

**SUBMISSION BY THE INDEPENDENT COMPLAINTS DIRECTORATE (ICD) INTO  
THE SOUTH AFRICAN POLICE SERVICE AMENDMENT AND THE NATIONAL  
PROSECUTING AUTHORITY AMENDMENT BILL, 2008**

**Introduction**

The Independent Complaints Directorate (ICD) was established in terms of the South African Police Service Act, Act 68 of 1995, with the object of ensuring that complaints brought against members of the police are effectively and efficiently investigated. The powers of the ICD are contained in chapter 10 of the aforesaid Act. The ICD's mandate was further extended to include oversight over the Municipal Police Service.

The ICD has been requested to submit inputs on the objects of the South African Police Service Amendment Bill and the National Prosecuting Authority Amendment Bill, 2008.

**Discussion**

We appreciate the opportunity afforded to us as a critical stakeholder who will be affected by the proposed Bills currently under consideration by Parliament.

The ICD wish to comment as follows:

1. Relocation

- That the preamble of the amendment Bill which provides for the relocation of the Directorate for Special Operations (DSO) to the South African Police Service (SAPS), is aimed at enhancing the investigative capacity so as to intensify and accelerate the fight against priority crimes that threatens the national interest and security of the state. Section 179(2) of the Constitution read with section 20 of the National Prosecuting Authority Act, 1998, as amended, does not permit the Prosecuting Authority to have the investigative directorate within its structures. The NPA is therefore a Prosecuting Authority and its powers should be distinct from law enforcement. The two responsibilities of criminal investigations and criminal proceedings should be kept separately.
- The ICD was unable to exercise its powers over the DSO as it did not have legislative mandate over the NPA even though the DSO was performing law enforcement duties.
- The envisaged relocation of the Special Investigators of the DSO into SAPS Directorate for Priority Crimes Investigation (DPCI), as proposed in the two Bills, will present an opportunity for ICD to exercise its oversight responsibilities over them. And this notion was also supported by the recommendations as contained in the Khampepe Commission report.

2. Enhancement of the investigative capacity

The objective of the relocation of the Special Investigators of the DSO to the DPCI, within the SAPS, is aimed at enhancing the investigative capacity of the SAPS, which we fully support. The ICD's capacity will therefore have to be enhanced in order to optimally discharge its responsibilities.

### **Challenges of the ICD in line with the proposed amendments**

#### *Legislation*

- The SAPS Act currently makes provision for ICD to investigate allegations of misconduct, criminality and death in custody or as a result of police action. It is our view that the current legislation does not adequately empower the ICD to execute its oversight responsibility:
  - Lack of enforcement mechanism of the recommendations made to the police management;
  - The power to subpoena any member of the SAPS/MPS to appear before it.
- It becomes imperative therefore that the SAPS Amendment Bill make provision that will address the shortcomings of Section 53 of the same Act namely:-
  - Implementation of ICD recommendations by SAPS/MPS;
  - The powers as provided for in Section 16(b) of the SAPS Amendment Bill 2008.

#### *Capacity*

- Since the inception of ICD, two additional mandates viz, oversight over Metro Police Service and the monitoring of the implementation of the Domestic Violence Act by the police, were added without any additional funding, which put a strain over its existing budget;
- The additional responsibility of overseeing the DPCI will further put a strain on the already overstretched capacity of the ICD, therefore it becomes important that the ICD is properly capacitated to deal with this extended mandate;
- Human capital with specific expertise is another challenge which should be addressed and the proposal is as follows:- that focus should be on recruiting skilled personnel with forensic expertise, cyber investigation, commercial investigation and any other specialized fields that would impact on the work of the ICD. It is envisaged that the costs of attracting the above skills and adequately capacitating the ICD for this specific purpose will be discussed infra.

### **Recommendations**

- That ICD as a department supports the Bill;
- That the SAPS Amendment Bill make provision that will address the shortcomings of Section 53 of the principal Act namely
  - the implementation of the ICD recommendations by SAPS/MPS;
  - the powers as provided for in Section 16(B) of the SAPS Amendment Bill, 2008, which empowers the Head of the DPCI to conduct enquiries, should also be conferred on the ICD.

### Financial implications

Needs analysis – Oversight of the Directorate for Priority Crimes investigation

#### Compensation of Employees

10 X AD per province X 9	90 X R 300 000	R 27 000 000
2 X DD p p	18 X R 500 000	R 9 000 000
1 X D p p	9 X R 600 000	R 5 400 000
1 X PA p p	9 X R 150 000	R1 080 000
	117 + 1	<b>Sub- total: R 42 480 000</b>

#### Allowances

Standby	117 X R 30 pd X 30 days X 12 months	R 1 263 600
Danger	117 X R 300 pm X 12 months	R 421 200
Overtime hourly	117 X 20 hours/pm X 12 months X (180 hours X R 25 000/pm)	R3 875 040

**Subtotal: R 5 559 840**

#### Vehicles

Subsidized pm X 12	Capital = pp X 9 = 54 X (2/3 of R 240 000 over 3 yrs) + R 2 000 insurance	R 3 888 000
Traveling	3 000 km/pm X 54 X 12m X R 2.00pk	R 3 888 000

GG fleet Capital = 1 p o = X R 200 000 + R 3000 fees X 10 + 3000 km/pm X 10 X  
R 8 pl for 10 km R 2 383 200

GG Special Cap. = 9 X R 300 000 + R 3000 fees X 9 X 12 + 9 X 2000km/pm X 12 X R  
8 pl for 10 km R 3 024 000

**Subtotal: R 13 183 200**

### Equipment

Laptop 117 X R 10 000 R 1 170 000

Printer 1 p o = 9 X R 20 000 R 180 000

Network linkage and dataline use 9 X R 3000 pm X 12 R 324 000

Cell phone R800 pm X 12 X 117 R 1 123 200

Landline + Sw/board R 400 pm X 12 X 117 R 561 600

Invest equipment: (camera/video cam/TV & Recorder/etc = 4 X R10 000 p item X 9 of X  
2 sets R 720 000

**Subtotal: R 4 078 800**

### Training

1 Session p/a R 4 000 X 117 **Subtotal: R 468 000**

### Subsistence & Travel

Each 1 will sleep twice per week away = 117 X 12pm X (8 d X R 2000 hotel)  
R 22 464 000

Tollgate & parking 117 X 12pm X (8 X R 50) R 561 000

Beverages/meals 117 X 12pm X (8 X R 100) R 1 123 200

**Subtotal: R 24 148 200**

### Furniture

117 + 1 X R 80 000 R 9 440 000

Safes X 9 p o X 2 teams X R 10 000 R 180 000

Fax X 9 p o X R 10 000 (+ Security)

**Subtotal: R 9 720 000**

**Other: Office supplies**

Stationary 118 X R 1000 pm X 12

**Subtotal: R 1 416 000**

**Office accommodation**

20sq m X 118 X R 1 000 p sq m X 12pm

R 28 320 000

Partitioning 10% of R 28 m

R 2 800 000

Cabling 9 o X R 20 000

R 180 000

**Subtotal: R 31 300 000**

**Grand Total: R 132 350 000**

Escalation of 10,5% for year 2 (2010)

**R 146 251 000**

Escalation of 5.5% for year 3 (2011)

**R 154 294 000**

**MTEF 2009 – 2011**

**R 432 895 000**