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OVERVIEW OF THE 2010/11 ANNUAL REPORT OF THE INDEPENDENT COMPLAINTS DIRECTORATE (ICD)

1. INTRODUCTION

This paper will provide a brief overview of the programme performance of the ICD as reflected in its Annual Report 2010-2011, with reference to the ICD's strategic priorities, quarterly spending analyses and issues raised by Parliament in respect of the previous financial year's programme performance.

1.2. Legislative Mandate

In 2010/11 the ICD was governed by the following legislative provisions:¹

- Section 206(6) of the Constitution² which provides for an independent police complaints body to investigate any alleged misconduct of, or offence committed by, a member of the police service in a province after receipt of a complaint lodged by a provincial executive.
- Section 50 of the South African Police Service Act, 1995 ("the Police Act")³ which establishes the ICD under the SAPS.
- Section 53(2) of the Police Act which provides that the ICD's legislative mandate is to investigate any misconduct or offence allegedly committed by a member of the SAPS to either on its own accord or upon receipt of a complaint investigate deaths in police custody or as a result of police action; and investigate matters referred to it by the Minister of Police or his or her provincial counterparts.
- Section 64(O) of the Police Act⁴ gives the ICD civilian oversight in respect of the Municipal Police Services (MPS).
- Section 18 of the Domestic Violence Act (DVA), 1995,⁵ provides that the ICD must be informed of any failure by SAPS members to comply with an obligation in terms of the DVA or relevant National Instructions; and that the ICD can recommend that disciplinary action be taken against offending SAPS members. Every six months the ICDS must submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a) of the DVA, and set out the recommendations made in respect of such matters. Every six months the National Commissioner of the SAPS must submit a report to Parliament regarding steps taken as a result of ICD recommendations.

In addition the ICD is expected to contribute to the achievement of the relevant strategic outcomes set by Government. The ICD's functional area falls within the Public Order and Safety functional classification which is tasked with achieving, in particular, Outcome 3, which is to ensure that all people in South Africa are and feel safe.

¹ SAPS 2010/11 Annual Report, p39

² Constitution of the Republic of South Africa, 1996

³ South African Police Service Act No 68 of 1995

⁴ Read with Regulation 9 and Annexure 5 of the Regulations for the Municipal Police Service

⁵ Act No 116 of 1998



2. Strategic Priorities and Measurable Objectives of the ICD

The ICD set 12 strategic priorities for 2010 – 2013, some of which were not applicable to the year under review.

2.1 The ICD's 2010 – 2013 Strategic Plan listed six key areas for improved service delivery⁶:

- Investigation of deaths in police custody.
- Investigation of deaths where there is police involvement.
- Investigation of offences, for example, criminal offences.
- Investigation of misconduct by members of the SAPS or the municipal police services.
- Monitoring of the implementation of the Domestic Violence Act by the SAPS and the municipal police services.
- Decrease the backlog of cases from the preceding financial year to not more than 10% of the workload by 2013/14.

2.2 The following “Key Strategic Achievements” were reported in respect of 2010/11:

- **New legislation:** Legislation to effect the transition from the Independent Complaints Directorate (ICD) to the Independent Police Investigative Directorate (IPID) was passed by Parliament in March 2011. The IPID Bill was signed into law on 12 May 2011.
- **Revised activities and focus areas:** The prioritisation of serious cases (deaths that occur in police custody or as a result of police action) resulted in 82%⁷ or 1 052 Class 1 investigations being finalised in 2010/11 in eight provincial offices. The target of 65% set in the 2010 to 2013 strategic plan was thus exceeded.
- **Carry over only 10% of cases from one year to the next during the 2010/11 to 2013/14 period:** In 2010/11 the directorate achieved a reduction of 57% of cases carried over from 2009/10 as 255 out of the 479 Class 1 cases carried over from the previous financial year were completed, resulting in 224 Class 1 cases carried over to 2011/12.
- **Community awareness programmes:** The ICD held 307 outreach events to raise public awareness of the ICD's activities and mandate, and to provide feedback on cases relevant to particular communities. The target for this strategic objective was 250 events. Efforts were stepped up to communicate ICD activities to the media by issuing statements on cases and holding media briefings in various parts of the country. “Nearly” 50” media releases were issued.
- **Investigation services:** 83% of investigations into complaints of criminality against the SAPS and the municipal police services were finalised against a target of 55%.

⁶ Supra

⁷ See p15 of 2010-2011 ICD Annual Report



- **Streamline and reorganise the complaints-handling process and investigative function:** 96% of 5 869 complaints received were registered and allocated within 48 hours. According to the ICD the 4% shortfall in meeting this target occurred mainly in the Western Cape office and this challenge was being addressed.
 - **A new Chief Financial Officer was appointed on the 22 November 2010⁸** as the ICD's Chief Financial Officer retired during the reporting period.
3. **Additional selected financial and programme performance highlights and issues emanating from the ICD 2010 - 2011 Annual Report**

3.1 Financial Performance

- The ICD received an **unqualified report with no emphasis of matters**.
- The ICD spent 97.7% of its adjusted appropriation budget of R131.435 million (compared to 91.1% spent in 2009/10). **Under-spending of R2.991 million** (which was attributed to late invoices) was high compared to the size of the Budget vote in comparison to under-spending in departments with larger budgets.⁹
- There was **no unauthorised and irregular expenditure**.
- **Fruitless and wasteful expenditure totaling R3 000** was paid back.
- **Virement in the amounts of R159 000 and R1.165 million** were shifted out of Programmes 1 and 3 (sub-programme: Information Management) respectively into Programme 2 (Compensation of employees).
- **Minor amounts were shifted within Programmes.**¹⁰ The highest amount of R218 000 was shifted within Programme 1 (Management sub-programme) to contribute towards covering the shortfall under Machinery and Equipment in respect of the replacement of furniture due to the relocation of the National Office to new premises.
- **Substantial increases in expenditure** were noted in respect of **Computer services** (from R2.760 million in 2009/10 to R5.136 million in 2010/11); consultants (in respect of the realignment of performance agreements for all senior managers), **contractors and agency/outsourced** (from R1.024 million in 2009/10 to R2.076 million in 2010/11) and **operating leases** (from R4.237 million in 2009/10 to R15.568 million in 2010/11).

3.2 Issues raised by the Auditor-General (AG)¹¹:

- The reported performance for Programme 2 in respect of class 1 and class 3 cases¹² was not valid when compared to the investigation case files. Cases were signed off as complete without the case investigation report.

⁸ See p18 of the 2010 – 2011 Annual Report

⁹ Dollie, N (2011). Annual Report of the Independent Complaints Directorate (ICD) 2010/11: Summary and Analysis of the Financial Statements and Notes for 2010/11 and Report of the Auditor General. Research Unit, Information Service Section, Parliament of South Africa

¹⁰ See also p72 of the 2010 – 2011 Annual Report

¹¹ See p81 – 82 of the ICD 2010 – 2011 Annual Report

¹² Class 1 cases involve deaths that occur while a person is in police custody, or as a result of police action; or a rape allegedly committed by a police officer, whether on or off duty. Class 3 cases involve criminal acts allegedly committed by SAPS and municipal police members. (See p13 of the 2010 – 2011 Annual Report)



- Numerous cases were approved for completion by officials without proper written delegation of authority.
- The Accounting Officer did not establish a comprehensive system for reporting performance information.
- There was non-compliance with Treasury and Public Service Regulations because **payments were not settled within 30 days.**
- **Qualifications and other claims** relevant to the employment position of newly appointed employees were not verified or records kept.
- There had been material misstatement regarding the contingent liability disclosure in the financial statements submitted for auditing which was later rectified by management.

3.3 Programme Performance

- No new satellite offices were established in 2010/11 as this target is set to be achieved by 2012/13. In terms of the ICD's 2011/12 Budget Vote, an additional allocation of R10.1 million in 2012/13 will go towards the establishment of satellite offices in George in the Western Cape and KwaMhlanga in Mpumalanga.
- The ICD had made 501 recommendations (127 regarding deaths in police custody and 374 regarding criminal matters) for prosecution to the Directorate of Public Prosecutions.
- Recommendations made to SAPS totalled 2 261 recommendations, of which 1 211 were in respect of misconduct; and 924 in respect of criminal offences committed by SAPS members.

4. Analysis of Programme Performance against set targets

The ICD has three (3) Programmes, namely:

- Programme 1: Administration
- Programme 2: Complaints Processing, Monitoring and Investigation
- Programme 3: Information Management and Research

The following section will evaluate the performance of each programme against set targets.

4.1. Programme 1: Administration

	Voted Funds ('000)	Adjusted Appropriation ('000)	Virement	Final Appropriation ('000)	Expenditure ('000)
Administration	50.132	50.837	(159)	50.678	50.387 (99.4%)

Administration consists of, *inter alia*, executive support, the internal audit unit, human resources management, financial management, supply chain management, asset management,



risks and ethics management, labour relations and employee wellness management. The purpose of this programme is to provide for the overall management of the ICD and its support services.

The adjusted appropriation for Administration in 2010/11 was R50.837 million of which R50.387 million or 99.4% was spent compared to the 2009/10 allocation of R44.373 million, and expenditure of R39.528 million; with a variance of R4 845.

Personnel expenditure amounted to R22.433 million or 44.5% of the total expenditure under Administration. **Compensation of employees** made up 65.5% or R 14.698 million of the total expenditure on personnel costs. **Overtime payments** amounted to R301 000 or 1.3% of personnel costs (out of a total of R768 000).

Other expenditure was incurred in respect of **Training** (R348 000); and **Professional and Special Services** (R432 000).

- **Performance rewards**

Performance rewards totalled **R1.017 million** in respect of the 107 beneficiaries.

The average performance cost per employee *per salary band*¹³ were Skilled (levels 3-5) **R4 026**; Highly skilled production (levels 6-8) **R7 255**; and Highly skilled supervision (levels 9-12) **R12 225**.

At Senior Management level the average performance cost per employee per salary band in respect of the five beneficiaries was¹⁴: one beneficiary on Band A (R3 350); and four beneficiaries on Band B (R4 200).

Performance rewards were not paid to employees with disabilities; and employees on Lower skilled (levels 1 – 2).

Comment / Question

- The average performance cost per employee reflected on page 54 out of the Annual Report is set out according to race, gender and disability.
- What was the average performance cost per employee without taking into account these categories?
- What positions do the four employees with disabilities occupy and what is the nature of their respective disabilities?
- What factors are taken into consideration when evaluating the performance of employees with disabilities when it comes to performance rewards?

¹³ See p54 of the 2010 – 2011 ICD Annual Report

¹⁴ See p55 of the 2010 – 2011 ICD Annual Report



4.1.1 Human Resources Management

The ICD's total number of posts in 2010/11 was 292 of which 270 was filled compared to 267 in 2009/10. There were no posts additional to the establishment. The ICD had no critical occupations in 2010/11.¹⁵

The three main strategic priorities listed under Administration were to: comply with the Employment Equity Act, increase the representation of employees with disabilities and fill vacant positions promptly.¹⁶

The information below will focus on employment equity, vacancies, staff turnover, promotions, and leave.

- **Employment Equity**

- The racial breakdown of the total number of 270 employees were: **87.41%** African, **4.81%** Coloured, **2.59%** Indian, and **5.19%** White.
- **49.26%** of all employees were male compared to **50.74%** females.
- The ICD hopes to achieve its target of 50% women in top and senior management positions in 2012/13. As at 31 March 2011, **only 29% of the 17 existing senior management positions were held by women**. This is ascribed to the fact that the ICD is a small department with a very low staff turnover at senior management level; and that no new posts were created at that level in 2010/11.
- There were **2 females** (2 African) compared to **3 males** (2 African and 1 White) in **Top Management**.
- There were 3 females (3 African) compared to 8 males (8 African) in Senior Management positions.
- African males held the most positions in all occupational bands.
- A total number of **four or 1.48% of employees had disabilities** (two males and two females). Three of these employees were recruited in 2010/11.
- Between 1 April 2009 and 31 March 2011 **one person was recruited to Top Management** (an African female) and another to Senior Management (an African female).

- **Skills Development / Training**

- The 2010 - 2011 Annual Report does not provide detailed information on training.
- Page 60 of the Report indicates that in respect of the Professionals and Clerks occupational categories, **the training provided were far less than the training needs identified at the start of the reporting period**. In some instances "other forms of training" provided exceeded the training needs identified.
- Out of the total of **607 training needs identified only 246 were actually provided**.

¹⁵ See p50 of the 2010 – 2011 ICD Annual Report

¹⁶ See p121 of the 2010 – 2011 Annual Report



Questions

- What is meant by “other forms of training”?
- The Annual Report states that R348 000 was spent on training. What was the total training budget in 2010/11?
- What was reason why the training provided were far less than the training needs identified at the start of the reporting period?
- What training is specifically provided to increase the investigative capacity and skills in preparation for the change in focus to investigations?

• Vacancies

The **overall vacancy rate** at 31 March 2011 **was 7.5%**,¹⁷ which is an increase compared to the 6.9% vacancy rate recorded in 2009/10. Despite this increase, the target of maintaining the ICD’s vacancy rate below 10% was achieved.

The highest vacancy rate (9.4%) occurred in the Administration Programme, followed by Programme 3: Information Management and Research (6.9%). The vacancy rate in Programme 2: Monitoring and Evaluation was 6.4%

In terms of **salary bands** the highest vacancy rates were in respect of Senior Management (Levels 13 – 16) with a 20% vacancy rate; and Highly skilled supervision (Levels 9 – 12) which had a vacancy rate of 19.2%.¹⁸

Comments / Questions

- The vacancy rate in the ICD fluctuated “considerably” as staff members resigned for promotions elsewhere due to limited promotion opportunities at the ICD.
- There was “very low staff turnover at senior management level; and no new posts were created at that level in 2010/11”; and only 29% of the 17 existing senior management positions were held by women.
- What were the challenges in filling the four vacant Senior Management posts; and are these vacant posts reserved for female candidates?
- What mechanisms have been put in place to improve staff retention, especially in respect of more competitive salaries and promotions?
- Why were there no job evaluations or salary and /or post upgrades during the period under review, pending the coming into effect of the IPID Act?

¹⁷ See p200 of the 2010/11 Annual Report

¹⁸ See page 61 of the 2010 – 2011 Annual Report



- **Staff turnover**

The **overall annual staff turnover rate** in 2010/11 was **14%**. The highest turnover rates were among Senior Management service Band A (17%); and Skilled (levels 3 – 5) with 16%.

Resignations (12), dismissal (2) and retirement (2) constituted the 16 employment terminations in 2010/11.

Termination Type	2009/10	2010/11
Death	2	
Resignation	11	12
Expiry of Contract	-	
Dismissal – Operational Charges	-	
Dismissal – misconduct	2	2
Dismissal – inefficiency	-	
Discharge due to ill-health	-	
Retirement	1	2
Transfers to other Public Service Departments	19	
Total	35	16
Total terminations as % of total employees		6%

- **Promotions**

Promotions by salary band totalled 11 (6 African males and 5 Coloured females) or 4.07% in 2010/11. The highest percentage of promotions was in the Skilled academically qualified workers, junior management, supervisors, foremen and superintendents categories, reflecting 6 or 2.22%.

- **Leave**

Sick leave¹⁹: The **total average number of sick leave days per employee was 7.3 days** in respect of all salary bands up to Senior Management level. The **total cost of R1 091 million** was in respect of a total of **225 employees**. Between 1 January 2009 and 31 December 2009 the total average number of sick leave days per employee was 7 days in respect of salary bands Skilled (Levels 3-5) up to Senior Management level. In 2009 the total cost of R832 000 was in respect of 205 employees.

Disability leave: **One employee** in the Highly skilled supervision (Levels 9 – 12) salary band took a total of **8 disability leave days** at a cost of **R6 million** to the ICD.

Comments / Questions

- What was the nature of the disability of the employee mentioned above?
- Why did the cost to the ICD amount to R6 million if there were no injuries on duty as stated in the Annual Report?



- Labour Relations**

The Annual Report states that 7 misconduct and disciplinary hearings were finalised in 2010/11. The table below shows the type and outcomes of finalised misconduct and disciplinary hearings.

Outcome of Disciplinary Hearings	2010/11	% of total
Final Written Warning	1	14.2
Suspended Without Pay	1	14.2
Dismissal	2	28.7
Not Guilty	2	28.7
Case Withdrawn	1	14.2
Total	7	

Questions / Comments

- What was the total number of disciplinary hearings in 2010/11?
- The table below sets out quite serious types of misconduct – what was the outcome in each case?

Type of Disciplinary Hearings	Number
Breach of confidentiality	1
Contravention of policy	1
Making false statement on a sworn affidavit	2
Poor work performance	1
Misrepresentation	1
Total	7

Grievances: Only 4 out of a total of 7 grievances were resolved.

Disputes: Two disputes lodged with councils were upheld. What was the implication for the ICD?

Precautionary suspensions: The number of suspension days exceeded 30 days In respect of five of the six employees who were suspended. The average number of days suspended totaled 59.6.



4.2. Programme 2: Complaints Processing, Monitoring and Investigation²⁰

	Voted funds ('000)	Adjusted Appropriation ('000)	Virement ('000)	Final Appropriation ('000)	Expenditure ('000)
Complaints Processing, Monitoring & Investigation	63.433	64.601	1.324	65.925	64.997 (98.6%)

Programme 2 has two components: Complaints processing, monitoring and investigation; and Legal Services. The first component receives, registers, processes and investigates complaints of deaths in police custody or as a result of police action, and complaints of misconduct and criminality against the police. The Legal Services component provides legal advice to ICD officials and the department.

Programme 2 spent 98.6% of its budget. The R1. 324 million virement from Programme 1: Administration (R159 000) and Programme 3: Information Management and Research (R1. 165 million) into this Programme was used to cover the shortfall in respect of Compensation of Employees; and Goods & Services.

Comments / Questions

- Apart from the strategic objective to not carry over more than 10% of cases to the next financial year, another was to increase crime scene attendance by 90%. What was the performance in respect of the attendance of crime scenes?
- The Annual Report does not report on Legal Services – what was the performance in respect of this sub-Programme?
- What steps have been taken to address the concerns raised by the Auditor-General in the comments below on the performance in respect of class 1 and class 3 cases?

The table below sets out the two strategic objectives that the ICD focused on in 2010/11.

Strategic Objective / Performance Indicator	Target	Actual
Complete investigation of deaths in custody or as a result of police action (class 1)	65% of workload including 2009/10 cases carried over and notifications of deaths received in 2010/11	82% or 1052 cases completed Target exceeded
Complete investigations of complaints of criminality against the police (class 3)	55% of workload including 2009/10 cases carried over and those received in 2010/11	83% or 2 811 cases completed Target exceeded

²⁰ See p24 of the 2010 – 2011 ICD Annual Report



Auditor-General comments in respect of Programme 2:

- The Auditor – General commented that the reported performance for Programme 2 in respect of class 1 and class 3 cases²¹ was not valid when compared to the investigation case files. Cases were signed off as complete without the case investigation report.
- Numerous cases were approved for completion by officials without proper written delegation of authority.

Complaints and Notifications received by class of offence in 2010/11²²

Province	Deaths	Domestic Violence	Criminal	Misconduct	Total
Eastern Cape	109	7	146	60	322
Free State	36	15	267	448	766
Gauteng	182	23	418	546	1169
KwaZulu-Natal	248	6	190	126	570
Limpopo	55	8	302	216	581
Mpumalanga	56	2	214	94	366
North West	36	7	214	333	590
Northern Cape	20	6	304	169	499
Western Cape	55	28	438	485	1006
Total	797	102	2493	2477	5869

The above table shows that the **most deaths in police custody** or as a result of police action occurred in **KwaZulu-Natal** (248) followed by **Gauteng** (182) and the **Eastern Cape** (109).

The **Western Cape** received the **most criminal complaints** (438) against SAPS members, followed by **Gauteng** (418) and the **Northern Cape** (304).

Gauteng received the **highest misconduct complaints** (546), followed by the **Western Cape** (485) and the **Free State** (448).

The three provinces with the **most domestic violence complaints** were the **Western Cape** (28), **Gauteng** (23) and the **Free State** (15).

²¹ Class 1 cases involve deaths that occur while a person is in police custody, or as a result of police action; or a rape allegedly committed by a police officer, whether on or off duty. Class 3 cases involve criminal acts allegedly committed by SAPS and municipal police members. (See p13 of the 2010 – 2011 Annual Report)

²² See p28 of the 2010 – 2011 Annual Report



4.3. Programme 3: Information Management and Research

	Voted funds (’000)	Adjusted Appropriation (’000)	Virement (’000)	Final Appropriation (’000)	Expenditure (’000)
Information Management & Research	15.770	15.997	(1.165)	14.832	13.060 (88.1%)

The Information Management and Research programme maintains a crucial database that registers all complaints, manages the ICD’s information technology needs and the distribution of its products; provides services to stakeholders and conducts research.

Programme 3 spent 88.1% of its budget. The under-spending of R1. 165 million in this Programme was created through savings on Compensation of Employees through vacancies. The virement of funds were applied from this Programme towards the Compensation of employees in Programme 2.

The strategic objectives for 2010/11 were to:

- Register and allocate all complaints received by the ICD within 48 hours.
- Attend to all applications for exemption in terms of the DVA.
- Increase the number of community-awareness programmes.
- Increase the number of police stations audited for compliance with the DVA; and
- Provide relevant information to the public and stakeholders.

The Annual Report states on page 24 that Programme 3 met all of its strategic objectives in 2010/11.

Service-delivery objectives and indicators

- A new case-management system with a browser interface was developed and implemented at all relevant sites. Staff members were also trained to use the system which delivers “correct information at the right time” to ICD staff nationally.
- The ICD’s information and communication technology plan was implemented in 2010/11.
- A wireless mobile access solution was implemented for ICD staff.
- The ICD website was redesigned.
- An intranet for use by ICD staff was developed.



5. Report of the Auditor General

The ICD received an **unqualified report with no emphasis of matters**. The Auditor-General, however, made comments relating to, inter alia, the validity of programme performance information, leadership; and the financial regulatory framework:

- The reported performance for Programme 2 in respect of class 1 and class 3 cases²³ was not valid when compared to the investigation case files. Cases were signed off as complete without the case investigation report.
- Numerous cases were approved for completion by officials without proper written delegation of authority.
- The Accounting Officer did not establish a comprehensive system for reporting performance information.
- There was non-compliance with Treasury and Public Service Regulations because payments were not settled within 30 days.
- Qualifications and other claims relevant to the employment position of newly appointed employees were not verified or records kept.
- There had been material misstatement regarding the contingent liability disclosure in the financial statements submitted for auditing which was later rectified by management.

6. Summary and Analysis of Financial Statements and Notes

The analysis of this portion of the Annual Report is contained in a separate document entitled “Annual Report of the Independent Complaints Directorate (ICD) 2010/11: Summary and Analysis of the Financial Statements and Notes for 2010/11 and Report of the Auditor General”, prepared by N Dollie.

References

1. Independent Complaints Directorate 2010 - 2011 Annual Report
2. SAPS 2010/11 Annual Report
3. Dollie, N (2011). Annual Report of the Independent Complaints Directorate (ICD) 2010/11: Summary and Analysis of the Financial Statements and Notes for 2010/11 and Report of the Auditor General. Research Unit, Information Service Section, Parliament of South Africa.
4. Mpsi, M (2010). Summary of the 2009/10 Annual Report of the Independent Complaints Directorate. Research Unit, Information Service Section, Parliament of South Africa.

²³ Class 1 cases involve deaths that occur while a person is in police custody, or as a result of police action; or a rape allegedly committed by a police officer, whether on or off duty. Class 3 cases involve criminal acts allegedly committed by SAPS and municipal police members. (See p13 of the 2010 – 2011 Annual Report)