



**independent police
investigative directorate**

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

JOINT PRESENTATION ON IMPLEMENTATION OF IPID RECOMMENDATIONS – SAPS & IPID

17 AUGUST 2021



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PURPOSE



Purpose



The purpose of this presentation is to update the Portfolio Committee on Police, on the status of implementation of IPID disciplinary recommendations, referred to the SAPS.

BACKGROUND

Background



- On 21 May 2021, the Independent Police Investigative Directorate (IPID) appeared before the Select Committee on Security and Justice, to present the Annual Performance Plan (APP) and budget allocation, for 2021/2022.
- A lack of implementation of disciplinary proceedings, by SAPS, was noted from the presentation by IPID.
- Subsequently, the South African Police Service (SAPS) and the IPID were invited to appear before the Portfolio Committee on Police (PCoP), on 26 May 2021.
- The SAPS was directed to present the status of the discipline management in the SAPS, whilst the IPID was directed to present the status of complaints received and recommendations, for the 2020/2021 financial year.
- The presentation by the SAPS covered the whole range of disciplinary-related matters, which included the IPID recommendations received and the status thereof.
- The presentation by the SAPS and IPID, highlighted significant statistical discrepancies, which prompted the PCoP to direct the SAPS and IPID to return to the Committee with a single presentation, which responds to the Committee members questions and reconciles the conflicting statistics.

LEGISLATIVE FRAMEWORK

Legislative Framework



The relationship between the SAPS and IPID is regulated by the following legislation:

Constitution of the Republic of South Africa, 1996

- The Constitution provides for legislation to establish the powers and functions of the SAPS (Section 205(2)), in accordance with the mandate of the SAPS, as set out in Section 205(3). The National Commissioner is, in terms of Section 207(1) of the Constitution, responsible to control and manage the SAPS.
- Section 206(6) provides for the establishment, by national legislation, of an independent police complaints body, to investigate any alleged misconduct of, or offence committed by a member of the SAPS in the province on receipt of a complaint lodged by a provincial executive.

South African Police Service Act, 1996 (Act No. 68 of 1996)

- The SAPS Act is the legislation, envisaged by Section 205(2) of the Constitution. The Act regulates the establishment and composition of the SAPS, provides for powers, duties and functions of the SAPS and empowers the Minister to issue regulations on various matters, including discipline, in the SAPS.

Legislative Framework (2)



Independent Police Investigative Directorate Act, 2011 (Act No.1 of 2011)

- The IPID Act is the legislation, envisaged by Section 206(6) of the Constitution. The Act *inter alia* regulates the establishment and composition of the IPID, provides for independent oversight of the SAPS and municipal police services, imposes reporting obligations on members of the SAPS and municipal police services and regulates cooperation between the different entities and authorises IPID to make disciplinary recommendations, in respect of members of the SAPS and municipal police services resulting from investigations conducted by IPID.
- In furtherance to the IPID Act, a Memorandum of Understanding between the SAPS, IPID and municipal police services was developed, to regulate cooperation between the SAPS, IPID and municipal police services, to comply with the IPID Act. The MOU was concluded between the SAPS and IPID, in March 2021 and has been forwarded to the municipal police services for the signature of the respective city managers.
- The MOU deals with various matters, to enhance cooperation between the parties, including matters, such as notification of IPID on matters referred to in Section 28(1)(a) to (f) of IPID Act, management of crime scenes, requests for information by the relevant parties, management of disciplinary matters and access by IPID investigators to the internal systems of the SAPS (such as the Crime Administration System) to update dockets that they are investigating. (For purposes of this presentation, the focus will be limited to matters of discipline management.)

Legislative Framework (3)



- Section **7(6)** of the IPID Act provides that the Executive Director must ensure that complaints, regarding disciplinary matters, in which members of SAPS are involved, are referred to the National Commissioner or, where appropriate, the relevant Provincial Commissioner.
- The National Commissioner or the appropriate Provincial Commissioner, to whom recommendations, regarding disciplinary matters have been referred, will, in terms of section **30** of the IPID Act, —
- (a) within **30** days of receipt thereof, initiate disciplinary proceedings, in terms of the recommendations made by IPID, inform the Minister in writing and provide a copy thereof to the Executive Director and the Secretary;
- (b) quarterly, submit a written report to the Minister on the progress made, regarding disciplinary matters and provide a copy thereof to the Executive Director and the Secretary; and
- (c) immediately, on the finalisation of any disciplinary matter referred to it, by the IPID, inform the Minister in writing of the outcome thereof and provide a copy to the Executive Director and the Secretary.

Regulatory Framework on Discipline



The Labour Relations Act, 1995 (Act No. 66 of 1995) (“LRA”)

- Section 23(1)(c)(i) of the LRA provides that a collective agreement binds the parties thereto, if the agreement regulates terms and conditions of employment. Consultation with organised labour and agreement on essential aspects of the employment relationship are therefore required to ensure that the interests of employees are fairly considered. Discipline is an example of a matter that regulates the terms and conditions of employment.
- The management of discipline in the SAPS is regulated by a collective agreement, SSSBC Agreement 1 of 2012 and is binding on the parties thereto.
- The SSSBC Agreement is the result of negotiations between the SAPS (as the employer) and organised labour on matters relating to discipline, including procedural aspects, e.g. the conducting of disciplinary hearings, the identification of serious and less serious misconduct, suspension, etc.
- As agreed upon in the SSSBC Agreement, the Agreement would come into effect on the date it was promulgated by the Minister of Police as the Discipline Regulations.

Regulatory Framework on Discipline (2)



- Any employment relationship is premised on the principle that an employee is required to comply with the rules and procedures, as determined by his or her employer.
- Rules and procedures, determined by any employer, guides the conduct of an employee to know what is expected from him or her and the consequences if the employee fails to comply with the rules and procedures, including disciplinary steps.
- The power to discipline an employee, is the responsibility of an employer.
- An employer is authorised and indeed responsible, to ensure that good discipline is maintained in the workplace. This principle is recognised in the Labour Relations Act, 1995 (Act No. 66 of 1995).
- This is integral to the right and duty of an employer, to ensure that employees adhere to its rules and procedures.
- These principles are recognised in the labour law and also relate to the employment relationship of members.
- The SAPS, as an employer, is responsible to manage discipline within the organisation, subject to the applicable legislative framework.

Regulatory Framework on Discipline (3)



The South African Police Service Discipline Regulations, 2016

- The Regulations reflect *verbatim* the SSSBC Agreement as concluded between the parties. The following provisions as contained in the Regulations and negotiated with organised labour, should be noted:
- Regulation 3, which contains the purpose of the Regulations and includes, to:
 - support constructive labour relations in the SAPS;
 - promote mutual respect between employees and the employer;
 - ensure that supervisors and employees share a common understanding of misconduct and discipline to:
 - promote acceptable conduct, in terms of the provisions of these Regulations;
 - provide a user friendly framework in the application of discipline; and
 - prevent possible arbitrary actions by supervisors towards employees in the event of misconduct.
- Regulation 4 sets out the principles of the Regulations, namely that:
 - discipline is a corrective and not a punitive measure;
 - discipline is a line management function; and
 - the investigation into an alleged misconduct must be done independently and separate from any other investigation.



CONCERNS RAISED BY THE PORTFOLIO COMMITTEE ON POLICE

Concerns Raised by the PCoP



The following were concerns and challenges raised by the PCoP:

- Working relationship between the SAPS and IPID.
- Terms of reference to be concluded and a copy to be forwarded to the PCoP.
- Why the SAPS and IPID stats differ (data discrepancies) – recommendations referred to SAPS and the initiation thereof.
- Lack of disciplinary action by the SAPS.
- Re-investigation of the recommendations by SAPS.
- Lenient outcomes/sanctions of disciplinary hearings, e.g. warnings and counselling.

REMEDIES/SOLUTIONS

Remedies/Solutions



Working relationship between the SAPS and IPID

- The Memorandum of Understanding (MOU) between the SAPS and IPID, regarding cooperation to comply with the IPID Act, has been signed, on 2021-03-09.
- The parties to the MOU agree that the purpose of the MOU will be to serve as the recorded, recognised, acceptable manner of interaction between IPID and SAPS, in accordance with the IPID Act.
- The parties agree that the National Commissioner and the Executive Director will each nominate one representative to serve on a committee to facilitate, monitor and evaluate the implementation of this MOU.
- The parties agree that every Provincial Commissioner and Provincial Head of IPID, or their delegate, will meet on a quarterly basis, to discuss areas of mutual interest.

Remedies/Solutions (2)



- The status of this MOU is to serve as the written record of the agreements reached, in respect of the identified areas of cooperation. However, this MOU does not and cannot, have the binding effect of law. The IPID and SAPS are in full agreement that this MOU, being the result of prior intensive consultation, represents the best workable way of giving effect to the IPID Act.
- With regard to initiation of disciplinary proceedings, the parties agreed that the responsibility of instituting, where appropriate, disciplinary action on account of alleged misconduct, is an internal control mechanism to be used internally by SAPS. As a result, the SAPS, as employer, remains responsible to decide on disciplinary steps to be taken, in terms of its disciplinary code. IPID's role in monitoring such internal disciplinary action is to be viewed as a way of ensuring transparency and accountability.

Remedies/Solutions (3)



Terms of Reference (ToR) to be concluded and a copy to be forwarded to the PCoP

- An interdepartmental Committee between the SAPS, IPID and the Civilian Secretariat of Police Service (CSPS), has been established at national level, to oversee the effective management and coordination of disciplinary recommendations.
- The ToR has been developed, to regulate the functioning of the Committee, which are in the final stage of being concluded.
- In addition, similar Committees have been established, at provincial level.
- The Committee meets on a monthly basis. The meetings are chaired by the CSPS and one of the objectives of meetings, is to assess the level of implementation of recommendations. The required level of attendance to the meeting, at national level is at the level of Director/Brigadier, whilst at provincial level, it is at the level of Deputy Director/Colonel.

Remedies/Solutions (4)



Data discrepancies

Recommendations referred to SAPS by IPID

- The IPID and SAPS confirm that a total of 686 negative recommendation were referred to the SAPS, in the 2020/2021 financial year. The discrepancy, which was noted in the presentation, was as a result of the recommendations referred to members of the respective municipal police services and not members of the SAPS.

SAPS reported 100% initiation of disciplinary proceedings whilst IPID reported 58%

- There has been a communication challenge, with regard to exchanging information at provincial level and this has since been addressed and resolved. The SAPS and IPID concluded that initiations of disciplinary proceedings, is 100%.

Remedies/Solutions (4)



Lack of disciplinary action by the SAPS

- All disciplinary recommendations, which are received from IPID, are considered and disciplinary proceedings are being initiated.
- Upon receipt of IPID disciplinary recommendation, the SAPS, as an employer, initiates disciplinary proceedings, by following the procedure of instituting disciplinary steps, as contained in the SAPS Discipline Regulations.
- If the allegations are of a serious nature, the line manager will, in terms of Regulation 8, ensure that investigation is concluded within 30 calendar days and that the employee is informed of the alleged misconduct and pending investigation.
- In the event that allegations are not serious, the line manager will invoke Regulation 7, by giving employee warnings, such as verbal, written or final written warning.

Remedies/Solutions (5)



Re-investigation of IPID recommendation by SAPS

- Both the SAPS and IPID acknowledge that the SAPS Discipline Regulations provides that allegations of misconduct against an employee must be investigated, in accordance with the SAPS Discipline Regulations.
- In accordance with the SAPS Discipline Regulations, Regulation 4(m) of principles, which these regulations are based on, provides that *"the investigation into an alleged misconduct must be done independently and separate from any other investigation"*.
- Flowing from the above principle, Regulation 6(2)(a) states that, *"the disciplinary officer designated by the National Commissioner or Provincial Commissioner may "upon a complaint of any person, initiate an investigation concerning alleged misconduct and cause an employee to be charged for misconduct in accordance with these Regulations"*.
- Further to the above, Regulation 8 provides that, *"a supervisor must ensure that the investigation into the allegations of misconduct is completed within thirty (30) calendar days or as soon as practically possible thereafter. Regulations further provides that, the employee must be informed of the alleged misconduct and pending investigation"*.

Remedies/Solutions (6)



Lenient outcomes of disciplinary hearings e.g. warnings and counselling

- If the matter is viewed as serious, a Chairperson will be appointed, in terms of Regulation 11(1) of the SAPS Discipline Regulations, to preside at a disciplinary hearing.
- The Chairperson must objectively and unbiased, consider the evidence presented before him/her, prior to determining whether the employee is guilty of misconduct.
- The Chairperson must consider the aggravating and mitigating circumstances presented, before deciding on the appropriate sanction.
- If the employer (SAPS) is not satisfied with the outcome of the hearing, the matter may be taken on review to the Labour Court.
- Regulation 6(7) of the SAPS Discipline Regulations, 2016, provides a recourse to any interested party, in an event he or she is not satisfied with a decision reached, by either the supervisor or employer representatives. The said interested party may submit a representation to the National Disciplinary Officer, providing reasons why the decision must be reversed.



IPIID RECOMMENDATIONS 2020/2021 STATISTICAL INFORMATION

IPID Recommendations 2020/2021



The slides to follow, reflect the total number of recommendations referred to the SAPS, in terms of Section 7(6) of the IPID Act. Furthermore, the presentation will also give the PCoP an insight, in terms of the implementation of recommendations, the progress and the manner, in which the recommendations were finalised.

IPID Recommendations 1 April 2020 to 31 March 2021



Province/Division	Total Recommendations to SAPS	Positive Recommendations	Negative Recommendations
Eastern Cape	281	136	145
Gauteng	197	112	85
Limpopo	151	136	15
Mpumalanga	158	109	49
KwaZulu-Natal	50	16	34
Free State	405	308	97
Northern Cape	196	162	34
North West	102	64	38
Western Cape	567	407	160
Head Office	66	37	29
Total	2 173	1 487	686

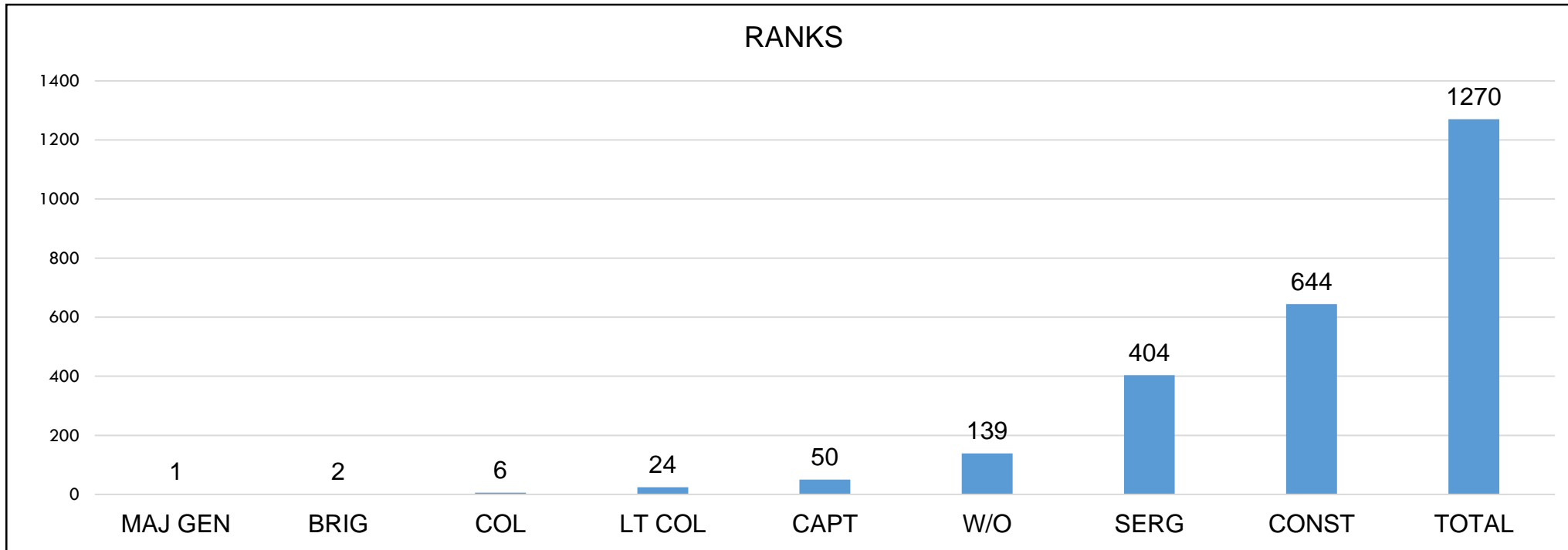
Positive Recommendations – No disciplinary steps have been recommended by IPID

Negative – Disciplinary steps recommended by IPID

Recommendations Received vs Number of Employees Involved



Total Negative Recommendations Received	Total Members
686	1270



Negative Recommendations Referred to SAPS: 2020/2021



	1 st QUARTER			2 nd QUARTER			3 rd QUARTER			4 th quarter			
PROVINCE/ DIVISION	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	TOTAL
EC	16	2	6	2	8	10	39	17	7	5	14	19	145
GP	0	2	3	0	8	6	14	14	10	0	4	24	85
LIM	0	2	0	3	2	0	3	1	2	1	0	1	15
MP	2	4	0	6	10	2	6	3	7	6	1	2	49
KZN	0	0	5	1	2	1	1	6	2	0	11	5	34
FS	0	9	4	4	5	9	10	10	16	8	7	15	97
NC	3	0	4	2	5	1	2	5	4	0	3	5	34
NW	5	0	0	2	2	0	2	6	7	0	14	0	38
WC	15	0	0	9	9	20	15	15	38	0	17	22	160
HEAD OFFICE	2	6	1	0	1	3	6	2	0	4	1	3	29
TOTAL	43	25	23	29	52	52	98	79	93	24	72	96	686
	91			133			270			192			686

Types of Offences (Section 28): April 2020 to March 2021



PROVINCE	DEATHS IN POLICE CUSTODY	DEATHS AS A RESULT OF POLICE ACTION	COMPLAINT OF DISCHARGE OF AN OFFICIAL FIREARM	RAPE BY A POLICE OFFICER	RAPE IN POLICE CUSTODY	TORTURE/ ASSAULT	CORRUPTION	SYSTEMIC CORRUPTION	NON COMPLIANCE WITH IPID ACT	ANY OTHER OFFENCE	TOTAL
	Sect 28 1(a)	Sect 28 1(b)	Sect 28 1(c)	Sect 28 1(d)	Sect 28 1(e)	Sect 28 1(f)	Sect 28 1(g)	Sect 28(2)	Sect 33	Sect 28 1(h)	
Eastern Cape	1	8	18	6		109			1	2	145
Free State	1	6	10	3	1	70	2		3	1	97
Gauteng		9	14	5		43	10		4		85
KwaZulu-Natal		12	4	2		12	3		1		34
Limpopo		1	2			12					15
Mpumalanga		6	4			31			8		49
North West		3	2			32			1		38
Northern Cape		4	8	1		17	1		1	2	34
Western Cape	2	8	2	5	3	137			3		160
Head Office		5	6	3		14				1	29
Total	4	62	70	25	4	477	16	0	22	6	686

Initiation of Disciplinary Proceedings, in terms of Section 30(a) of the IPID Act



Province	Total recommendations received	Disciplinary steps Initiated	Target achieved
Eastern Cape	145	145	100%
Free State	97	97	100%
Gauteng	85	85	100%
KwaZulu-Natal	34	34	100%
Limpopo	15	15	100%
Mpumalanga	49	49	100%
North West	38	38	100%
Northern Cape	34	34	100%
Western Cape	160	160	100%
Head Office	29	29	100%
Total	686	686	100%

Progress of Disciplinary Proceedings, in terms of Section 30(b) of the IPID Act



End of March 2021			
Province/Division	Total Recommendations Received	Total Finalised	Total Pending
Eastern Cape	145	126	19
Free State	97	81	16
Gauteng	85	57	28
KwaZulu-Natal	34	15	19
Limpopo	15	11	4
Mpumalanga	49	45	4
North West	38	26	12
Northern Cape	34	30	4
Western Cape	160	141	19
Head Office	29	18	11
Total	686	550	136

Outcomes of Disciplinary Proceedings, in terms of Section 30(c) of the IPID Act



Province/Division	Service Termination	Guilty	Not Guilty	Withdrawn	No Prima Facie Evidence	Total Finalised
Eastern Cape	5	32	23	0	66	126
Free State	3	27	14	0	37	81
Gauteng	7	17	13	4	16	57
KwaZulu-Natal	1	5	2	4	3	15
Limpopo	1	2	1	1	6	11
Mpumalanga	0	20	15	0	10	45
North West	2	7	2	1	14	26
Northern Cape	0	14	5	3	8	30
Western Cape	2	48	19	7	65	141
Head Office	1	7	5	1	4	18
Total	22	179	99	21	229	550

Outcomes of Disciplinary Proceedings, in terms of Section 30(c) of the IPID Act – Found Guilty



Province/Division	Dismissal	Salary Suspended for a Period	Final Written Warning	Written Warning	Verbal Warning	Corrective Counselling	Total Found Guilty
Eastern Cape	8	2	9	10	1	2	32
Free State	6	4	4	12	1		27
Gauteng	5	2	3	6		1	17
KwaZulu-Natal	2		1		1	1	5
Limpopo			1	1			2
Mpumalanga		1	1	15	2	1	20
North West		1	1	3	2		7
Northern Cape	1	3	4	4		2	14
Western Cape	1		6	19	10	12	48
Head Office	5		1	1			7
Total	28	13	31	71	17	19	179

Outcomes of Disciplinary Proceedings, in terms of Section 30(c) of the IPID Act – Found Guilty per Category



Category Section 28	Dismissal	Salary Suspended for a Period	Final Written Warning	Written Warning	Verbal Warning	Corrective Counselling	Total Found Guilty
(a) Death in Custody				1			1
(b) Death as a Result of Police Action	9	4	3	2		2	20
(c) Discharge of an Official Firearm	7	5	6	8	1	1	28
(d) Rape by a Police Officer On/Off Duty	5			1			6
(e) Rape of any Person while that Person is in Police Custody	1						1
(f) Torture or Assault	2	3	20	51	15	14	105
(g) Corruption	3						3
(h) Any other Criminal Offences		1					1
(i) Non-compliance with IPID Act	1		2	8	1	2	14
Total	28	13	31	71	17	19	179

Pending Recommendations



Province/Division	Under Investigation	Appointment of Functionaries Pending	Disciplinary Hearing Date Pending	Disciplinary Hearing In Progress	Total Pending
Eastern Cape	11	2	6		19
Free State	7	5	4		16
Gauteng	14	1	13		28
KwaZulu-Natal	3	2	11	3	19
Limpopo	1	1	2		4
Mpumalanga	2	2			4
North West	4	4	2	2	12
Northern Cape	2	1	1		4
Western Cape	10	5	2	2	19
Head Office	3	6	2		11
Total	57	29	43	7	136

THANK YOU