



17 November 2020

ANNUAL REPORT ANALYSIS OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID) 2019/20

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1. INTRODUCTION

The Independent Police Investigative Directorate (IPID) derives its mandate from the IPID Act, 2011 (Act 1 of 2011), which is to ensure effective independent oversight of the South African Police Service (SAPS) and Municipal Police Service (MPS). It is often difficult to measure the true performance of independent police oversight bodies through its effect on police conduct.

The Department received an unqualified audit, with emphasis on matters and some material findings. However, the overall performance of the Department declined during the 2019/20 financial year and was especially visible in the Administration Programme.

The IPID had two acting Executive Directors after the previous Executive Director's contract of employment ended at the end of February 2019. In June 2020, the Minister of Police nominated Ms Jennifer Dikeledi Ntlatseng as the preferred candidate for the appointment to the position of Executive Director of the IPID, in terms of section 6 of the Independent Police Investigative Act, 2011 (No. 01 of 2011). The Committee criticised the Minister because the appointment of a new permanent Executive Director took longer than the stipulated timeframe given by the IPID Act, 2011. The Committee approved the appointment of Ms Ntlatseng as IPID Executive Director. The appointment will give much needed stability in IPID.

This paper provides a summary of the financial and service delivery performance of IPID during the 2019/20 financial year. Due to the time limitation, the paper does not provide a comprehensive analysis of the 2019/20 Annual Report. The paper is completed in preparation for the engagement of the Portfolio Committee on Police on the 2019/20 Annual Report hearing scheduled for 18 November 2019.



2. REPORT OF THE AUDITOR GENERAL OF SOUTH AFRICA (AG)

The IPID received an **unqualified audit opinion**. The AG did not make any material findings on performance, but made material finding in compliance to legislation.

The AG raised one **emphasis on matters** in the 2019/20 financial year, this was:

- **Payables not recognised:** Payables not recognised of R4 902 000 exceeded the payment terms of 30 days, as required in Treasury regulation 8.2.3. This amount in turn exceeds the R43 000 of voted funds to be surrendered by R4 902 000 as per the statement of financial performance. The amount of R4 902 000 would therefore have constituted unauthorised expenditure had the amounts been paid in time.

Material findings on compliance with legislation

Expenditure Management

- Effective steps were not taken to prevent irregular expenditure as required by section 38(1)(c)(ii) of the PFMA and Treasury Regulation 9.1.1. The majority of the irregular expenditure disclosed in the financial statements was caused by non-compliance with procurement processes.
- Effective steps were not taken to prevent the overspending on cost of employees to the amount of R19.4 million as required by section 3 of the Appropriation Act, 2019 and TR 6.3.1(a) & (d), resulting in irregular expenditure. The overspending is as a result of the provisions of section 23 of the IPID Act, which requires IPID investigators to be paid the same as SAPS detectives. The overspending on compensation of employees did not result in the overspending on the vote or main division of the vote because the Department reduced planned spending in goods and services and capital expenditure line items.
- Some payments were not made within 30 days or an agreed period after receipt of an invoice, as required by Treasury Regulation 8.2.3. This was mainly due to delayed internal processes; and budgetary constraints experienced by the Department during the last quarter.

Internal control deficiencies

- Management did not implement adequate record keeping controls to ensure that accurate, complete and relevant information is available and retrievable on a timely manner to support compliance with key legislation.
- Management did not implement adequate controls to review and monitor compliance with the applicable laws and regulations, resulting in irregular expenditure being incurred, and payments not made within 30 days.

3. FINANCIAL OVERVIEW

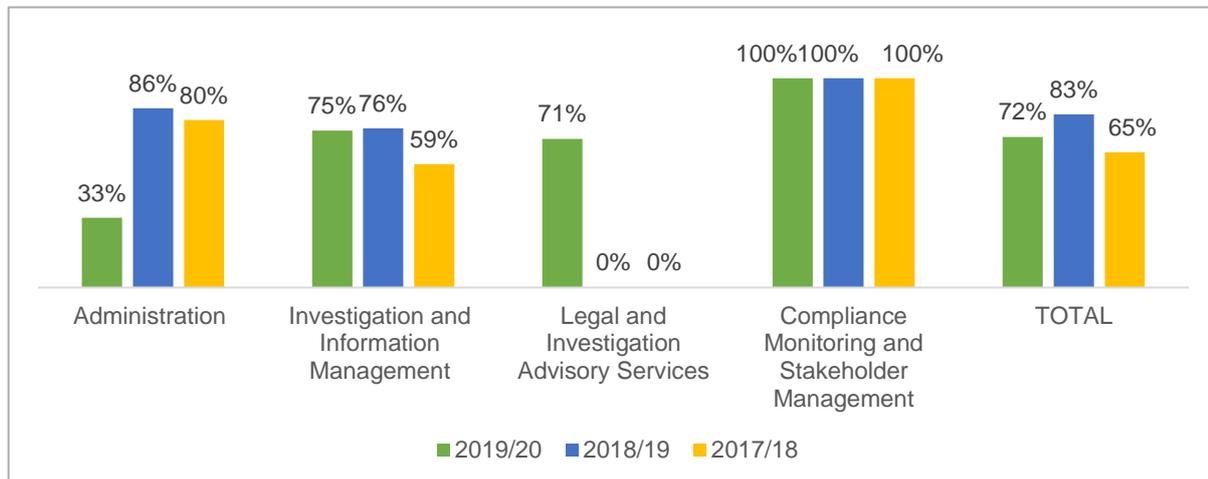
3.1. Overall expenditure and performance

Overall, the performance of the Department declined during the 2019/20 financial year. The Department achieved 72% on predetermined targets compared to 82.8% in the previous financial year. The decline was most noticeable in the Administration Programme that recorded a significant decline from 86% in 2018/19 to 33% in 2019/20. The performance of



the Compliance and Stakeholder Management Programme remained at 100% in 2019/20 and 2018/19. The IPID introduced a new (separate) programme in 2019/20, namely the Legal and Investigation Advisory Services Programme that achieved 71% of its performance targets.

Graph 1: Overall performance in 2017/18 to 2019/20



At the end of the 2019/20 financial year, the Directorate had spent R336.6 million or 99.9 per cent of its Adjusted Appropriation budget of R336.7 million. As such, the Directorate recorded underspending of R43 000 or 0.1 per cent of its budget at the end of the financial year. At year-end, the IPID overspent on its Compensation of employees budget with R19.3 million, which is recorded as irregular expenditure.

The underspending on *goods and services* was mainly on *minor assets* (R7.3 million) while the underspending on *payments for capital assets* was mainly on *machinery and equipment* (R4.6 million). For both items, the underspending was due to delays in the Directorate relocating to new office accommodation which was planned for 2019/20 but did not realise due to a legal dispute between the Directorate (and the Department of Public Works) and the owner of the Directorate's current office accommodation about its current lease agreement (City Forum building). As a result, costs associated with the relocation such as the procurement of new office furniture and computer equipment did not materialise thus explaining the preliminary underspending recorded on *minor assets* and *machinery and equipment*.

The underspending on *transfers and subsidies* was mainly recorded on *transfers to departmental agencies and accounts (non-business entities)* (R86 000) due to delayed invoices from the service provider for the renewal of TV licence fees for the two-way radios that are used by investigators.

Section 23 of the Independent Police Investigative Directorate (IPID) Act (2011): The section provides that the salaries of investigators in IPID be aligned with those of Detectives in the South African Police Service (SAPS). Although the Directorate began with the implementation of section 23 in 2018/19, not all salary components could be aligned with those of Detectives in SAPS due to the unavailability of funding.



As a result, other salary components such as backdated salary payments and the settlement of the pension fund liability could not be effected in 2018/19. Following a Court ruling in 2019 in which the Directorate was ordered to ensure full compliance with section 23 by aligning all remaining salary components for Investigators with those of Detectives in SAPS, the Directorate reprioritised funds amounting to R20.5 million during the 2019 Adjustments Budget to provide for the full implementation of section 23.

Despite this reprioritisation, the actual cost of implementing section 23 exceeded the amount projected by the Directorate at the time of the adjustments budget, thus explaining the preliminary overspending of R19.4 million on *compensation of employees* at the end of the financial year. The overspending was mainly recorded on *salaries and wages* (R15.1 million) and *social contributions* (R4.3 million). **Together, the IPID overspent their compensation of employees budget with R19.3 million.**

According to National Treasury, it should be noted that this phase of implementation of section 23 entailed the settlement of the pension fund liability for investigators to the Government Employees Pension Fund (GEPF), backdated salary payments and the adjustment of salary notches for investigators on salary levels 7 and 8. The last phase of implementation will be done during the first quarter of the 2020/21 financial year and will entail adjusting the salary notches for Investigators on salary levels 9 – 14.

3.2. Irregular expenditure

The Department incurred irregular expenditure amounting to R32.8 million during the 2019/20 financial year, R35.9 million was carried over from the previous financial year, and R30 million from previous financial years. The closing balance for irregular expenditure was R98.8 million at the end of 2019/20.

The Department recorded the following irregular expenditure in the last two financial year (amongst others):

- The North Gauteng High Court (Pretoria) declared the lease contract for the head office building (City Forum) unlawful in 2015, but was still paid by the Department (R32.82 million).
- Overspending on compensation of employees (R19.3 million).
- Appointment of Legal Services without following Supply Chain Management (SCM) processes (R15.2 million). These funds were spent on the legal action by the previous Executive Director (Mr McBride) against the Minister of Police.

Note: The IPID should indicate whether it has consulted with National Treasury to address irregular expenditure and whether these will be condoned?

3.3. Unauthorised expenditure

The Department did not incur any unauthorised expenditure in the 2019/20 financial year. The reported amount of R891 000 reflecting in the 2019/20 financial statements consists of prior over-expenditure by the then Independent Complaints Directorate (ICD) in Programme 3 and 2 for the financial year 2005/06 and 2008/09 respectively. The Department made a submission



with the supporting documents requesting the authorisation of the disclosed amount since been submitted to SCOPA through National Treasury.

3.4. Fruitless and wasteful expenditure

During the year under review, the IPID incurred R93 000 in fruitless and wasteful expenditure, of which R3 000 was written off. The Department has historic fruitless and wasteful expenditure of R3.236 million that emanated from previous financial years. In 2019/20, the bulk of the historic thereof was written off (R3.202 million from R3.236 million). At year-end, the IPID had a closing balance of R125 000.

Note: In 2019/20, R3.202 million from the R3.237 million historic fruitless and wasteful expenditure was written off, thus leaving R35 000 that was not written off. The IPID should provide details on this expenditure and explain why this amount was not also written off.

3.5. Claims against the Department

In 2017/18, the Department had a contingent liability of R87.9 million allowed for civil claims against the Department. During the 2018/19 financial year, the Department incurred liabilities of R9.250 million and paid R41.018 million in liabilities. This resulted in a reduction in the contingent liability to R56.200 million at year-end. The Department further reduced its contingent liability to R49.8 million in 2019/20. During the year, the Department incurred R2.8 million in new claims against the Department.

Note: The Department should indicate what number of civil claims resulted from the implementation of Section 33 of the IPID Act, 2011. Section 33 refers to offences and penalties. The section makes it an offence to interfere, hinder or obstruct the IPID in the exercise of its powers of functions, as stated in section 29 of the IPID Act, 2011.

4. EXPENDITURE AND PERFORMANCE PER PROGRAMME

4.1. Programme 1: Administration

Administration Programme
Achieved 2 from 6 performance targets
33.3% Achievement rate

The Administration Programme achieved two from six performance indicator targets, which represents 33.3% of targets achieved, which is a significant decline in performance from the previous financial year in which 85.7% of targets were achieved.

The Department identified the following strategies to overcome underperformance:

- ✓ Review the Technical Indicator Description (TID) to cover the audit process methodology in respect of late submission of management responses.
- ✓ Review mitigation plans in the new strategic risk register for 2020/21 to be realistic and within the Department's control.



- ✓ Establish and ICT Steering Committee to play an oversight role at an operational level to assist the Department in addressing ICT operational challenges and monitor progress.

At the end of the 2019/20 financial year, the Administration Programme had spent 99.99 per cent of its available budget of R87.1 million, thus recording preliminary underspending of R9000. The main cost drivers for the financial year were payments made on fleet services, property payments, audit costs, operating leases and legal costs. In addition, the bulk of budget was also spent on Information Communication Technology (ICT) related activities such as renewal of various licenses, data lines, mainframe services, internet services and upgrading of ICT infrastructure.

4.2. Programme 2: Investigation and Information Management

Investigation and Information Management Programme
Achieved 12 from 16 performance targets
75% Achievement rate

The Programme achieved 12 from 16 performance targets in the 2019/20 financial year, which represents an achievement rate of 75%.

During 2019/20, 5 640 cases were reported to the IPID, which is a decrease of 3% compared to the previous financial year (189 cases fewer). The figure below shows that the largest numerical decrease was in complaints of the discharge of official firearm(s) (86 fewer cases) and cases of other criminal matters recorded the largest percentage decrease (-49%).

Table 1(b): Annual intake comparisons	2018-2019	2019-2020	Changes	
			Number	Percentage
Section 28(1)(a)-deaths in police custody	214	237	23	11%
Section 28(1)(b)-deaths as a result of police action	393	392	-1	0%
Section 28(1)(c)-complaint of the discharge of official firearm(s)	770	684	-86	-11%
Section 28(1)(d)-rape by police officer	124	120	-4	-3%
Section 28(1)(e)-rape in police custody	13	11	-2	-15%
Section 28(1)(f)-torture	270	216	-54	-20%
Section 28(1)(f)-assault	3 835	3 820	-15	0%
Section 28(1)(g)-corruption	108	84	-24	-22%
Section 28(1)(h)-other criminal matter	35	18	-17	-49%
Section 28(2)-systemic corruption	1	1	0	0%
Non-compliance with Section 29 of IPID Act	66	57	-9	-14%
Total	5 829	5 640	-189	-3%*

Source: IPID 2019/20 Annual Report

The majority of the cases reported were within Section 28(1) (a) to (h). Of this figure, 3 820 were assault cases, 684 were cases of complaints of discharge of an official firearm(s), 392 were cases of deaths as a result of police action followed by 237 cases of death in police



custody. The province that received the highest number of cases was the Western Cape with 1 197 cases, followed by Gauteng with 993 cases and KwaZulu-Natal with 729 cases.

Of the 237 cases of death in police custody, most were because of suicide (hanging). In 2019/20, 71 persons in police custody committed suicide by hanging themselves. Due to the scope of the problem, the IPID conducted a comparative analysis of suicide by hanging. The analysis found that most provinces experienced a decrease in the number of suicide victims in police custody, except Northern Cape, Mpumalanga and Limpopo that experienced an increase. Items such as clothing and blankets were the main instruments used to commit suicide. The IPID noted with concern that suicide victims used other prohibited items such as rope, shoelaces and belts.

Note: The IPID should indicate whether any sanctions were brought against the police members responsible for detention.

According to IPID, it finalised 2 269 cases (decision-ready) of the total case intake of 5 640 cases, which is a 40% completion rate. This should be of serious concern to the Committee. Furthermore, the IPID reports that it has a total workload of 13 255 cases (backlog and current), of which 3 889 cases were decision-ready. Thus, only 29% of all cases were decision-ready by the end of 2019/20.

Note: During a recent Committee meeting (14 October 2020), the Executive Director indicated that IPID is in the process of employing retired detectives to address the backlog. The IPID should indicate how this process would work, e.g. would these detectives be appointed on a contact-basis?

The IPID made 2 443 criminal recommendations to the National Prosecuting Authority (NPA) for decision, of which 1 594 of referrals are still waiting for response, prosecution declined for 785 cases, 55 cases to be prosecuted and 9 cases were withdrawn.

The IPID made 2 616 recommendations to SAPS during the period under review, which comprised of 870 recommendations where the IPID recommended to SAPS to discipline its member(s) and 1 746 recommendations where the IPID recommended no disciplinary action to SAPS member(s).

The IPID made 106 recommendations to MPS during the period under review, which comprises of 33 recommendations where the IPID recommended to MPS to discipline its member(s) and 73 recommended no disciplinary action to MPS member(s). The majority of negative recommendations were to the Tshwane Metro Police Department (19 recommendations) followed by Johannesburg Metro Police (6 recommendations) and Ekurhuleni Metro Police (4 recommendations).

During a recent Committee meeting (14 October 2020), the Executive Director indicated that the **NPA declined to prosecute** in some cases due to the quality of investigations. The National Director for Prosecutions (NDPP) indicated that cases referred to it does not warrant prosecutions.



Note: To mitigate this challenge, the IPID appointed legal quality assurers to address these challenges by the end of October 2020. The Executive Director further indicated that cases that were declined for prosecution will be reopened and analysed to determine what it lacks. The IPID should indicate how this process would work, e.g. would these detectives be appointed on a contact-basis?

The table below shows performance on the mandatory cases for investigation that are decision-ready (finalised) against predetermined cases, but also the number of case intakes for the 2019/20 financial year.

Table 4: Performance on selected performance indicators

Section of IPID Act	Investigated	2019/20 Target	2019/20 Achieved	Deviation	2018/19 Comments on reported achievements
28(1)(a)	Number of deaths in police custody cases that are decision-ready	150	174	24	Target exceeded
28(1)(b)	Number of deaths as a result of police action cases that are decision-ready	130	141	11	Target exceeded
28(1)(c)	Number of complaint of the discharge of official firearms(s) cases that are decision-ready	150	257	107	Target exceeded
28(1)(d)	Number of rape by police officer (on or off duty) cases that are decision-ready	69	90	21	Target exceeded
28(1)(e)	Number of rape in police custody cases that are decision-ready	10	8	-2	Target not achieved.
28(1)(f)	Number of torture cases that are decision-ready	45	62	17	Target exceeded
28(1)(f)	Number of assault cases that are decision-ready	2000	1 461	-539	Target not achieved
28(1)(g)	Number of corruption cases that are decision-ready	60	35	-25	Target not achieved
28(1)(h)	Number of other criminal matter(s) and misconduct cases that are decision-ready	40	10	-30	Target not achieved
28(2)	Number of systemic corruption cases that are decision-ready	3	4	1	Target exceeded

Source: IPID 2019/20 Annual Report

The IPID did not achieve its target on **rape in police custody**. The IPID should indicate whether the significant backlog in the SAPS Forensic Science Laboratories had an impact on the underperformance on this target.



Assault is the most prevalent category of police misconduct, and the IPID did not meet the target, which is concerning. The IPID should explain the significant underperformance on this target (539 assault cases were not finalised).

The Department identified the following strategy to overcome areas of underperformance:

- ✓ The training interventions will be prioritised in the 2020/2021 financial year.
- ✓ The investigation of outstanding cases is ongoing and will be finalised in the 2020/21 financial year.

Note: In October 2019, there were serious allegations of statistical manipulation to inflate performance (especially in provinces). The IPID should provide the details/findings of the subsequent investigation into these allegations.

At the end of the 2019/20 financial year, the Investigation and Information Management Programme had spent 100 per cent of its available budget of R233.4 million. Although the Programme did not record overall over expenditure, *Compensation of employees* overspent by R19.367 million. This budget allocation was R164 million and the Department spent R183.3 million at year-end, which is recorded as irregular expenditure. The Department offset the overspending by underspending of R14.7 million on *goods and services* and R4.6 million on *machinery and equipment*. This underspending was because of delays in the Directorate relocating to new office accommodation due to legal dispute with the property owner of its current office accommodation (*City Forum building*). In October 2020, the IPID indicated that the new property owner confirmed that, by 04 December 2020, the new building will be fit for occupation.

Note: The full lease amount of R32.82 million was recorded as irregular expenditure. This dispute was not resolved in the first quarter of the 2020/21 financial year.

4.3. Programme 3: Legal and Investigation Advisory Services

Legal and Investigation Advisory Services
Achieved 5 from 7 performance targets
71.4% Achievement rate

At the end of the 2019/20 financial year, the Legal and Investigation Advisory Services Programme achieved five from seven performance targets, giving the Programme an achievement rate of 71.4 per cent.

At the end of the 2019/20 financial year, the Legal and Investigation Advisory Services Programme had spent R5.3 million or 99.4 per cent of its available budget, thus recording preliminary underspending of R33 000. Travel and Subsistence remained the cost driver of the Programme.

At economic classification level, preliminary underspending was recorded on *goods and services* (R33 000), mainly on *travel and subsistence* (R18 000) due to savings realised against the travel budget which had been set aside for the office of a vacant Director post. As



the Director post was only filled in the last quarter of the financial year, the Directorate realised savings against this budget.

4.4. Programme 4: Compliance Monitoring and Stakeholder Management

Compliance Monitoring and Stakeholder Management Programme
Achieved 7 from 7 performance targets
100% Achievement rate

The Programme achieved a second consecutive achievement rate of 100% on performance targets. In 2019/20, the Programme achieved seven from seven performance targets. Furthermore, the Programme exceeded the performance targets by a wide margin.

At the end of the 2019/20 financial year, the Compliance Monitoring and Stakeholder Management Programme recorded underspending of R4000. The underspending was mainly recorded on *goods and services* (R3 000), specifically on *travel and subsistence* due to savings realised as a result of a senior management post being vacant for longer than anticipated. At the end of 2019/20, the Programme reported overall actual expenditure of R10.831 million (99.95% of available budget).

5. HUMAN RESOURCE MANAGEMENT

At the end of the 2019/20 financial year, the Directorate had 360 filled posts against the approved Human Resource Budget Plan (HRBP) annual target of 428 posts. This resulted in 68 vacant funded posts. The *Administration* and *Investigation and Information Management* programmes recorded the highest number of vacant posts, showing vacancies of 20 and 40 posts, respectively.

According to National Treasury, some of the vacant posts were as a result of the Directorate's decision to delay the creation of new posts in line with its planned new structure in order to be able to reprioritise the funds set aside for this purpose towards the implementation of section 23 of the IPID Act (2011).

During 2019/20, the Department appointed a consulting firm with a project team of 17 persons to conduct 'Internal Audit Review Services for ICT' to a total contract value of R442 428.

Note: The Department should provide details of the 'Internal Audit Review Services for ICT' project for which a consulting company was appointed. The IPID should indicate whether the review delivered the expected outcomes?

6. REFERENCES

Independent Police Investigative Directorate (IPID) (2019). Annual Report for 2018/19.
Independent Police Investigative Directorate (IPID) (2020). Annual Report for 2019/20.