



04 October 2016

**ANNUAL REPORT ANALYSIS OF THE INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE (IPID) 2015/16**

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1. INTRODUCTION

The Portfolio Committee on Police, through the mandate of the National Assembly, is constitutionally obligated to scrutinize and oversee the performance of departments and



entities falling within its portfolio. In fulfilling this obligation, the Committee engaged with Independent Police Investigative Directorate (IPID) on its performance during the 2015/16 financial year through numerous meetings on a variety of important issues, amongst others the full implementation of the IPID Act, 2011 (Act 01 of 2011) and the implementation of the recommendations made by the Farlam Commission of Inquiry.

The most powerful mechanism of oversight used by Committees is the consideration of statutory obligated documents that Departments must produce during a financial year, which include a Strategic Plan, Annual Performance Plan (APP), Budget, In Year Monitoring (IYM) Reports and Annual Report. In April 2016, the Committee considered the 2016/17 Budget of the Directorate together with its 2016/17 APP, which set out what the IPID intends to do during the 2016/17 financial year and the manner in which the funds will spent to achieve the service delivery targets set in the APP.

The Directorate is legally obligated to submit its Annual Report before Parliament at the end of September in order to account for its actual service delivery performance during the past financial year. As such, in the upcoming engagement with the IPID, the Committee will scrutinize the extent to which the IPID has delivered on the service delivery promises they made in their 2015/16 APP and which the Committee agreed to finance by appropriating public funds through the approval of its 2015/16 Budget (and Adjusted Appropriated Budget).¹ This role in overseeing annual reports is crucial to closing the accountability loop of planning, budgeting, implementation, reporting, auditing and finally, oversight.

During the 2015/16 financial year, the IPID faced several challenges which affected its ability to achieve many of its service delivery targets. Key amongst these challenges are the continuing management instability, the inability of the IPID to capacitate its core service delivery programme and insufficient financial controls.

This paper highlights the legislative framework for Parliament's oversight mandate, the expenditure of the Directorate as at the end of the 2015/16 financial year and its service delivery achievements against the targets set in the Directorate's 2015/16 APP.

2. KEY ISSUES FOR CONSIDERATION BY PARLIAMENT

Submission and quality of Annual Report: The IPID submitted its 2015/16 Annual Report on 29 September 2016, which was within the statutory deadline of 30 September 2016. The Annual Report is of high quality and in line with the prescribed format. The layout of the report facilitates an understanding of the information, which is communicated simply and clearly. All the measurable objectives specified in the Strategic Plan and Annual Performance Plan of 2015/16 is reported on in the Annual Report. The Annual Report represents a serious attempt to account for the Directorate's performance over the 2015/16 financial year.

Unqualified audit opinion: The IPID received an unqualified audit opinion from the Auditor General, with no material findings on the usefulness and reliability of performance information in the two core service delivery programmes of the Directorate (*Investigation and Information Management* and *Compliance Monitoring and Stakeholder Management Programmes*). The

¹ National Treasury (2005).



AG made a finding on non-compliance to legislative prescripts relating to the failure to discipline officials responsible for irregular expenditure. The AG also found deficiencies in the internal controls of the Directorate, mainly relating to a lack of leadership in overseeing compliance to policy and legislative prescripts.

Non-implementation of Audit Plan and Recommendations: The Directorate did not fully implement the recommendations and audit plan of the Internal Audit Committee. If the Directorate implemented the recommendations of the Audit Committee, it could have received a clean audit from the AG in 2015/16.

Unauthorised expenditure: Even though the Directorate did not incur any unauthorised expenditure during 2015/16, an amount of R981 thousand is reflected on their financial statements brought over from the 2005/06 and 2008/09 financial year awaiting condonation from National Treasury. The Portfolio Committee recommended in its 2015 BRRR that this matter should be resolved. The Minister of Finance stated in his response to the recommendation that even though the Directorate submitted the request to National Treasury on 31 March 2015, certain information, which was critical for the National Treasury to make an informed recommendation to Parliament (SCOPA), was not included in the submission and that numerous electronic and telephonic follow-ups have been made to the Directorate requesting such information. The Directorate has still not provided the information hence no recommendation has been made to Parliament in this regard.

Virements and shifts: The application of virements and shifts to utilise savings in the amount appropriated under a main division (Programme) within a Vote towards the defrayment of excess expenditure under another main division (Programme) within the same Vote is permitted through section 43 of the Public Finance Management Act (PFMA), 1999 (Act 1 of 1999). However, the use of virements and shifts should be kept to a minimum, as it is indicative of ineffective planning and/or adherence to performance plans. In 2015/16, the Directorate adjusted the budget for *compensation of employees* downwards with R19.871 million, due to a relatively high vacancy rate in the Department (10%). In a Department that is highly personnel intensive, large savings on items relating to personnel, like *compensation of employees*, is concerning as the staff complement is essential to deliver on its service delivery mandate.

Consequence management: The lack of consequence management and the protracted nature of disciplinary procedures have been noted as a concern by the AG and Internal Audit Committee in 2015/16. The average days for suspensions were 255 days, which is well above the 30 day limit. Consequence management is critical to ensure an effective and strong workforce. The appointment of a legal service provider for disciplinary hearings without following supply chain management processes is currently under investigation.

Increase of performance targets: The low targets for performance indicators identified for the *Investigation and Information Management Programme* on Section 28 cases has been a significant concern of the Committee over the past financial years. The Committee asserted that aiming to complete only half (50%) of investigations of Section 28 cases, including rape in police custody, assault and death as a result of police action (amongst others) does not inspire public confidence in the IPID to hold the SAPS and MPS accountable. In 2015/16, most



of the performance targets relating to Section 28 investigations were exceeded, which forms a solid basis to argue for the increase of these targets over the medium term. The increase in performance targets will increase confidence in the ability of the IPID to effectively hold the SAPS and MPS accountable for misconduct and criminal acts.

Underperformance of *Legal Services* Programme: The *Legal Services* Programme recorded significant underperformance at the end of 2015/16. The Programme achieved 36% of its predetermined performance targets and brought down the overall performance achievement rate of the Directorate. Of the 11 targets, the Programme did not achieve seven (7) performance targets. However, these targets are all time-bound, for example the Programme aimed to provide 90% of written legal advice within 48 hours of request. It could be that the written advice was provided within 60 hours of request, but meant that the target was not achieved. As such, the Committee should seek clarity on whether the targets were achieved albeit outside the time frames stipulated. The removal of unrealistic timeframes in the *Investigation and Information Management* Programme to complete investigations led to significant improvements on its performance targets.

Increase in corruption and systemic corruption cases: The Directorate increased the number of corruption and systemic corruption cases significantly in 2015/16 compared to the previous year. The establishment of the National Specialised Investigative Team (NSIT) was aimed at strengthening the Department's capacity to investigate systemic corruption amongst other complex matters and it seems that the NSIT is achieving successes.

Increase in disciplinary and criminal convictions: The Directorate managed to increase the number of disciplinary and criminal convictions in 2015/16 compared to the previous financial year. This is due to the *Compliance Monitoring and Stakeholder Management* Programme's efforts to ensure that recommendations by the Directorate are implemented and lead to convictions. The Programme also enabled the Department to evaluate the quality and appropriateness of recommendations made to the National Prosecuting Authority (NPA).

Information and Communication Technology (ICT): As a result of reductions to the baseline allocation of the Directorate over the medium term, the ICT Plan that was intended to improve the ICT infrastructure of the Directorate could not be implemented during 2015/16. This should be addressed by the Committee, as greater emphasis is being placed on the use of technology with the establishment of a Government Information Technology Officer (GITO) position in each Department to align the respective department's ICT Strategic Plan, strategic direction and management plans. The Directorate should be innovative in its planning and budget allocations to allow for the implementation of the ICT Plan despite baseline reductions.

Professionalising the police service: The IPID has a critical role to play in the professionalising of the SAPS and MPS. As the most prominent statutory oversight body, the IPID is ideally placed to increase the adherence of SAPS and MPS members to relevant prescripts, laws and codes of conduct to increase accountability and professionalism. This is in-line with the recommendations made through the NDP as well as the White Paper on Police and White Paper on Safety and Security (2015).



Independence: One of the key recommendations made by the Farlam Commission of Enquiry is that the IPID should operate independently from the SAPS as per the provisions of the IPID Act, 2011. To give effect to this recommendation, the IPID should ideally develop in-house expertise on technical, forensic and ballistic aspects of investigations. To contract this expertise is very costly and largely unaffordable for the IPID. Due to limited resources the IPID relies on the SAPS for expertise, which may affect the integrity of investigations. The Committee should consider making a recommendation in this regard in the 2016 Budgetary Review and Recommendations Report.

3. LEGISLATIVE FRAMEWORK: PERFORMANCE ASSESSMENT

3.1. Oversight mandate of the Committee

The Constitution vests the National Assembly with the power of oversight over their respective executives, in addition to their legislative and other powers. Section 55(2) outlines the oversight powers of the National Assembly, by requiring that it “must provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise by the national executive authority, including the implementation of legislation, and any organ of state.”

The National Assembly is also empowered with the power of “scrutinizing and overseeing executive action” by section 42(3) of the Constitution. In order to facilitate Parliament’s oversight of the national executive organs of state, section 92(3)(b) of the Constitution requires that “Members of Cabinet must provide Parliament with full and regular reports concerning matters under their control.” The oversight powers of the National Assembly are particularly important for the process of considering annual reports, as they are the ‘regular reports’ referred to above.

The **Money Bills Amendment Procedure and Related Matters Act, 2009 (Act 9 of 2009)** provides for procedures to amend money Bills before Parliament and for norms and standards for amending money Bills before provincial legislatures and related matters. The Act stipulates the procedure to be followed by Parliament prior to the introduction of the national budget. Section 5(1) states that the National Assembly, through its committees, must annually assess the performance of each national department, with reference to the following:

- ✓ The medium term estimates of expenditure of each national department, its strategic priorities and measurable objectives (APP), as tabled in the National Assembly with the national budget (ENE);
- ✓ prevailing strategic plans;
- ✓ the expenditure report relating to such department published by the National Treasury in terms of section 32 of the Public Finance Management Act (quarterly expenditure);
- ✓ the financial statements and annual report of such department (Annual Report);
- ✓ the reports of the Committee on Public Accounts relating to a department; and
- ✓ any other information requested by or presented to a House or Parliament.

The Committee has complied with the requirements in terms of section 5(1) of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act 9 of 2009) throughout the 2015/16



financial year. The Committee on Public Accounts (SCOPA) did not published any resolutions on the IPID during 2015/16.

To give effect to its oversight role, the Committees should consider the Annual Report of the IPID through focussing on:²

- 1) The technical quality of the Annual Report;
- 2) Whether the IPID reports on each and every performance target specified in their APP;
- 3) The quality of the performance information as highlighted by any audit of performance information which the Auditor-General may perform, or in the light of any other information that comes to the Committee's attention;
- 4) The economy, efficiency and effectiveness of service delivery as measured by the performance indicators presented in the Annual Report;
- 5) The equity of service delivery;
- 6) The implementation of the IPID's Service Delivery Improvement (SDI) programme;
- 7) Evaluating management's explanations as to why the IPID's service delivery performance did not attain the targets set in the APP and budget; and
- 8) Investigating the circumstances that led to under- or over-expenditure of the Directorate's budget, the impact this had on service delivery and the measures taken by management to comply with the Budget.

3.2. Budgetary Review and Recommendations Report (BRRR)

The outcome of the performance assessment process followed by Committees is to annually submit a **budgetary review and recommendation reports (BRRR)** for tabling in the National Assembly, as per Section 5(2) of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act 9 of 2009). It further stipulates that a BRRR -

- Must provide an assessment of the department's service delivery performance given available resources;
- Must provide an assessment on the effectiveness and efficiency of the departments use and forward allocation of available resources; and
- May include recommendations on the forward use of resources.

The Committee should keep the above mentioned outcomes of the BRRR in mind during its deliberations with the IPID on its Annual Report in order to deliver a substantial BRRR and adhere to section 5(2) of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act 9 of 2009).

3.2.1. Response by the Minister of Finance: 2015 BRRR

Section 7(4) of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act 9 of 2009) prescribes that the Minister of Finance must submit a report to Parliament on how the Budget gives effect to, or the reasons for not taking into account, the recommendations contained in the BRRR.

² National Treasury (2005).



In the Committee's 2015 BRRR two budgetary recommendations were made regarding the budget of the IPID. These recommendations with its response from the Minister of Finance is listed below:³

- 1) ***The Committee recommends that it is unable to support the request for additional funding over the MTEF (2014-2019) before the present funded vacant posts are filled in the Directorate, especially within the Investigation and Information Management Programme, which is the core service delivery programme of the Directorate.*** The Minister of Finance stated that National Treasury agrees with the Committee's recommendation. As part of the 2016 MTEF's technical and functional group meetings with the IPID, same points were emphasised to the Directorate. The National Treasury further made a presentation in this regard to the management of IPID at its strategic planning session in November 2015. While acknowledging the importance of the IPID's proposed expansion strategy, there is currently no sound basis for the allocation of additional resources to the Directorate unless it can demonstrate that it has the capacity to fully spend the current allocated budget.

- 2) ***The Committee recommends that the Directorate must endeavour to address the outstanding unauthorised expenditure incurred in the 2005/06 and 2008/09 financial years without delay and enter into renewed engagements with National Treasury to clear this expenditure.*** The Minister of Finance stated that the National Treasury supports the Committee's recommendations but it is also important to note that even though the Directorate submitted the request to National Treasury on 31 March 2015, certain information, which was critical for the National Treasury to make an informed recommendation to Parliament, was not included in the submission. Numerous electronic and telephonic follow-ups have been made to the Directorate requesting such information but the Directorate has still not provided the information hence no recommendation has been made to Parliament in this regard.

4. REPORT OF THE AUDITOR GENERAL (AG)

The Audit Report of the AG is the only independent assessment of the quality of financial statements, including all its disclosures. The role of the AG is to comment on the reasonableness and fairness of the annual financial statements submitted by the Directorate.

4.1. Report on the financial statements

The IPID received an **unqualified audit opinion** from the AG for the 2015/16 financial year.

4.2. Report on other legal and regulatory requirements

Predetermined objectives

The AG performed procedures to obtain evidence about the usefulness and reliability of the reported performance information of the following two programmes:

- Programme 2: Investigation and Information Management; and
- Programme 4: Compliance Monitoring and Stakeholder Management.

³ Minister of Finance (2016).



- There has been an overall improvement in the audit outcome as evidenced by the dashboard report.
- The critical challenge relates to performance information, where internal control deficiencies were noted, primarily on the issue of special closures.
- The AG and Management still had some areas of disagreement on the decision ready reported performance which included special closure cases. The Committee observed that the disagreement related to the respective definitions of management and the AG. To avert a recurrence the Committee recommended that the definition in the SOP be reviewed.
- Some disagreements were also noted on the leadership aspect of the dashboard report.
- With regard to consequence management the Committee noted that procedures were initiated, but not fully documented for submission to the AG. Hence a finding which could have been avoided.
- The inordinate delay in finalising disciplinary matters is a matter of concern. The Committee notes that in some instances postponements are necessitated by the unavailability of the initiator or Presiding Officer. Recommendations have been made by the Committee in this regard;
- The enhanced mandate of the Department without the concomitant funding has created a serious strategic risk and must be addressed, failing which the risk of the Department not meeting all its targets is very real. This has also affected the ability of the Department to use information technology as a strategic leverage because of lack of funds to carry out IT projects.

Comments and questions

- 1) The Committee should question the reasons for not fully implementing the findings and recommendations of the Internal Audit.
- 2) The Committee should also request the Directorate to indicate the reasons for failing to fully implement the Audit Action Plan.
- 3) The Directorate could have had a clean audit if these recommendations were implemented.
- 4) The Directorate should provide clarity on the disagreement between itself and the AG on the respective definitions related to decision ready reported performance, including special closures cases.
- 5) The Directorate should also indicate the manner in which the definitions will be changed in the SOP, as per the recommendation of the Audit Committee.
- 6) The Acting Executive Director should indicate why appropriate disciplinary steps have not been taken against officials who made or permitted an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure as is required by section 38(1)(h)(iii) of the PFMA in terms of the general responsibilities of accounting officers.

6. FINANCIAL OVERVIEW - 2015/16 FINANCIAL YEAR

Although the Committee focuses primarily on service delivery, it must also consider the IPID's financial performance, as to develop a holistic understanding of the performance of the during the 2015/16 financial year.



6.1. Budget and expenditure

As at the end of the fourth quarter of 2015/16, the Directorate spent R234.2 million of the available budget of R234.8 million (99.7 per cent). As such, the Directorate failed to spend R624 000.00 at year-end. This is after several virements were applied across all programmes to offset excess expenditure. The Directorate improved its expenditure for the period under review when compared with expenditure in the same period in the previous financial year (2014/15). The *Administration* and *Investigation and Information Management* programmes recorded the biggest underspending i.e. R371 000 and R188 000, respectively.

At economic classification level, expenditure on *compensation of employees*, recorded underspending to the amount of R406 000 at the end of the 2015/16 financial year. Similarly, actual spending on *goods and services* was lower than the available budget by an amount of R82 000, resulting in an underspending on current payments of R488 000.

The spending trend on goods and services over the past three financial years reflects spikes particularly in March on *communication, fleet services, stationery, travel, property payments* and *operating payments*. The Directorate should provide reasons for this.

The table below provides a summary of the overall Departmental spending as at the end of the 2015/16 financial year:

Table 1: Overall Departmental spending

IPID Programmes R'000	Adjusted Appropriation	Post-AENE Adjustments	Available Budget	Actual Spent	% Spent
1. Administration	74 015	(2 081)	71 934	71 563	99.5%
2. Investigation and Information Management	150 822	1 994	152 816	152 816	99.5%
3. Legal Services	5 476	287	5 763	5 734	99.5%
4. Compliance Monitoring and Stakeholder Management	4 468	(200)	4 268	4 233	99.2%
Total	234 781	-	234 781	234 157	99.7%
Economic classification					
Current payments:	231 890	(227)	231 663	231 175	99.8%
Compensation of employees	159 625	(9 600)	149 965	149 559	99.7%
Goods and services	72 265	9 433	81 689	81 616	99.9%
Transfers and subsidies:	529	113	642	623	97.1%
Departmental agencies and accounts	371	(2)	369	364	98.7%
Households	158	115	273	259	95.0%
Payments for capital assets:	2 362	112	2 474	2 356	95.2%
Machinery and equipment	2 362	112	2 474	2 356	95.2%
Payments for financial assets	-	2	2	2	100%
Total	234 781	-	234 781	234 157	99.7%



6.2. Irregular expenditure

The Directorate recorded irregular expenditure of R2.069 million for the 2015/16 financial year. An amount of R527 thousand was carried over from the previous financial year, of which only R31 thousand was condoned. This left a total amount of R505 thousand on the financial statements of the IPID as not yet condoned. At the end of the 2015/16 financial year, the IPID has a closing balance of R2.565 million on irregular expenditure.

The AG made a finding on compliance to legislation (lack of consequence management) as disciplinary steps were not taken against officials who made and permitted irregular and fruitless and wasteful, as required by section 38(1)(h)(iii) of the PFMA, 1999.

The Committee should question the Department on reasons for not concluding disciplinary steps against the responsible official, which would have avoided a finding by the AG on the lack of adhering to prescripts and subsequent consequence management.

6.3. Unauthorised expenditure

The IPID did not incur any unauthorised expenditure in 2015/16, however it currently has a total amount of R891 thousand stated as unauthorised expenditure and is currently awaiting authorisation by SCOPA. This amount related to overspending of the IPID budget and/or programme budget in previous financial years (2005/06 and 2008/09).

The Committee should question the failure of the IPID to submit the requested documentation to National Treasury to condone the unauthorised expenditure incurred during the 2005/06 and 2008/09 financial years, which still reflects in the financial statements of the IPID.

6.4. Fruitless and wasteful expenditure

The Directorate had a total amount of R4 thousand as fruitless and wasteful expenditure, which was the result of a refund that was made by a supplier who overcharged the Department.

6.5. Claims against the Department

The monetary amount of claims against the Department increased from R24.5 million in 2014/15 to R41.4 million in 2015/16. The Directorate should provide details on the nature of civil claims made against the Department (Minister of Police) during 2015/16. These civil claims include a total of 24 cases brought against the Department. As an oversight body, the IPID should lead by example and not have any basis for legal action against the Department.

7. PERFORMANCE OVERVIEW - 2015/16 FINANCIAL YEAR

7.1. Service Delivery Improvement Plan (SDIP)

In 2015/16, the IPID concluded the Service Delivery Improvement Plan (SDIP) for a period of three years (2014-2017). The SDIP contains the Directorate's mandate, challenges and



roadmap on how to achieve the Directorate's Strategic Plan. The SDIP provides for an indication of prioritized areas that needs attention in order for the Department to achieve its strategic objectives and to ensure there is continuous improvement on service delivery; furthermore it indicates the standards for the main services to be provided.

7.2. Strategic Outcome Orientated Goals

The outputs of the IPID are linked to the following Strategic Outcome-Oriented Goals, as reflected in the IPID Strategic Plan for 2015/16 – 2019/20:

Table 2: Strategic outcome orientated goals

	Strategic Outcome-Orientated Goals	Goal Statement
1.	The IPID is an effective independent oversight body.	The IPID is an independent oversight body that conducts quality investigations without fear or favour; and makes recommendations that are acted upon and have a lasting impact on police conduct.
2.	The IPID investigates cases effectively and efficiently.	The IPID conduct quality investigations that ensure the effective completion of cases and the generation of recommendation reports within appropriated time frames.
3.	The police service is responsive to the IPID recommendations.	The police service ensures that IPID recommendations are implemented, action taken as a result thereof is monitored and progress is reported to the IPID.
4.	The IPID is accountable to the public.	Development of public awareness of the IPID and its functions through community awareness programmes, media campaigns and stakeholder management.

The IPID is not achieving its Strategic Outcome-Orientated goals fully due to the following factors:

- The Directorate is not currently fully independent, as it relies on the SAPS for forensic and ballistic expertise during their investigations, which may impact on the independence and integrity of investigations. However, it is expensive to create in-house expertise or to outsource the expertise – this is currently unaffordable for the IPID due to baseline reductions to its budget over the medium term.
- The increase in disciplinary and criminal convictions could be indicative of the realisation of the goal to make the SAPS and MPS responsive to the IPID recommendations, but should be continuously monitored to build on the achievements made in the 2015/16 financial year.
- The IPID is not fully accountable to the public, as its targets for Section 28 investigations remains low and does not inspire public confidence. Additionally, the number of public awareness engagements have been reduced due to reductions to the baseline of the Directorate. The IPID should also increase its public profile, as many civilians are unaware of the mandate of the IPID. However, the new initiatives embarked upon by the IPID to increase awareness on the requirements of the IPID Act

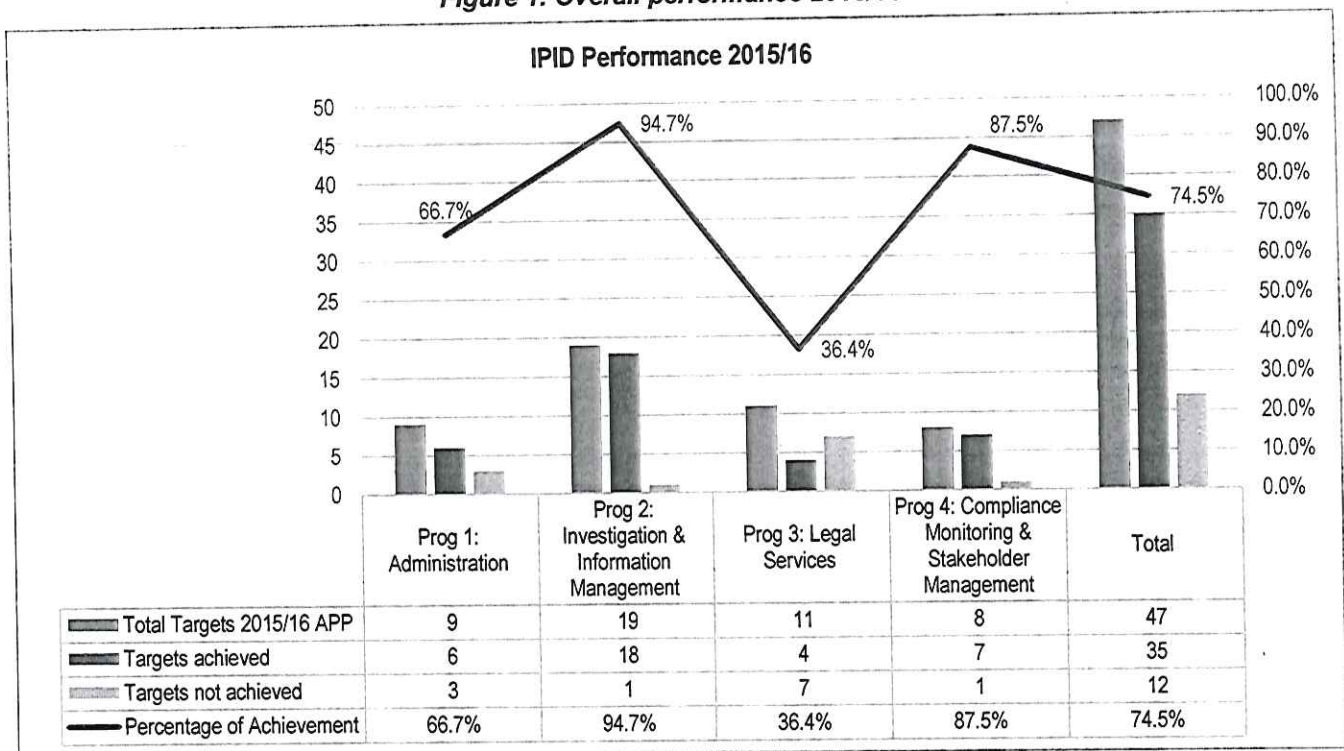


to SAPS members during station lectures could have a meaningful impact on increasing the accountability and professionalism of the SAPS and by extension, of the IPID.

7.3. Achievement on Annual Performance Targets

The IPID identified 47 measurable performance targets for the 2015/16 financial year, of which 35 performance targets were achieved and 12 targets were not achieved. The overall achievement rate of the IPID was 75% in 2015/16, which was brought down significantly by the non-performance of the *Legal Services Programme*. The performance of the IPID improved significantly over the past three financial years, from an overall target achievement of 27% in 2013/14 and 44% in 2014/15 to 75% in 2015/16.

Figure 1: Overall performance 2015/16



Overall, the two core programmes of the IPID performed the best during 2015/16. The *Investigation and Information Management Programme* achieved 18 of its 19 performance targets, of which most of the targets were exceeded (94.7% achievement). The *Compliance Monitoring and Stakeholder Management Programme* achieved seven (7) of its eight (8) performance targets in 2015/16. The AG audited the reliability and usefulness of the performance targets and measurements of these two programmes and made no material findings. As seen from the percentage of achievement line on the graph above, the *Investigation and Information Management* and *Compliance Monitoring and Stakeholder Management* Programmes performed well above the average overall achievement rate of 75% achieved by the Department.



The *Legal Services* Programme performed very poorly, as it managed to only achieve 36.4% of its measurable performance targets in 2015/16. Of its 11 targets, the Directorate managed to achieve only four (4) targets. The non-performance is mostly attributed by IPID to a lack of capacity in the programme.

8. PERFORMANCE PER PROGRAMME ON PERFORMANCE TARGETS

8.1. Programme 1: Administration

This section provides information on the achievements made by the *Administration* Programme on predetermined performance targets as contained in the APP as well as other key performance areas governed in the Administration environment of the IPID.

8.1.1. Expenditure at year-end

The Directorate spent R71.6 million of the available budget of R72 million (99.5%) for the Administration Programme. A virement of R2.1 million was made from the Administration Programme in the fourth quarter, of which R1.8 million came from the *compensation of employees* budget. The virement effected in the last quarter, reduced the underspending of the Administration Programme to R371 thousand at year-end. If the virement had not been made, the underspending under the Administration Programme would have been higher.

At economic classification level, *compensation of employees* reported underspending of R359 thousand. Higher spending occurred on *audit costs, communication, consultants and property payments*. Spending on these items over the past three financial years reflects a spike in March 2016. This is not in-line with National Treasury Instruction Note 1 of 2013/14 on Cost Containment. The Administration Programme has a staff establishment of 124, of which 109 posts were filled at the end of the fourth quarter, as such the Programme had 15 vacant positions at the end of the 2015/16 FY.

8.1.2. Service delivery performance

The table outlines the output targets for the 2015/16 financial year for each strategic objective specified for the *Administration* Programme in the Strategic Plan of the Directorate. As illustrated, the Directorate achieved its strategic objective targets as stated in their Strategic Plan. The reduction in the vacancy rate of the Directorate is a significant achievement, as the capacitation of its organisational structure has been a longstanding challenge. However, this figure should be reduced further over the medium term.

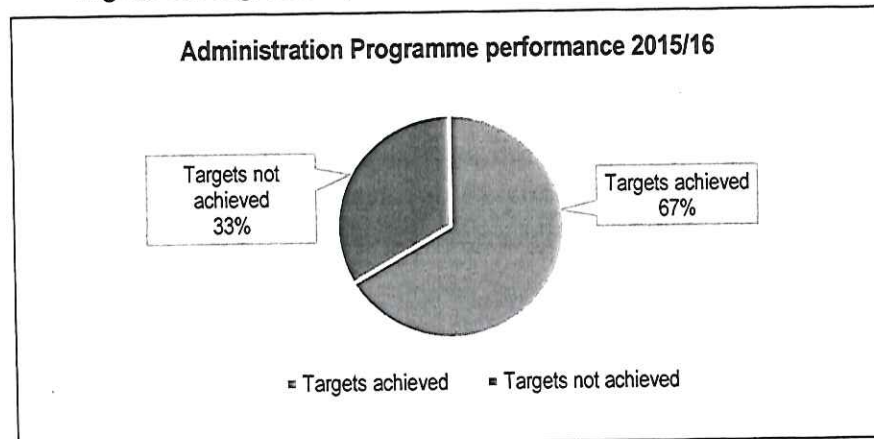
Table 3: Strategic objective annual targets for 2015/16

Strategic objective	Indicator	Strategic Plan Target	2015/16 target	Achievement
Capacity building	Vacancy rate per year	<10%	<10%	9.42%
Performance management system	Number of Performance Reports produced	9	9	9



The *Administration* Programme had a total of nine (9) performance targets for the 2015/16 financial year, of which it managed to achieve six (6), giving the programme an achievement rate of 67%.

Figure 2: Programme performance indicators and targets



Of the nine (9) performance targets, the programme failed to achieve three (3) targets, which is 33% of its performance targets. The targets not achieved included:

- The Directorate aimed at achieving 50% of females employed by the Directorate at senior management level, but achieved 47%, which is a deviation of 3%. The Directorate indicated that no suitable female candidates were identified. To mitigate against future underperformance, new SMS vacant posts will be targeted for appointment of female candidates that is in-line with the Employment Equity Plan.
- The Directorate aimed at having 2% of the staff complement consisting of people with disabilities, but achieved 1.5%, which is a deviation of 0.5%. The Directorate indicated that this will be addressed by earmarking for three persons with disabilities that is in-line with the Employment Equity Plan.
- The Directorate aimed at training 50% of its staff complement, but trained only 35% of the staff complement, which is a deviation of 15%. The Directorate attributed this to the complexity of the course "Systemic Corruption" and that the specifications provided did not address the training needs of the Directorate. Further, the threshold requirement for in-house training was not met. The training plan will be closely monitored in future to prevent a repeat of this underachievement.

8.2. Human resource management

At the end of the 2015/16 financial year, a total number of 375 post were filled against 414 number of posts on the approved establishment of the Directorate, representing an overall vacancy rate of 9.4%. The *Investigation and Information Management* programme reported a bigger share of the vacancies (20 vacant posts) when compared to other programmes. Overall, the vacancy rate in the Directorate has decreased significantly when compared to the same period in 2014/15 when the Directorate had a vacancy rate of 20.3%. The highest vacancy rate is within the *highly skilled supervision* (9-12) salary band (13.2%). At the end of the 2015/16 financial year, the Directorate had a turnover rate of 8.4%. A total of 15 staff



members left the employment of the Directorate. The major contributor to the reasons why staff left the Directorate was resignations – out of the 15 staff members who left the employment, 11 were as a result of resignations (79.2%).

Two members of the SMS failed to conclude and sign **performance agreements** within the specified timeframes. The matter is currently being handled by the labour relations unit and disciplinary steps will be taken against the two members.

A number of 125 staff within the salary band for personnel below the SMS out of a total of 339 personnel received **performance bonuses** during 2015/16. Within the SMS, a total of five (5) staff members out of a total of 36 in the SMS received performance bonuses during 2015/16, all within salary Band A.

In terms of **labour relations**, only one (1) **disciplinary case** was finalised in 2015/16 leading to a dismissal for dishonesty. The Directorate had a total of **24 grievances lodged**, of which 15 grievances were resolved (62.5%) and nine (9) grievances were not resolved (37.5%). Five (5) staff members were **suspended** during the financial year under review, of which all exceeded the 30 day limit significantly. The average number of days suspended were 255 days (almost a full year). The suspensions were on full pay to the cost of R2.9 million for the 2015/16 financial year.

The **total budget for compensation of employees** had been adjusted downwards by a total of R19.871 million from the main appropriation to the final appropriation. During the initial adjustments period, the Directorate applied virements and shifts to the amount of R10.211 million to its *compensation of employees* budget, from R169.836 million (main) to R159.625 million (adjusted). In the fourth quarter, the Directorate applied a second downward adjustment to the budget for *compensation of employees* of R9.660 million, bringing the final appropriated budget to R149.559 million, of which it spent 99.7%. If the Directorate did not apply the two adjustments to the budget for *compensation of employees*, it would have spent 88% of its original budget allocation.

8.3. Programme 2: investigation and information management

This section provides information on the achievements made by the Investigation and Information Management Programme on predetermined performance targets as contained in the APP as well as other key performance areas governed in the Directorate's core service delivery programme.

8.3.1. Expenditure at year-end

The Directorate spent R152.6 million of its available R152.8 million budget for the *Investigation and Information Management* Programme (99.9%) at the end of the 2015/16 financial year. The Programme left a total of R158 thousand unspent at year-end. A total amount of R8.4 million was shifted away from the budget for *compensation of employees* after the AENE process in the fourth quarter due to vacant posts. This indicates that if the virement was not applied, underspending on *compensation of employees* would have been R8.5 million, which should be a serious concern to the Committee.



8.3.2. Service delivery performance

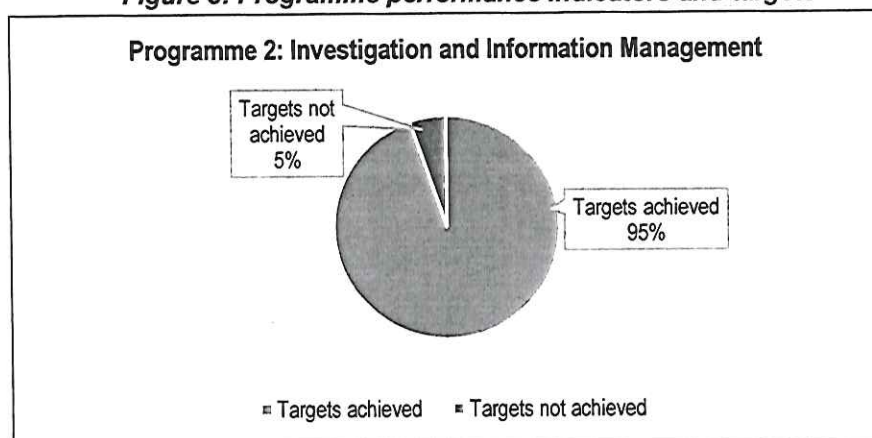
The table outlines the output targets for the 2015/16 financial year for each strategic objective specified for the *Investigation and Information Management* Programme in the Strategic Plan of the Directorate. The Directorate exceeded most of its strategic performance targets, which is attributed to the implementation of various intervention mechanisms to improve performance such as the deployment of Task Teams, ED Directives and the Turnaround Strategy.

Table 4: Strategic objective annual targets for 2015/16

Strategic objective	Indicator	Strategic Plan Target	2015/16 target	Achievement
Case Management System	Percentage of cases registered and allocated within 72 hours of receipt of written notification	90% (4 937)	90% (4 937)	92% (5 126 of 5 519)
	Number of statistical reports generated on the number and type of cases investigated, recommended and the outcomes thereof.	18 Reports	18 Reports	18 Reports
Decision ready cases finalised	Percentage of Decision Ready cases finalised per annum.	58% (5 252)	58% (5 252)	69%
Recommendation reports generated and referred	Percentage of Recommendation Reports referred per annum.	80% (1 176)	80% (1 176)	87% (1 957 of 2 254)

In 2015/16, the core service delivery programme of the Directorate, *Investigation and Information Management* excelled in terms of the achievement of performance targets. Of its 19 targets, 18 were achieved, which is an achievement rate of 95%.

Figure 3: Programme performance indicators and targets



Most of the targets in terms of investigations of section 28 cases were exceeded by a wide margin. Most notably the following:



- The performance target for the *percentage of investigations of rape cases while in police custody that are decision ready (finalised)* of 62% was exceeded by 23%. The Directorate finalised 25 out of the 28 cases, which is an achievement of 89%.
- The performance target for the *percentage of investigations of assault cases decision ready (finalised)* of 50% was exceeded by 22%. The Directorate finalised 5 070 out of 7 000 cases, which is an achievement of 72%.
- The performance target for the *percentage increase of criminal recommendations to prosecute that are placed on the court roll* was exceeded by 219%. This performance indicator was introduced in 2014/15 and aimed at achieving 10%. However, the Directorate achieved an increase from 17 to 56 cases. Of the 52 matters to prosecute in 2014/15, only 17 were placed on the court roll; while of the 84 matters to prosecute in 2015/16, 56 matters were placed on the court roll.

The only target that was not achieved in the *Investigation and Information Management Programme* for 2015/16 was the *percentage increase of disciplinary recommendations where disciplinary processes are initiated*. The Directorate aimed at increasing the percentage by 10%, but only managed to increase the percentage by 1%, which is a negative deviation of 9%. This underperformance was attributed to the dependencies of this target on external factors. To overcome the underperformance on this target, the Directorate will decentralise Legal Services support in the Provinces to ensure that recommendations referred to stakeholders are of high quality.

Comments and questions

- 1) The low targets set for section 28 cases have been a concern to the Committee for the past couple of financial years, as it does not inspire confidence in the ability of the IPID to hold members of the SAPS and MPS accountable under the IPID Act. This has been especially so for the performance target of rapes in police custody. The performance targets of the *Investigation and Information Management Programme* should be increased over the medium term to inspire greater confidence in the IPID.
- 2) What effect has the lack of capacity and underperformance of the *Legal Services Programme* had on the underachievement of the target to increase the percentage of disciplinary processes initiated?

8.3.3. Statistical report

In 2015/16, a total of 5 519 cases were reported to the IPID, of which the majority of cases reported were in terms of section 28(1)(a) to (h) of the IPID Act, 2011. This is a slight decrease of 6% from the 5 879 cases reported to the IPID in the previous financial year.

Of the 5 519 cases reported to the IPID, 3 509 cases were assault cases (63.5%), 865 cases relating to complaints of a discharge of an official firearm(s) (15.6%), 366 cases of deaths as a result of police action (6.6%) and 216 cases of death in police custody (4%).

In terms of intake comparisons between 2015/16 and the previous financial year, cases of systemic corruption increased with 267% from three (3) cases in 2014/15 to 11 cases in 2015/16 and cases relating to corruption increased with 20% from 93 cases in 2014/15 to 112 cases in 2015/16. The cases relating to torture remained constant at 145 cases in both years.



Cases involving rape in police custody and non-compliance with section 29 of the IPID Act declined by 32% each in 2015/16 compared to the previous financial year.

Table 5: Intake comparisons

Section of IPID Act	Intake of cases	2014/15	2015/16 ⁵	Percentage change
28(1)(a)	Deaths in police custody	244	216	-11%
28(1)(b)	Deaths as a result of police action	396	366	-8%
28(1)(c)	Complaint of the discharge of official firearms(s)	940	865	-8%
28(1)(d)	Rape by police officer (on or off duty)	124	112	-10%
28(1)(e)	Rape in police custody	34	23	-32%
28(1)(f)	Torture	145	145	0%
28(1)(f)	Assault	3 711	3 509	-5%
28(1)(g)	Corruption	93	112	20%
28(1)(h)	Other criminal matter(s)	90	88	-2%
28(1)(h)	Misconduct	39	31	-21%
28(2)	Systemic corruption	3	11	267%
29	Non-compliance with section 29 of the IPID Act	60	41	-32%
Total		5 879	5 519	-6%

Of the 5 519 cases reported to the IPID during 2015/16, the highest percentage of cases were reported in the Western Cape (20%), followed by Gauteng (15%) and KwaZulu-Natal (14%). Almost 80% of the assault cases were reported in the Western Cape, which is also the highest proportional assault cases across provinces. Although the Western Cape contributed most to the case intake of the IPID, it should be noted that the cases reported in the Western Cape decreased with 24% in 2015/16 compared to 2014/15 (1 099:1 455). The Mpumalanga province contributed 9% of the 2015/16 case intake, but showed a 32% increase of cases compared to 2014/15 (368:484).

During 2015/16, the IPID investigated 5 397 cases which involved the members of the SAPS and 105 cases involving members of the MPS on section 28 offences. The vast majority of cases reported to the IPID were from the SAPS with 98% and 2% of cases from the MPS.

Table 6: Intake for 2015/16 between SAPS and MPS

Section of IPID Act	Intake of cases	SAPS	MPS
28(1)(a)	Deaths in police custody	216	-
28(1)(b)	Deaths as a result of police action	356	10
28(1)(c)	Complaint of the discharge of official firearms(s)	826	39
28(1)(d)	Rape by police officer (on or off duty)	106	6
28(1)(e)	Rape in police custody	23	0
28(1)(f)	Torture	144	1

⁵ The number includes both SAPS and MPS



Section of IPID Act	Intake of cases	SAPS	MPS
28(1)(f)	Assault	3 466	43
28(1)(g)	Corruption	109	3
28(1)(h)	Other criminal matter(s)	87	1
28(1)(h)	Misconduct	31	0
28(2)	Systemic corruption	11	0
29	Non-compliance with section	39	2
Total		5 414	105

In 2015/16, the IPID had a total of 10 695 cases (**workload**), of which 7 407 cases were finalised (69%). The IPID significantly improved on the number/percentage of investigations concluded from 56% in 2013/14 to 48% in 2014/15 and 69% completion in 2015/16. Further, the IPID also managed to reduce its backlog cases by 68% (from 2 209 to 957) in 2015/16.

A total of **957 criminal recommendations** were made to the NPA for decision, of which 78% of cases are still awaiting a response and in 118 cases the NPA declined to prosecute (12.3%). Of the 957 criminal recommendations made to the NPA, 84 cases were prosecuted (8.7%). The IPID made **1 297 disciplinary recommendations** to the SAPS during 2015/16, of which 687 cases are awaiting response, 274 disciplinary investigations initiated and 132 (10%) SAPS members found guilty based on the recommendations made by the IPID.

The IPID secured a total of **97 criminal convictions** against members of the SAPS in 2015/16 compared to 58 criminal convictions in 2014/15. The number of disciplinary convictions also increased from 200 in 2014/15 to **243 disciplinary convictions** in 2015/16. The IPID currently have a total of 814 cases on the court roll for prosecution.

Comments and questions

The IPID should explain the numbers of criminal and disciplinary convictions, as more convictions were made than cases in which guilty verdicts were handed down. This could possibly be attributed to individual convictions where the guilty verdict was based upon the number of cases.

8.3.4. Ratio of investigators

The IPID asserts that the current IPID to SAPS and MPS ratio of 1:1100, compared to the SAPS members ratio to population ratio of 1:336, is insufficient to effectively deliver on its mandate. However, this is not a good comparison to make, as SA cannot afford to have one IPID investigator for every 336 SAPS members. This would mean that the IPID should have approximately 450 investigators.⁶ This will necessitate a significant increase in the budget of the IPID, which is questionable in the current economic climate. The IPID should indicate the manner in which the ratio of 1:1 100 IPID to SAPS and MPS has been calculated and whether any international comparative research has been conducted to establish an average ratio in terms of police members to that of police oversight bodies. The IPID's counterpart in the United

⁶ In 2015/16, the SAPS had a total of 151 834 SAPS Act members.



Kingdom, the Independent Police Complaints Commission (IPCC) is arguably better resourced than the IPID. In 2014/15, the UK had a total of 154 000 police members and the IPCC had a staff complement of 804 members with a budget of almost R1 billion (£54.136 million).

8.4. Programme 3: Legal services

This section provides information on the achievements made by the Legal Services Programme on predetermined performance targets as contained in the APP as well as other key performance areas of the IPID.

8.4.1. Expenditure at year-end

At the end of the 2015/16 financial year, the Directorate had spent R5.7 million against the available budget of R5.76 million for the *Legal Services* Programme, leaving R29 thousand unspent at year-end. This represents an expenditure of 99.5% of the available budget, which is a significant improvement compared to the previous financial year (2014/15), where the Directorate spent 61.0%. The Directorate applied a post-AENE virement of R287 thousand away from the *Legal Services* Programme (in the fourth quarter), which significantly reduced the amount of underspending.

At economic classification level, lower spending was mainly reflected on *machinery and equipment*, which recorded a deviation of R26 thousand.

8.4.2. Service delivery performance

The table outlines the output targets for the 2015/16 financial year for each strategic objective specified for the *Legal Services* Programme in the Strategic Plan of the Directorate. The Directorate did not achieve seven of its strategic targets for 2015/16, which is a concern as the Programme provides vital support to its core service delivery programmes.

Table 7: Strategic objective annual targets for 2015/16

Strategic objective	Indicator	Strategic Plan Target	2015/16 target	Achievement
Legal and litigation services are provided	Percentage of legal opinions provided to the Department	90%	90%	70% (126 of 180)
Investigation advisory services are undertaken	Percentage of legal advice provided to investigators	90%	90%	75% (12 of 16)

The *Legal Services* Programme performed the worst of all the programmes of the Directorate in 2015/16. It managed to achieve only four (4) performance targets out of the 11 targets identified for 2015/16, which is an achievement of 36%. The lack of performance was attributed to capacity constraints encountered during the financial year due to the absence of key members of the component.⁷

⁷ The Acting ED has put corrective measures in place and the staff members were disciplined.



Figure 4: Programme performance indicators and targets



The *Legal Services* Programme recorded **underperformance** on the following performance indicators and accompanying targets:

- 1) The Programme failed to finalise 90% of contracts and service level agreements within 30 working days of request - 79% achievement;
- 2) The Programme failed to provide 80% of written legal opinions to the Directorate within 21 working days of request – 80% achievement;
- 3) The Programme failed to provide 90% of written legal advice within 48 hours of request – 60% achievement;
- 4) The Programme failed to process 100% of applications for policing powers within five (5) working days of request;
- 5) The Programme failed to produce four (4) practice notes and directives during the 2015/16 financial year. The target was missed by one (1) practice note/directive;
- 6) The Programme failed to process and finalise 100% of Promotion of Access to Information Act (PAIA) within 30 days – achieved 57%; and
- 7) The Programme managed to conduct 11 legal workshops out of its targeted 12 workshops.

Comments and questions

- 1) The Committee should ask the Directorate to indicate whether all applications for policing powers were processed during the financial year, even though it was not done within five (5) working days. The Directorate should indicate what the average time for processing applications for policing powers were during 2015/16.
- 2) The Committee should request the Directorate to indicate whether all PAIA requests were finalised during the financial year, even though not within 30 days.
- 3) The Committee should consider whether more of the targets in the *Legislation* Programme would have been achieved if more time were allowed on these targets. The Committee should seek clarity on whether the targets were achieved albeit outside the time frames stipulated. The removal of unrealistic timeframes in the *Investigation and Information Management* Programme to complete investigations led to significant improvements on its performance targets.



8.5. Programme 4: Compliance monitoring and stakeholder management

This section provides information on the achievements made by the Compliance Monitoring and Stakeholder Management Programme on predetermined performance targets as contained in the APP.

8.5.1. Expenditure at year-end

The Directorate spent R4.2 million of its available Programme budget of R4.3 million at the end of the 2015/16 financial year, leaving R35 thousand unspent at year-end. The underspending was incurred on the *goods and services* budget of the Programme. The budget progression of the Stakeholder Management subprogramme should be a cause for concern to the Committee. At the start of the 2015/16 financial year, the subprogramme received an appropriated budget of R585 thousand, which was increased by R35 thousand during the adjustments period (AENE), which gave the subprogramme an adjusted appropriation of R620 thousand. However, in the fourth quarter, a virement of R473 thousand was applied away from the subprogramme, leaving the subprogramme with an available budget of R147 thousand of which only R117 thousand was spent (79.8%).

The Programme has a staff establishment of eight (8), of which seven (7) posts were filled at the end of the 2015/16 financial year (one vacancy).

8.5.2. Service delivery performance

The table outlines the output targets for the 2015/16 financial year for each strategic objective specified for the *Compliance Monitoring and Stakeholder Management* Programme in the Strategic Plan of the Directorate. The Directorate managed to achieve all its strategic targets for the *Compliance Monitoring and Stakeholder Management* Programme during the 2015/16 financial year. The target for the number of public awareness campaigns were exceeded by 28 due to more emphasis placed on ensuring the marketing of the IPID. Similarly, the target for the number of formal engagements conducted with key stakeholders was exceeded by 22 engagements. This was due to the IPID holding station lectures at police stations to educate members of the SAPS on the requirements of the IPID Act. During a previous engagement the Directorate indicated that these lectures only focus on the SAPS and not the MPS, but that it will be extended to the MPS during the current financial year (2016/17).

Table 8: Strategic objective annual targets for 2015/16

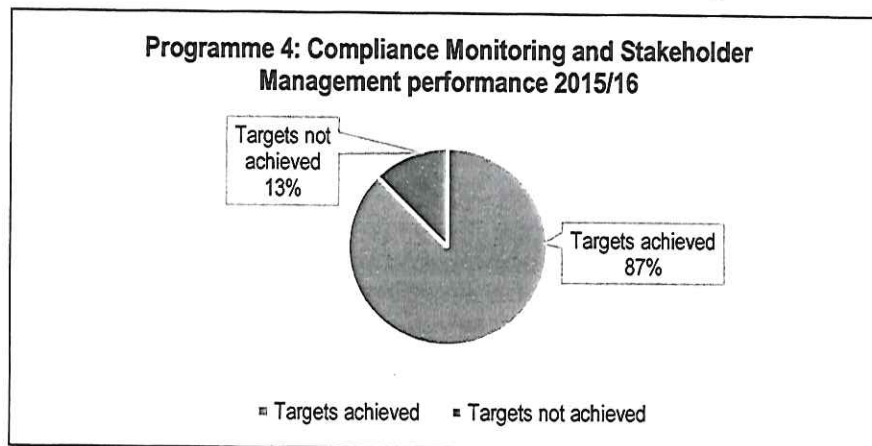
Strategic objective	Indicator	Strategic Plan Target	2015/16 target	Achievement
Recommendation Reports are quality assured	Number of reports on the evaluation of the quality of IPID recommendations per year	4	4	4
Compliance Monitoring or responses to recommendations	Number of submitted reports on the responsiveness of SAPS/MPS/NPA on IPID recommendations per year	4	4	4



Strategic objective	Indicator	Strategic Plan Target	2015/16 target	Achievement
Public awareness campaigns are undertaken	Number of community outreach events conducted per year	216	216	244
Stakeholder management is undertaken	Number of formal engagements conducted with key stakeholders per year.	120	120	142

The *Compliance Monitoring and Stakeholder Management* Programme identified a total of eight (8) performance indicators for 2015/16 with its corresponding performance targets. Of the eight (8), a total of seven (7) targets were achieved, giving the Programme an achievement rate of 87.5%.

Figure 5: Programme performance indicators and targets



The target that was not achieved by the *Compliance Monitoring and Stakeholder Management* Programme is the number of responses to media enquiries released annually. The Programme aimed to release 150 responses, but released 148 responses – missing the target by two (2) responses. This underperformance was attributed to the multiple responses to multiple enquiries on the same subject matter.

Of importance is the attendance of 54 local Community Policing Forum (CPF) meetings by IPID investigators during the 2015/16 financial year.

9. EXTERNAL INFLUENCES ON PERFORMANCE

9.1. National Development Plan (NDP)

The National Development Plan (NDP) envisages that “In 2030, people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the streets and children play safely outside. The police service is well-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice.” The Planning Commission recommended the following to achieve the 2030 vision:



- Strengthen the criminal justice system;
- Make the police service professional;
- Demilitarise the police;
- Building safety using an integrated approach through community participation; and
- Fighting corruption.

The NDP recommends that the IPID, as a mandated oversight body, has a critical role to play in achieving a more professional police service through the monitoring of adherence to professional ethics and to recommend appropriate sanctions where necessary. This echoes the mandate of the IPID as established through the IPID Act, 2011 (Act 1 of 2011).

The draft White Paper on Police is underpinned by the recommendations of the NDP to increase the professionalism of the SAPS through the adherence to the SAPS Code of Conduct, which seeks to mitigate the abuse of power by members of the police service. Over the medium term, the Directorate will expand its investigative methods and systems to respond to cases of police misconduct. The Directorate will train police officials at different stations on key provisions of the IPID Act, 2011. The training sessions are packaged as preventative measures and conducted during station lectures to ensure that police members are fully aware of and compliant with the provisions of the Act in relation to, amongst others, their reporting obligations on crimes committed by police officials, implementing the recommendations referred to the police service by the Directorate and cooperation with the IPID during investigations. Greater awareness of the Directorate's mandate by police officials will contribute to the professionalization of the police service as police officials will become aware of what is expected of them and be reminded that they will be held accountable for any reported misconduct, negligence or crimes committed during the execution of their duties.

The training sessions should be extended to the MPS.

9.2. Farlam Commission of Inquiry

On 12 September 2012 the President issued Proclamation No. 50 of 2012⁸ in which he appointed a judicial commission of inquiry, which became known as the Farlam Commission, to investigate matters that arose out of the incidents at the Lonmin mine in Marikana during August 2012. During this period, members of the South African Police Service (SAPS) were deployed at the Lonmin mine to quell protest action by striking mine workers. Members of the SAPS were involved in the deaths of striking miners and as such the IPID became involved in investigating the actions of police members, as it is the Directorate's statutory mandate to investigate alleged misconduct and criminal action by members of the SAPS. The Terms of Reference (TOR) of the Commission did not expressly state that the actions of the IPID should be investigated, but by extension, the Commission made several findings and recommendations on the IPID as the primary body to ensure independent oversight of the SAPS and Municipal Police Services.

Accountability: Capacity and independence

The evidence leaders participating in the Commission criticised the handling of the crime scenes by IPID, particularly with regard to their lack of personnel and lack of experts. It was

⁸ Published in Government Gazette No. 35680



stated that the IPID relied on the ballistics and crime scene experts of the SAPS, which inadvertently negates⁹ one of the objects of the IPID Act, 2011 stated in section 2(d). It was found that the IPID did not function independently in all respects in these investigations.¹⁰ In terms thereof, the Commission recommended that the staffing and resourcing of IPID should be reviewed to ensure that it is able to carry out its functions effectively. This has also been a concern of the Portfolio Committee of Police in recent years. The implementation of the Expansion Plan drafted by the IPID to expand its footprint has also been rejected by National Treasury (as well as the Portfolio Committee) due to the consistent failure of the IPID to fill funded posts.

Accountability: Self-incrimination

Many of the statements taken by IPID are in the nature of warning statements and are lacking in clarity and detail.¹¹ The Commission found that the fact that none of the information contained in the statements furnished to the Commission during proceedings may be used in any criminal prosecutions, ought to have encouraged full disclosure.¹² The warning statements did not inform the suspect of the protection afforded to him in terms of section 24(5)¹³ of the IPID Act, 2011. Furthermore, the warning statements made to IPID investigators which insofar as they incriminated the makers could also not be used against them in criminal proceedings by virtue of the provisions of section 24(4)¹⁴ of the IPID Act. The Commission found that it does not appear that the provisions of the subsection were drawn to the attention of the persons making the statements because the standard forms used for IPID statements do not refer to the subsection and appear to be based on those used by SAPS when interviewing ordinary suspects in criminal investigations.

The **Farlam Commission** recommended that the forms used by IPID for recording statements from members of the SAPS should be amended so as to draw the attention of the members concerned to the provisions of section 24(5) of the IPID Act and thereby encourage them to give full information about the events forming the subject of an IPID investigation without fear that they might incriminate themselves.

Further investigations

The Commission found that for understandable reasons the IPID investigations did not proceed while the Commission was ongoing. As such, it was noted that the perusal of the dockets indicates that there is a great deal of investigation which is still outstanding.¹⁵ In terms of ascertaining **criminal liability**, the Commission recommended that a further investigation be conducted in terms of Section 24(1) of the NPA Act, 1998.

Section 2(d) of the IPID Act, 2011 states that the IPID must operate independently from the SAPS, however this provision is currently not fully implemented. To implement the mandate

⁹ Page 324

¹⁰ Page 325

¹¹ Page 326

¹² Page 325

¹³ Section 24(5) states: No self-incriminating answer given or statement made by any person to an investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings instituted against that person in any court, except in criminal proceedings for perjury.

¹⁴ Section 24(4) states: A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but – (a) a person is not obliged to answer any question if the answer is self-incriminating; and (b) the person asking the question must inform that person of the rights set out in paragraph (a).

¹⁵ Page 326



of independence, the IPID must develop its own capacity to fully investigate cases, including the technical, forensic and ballistic side of its investigations. However, due to limited resources, the IPID relies on the SAPS for their expertise, which may impact on the integrity of the investigations and IPID's independence.

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