

GRIPES OR GRIEVANCES?

What the Independent Complaints Directorate statistics tell us (or not)

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When it was created, the Independent Complaints Directorate (ICD) was seen primarily as a mechanism for investigating and deterring human rights abuses by members of the SAPS. It was motivated by evidence of high levels of police brutality, including unjustified killings and the use of torture. However, according to ICD statistics, most complaints received by the ICD are not from victims of police brutality, but from members of the public dissatisfied with the quality of policing service provided to them. ICD statistics cannot therefore be used as indicators of overall levels of police brutality.

One of the fruits of the transition to democracy in South Africa has been the Independent Complaints Directorate (ICD) which opened its doors in April 1997.¹

The ICD operates independently of the South African Police Service (SAPS) and has a separate budgetary allocation (R36.8m in the 2003-4 year), although the key legal provisions dealing with the ICD are provisions of the SAPS Act (68 of 1995).²

Understanding the ICD mandate requires looking both at the legal provisions, and how these have been interpreted by the ICD in practice. While the legal mandate allows some flexibility on this issue, the ICD has tended to identify itself as an investigative body and places less emphasis on the question of ensuring that police carry out internal investigations effectively. Despite this, the ICD does not in fact investigate most of the cases that it receives, but tends to focus its investigative capacity on more serious cases, arguing that it 'monitors' police internal investigations in relation to the rest.

The ICD is also required by law to itself investigate all deaths in police custody and as a result of police action. The high number of these cases (although they have declined significantly since 1997) has imposed a substantial burden on its investigative capacity. In addition to its investigative and monitoring roles, the ICD also makes policy recommendations to the police. The ICD mandate incorporates both the SAPS and municipal police services.

The ICD director is nominated by the Minister of Safety and Security, although the nomination has to be confirmed by the Parliamentary Standing Committee on Safety and Security. The ICD is required to report to the minister and parliamentary committee. The ICD has a staff of roughly 130 personnel located in nine provincial offices and a national office in Pretoria. This includes over 60 investigative staff.

Analysis of all cases reported to the ICD

Since its establishment the ICD has been relatively well used, having received a large number of cases

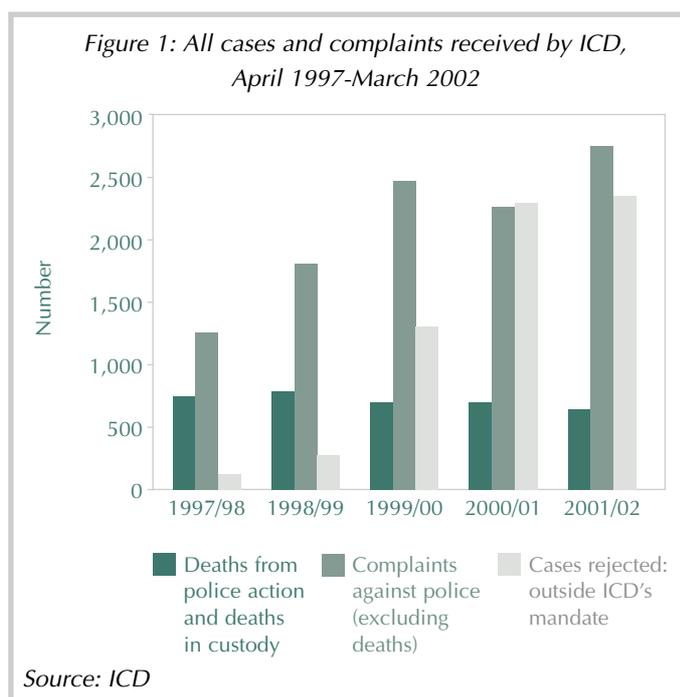
in its first five years of operation. The overall number of cases has increased over the years, which may be interpreted as a positive sign. Column A of Table 1 reflects the total number of cases and complaints received by the ICD over the period April 1997 to March 2002.

Another positive sign is that the number of deaths in custody or as a result of police action have, according to ICD reports, decreased by 21% between 1997/98 and 2001/02 (Figure 1).

In analysing ICD statistics it is however important to distinguish between the following three categories (see Table 1):

- **Police action and custody deaths.** The SAPS and municipal police are required by law to notify the ICD of all deaths in police custody and as a result of police action. It is therefore inappropriate to refer to these cases as 'complaints', as the bulk of them are reported to the ICD by the police as required by law. Only a very small number of these cases are received by the ICD in the form of complaints from the public. During the 1997-2002 period police action and custody deaths constituted 17% of cases received by the ICD.
- **Cases outside the ICD's mandate.** A high number of complaints or cases lodged by members of the public are rejected by the ICD as not falling within its mandate. Altogether 31% of cases received by the ICD during the 1997-2002 period were classified in this way.
- **Complaints against the police.** These constituted the majority of cases (52%) received by the ICD during the 1997-2002 period. Most of these are lodged by members of the public, but they also include a number (which is unknown) lodged by police. The most accurate figures to use when talking about complaints lodged against police, are therefore these figures that exclude both ICD statistics on deaths, as well as cases that do not fall within the mandate of the organisation.

Legitimate cases for investigation and monitoring by the ICD, comprising deaths and complaints against



the police, therefore made up 69% of cases which it received in this period (column E in Table 1).

ICD's categorisation of cases according to classes

Class I: A report or complaint of an alleged death as a result of police action or in police custody.

Class II: A complaint referred to the ICD by the provincial MEC.

Class III: A complaint alleging that a member of the SAPS committed a serious criminal offence.

Class IV: A complaint alleging that a member of the SAPS committed a less serious offence or act of misconduct in violation of SAPS regulations.

Cases of police use of force or alleged brutality

ICD statistics relating to cases or allegations regarding the use of force or brutality³ by the police, cover deaths as a result of police action (recorded along with deaths in police custody in Class I)⁴, as well as various types of non-fatal assaults. These are recorded under a range of sub-categories, including:

- Serious assaults recorded under Class III including the sub-category of torture, as well as

Table 1: Cases and complaints received by the ICD, April 1997-March 2002

	A	B	C	D	E
	Total cases received	Deaths as a result of police action and deaths in custody	Cases rejected as falling outside ICD's mandate	Complaints against the police (cases falling within ICD mandate excluding deaths)	Cases which ICD investigates and monitors (Col B+D)
1997/98	1,999	737	91	1,171	1,908
1998/99	2,874	755	279	1,840	2,595
1999/2000	4,380	681	1,237	2,462	3,143
2000/01	5,225	687	2,293	2,245	2,932
2001/02	5,675	585	2,306	2,784	3,369
Total	20,153	3,445	6,206	10,502	13,947
% of all cases received	100%	17%	31%	52%	69%

- assault GBH and attempted murder.
- Less serious assaults including common assault under Class III, and a separate category of assault recorded under Class IV.⁵

Figures for these cases for the April 1997 to March 2002 period are reflected in Table 2.

As indicated in Table 2, deaths as a result of police action have consistently made up roughly 50% of ICD cases relating to the use or misuse of force by police. The ICD therefore receives roughly as many cases dealing with the use or misuse of force from the police themselves (in fulfilment of their mandatory reporting obligations), as it receives by means of complaints from the public (reflected in the categories for torture and assault in Table 2).

Types of complaints received by ICD

Complaints (apart from complaints dealing with deaths as a result of police action or in police custody) are categorised by the ICD in roughly 45 sub-categories which fall mainly under either Class III or Class IV.⁶ Of the 10,502 complaints received by the ICD between April 1997 and March 2002 (reflected in column D of Table 1), only 21% were for incidents involving non-fatal (and non-sexual⁷) assaults.

The bulk of complaints (59%) were classified into one of two sub-categories, namely: 'neglects duty or performs duty in improper manner' and 'failure to perform duties and responsibilities' (Table 3). In fact, in the 2001-2002 year these complaints constituted almost 75% of all complaints received by the ICD (Figure 2) and 90% of complaints received in Gauteng and North West provinces.⁸

The 20% of 'other complaints' include a mixture of sub-categories. In the 1997-1998 year, for instance, the other main sub-categories were an unexplained category titled 'abuse of power' (48 cases), corruption (40 cases) and various forms of misconduct. The main sub-categories in the 2001-2002 year were 'abuse of power' (40 cases), theft (32 cases), and corruption (30 cases).

It should be noted that the vast majority of complaints in the categories 'neglects duty or performs duty in improper manner', and 'failure to perform duties and responsibilities' (and therefore the bulk of complaints received by the ICD), are complaints from ordinary members of the public who are dissatisfied with the service that they have received from the SAPS.

The ICD is therefore used much more by members of the public who are dissatisfied with the service

Table 2: ICD national figures for cases involving police use of force or brutality, April 1997- March 2002

	1997-98	1998-99	1999-2000	2000-01	2001-02	Total	%
Deaths as result of police action (excluding deaths in custody)	518	558	472	432	371	2,351	51
Torture	68	61	28	27	37	221	5
Assault GBH and attempted murder	157	311	500	344	298	1,610	35
Assault (common)	67	69	143	102	81	462	10
Total	810	999	1,143	905	787	4,644	101*

* Exceeds 100% due to rounding.

they received from the SAPS, than it is used by suspects and others who have allegedly been victims of assaults and other abuses at the hands of the police.

While some South Africans may be inclined to see this as an indictment of the poor quality of service received by members of the public from the police, it appears to conform to patterns in the US:

In New York City, for example, only about 10 percent of all complaints in 1993 arose from an incident involving the arrest or citation of the complainant..... [T]he typical complainant is not a young criminal but a middle-aged person who feels that a police officer's behaviour was improper. The vast majority of these complaints involve discourtesy, rudeness, or a failure to provide adequate service and are not related to a criminal incident.¹⁰

ICD statistics – an indicator of police brutality?

While the statistics in some ways reflect patterns in other countries, it is useful to examine the underlying factors that contribute to these patterns locally. An examination of ICD statistics on non-fatal

assaults for the April 2001-March 2002 year (Table 4) points to some of the difficulties in using ICD statistics uncritically.

As indicated in Table 4, ICD figures for serious assaults by the police consistently outnumber figures for less serious assaults by a factor of 4 to 1. Although in practice common assaults by police far outnumber more serious assaults, the ICD statistics indicate that victims of less serious assaults are highly unlikely to report these to the ICD.

There is in fact some evidence that the SAPS itself receives many more complaints and allegations involving forms of assault by SAPS members, than does the ICD. Statistics reported by the Minister of Safety and Security indicated that over the years 1994-1997, an annual average of over 5,300 cases of common assault, assault GBH and attempted murder were lodged against SAPS members. Sixty-seven percent of these were cases of common assault.¹¹

It is furthermore clear from Table 4 and Figure 3 that there are significant discrepancies between the provinces. The fact that Gauteng and the Western

Table 3: Complaints received by the ICD, April 1997-March 2002

	1997-98	1998-99	1999-2000	2000-01	2001-02	Total	%
Complaints of non-fatal assaults ⁹	292	441	671	473	416	2,293	21
Neglect of duty or performs duty in improper manner	506	864	1,279	1,441	2,066	6,156	59
Other complaints	373	535	512	331	302	2,053	20
Total	1,171	1,840	2,462	2,245	2,784	10,502	100

Cape have the highest number of complaints suggests factors such as levels of urbanisation, income and literacy have an impact on the level of use of the ICD. In remote areas the relative inaccessibility of ICD offices is also likely to inhibit the lodging of complaints (although the ICD does allow for complaints by telephone and the internet).

The fact that the KwaZulu-Natal office recorded the lowest number of complaints in this period suggests that there are serious problems with the functioning of this office. Over the April 2001-March 2002 period, the ICD office in KwaZulu-Natal recorded a lower number of assaults than the ICD in the Northern Cape. This seems curious, given that KwaZulu-Natal is the office which consistently receives the highest number of reports on deaths as a result of police action from the SAPS, and given that KwaZulu-Natal has a population ten times the size of the Northern Cape.

According to a press report, a six month pilot project conducted by the KwaZulu-Natal Campaign Against Torture at six police stations (3% of the roughly 180 stations in KwaZulu-Natal), recorded 86 cases of torture and other abuse of detainees. In six months the project therefore recorded 12 times as many allegations of non-fatal assault by the SAPS, as were recorded by the ICD in KwaZulu-Natal during an entire year.¹²

Conclusion

As indicated by Table 2, the total number of cases received by the ICD recording the use of force or alleged police brutality, reached their highest levels ever in 1999-2000. Thus, while the overall number of complaints received by the ICD has increased steadily over the 1997-2002 period, both reports of deaths and complaints of alleged police brutality have declined after an initial increase in the early years after the ICD was established.

While it is possible that this points to some type of change in the patterns of use and misuse of force

Figure 2: Types of complaints (excluding deaths as a result of police action or in custody) received by ICD, April 1997-March 2002



Source: ICD

by South African police, it is clear that there are other factors which impact on the overall number of cases of non-fatal police violence received by the ICD. These include factors impacting on the public use and productivity of the various ICD offices, including questions of accessibility. At the same time, because victims of police violence tend to be poorer and more marginal members of the public, they are more likely to be vulnerable to police intimidation, but less likely to lodge complaints against the police.

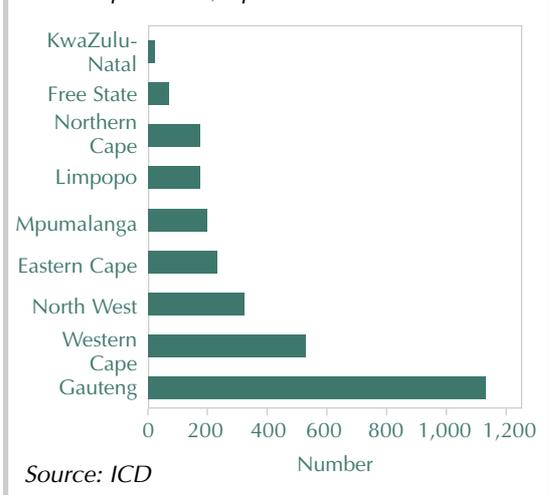
The ICD is relatively underused by victims of torture and other assaults by the police, and ICD statistics on non-fatal police violence cannot be seen as significantly related to overall levels of violence of this kind.

Potentially the ICD could impact on the patterns of complaints by 'outreach' initiatives, directed at people held in custody and aimed at improving their access to systems for the lodging of complaints. Alternatively the ICD could encourage and motivate the SAPS and metropolitan police services to improve their capacity for receiving complaints, and ensure that these are accessible and user-friendly. Any such efforts would be likely to lead to a higher number of cases of non-fatal police violence being recorded in South Africa.

Table 4: Allegations of assaults and other complaints by province, April 2001- March 2002

Provinces	Assault			Total complaints	% of national total	% of national population
	Torture, assault GBH & att murder	Assault common and assault	Total assaults			
Gauteng	75	2	77	1,121	40	18
Western Cape	38	37	75	519	19	10
North West	13	2	15	317	11	8
Eastern Cape	52	12	64	228	8	15
Mpumalanga	43	6	49	196	7	7
Limpopo	79	19	98	167	6	13
Northern Cape	13	3	16	167	6	2
Free State	15	0	15	52	2	6
KwaZulu-Natal	7	0	7	17	1	21
Total	335	81	416	2,784	100	100

Figure 3: Total number of complaints (excluding deaths as a result of police action or in custody) in provinces, April 2001-March 2002



Endnotes

- 1 Thanks to Moses Dlamini at the ICD for assistance in clarifying questions addressed in this paper.
- 2 The Domestic Violence Act, 116 of 1998 also imposes certain obligations on the ICD.
- 3 Brutality is here understood as unlawful uses of force or violence.
- 4 Note that deaths in custody which are related to the use of force or brutality by police are recorded by the ICD as deaths as a result of police action. ICD statistics on deaths in custody exclude all deaths related to lawful or unlawful police uses of force.
- 5 Prior to the 2001-2002 annual report, assault GBH and attempted murder were presented as a single category. As a result of these and other changes to the system of

categorisation the number of sub-categories in Class 3 has changed between 1997 and 2002 from roughly 18 to 22. Prior to 2001-2002 there was only an 'assault' category under Class IV and no common assault category in Class III.

- 6 Few cases are classified in Class II which deals with cases received from the Minister or MEC.
- 7 Sexual assaults make up a very small proportion of cases received by the ICD. In 1997-98 they constituted 1% of complaints (10 cases of rape, 2 of indecent assault, and 3 of sexual harassment). In 2001-2002 they constituted 0,5% of complaints (14 cases of rape, and 2 of indecent assault).
- 8 The three provinces in which these categories constitute the smallest proportion of complaints (KwaZulu-Natal, Free State and Limpopo), are also the provinces which, relative to population, generate the smallest number of complaints.
- 9 Includes 'torture', 'assault GBH and attempted murder', and 'assault' (Figures in Table 2).
- 10 S Walker, *Police Accountability: The Role of Citizen Oversight*, Belmont, Wadsworth, 2001.
- 11 D Bruce and G O'Malley, *In the Line of Duty? Shooting incident reports and other indicators of the use and abuse of force by members of the SAPS*, Report for the Independent Complaints Directorate, Centre for the Study of Violence and Reconciliation, 2001.
- 12 *Natal Mercury*, 6 November 2002.

Sources for tables and graphs

All ICD statistics are from ICD annual reports except the 1998-1999 figures which are from other statistics provided by the ICD. Provincial population percentages are from the South African Institute of Race Relations 1999/2000 Annual Survey. Budget data is from the National Treasury's budget review.