



16 August 2021

## INFORMATION NOTE: FOLLOW-UP ON DISCIPLINE MANAGEMENT IN THE SAPS

### Table of Contents

1. Introduction .....	1
2. Working relationship between the SAPS and IPID.....	1
3. Discrepancy in Statistics by SAPS and IPID .....	3
4. National Development Plan (NDP) .....	5
5. Conclusion .....	6
6. References.....	6

## 1. INTRODUCTION

On 26 May 2021, the Portfolio Committee on Police had a meeting with the South African Police Service (SAPS) and the Independent Police Investigative Directorate (IPID) on discipline management within the SAPS. During the meeting, Members raised significant concerns, including a seemingly antagonistic relationship between SAPS and IPID, data discrepancies, lenient disciplinary sanctions and reinvestigations of cases by the SAPS. The Committee decided to convene a follow-up meeting with the SAPS and IPID to address these concerns and called for an integrated presentation. However, the most recent (joint) presentation further calls into question the veracity of data on discipline management and leaves further questions on the impact of the IPID on police behaviour.

This paper is completed for the Portfolio Committee on Police's follow-up meeting on 17 August 2021.

## 2. WORKING RELATIONSHIP BETWEEN THE SAPS AND IPID

A key concern raised by the Committee was the working relationship between the SAPS and IPID. During the meeting on 26 May 2021, the Deputy Minister of Police said:

*"IPID is not an instrument that was created to be an antagonistic force against the police. Nor are the police supposed to look at IPID as problematic institution. These institutions are meant to complement each other, particularly IPID, in ensuring the professionalisation of the SAPS is realised."*

In response, the IPID and SAPS stated that they have signed a Memorandum of Understanding (MOU) on 09 March 2021 to "service as the recorded, recognised, acceptable manner of interaction between IPID and SAPS, in accordance with the IPID Act".<sup>1</sup>

<sup>1</sup> SAPS/IPID, 17 August 2021



The presentation further stated that the MOU does not have a binding effect of law and that the SAPS remains in charge and responsible for all internal disciplinary measures to be used as an internal control mechanism and remains in control to decide on disciplinary steps taken against members in accordance with disciplinary codes and regulations. The MOU further acknowledges that “IPID’s roles is monitoring such internal disciplinary action is to be viewed as a way of ensuring transparency and accountability” (sic).

Further thereto, an interdepartmental committee constituted by the SAPS, IPID and the Civilian Secretariat for Police Service (CSPS) was established at national level to oversee the effective management and coordination of disciplinary recommendations. The approved Terms of Reference (TOR) regulating the functioning of the committee will be circulated to the Portfolio Committee on Police once finalised.

In terms of **re-investigations by the SAPS**, the presentation clarifies that discipline remains the purview of the SAPS as per its Disciplinary Regulations, 2016.

### Comments and questions

- 1) The MOU should be welcomed, however, since it was already signed on 09 March 2021, the original data discrepancies presented in the previous Committee meeting (26 May 2021) should never have happened if the cooperation was successful.
- 2) The proposed interdepartmental committee constituted by the SAPS, IPID and CSPS should be welcomed. However, effective oversight by the CSPS is heavily dependent on the access to quality data from the SAPS. How will the access to data be ensured? The legislative mandate of the CSPS is, amongst others, to “monitor the performance of the police service and regularly assess the extent to which the police service has adequate policies and effective systems and to recommend corrective measures”.<sup>2</sup> How is the CSPS fulfilling this function, especially in regards of discipline management? Is an interdepartmental committee necessarily to facilitate this mandate? Should the CSPS Act be amended to strengthen its role?
- 3) Further to the above, the CSPS Act, 2011 legislates the cooperation with the IPID and states that the CSPS “must monitor the implementation by the police service of recommendations made by the Directorate and provide the Minister with regular reports on the steps to ensure compliance.”<sup>3</sup> Members may request copies of these reports submitted to the Minister in this regard over the 2020/21 period and the first quarter of 2021/22.
- 4) Both the IPID Act and CSPS Act provide for the establishment and functioning of an Consultative Forum to ensure the cooperation between the IPID and CSPS.<sup>4</sup> According to the IPID Act, one of the functions of the forum is to “discuss, amongst other, issued relating to trends, recommendations and implementation of such recommendations.”<sup>5</sup> How often does the Consultative Forum meet and is it effective?

<sup>2</sup> Section 6(1)(a) of the Civilian Secretariat for Police Service Act, 2011 (No. 2 of 2011).

<sup>3</sup> Section 31(2) of the Civilian Secretariat for Police Service Act, 2011 (No. 2 of 2011).

<sup>4</sup> Section 31(3) of the Civilian Secretariat for Police Service Act, 2011 (No. 2 of 2011) and

<sup>5</sup> Section 17 of the Independent Police Investigative Directorate Act, 2011 (No. 01 of 2011)



- 5) According to policing experts (David Bruce and Gareth Newham), the most significant decline in the finalisation of disciplinary cases and sanction implemented were between 2016/17 and 2017/18, which coincides with the introduction of the 2016 Disciplinary Regulations, “suggesting that this has had an adverse effect on the operation of the disciplinary system.”<sup>6</sup> Should the Regulations be reviewed?
- 6) The comprehensive review of the IPID Act should be prioritised by the Committee. Careful consideration should be given to strengthening the standing of IPID recommendations and to compel the SAPS to implement the recommendations.
- 7) Section 2 of the IPID Act, 2011 stipulates that the object of the Act is to “make disciplinary recommendations in respect of members...resulting from investigations conducted by the Directorate”. However, the investigative mandate of the IPID (under section 28 of the IPID Act) is on serious criminal actions, including murder, rape, torture, assault etc. There should be a distinction between what is considered a disciplinary infraction and a criminal act. The two should not carry the same weight.
- 8) The SAPS Amendment Bill, 2021 is silent on the role of the IPID. This should be reviewed to strengthen the role of IPID as a key stakeholder in the professionalisation of the SAPS.

### 3. DISCREPANCY IN STATISTICS BY SAPS AND IPID

On 26 May 2021, the Portfolio Committee on Police requested the SAPS and IPID to reconsolidate their statistics because the two sets differed. The table below shows that IPID amended their figures to reflect those presented by the SAPS on 26 May 2021. However, in doing that, there are significant changes to the figures, which must be further explained.

**Table 1: Differences in data on recommendations**

	<b>Total Recommendations to SAPS</b>	<b>Positive Recommendations</b>	<b>Negative Recommendations</b>
26 May 2021	2 220	1 518	702
17 August 2021	2 173	1 487	686
<b>Difference</b>	<b>- 47</b>	<b>-31</b>	<b>-16</b>

According to the most recent presentation, these cases had been erroneously stated by the IPID and were not referred to the SAPS, but to the MPS. The IPID should indicate why this was added to its original presentation.

The most significant change in the statistics presented to the Committee is that of disciplinary recommendations made by IPID and disciplinary sanctions. These differences are shown in the table below.

<sup>6</sup> Bruce, D and Newham, G (2021)



**Table 2: Differences in disciplinary sanctions based on IPID referrals finalised**

Date of presentation	Total Guilty	Dismissal	Salary suspended	Final written warning	Written warning	Verbal warning	Corrective counselling
26 May 2021	66	6	6	13	32	5	4
17 August 2021	179	28	13	31	71	17	19
<b>Difference</b>	<b>+113</b>	<b>+22</b>	<b>+7</b>	<b>+18</b>	<b>+39</b>	<b>+12</b>	<b>+15</b>

The significant differences in disciplinary sanctions cannot be merely explained though a “communication challenge” between the SAPS and IPID.

### Comments and questions

- 1) In the IPID’s presentation, they had a sanction for police members fined – is this a disciplinary sanction, because the joint presentation does not list this as a sanction.
- 2) On slide 32, the presentation states that there were 22 service terminations. However, on the next slide, it reports 28 dismissals. This should be clarified.
- 3) The IPID should comment on the quarterly distribution of case intake (slide 28). What could be the possible contributing factors for the increase in the cases intake during the third quarter (October to December 2020) (270 cases) and then the significant decrease between April and June 2020 (91 cases). The lowest monthly intake was in June 2020 (23 cases), followed by January 2021 (24 cases).
- 4) The SAPS should differentiate between the number of disciplinary cases, the number of employees implicated, and the number of offences for which they are charged.
- 5) The reporting by IPID in their Annual Report spans different financial years, making it difficult to assess the effectiveness of the IPID. This is compounded by the historic backlog in IPID investigations.

**Based on the data presented by the IPID and SAPS, specific attention should be given to cases of assault/torture. The following should be noted:**

- 477 of 686 cases referred to SAPS were on assault/torture (65.16%)
- From the 179 finalised cases with a guilty verdict, 105 cases were on assault/torture (58.65%)
- From the 105 guilty verdicts on assault/torture, there were 2 dismissals (1.9%)
- The 2 dismissals from the total 477 assault/torture cases referred to SAPS (finalised and pending) equates to 0.42%.

Thus, between April 2020 and March 2021, the IPID referred 477 cases of assault/torture to the SAPS for disciplinary action and by the end of this period 0.42% of assault cases had led to a dismissal from the SAPS.



**The following should further be noted:**

- Between April 2020 and March 2021, the IPID had an active case load of 7 820 assault cases and 665 cases on torture (combined total of 8 485 cases).
- In reporting that 105 guilty verdicts were reached on assault/torture cases at the end of this period, it represents 1.23% of the total case workload.
- The 2 dismissals represent 0.02% of the total case workload.

Thus, during the 2020/21 financial year, a police member had a 1.23% chance of being found guilty of assault/torture and an 0.02% chance of being dismissed for allegations of assault/torture (2 dismissals/ 8485 cases).

**Comments and questions**

- 1) Why does the IPID report on assault and torture as one category?
- 2) The data does not show a significant deterrent for police brutality. The lack of stringent disciplinary sanctions should be reviewed.
- 3) The Committee should call a similar meeting with the National Prosecuting Authority (NPA) to scrutinise the extremely low prosecution figures. The newly appointed Executive Director implemented various initiatives to review cases to identify shortcomings. The Committee should question whether these initiatives have borne any fruit.
- 4) Members should note that during 2020/21, there was one guilty verdict on “death in police custody” for which the sanction was a written warning.

**4. NATIONAL DEVELOPMENT PLAN (NDP)**

The vision of the National Development Plan (NDP) is to ensure that by 2030, people living in South Africa feel safe at home, at school and at work, and that they enjoy a community life free of fear. Women walk freely in the streets and children play safely outside. The NDP argues that one of the primary ways to achieve this vision is to “make the police service professional”.

The NDP makes very clear recommendations on the professionalisation of the SAPS, the majority of which centres on discipline. These are:

- Linking the police Code of Conduct and Code of Professional Police Practice (Ethics) to promotions and disciplinary regulations and that the codes should be incorporated into the disciplinary regulations of the SAPS.
- The Code of Conduct must be linked to all human resource management systems.
- A copy of the Code of Conduct must be signed by police members, and kept in their personnel files.
- Periodic checks should be conducted to ensure that the Code of Conduct is understood and practiced.
- Disciplinary cases involving a breach of the Code should be dealt with as a priority.
- Members of the police charged with misconduct should be required to leave their station immediately until allegations are tested and finalised.



- Police members should be trained and tested on the application of the Code of Ethics in a compulsory course and failure to pass should lead to suspension or dismissal from the Service.
- The Code of Professional and Ethical Police Practice should also prescribe the off-duty obligations of police officials to honour the badge as a symbol of public trust.
- **Internal and external oversight bodies should be able to request a review of the professional ethics of an individual, unit or section of the police.**
- Mandated oversight bodies should monitor adherence to professional ethics and recommend appropriate sanctions, where necessary.

### Comments

The Committee should request a review the professional ethics of the SAPS.

## 5. CONCLUSION

The NDP is very clear on its recommendations regarding the professionalisation of the SAPS through the Code of Conduct and Code of Ethics. The principle of discipline within the SAPS must shift from command and control to a principle of leadership and self-discipline that is guided by strong codes of professional policing standards and behaviour. The professional code of the SAPS must be reviewed to address issues like the use of force and it must be enforced and supported by the organisational structure. The SAPS should consider best-practice models from regional and international law enforcement agencies and learn from their mistakes. The SAPS Code of Conduct and Code of Ethics must be reviewed to include professional policing standards needed to deliver a professional service in the current realities of South Africa, amid growing unrest, distrust in the police and rising crime levels.

## 6. REFERENCES

Bruce, D and Newham, G (2021). *Police data shows a disciplinary system in a state of collapse as conflict rages in SAPS upper echelons*. Published on 02 June 2021 on the Daily Maverick website. [Internet] Available from: <<https://www.dailymaverick.co.za/article/2021-06-02-police-data-shows-a-disciplinary-system-in-a-state-of-collapse-as-conflict-rages-in-its-saps-upper-echelons/>> [Accessed on 16 August 2021].

Civilian Secretariat for Police Service Act, 2011 (No. 2 of 2011) and

IPID and SAPS (2021). *Joint presentation on implementation of IPID recommendations*, dated 17 August 2021.

IPID (2021). *IPID's presentation on complaints and recommendations for 2021/2022 for the Portfolio Committee on Police*, dated 26 May 2021.

Independent Police Investigative Directorate Act, 2011 (No. 01 of 2011).

National Development Plan (2013).