they don't do preliminary groundwork and proper investigations before arresting suspects. Their attitude stinks.

Do you have any other comments that you'd like to make on the ICD's discussion document and the recent workshops?

It seemed that the ICD got us to come to the workshop so that they could try to seek approval for that which they already intend to do. But there needs to be a lot more debate. We shouldn't create super bodies like those that existed in the past. We need to learn lessons from history – not only from South Africa, but also from Hitler.

**“A constant awareness of being monitored changes behaviour”:
Comments by University of Natal
sociology lecturer Monique Marks**

1. Is a body, such as the ICD, which investigates SAPS members needed?

A body like the ICD is crucial. It is necessary for police oversight in general, but more particularly in South Africa where the police have a history of impunity and where state police organisations had no real accountability, but had widespread powers and were responsible for tremendous abuses -- particularly during states of emergency.

A police culture which lacks accountability and abuses power does not disappear easily simply due to changes in legislation, new policies and organisational restructuring. A key mechanism for changing police behaviour is a constant awareness of being watched by outside bodies which have considerable powers to investigate and enforce proposals for the rectitude of police behaviour.

This oversight, monitoring and investigation cannot be conducted by police officers themselves. There is much literature on and evidence of SAPS members covering up abuses that have been conducted both by themselves and their colleagues. This is hardly surprising given the secretive nature of police organisations and their insulation from the rest of society.

A body investigating the police does, however, need to have the support of police management. The processes and procedures of a body like the ICD also need to be known and understood by police members themselves.

Furthermore, police need to accept the positive impact of such a body in helping to transform the image and practices of the police to a service which is accountable and operates in a democratic and humane manner. Such a realisation does not exist in the SAPS and hence there is a lot of suspicion and negativity toward a body such as the ICD.

2. What functions should the ICD perform?

Essentially the ICD should play a role in investigating police abuse of power and misconduct, as is their stated function at present. Serious misconduct, such as deaths at the hands of the police, should be

prioritised, but it is crucial that seemingly minor issues are also investigated. The continued existence of these latter incidents feeds into beliefs by the police that their powers are unlimited and that their conduct remains unchecked. This has resulted in high levels of corruption in the police at all levels.

Cases in which police have failed to act on request could be reported to the ICD, but should be followed up by the SAPS line function supervisor concerned. The ICD should monitor the follow up investigation. All investigations into misconduct and the abuse of power allegations against senior police officers should be carried out by the ICD. The ICD should also be able to review investigations done by the police and supervise these.

The ICD should also be involved in determining the disciplinary actions to be taken against a member and in monitoring whether and how disciplinary actions are conducted. This should involve more than simply making recommendations. However, it would be difficult to get any police body to accept the authority of such a body in determining the exact nature of disciplinary action. I think that in cases where thorough investigations have been done and the merits of the case are properly established, the determinations of the ICD should be binding, particularly with regards serious offences.

The ICD should make complaints lodged against police members known to the management of the unit or station concerned. Management in turn should inform the members concerned. The ICD needs to ensure that members of the public are free to report any incidences of misconduct and abuse of power, and be assured that their concerns and experiences will be given serious consideration and acted upon. This does not seem to be occurring at present. There are even reports of the ICD not following up on serious allegations related to deaths in police custody (as was reported recently in the *Mail and Guardian*).

The ICD should, if possible, become more involved in mediating minor complaints between police and aggrieved citizens. The directorate should also be constantly reporting to the public and to the police the numbers and types of complaints that have been lodged, trends and patterns in this regard, and the ICD's suggestions for decreasing the rates of such incidents. At the same time, the ICD should continue to contribute to police training programmes.

3. Should the ICD be located within the Ministry of Safety and Security?

The location of the ICD within the Ministry of Safety and Security has a number of advantages. Firstly, there is the obvious proximity both to the political directors of the police and to the other main civilian oversight body, the Secretariat of Safety and Security.

Secondly, being based in the Ministry of Safety and Security may lend some authority and legitimacy to the ICD from the perspective of the police themselves. This location also allows civilian members in the ICD to be in touch with the culture, operational functioning and organisational dynamics within the department.

An obvious disadvantage of this location is that community members may feel that it reduces the autonomy and independence of the ICD with regards to the police. My opinion is that this concern can be dealt with through ensuring that the separate nature of the ICD is publicised.

4. What powers should the ICD have?

The ICD should have powers to:

- access any written or recorded documentation relevant to an investigation;
- question any police member who is guilty of or may have knowledge of an offence or person under investigation;
- access any information regarding past, present and future police disciplinary processes that impact on cases under investigation; and
- insist on disciplinary determinations that are within police jurisdiction and to supervise or monitor their implementation. (The ICD needs to bear in mind that such determinations are in line with the new Labour Relations Act and with internal police procedures.)

The ICD should have powers of arrest, but arrests should be made by directorate officials accompanied by members of the SAPS, and should follow normal police arrest procedures.

Prior to an arrest, the ICD must have adequate evidence that warrants the arrest. Unless absolutely impossible or unstrategic, a superior officer or supervisor within the police should be informed of the pending arrest of a SAPS member.

5. What impact has the ICD had on policing in South Africa?

Police officers are aware that their behaviour is to be closely monitored. This, I think, makes them more cautious with regard to their public conduct while carrying out police duties. However, where their activities are less public (such as in an individual's home) and where members of the community are less likely or not able to lodge complaints (given access problems, lack of transport and communication resources, old age and so on) the abuse of power and misconduct is more likely to continue. Police involvement in activities linked to corruption does not seem to have declined in a significant way. This may be because police are aware that such cases are difficult to investigate.

The ICD has apparently not achieved the support of the majority of police members. This is hardly surprising, given that police generally feel threatened by outside monitoring and investigatory bodies. Indeed, some police view the ICD as obstructing police efficiency rather than assisting the police to improve its organisational image and capacity. This perception may result in the legitimacy and effectiveness of the ICD being undermined.

Perhaps the impact of the ICD has been most noticeable in the higher ranks of the SAPS. It is my feeling that bodies such as the ICD have a greater capacity to act as a deterrent to police in senior ranks or positions which involve a high public profile. This may be due to these officers becoming more and more sensitised to the fact that careerism and promotion is now highly dependent on their capacity to operate in a manner which is community oriented and sensitive and promotes good community-police relations.

6. Any final comments?

The recent public dispute between the South African Police Union (SAPU) and the ICD is a serious problem. Police unions internationally are known to be conservative -- they tend to oppose external monitoring bodies, and are even known to oppose further training requirements. Obviously, the role of the police union is to protect police members, and to ensure the best possible working conditions for its members. However, police unions, for the most part, may be resistant to bodies such as the ICD, and may make every effort to ensure a reduction in their powers. It is not common for a police union to openly state that it will obstruct the operations of such a unit if necessary. While such comments may be the result

of enormous and understandable frustration, they are problematic. Since the union has such a high membership within the SAPS, and therefore, one presumes, greatly influences police thinking, such statements by SAPU could give rise to further scepticism and even anger at the ICD. My own interactions with the police at more informal levels seems to indicate that a fair proportion of police officers feel that SAPU's recent statements are representative of the perceptions and feelings of a sizeable majority of police members -- particularly at lower ranks.

The impact of the ICD, in terms of fulfilling its objectives, is dependent on its ability mobilise support from police members, and to ensure that SAPS officers are well aware of its powers, operations and functions. The ICD needs to prove its effectiveness with regard to investigations and it is important that the ICD is not perceived as a 'toothless body'. It is because of this that I think that the ICD should have the power to ensure that its disciplinary recommendations pertaining to internal police procedures are followed through.

“An independent accountability mechanism?”: Comments by David Bruce, researcher in the Criminal Justice Policy Unit of the Centre of the Study of Violence and Reconciliation

1. Is there a need for a body such as the ICD to investigate SAPS members?

The question needs to be broken down into two parts: (a) Is there value in having an independent police oversight mechanism in South Africa? It seems clear that a body such as the ICD could potentially play a valuable role in South Africa. There are a variety of models for independent oversight bodies around the world. The big question is how the role of a South African oversight mechanism should be defined to account for local realities and constraints.

(b) Should the ICD be responsible for investigating the police? There is no independent body in any country which is responsible for conducting all investigations into the police. The reality is that most investigations into possible cases of police crime and misconduct will have to be conducted by the police. A major issue is therefore how to ensure that the internal investigative and disciplinary systems of the

SAPS can be made to operate effectively. This issue requires detailed attention not only by the ICD, but also by police management and the Secretariat for Safety and Security.

While the police must be responsible for most of these investigations, this does not mean that there is not some value in the independent oversight mechanism having its own investigative capacity. For reasons including those concerning resources this capacity is likely to be limited relative to the size of the problem (even if the ICD's budget was increased three-fold).

A few things are essential for this investigative capacity to be used effectively:

- The appropriate systems (training, management and so on) must be put in place to ensure that the investigative system operates effectively and that appropriate resources are used;
- the investigative capacity must be used in a highly targeted and focussed manner which ensures that the limited investigative capacity is used so as to have optimum impact in addressing the problem of police crime and misconduct; and
- the mandate of the independent mechanism must be defined so that it is empowered to conduct investigations in a targeted and focussed manner.

This implies that in general the independent mechanism must have the ability to select which cases it is to investigate and that its mandate must be re-defined accordingly.

In discussing the investigative role of the ICD one should also take into account that there are at least three different ways in which the ICD can play this role: The first is by conducting investigations itself. The second is by supervising investigations by giving explicit guidelines and instructions regarding the investigation which would be conducted by the SAPS. The third is by monitoring investigations where the ICD would check up on investigations, which have been conducted by SAPS internal investigators, at the end of the investigation. The ICD currently sees 'monitoring' and 'investigations' as separate, but in terms of this approach, 'own investigations', 'supervision' and 'monitoring' are all part of the ICD's investigative role.

2. What functions should the ICD perform?

This is quite a difficult issue and the argument which is put forward here may be controversial. However unless we address the controversial issues properly we are unlikely to be able to address issues relating to the ICD effectively.

(a) Current roles of the ICD

At present the ICD has a very loosely defined mandate which may be seen to include the following:

(i) Acting as a complaints body: The implications of relying on the ICD to process all complaints against the police are potentially enormous. The ICD has so far been reluctant to encourage large numbers of members of the public to come forward with complaints against the police.

(ii) Investigating police crime and misconduct: Not all complaints which the ICD receives relate to police crime and misconduct. Some of them are simply from members of the public who are concerned that cases which they have reported to the police are not being investigated properly. Furthermore such complaints are not necessarily a reliable source of information on police crime such as corruption.

(iii) Investigating deaths in police custody or as a result of police action: The major work load which ICD investigators currently carry is the investigation of these deaths which, since the ICD started operating, have been occurring at an average rate of about 60 per month.

However, many of these deaths do not fall into either of the above categories and many are not the subject of complaints. The ICD finds out about most of these deaths through the required notification from SAPS.

Research by the Centre for the Study of Violence and Reconciliation on these deaths indicates that most are not the result of criminal acts by police. (It should be emphasised this is not the same as saying that many of them cannot be prevented.)

The ICD, SAPS and the Secretariat should see it as a priority to ensure that the number of these deaths is dramatically reduced through a strategy focussed on the prevention of these deaths. At the same time, where there is criminality on the part of the police, investigations need to be used effectively to bring the culprits to book.

(b) Dealing with complaints:

The most basic point is perhaps one about what we should take as 'given'. In order to address this issue properly the only assumption that should be made is that there is value in having an independent accountability mechanism in South Africa. The debate that we need to have then is on how we should define the responsibilities or mandate of this mechanism while taking into account current realities.

The basic debate about the ICD should be about whether it is a complaints body or not rather than about what it should investigate. The basic assumption behind the ICD is that the role that it has to play is equivalent to 'dealing with complaints'.

The name of the ICD currently carries the major part of its implicit mandate -- in particular the assumption that members of the public should be able to go to the ICD with 'complaints' and a realistic expectation that these will be dealt with. The assumptions associated with the ICD's name need to be evaluated.

The most basic debates about the ICD are therefore:

(i) Is it realistic to see the ICD in the near future as 'processing' most complaints? The answer is a definite 'No', particularly for reasons of resources.

(ii) Is there potential for the police to significantly improve their handling of complaints? There is no reason in principle why this should not be possible. In fact it should be easier for the SAPS to provide an effective system for receiving and processing complaints than it is for the ICD.

One way of dealing with this would be for the SAPS to establish an accessible complaints office in every policing area in the country (there are 42 of these while the ICD currently has fewer than 9 regional offices). The understanding should be that any member of the public who has a complaint against the police should be able to lodge this complaint at the police station where the problem occurred.

However if they have any reason for not wishing to do so they should lodge the complaint at the police area office, which should be responsible for ensuring all complaints in the area are properly attended to.

In exceptional circumstances, such as where a person fears for his/her life if he/she reports a complaint to the police, they should be able to report their complaints to the ICD. The ICD should also be a 'first port of call' for narrowly defined specific complaints such as alleged cases of torture.

(iii) Taking into account current realities, is it preferable for the police or an external body to be responsible for managing most complaints? The basic principle here is that the police should be responsible for dealing with complaints against members of the SAPS.

Essentially making 'complaints' the responsibility of an external body is counterproductive as responsibility and accountability for how complaints are dealt with is then displaced to the external body with unintended consequences. The big responsibility of the independent oversight mechanism in South Africa should be to ensure that the police are dealing with these problems (complaints, police crime and misconduct, the prevention of deaths) effectively and the mechanism needs to be provided with full powers to carry out this task effectively. How then should it play this role?

(c) In effect the 'optimum role' for the ICD would combine:

(a) An audit function - this would include research and analysis of various information sources as well as inspections of particular stations or policing areas.

The objective would be:

(i) to identify problem areas, units, persons, and behaviours for targeted investigations;

(ii) to set standards for the functioning of the management of force, the care of persons in custody, internal investigative and disciplinary system and other aspects of policing; and

(iii) to make recommendations to the Ministry or SAPS regarding 'problems' or improving standards.

(b) A responsibility for preliminary investigations into all deaths in police custody or as a result of police action (an onerous burden considering the large number of these). Thereafter they should supervise the police investigation unless there is prima facie evidence of police criminality. The implication is that the ICD will free up investigative capacity when the number of these deaths is reduced.

(c) An investigative capacity involving highly targeted and effective investigations -- these would be targeted at problem units (inter alia units which are not dealing with problem officers) or at individuals. The ICD would maintain a small case load, that is a realistic case load relative to its number of investigators. 'Supervision' and 'monitoring' could therefore be investigation mechanisms that the ICD would also use to handle some of the cases that it selects. The focus of such investigations could be 'serious crime' but also other major problem areas including discriminatory policing or service delivery failures of a serious nature (for example, in relation to domestic violence).

One implication of the above (some people may see this as a 'cosmetic' issue) is that the ICD must change its name hence the references above to 'an independent accountability mechanism'. Essentially the ICD should become an independent mechanism for ensuring the effective prevention and investigation of police crime and misconduct.

3. Should the ICD be located within the Ministry of Safety and Security?

The answer is probably no but the issue needs to be addressed in more detail than it has up to this point. Making the ICD more independent won't necessarily make it more effective. The key issues are to provide the ICD with powers to carry out its role effectively, to define the ICD mandate in an appropriate manner, and to ensure that the ICD is managed effectively. Assuming that the ICD does become more independent some of its most important relationships will still need to be those with the Minister, the Secretariat and the SAPS.

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