

Workshop Report

Understanding the IPID mandate for addressing police corruption



Compiled by Gareth Newham and Andrew Faull
Garden Court Marine Parade, Durban, 16 & 17 September 2010



independent
complaints directorate
Department:
Independent Complaints Directorate
REPUBLIC OF SOUTH AFRICA



As a leading African human security research institution, the Institute for Security Studies (ISS) works towards a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy, collaborative security and gender mainstreaming. The ISS realises this vision by:

- Undertaking applied research, training and capacity building
- Working collaboratively with others
- Facilitating and supporting policy formulation
- Monitoring trends and policy implementation
- Collecting, interpreting and disseminating information
- Networking on national, regional and international levels

© 2011, Institute for Security Studies

Copyright in the volume as a whole is vested in the Institute for Security Studies, and no part may be reproduced in whole or in part without the express permission, in writing, of both the authors and the publishers.

The opinions expressed do not necessarily reflect those of the Institute, its trustees, members of the Council or donors. Authors contribute to ISS publications in their personal capacity.

ISBN 978-1-920422-36-3

First published by the Institute for Security Studies,
P O Box 1787, Brooklyn Square 0075
Pretoria, South Africa

www.issafrica.org

Cover photograph www.picturenet.co.za

Design, Typesetting and Printing Marketing Support Services +27 12 346-2168

Workshop Report

Understanding the IPID mandate for addressing police corruption

Compiled by Gareth Newham and Andrew Faull
Garden Court Marine Parade, Durban, 16 & 17 September 2010

Contents

List of acronyms	iii
Executive summary	iv
Introduction	1
Workshop objectives	1
Delegates and Host Organisations	1
Opening remarks by the ICD Executive Director	2
Concepts, theories and the context of police corruption	3
Can we tackle police corruption in South Africa? A review of police anti-corruption investigative initiatives	3
Andrew Faull	
Beyond 'good cop'/'bad cop': everyday police corruption in South Africa	4
Dr Julia Hornberger	
From hierarchy to networks: does the IPID mandate require a paradigm shift?	5
Julia Berg	
Panel Discussion	6
Investigating police corruption	7
Towards understanding the IPID's mandate for addressing police corruption	7
Claudia O'Brian	
The Hawks' approach to investigating police corruption	7
Colonel Siane Lebakeng	
Tackling corruption in the Durban Metropolitan Police Service	8
Superintendent Sbonelo Mchunu	
Panel Discussion	8
An overview of the ICD experience with investigating police	10
Reflections on the police corruption mandate of the IPID in relation to current capacity	10
Tommy Tshabalala	
Exploring the corruption mandate of the IPID	11
Group 1: High-level tender corruption	11
Group 2: Planting evidence	11
Group 3: Police trafficking drugs	12
Group 4: Detectives selling a docket	12
Group 5: Metropolitan Police bribery	12
Group 6: Police extortion from undocumented foreign nationals	12
Panel Discussion	13
Summation	14
Summary and reflection on the key issues discussed at the workshop on the corruption mandate of the IPID	14
Dr Monique Marks	
Annexure A	15
Programme	15

List of acronyms

AARTO	Administrative Adjudication of Traffic Offences Act	ICD	Independent Complaints Directorate
ACC	Anti-Corruption Command of the ICD	IPID	Independent Police Investigative Directorate
ACTT	Anti-corruption task team	ISS	Institute for Security Studies
ACU	SAPS Anti-Corruption Unit	MPSs	Municipal Police Services
AFU	Asset Forfeiture Unit	NCPS	National Crime Prevention Strategy
CJP	Crime and Justice Programme	OCU	Organised Crime Unit
DMPS	Durban Metropolitan Police Service	SAPS	South African Police Service
DPCI	Directorate for Priority Crime Investigation (Hawks)	SAPU	South African Police Union
DPSA	Department for Public Service and Administration	SIU	Special Investigations Unit

Executive summary

During August 2010, the National Assembly Portfolio Committee on Police ended its deliberations on the Independent Police Investigative Directorate (IPID) Bill. The new legislation is a welcome development for those wanting greater accountability from the police service, as it seeks to reorganise and strengthen the body currently known as the Independent Complaints Directorate (ICD). The legislation redefines the way that the new structure, to be called the Independent Police Investigative Directorate, will investigate incidents of police corruption and systemic police corruption.

To prepare for this new mandate, the ICD and the Crime and Justice Programme (CJP) at the Institute for Security Studies (ISS) jointly hosted a national workshop on 16 and 17 September 2010 in Durban. The workshop objective was to explore how the soon-to-be-established IPID should interpret and engage with its mandate. This report presents the inputs and deliberations of the five workshop sessions.

In the first session, which aimed to provide context, three researchers spoke about the nature and extent of police corruption in South Africa and offered overviews on how to address the challenge. ISS researcher Andrew Faull reviewed police anti-corruption initiatives in South Africa post-1994 and sketched some of the conceptual and practical challenges the IPID might face in fulfilling its new mandate. Dr Julia Hornberger, of the Wits University's Forced Migration Studies Programme, presented findings that revealed how police culture, and

the dynamics of the relationship between police officers and communities, can result in corruption. The presentation from Julie Berg, of the Centre for Criminology at the University of Cape Town, called for a paradigm shift in the way that the government understands and tackles police corruption.

The second session heard insights from people with direct experience of investigating corruption in the public sector and the police. The speakers were Claudia O'Brian, a project manager at the Special Investigations Unit (SIU); Colonel Siane Lebakeng of the SAPS Anti-Corruption Unit in the Directorate for Priority Crime Investigation (DPCI); and Superintendent Sbonelo Mchunu of the Inspectorate of the Durban Metropolitan Police Service.

In the third session, the ICD Investigations head Tommy Tshabalala reflected on the successes and difficulties experienced by the ICD in its corruption investigations in previous years.

During the fourth session, participants split up into six groups, and each group was given a hypothetical scenario (case study) of police corruption. The task was to discuss a number of questions relating to the case and propose how the IPID could approach the matter. This was followed by a plenary session with feedback from each group.

In the fifth and final session Dr Monique Marks, of the Community Development Programme at the University of KwaZulu-Natal, summed up and reflected on the key issues raised in the workshop.

Introduction

In July 2010, Parliament released the IPID Bill for public comment. Public hearings on the Bill were heard in the first week of August, and a second version, incorporating many of the amendments suggested during submissions, was released towards the end of August and subsequently adopted by the National Assembly. The Bill is a welcome development as it seeks to reorganise and strengthen the ICD so that there is more effective organisation for overseeing the police. In the process the ICD is to be renamed the IPID.

There are significant changes in the mandate of the IPID compared to the mandate of the ICD. A memorandum to the first version of the Bill stated that the ‘thrust of the Independent Police Investigative Directorate’s work’ would be to ‘address systemic problems within the police service with a view to recommending appropriate interventions’. However, the Bill as enacted does not make the investigation of systemic corruption obligatory. In Clause 28, which sets out the mandate of the IPID, it stipulates that the Directorate must investigate:

- Any deaths in police custody
- Deaths as a result of police actions
- Any complaints relating to the discharge of an official firearm by any police officer
- Rape by a police officer, whether the police officer is on or off duty
- Rape of any person while that person is in police custody
- Any complaint of torture or assault against a police officer in the execution of his or her duties
- Corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary
- Any other matter referred to the Directorate as a result of a decision by the Executive Director, or requested by the Minister, an MEC or the Secretary in the prescribed manner

Where there is a clear obligation for the IPID to investigate, Clause 28 also specifies that the Directorate *may* investigate matters relating to systemic corruption involving

the police. In light of this, the ICD and the ISS decided to bring interested parties together to discuss the proposed mandate and what it may mean for the IPID.

WORKSHOP OBJECTIVES

The full workshop programme is attached (Annexure A). The workshop had two main objectives. The first was to explore the capabilities required to investigate corruption in the police, particularly corruption of a ‘systemic’ nature. The second was to develop practical approaches for investigating corruption in police agencies.

DELEGATES AND HOST ORGANISATIONS

Approximately 80 people attended, representing government, civil society and academic institutions. From government there were representatives from the Independent Complaints Directorate; the SAPS (including the Hawks and the Strategic Management division); the metropolitan police departments of Johannesburg, Ekurhuleni and Durban; the Department for Public Service and Administration (DPSA); and the Special Investigations Unit (SIU). Civil society organisations participating were the South African Police Union (SAPU); the ISS; the Open Democracy Advice Centre; and the universities of Cape Town, KwaZulu-Natal and the Witwatersrand.

The workshop was hosted by the ISS and the ICD. The ISS is an independent, pan-African, applied policy research organisation working in the area of African human security. It has its head office in Pretoria, and offices in Cape Town, Nairobi, Addis Ababa and Dakar. The ISS seeks to mainstream human security perspectives into public policy processes and to influence decision-makers within Africa and beyond. The CJP at the ISS concentrates its work on the causes, prevention and management of crime. This includes a focus on policing and police accountability. Over a number of years it has undertaken research on police corruption and worked with the ICD.

The ICD was established in 1997 to investigate complaints of brutality, criminality and misconduct against members of the SAPS and the Municipal Police Services

(MPSs). The ICD's executive director reports to the Minister of Police.

OPENING REMARKS BY THE ICD EXECUTIVE DIRECTOR

The head of CJP at the ISS, Gareth Newham, chaired the workshop. He welcomed delegates and introduced the executive director of the ICD, Francois Beukman, who gave the opening address.

Mr Beukman noted the vast improvement in the second draft of the IPID Bill compared with the first draft. He said that the Bill had improved due to strong support from the Minister of Police, the Portfolio Committee on Police, and civil society. He made particular reference

to the submission made by the ISS in Parliament whose recommendations were adopted by the committee into the new draft. This was testament, he said, to the fact that civil society can have an impact in the legislative process in South Africa.

Mr Beukman acknowledged the ongoing public discourse about strengthening the SAPS and the ICD, and stressed the ICD's commitment to continued partnerships with civil society. He said the ICD acknowledged that the new mandate would not mean 'business as usual', since the organisation had to adapt to its mandate. This means benchmarking management capacity against international institutions, especially those in the British Commonwealth.

Concepts, theories and the context of police corruption

The first session consisted of presentations from three researchers in the field in order to provide contextual, conceptual and anecdotal research on police corruption.

CAN WE TACKLE POLICE CORRUPTION IN SOUTH AFRICA? A REVIEW OF POLICE ANTI-CORRUPTION INVESTIGATIVE INITIATIVES: CONCEPTS AND PERCEPTIONS AROUND CORRUPTION, AND THEIR IMPLICATIONS FOR THE IPID

ANDREW FAULL

Researcher in the Crime and Justice Programme at the Institute for Security Studies

Faull gave a review of the various police anti-corruption initiatives and 'events' in South Africa post-1994, and sketched some of the conceptual and practical challenges the IPID might face in fulfilling its new mandate.

The presentation began with a review of existing surveys and qualitative research studies probing public and police perceptions of police in South Africa. Public surveys suggest a lack of trust in police, and the public perception is largely that the police are heavily involved in corruption. According to surveys and interviews with police officials, similar perceptions are also held within the SAPS itself. Perception research had not been conducted within the MPSs.

Faull said corruption has long been officially identified as a serious challenge confronting the SAPS. Key moments in relation to curbing police corruption are:

- 1996: The identification of police corruption as a national priority in the National Crime Prevention Strategy (NCPS) and the formation of the SAPS Anti-Corruption Unit (ACU)
- 2000-2002: The reduction and closure of the ACU and the shifting of its mandate to the Organised Crime Unit (OCU)
- 2002-2009: The drafting of various anti-corruption strategy documents in the SAPS such as the National Service Integrity Framework, and the SAPS Corruption and Fraud Prevention Plan (although there is no evidence of their implementation)

- 2009: The establishment of the Directorate for Priority Crime Investigations (DPCI) and its inheriting the Organised Crime Unit's corruption mandate
- 2010: The return to military-style police ranks; the conviction of the former SAPS National Commissioner on corruption charges; the increase in anti-corruption rhetoric from senior police; the renaming of the SAPS Corruption and Fraud Prevention Plan as the SAPS Anti-Corruption Strategy

Faull said that the argument could be made that all corruption is systemic in nature if it is viewed as a by-product of failed systems within an organisation. This, Faull said, can be illustrated by the difference between the 'rotten apples' and 'rotten barrel' metaphors. Police managers worldwide tend to speak about corruption within the organisation as a problem of a 'few rotten apples' which, if dealt with, will end the problem. However, those studying the phenomenon of corruption have tended to agree that the problem is far more complex. Rather than being a problem of 'rotten apples', dysfunctions within the police organisation itself and risks within the overall policing environment systemically contribute to the nature and scale of police corruption. Therefore the more appropriate metaphor is one of a 'rotten barrel'.

In this metaphor it is the barrel (a police organisation itself, characterised by weak management, discipline, professionalism, and command and control) that causes the apples to become rotten. The Mollen Commission of Enquiry into Police Corruption in the New York Police Department (1992-1994) highlighted the manner in which that department had allowed breakdowns in areas such as first-line supervision, which had allowed for corruption to grow – hence 'systemic corruption'.

In South Africa, the MPSs, which are largely responsible for traffic law enforcement, also face substantial problems with corruption. Traffic officer-related corruption was the most common type of public sector corruption experienced by civilians, according to the National Victims of Crime surveys undertaken in 2003 and 2007. The introduction of the Administrative Adjudication of Traffic Offences Act (AARTO) in which drivers will lose

points when committing road offences, will do little if anything to stop metro police from extorting money from motorists, as AARTO does not remove the discretion of traffic officials to issue sanctions to motorists, and it does nothing to improve the accountability of these officials. In fact, AARTO will give traffic and metro police more power with which to extort money from motorists. All metropolitan police services have some form of anti-corruption unit, but research by the ISS in 2007/08 showed these units all to be largely ineffective in preventing corruption among MPS officials.

Regarding the ICD, Faull said it had been successful in carrying out its core mandate of investigating cases of deaths in police custody or deaths as a result of police action, but had been less successful in pursuing other complaints against police. Faull highlighted the contrast in size and resourcing of the ICD compared to that of the SAPS. The ICD's staff is 0,14 per cent of the staff complement of the SAPS, and its total budget 2.43 per cent of the SAPS budget. Faull said a number of questions could be raised about how the new IPID will be able to manage such a greatly expanded mandate without expanding its human and physical resources.

In closing, he asked the following questions:

- Can the IPID fulfil its new mandate without significantly bolstering its human resource base?
- Corruption investigations (as with torture & rape) require specialised skills. Will the IPID train specialists in each area, or employ generalists?
- The new mandate may require the IPID to investigate allegations of tender abuse involving the National Commissioner. Will it have the independence, capacity and authority to carry out such an investigation?
- To what extent will inter-agency cooperation be necessary to fulfil the corruption mandate? Will this inhibit independence?
- If 'systemic corruption' is a by-product of widespread systemic and cultural flaws in a police agency, will the IPID have expertise to identify these systemic and cultural challenges?
- Which definition of 'corruption' will be used? According to the Prevention and Combating of Corrupt Activities Act, police stealing from drug dealers, whether to destroy or re-sell the drugs, is not corruption, or any other act that would fall within the IPID mandate – yet, is it not part of 'systemic' corruption?
- The best way to address systemic corruption is from within the police agency. Where will the IPID fit in this regard? Can the IPID serve as a watchdog that compels police agencies to reform systems that allow corruption?

BEYOND 'GOOD COP'/'BAD COP': EVERYDAY POLICE CORRUPTION IN SOUTH AFRICA

DR JULIA HORNBERGER

Forced Migration Studies Programme at the University of the Witwatersrand

Hornberger's presentation was based on participant observation research conducted by the Forced Migration Studies Programme over a number of months in 2009. The research involved participant observation of police officers in order to study the intersections of formal and informal police behaviour. According to Hornberger, it is organisational culture rather than legal rules that primarily determine police behaviour, and in the police, organisational culture is informed by institutional realities and constraints, and by police officers' relationships with communities. Hornberger said that if one spends time with police officers, one realises that corruption is part and parcel of everyday practice.

Part of the presentation consisted of short yet detailed accounts of incidents and interactions that researchers were able to document through observation. Hornberger argued that such accounts could assist policymakers and police managers to access realities that are largely ignored at higher organisational levels, as they lie outside of the formal plans, rules and regulations of the police. Nevertheless, unless these realities are acknowledged and understood, managers will find themselves unable to carry out plans and uphold regulations.

The discretionary nature of policing was illustrated through an incident whereby police officers chose to overlook minor transgressions (such as being in the country illegally) or opportunities for extortion, if the subject of the police officer's attention showed respect and a 'good attitude'.

Seemingly mundane things such as the symbolic importance of food can play a notable role in police-community relations. During a 12-hour shift, where and what to eat becomes important to police officers and is a much-discussed subject, Hornberger said. How meals are approached reveals where and with whom police officers feel most comfortable, as relationships are often built through food.

Another story about food illustrated how good community relations can become corrupt. The example presented was one of a civilian who sells beer illegally, deciding to buy the police a bunch of bananas even though the officers did not explicitly request this. The inference was that the illegal beer seller calculated that if he demonstrated goodwill to the officers he need not fear action being taken against him. Good relations with the public are necessary for effective policing, as relationship

dynamics between police and public are often uneven, questions need to be asked about how these relations come about and what they entail.

In such relationships, neither the civilian nor the police officer is a passive actor, and the complexities behind systemic corruption become increasingly apparent. Many people believe they can only get access to police through personal relationships, and because communities are internally divided and diverse, the boundary between the legal and illegal is often blurred. Another example of the moral malleability of police-civilian relations was the story of a police handler who had close relationships with his informers and took a portion of their SAPS informant fees, because, as he reasoned, they would not receive anything if it were not for his relationships with them.

Other stories from Hornberger's research illustrated how the internal policing environment itself leads to the bending of rules and breaking of laws in order to achieve targets. One story related to the requirement that police officers completed forms to prove that they had been stopping and checking vehicles. Rather than being guided by the need to identify criminal suspects and contraband, the officers were primarily guided by their targets, so they stopped searching vehicles once they had achieved the targets. In another story, the officer used torture as a 'short cut' to solicit information from a hijacking suspect. A third example of rule-bending related to 'stealing time' – a police official spent most of her shift doing little else than playing a computer game and drinking tea without any outward negative reaction from her colleagues. The question then arises as to whether this constitutes corruption.

Hornberger's presentation concluded with the policing of foreign nationals. She mentioned that there is a link between international migration and policing. South Africa deports a lot of migrants and police officers spend a lot of time on migration policing. SAPS Gauteng has diverted 26 per cent of its budget to migration policing activities and much effort is put on it even though it is a task that needn't be addressed by police.

Regarding migration and police corruption, she mentioned that 1 in 7 detainees in the Lindela Detention Centre report that their friends have stopped their deportations by paying bribes to police officers and that 15,3 per cent asylum seekers pay bribes after being stopped by public officials to check their documents; lastly that 1 in 3 observed interactions between police officers and civilians in high density migrant areas involve solicitation of bribes.

This prompts the question whether the police, by being assigned this victimless non-criminal enforcement task, are being set up to fail. According to Hornberger's observations, such victimless crimes frequently provide

an environment that inevitably leads to illicit activities by the police.

FROM HIERARCHY TO NETWORKS: DOES THE IPID MANDATE REQUIRE A PARADIGM SHIFT?

JULIE BERG

Centre for Criminology, University of Cape Town

Berg framed 'systemic corruption' as a shift in understanding, from individual to organisational deviance. Instead of occasional opportunities for corruption, systemic corruption is corruption understood as integrated into the whole system. She quoted Maurice Punch, who called this a shift in understanding 'from rotten apples to rotten orchards'.

Berg presented two paradigms through which one can look at and prevent corruption – the first she described as the paradigm currently in use, and the second as one that we should move towards. The current paradigm, the 'deterrence model', focuses on the individual police officer and the corrupt act that he or she committed – thus this model approaches corruption on a case-by-case basis. Berg said this 'identify and punish' approach was not an effective deterrent because so few people were caught by it. Such an approach, she said, cannot address corruption when embedded in police systems and practice.

The second paradigm, which she termed the 'opportunity-focused model', asks: 'What opportunities exist in a police station that allow acts of corruption to happen?' Rather than focusing on the individual, it looks at the conditions that allow for offences. It then asks: 'What conditions need to be present for systemic corruption to be controlled and contained?' This paradigm is therefore a compliance-oriented approach that seeks to get police to comply with sets of standards, rather than reacting to breaches in the law. When we start changing the practices of the organisation, she pointed out, we tend to change mindsets throughout the organisation. It is much harder to change individual mindsets through individual cases.

Berg said that if we do adopt an opportunity-focused model, we will need to be far more reflective, as this model demands research rather than investigation. We would need to know more about corruption in our police organisations and about the conditions that allow it to occur. She said if the IPID did not have the capacity to do research it would need to engage with those who do. This means creating a strongly networked system with both state and non-state institutions.

Ultimately, Berg suggested, the IPID should employ both the deterrence and opportunity models. But if

the IPID continues a case-by-case approach, this will result in a knowledge deficit that will not help to reduce corruption.

PANEL DISCUSSION

Following the three research presentations, Gareth Newham opened the floor for questions and discussion.

- An ICD staff member commented that Julie Berg's presentation on the two paradigms was 'spot on'. She said it is very important to understand that there was no better way to approach the systemic corruption problem than through research. She said the ICD would need to be proactive, building partnerships with the SAPS and metro police, and that corruption could not be dealt with on a case-by-case basis. Another delegate agreed with this sentiment, saying that networked cooperation was needed to address systemic corruption.
- The head of the ICD in the Western Cape pointed out that Section 4 of the IPID Bill made allowances for such partnerships. Berg responded by saying the IPID and other institutions need to be flexible in their approach to tackling corruption, and that flexibility needs to be operationalised.
- A member of the Hawks expressed her agreement that rooting out corruption needed a proactive approach.
- A SAPS member said it would be useless to expect the IPID to fix everything, and that only joint efforts could do so. In the police, he said, there are dedicated members who don't like corruption. It would be good to see the Hawks and IPID working together. Police management does not want corrupt police, he said, and the SAPS want to see all rotten potatoes out of the police. There is also a need to educate communities. If someone tries to bribe you, why not arrest them straight away, he asked.
- A representative of the Open Democracy Advice Centre noted that people are not making use of their rights because they don't know that they are allowed to make protected disclosures without fear of victimisation. She said this is because whistle-blowing policies have not been put in place in their departments.
- A member of Mpumalanga's Department of Safety and Security suggested that the IPID develop an integrity unit that can perform integrity tests within the SAPS and metro police at any time.
- The workshop chair noted that corruption is a universal police problem, which requires ongoing reflection, and adjustment of systems over time.
- A SAPS member said that the IPID should not be located in the Ministry of Police. Similarly, a member of SAPU asked whether the IPID would be independent or whether, like the ICD, they would be 'too comfortable' with the SAPS. The director of the ICD, Francois Beukman, responded that, regarding accountability, the IPID will report to the Minister of Police and to the portfolio committee of police. He said the debate about the independence of the ICD is an ongoing one, which will continue in its new phase of the IPID. Civil society, he said, must continue to be critical of the IPID's role, and check whether they are keeping to their mandate.

Investigating police corruption

The second session engaged with the practicalities of investigating police corruption.

TOWARDS UNDERSTANDING THE IPID'S MANDATE FOR ADDRESSING POLICE CORRUPTION

CLAUDIA O'BRIAN

Project Manager in the Programme Management Office at the Special Investigating Unit

O'Brian introduced the Special Investigating Unit and its mandate. After introducing the legislative foundation and mandate of the SIU, O'Brian outlined some of the organisation's ambitious anti-corruption goals and achievements, which included a hundred convictions for cases of corruption involving more than R5 million. She also said the SIU was establishing an anti-corruption task team (ACTT) together with the Hawks, the Asset Forfeiture Unit (AFU), and the National Prosecuting Authority. She noted that such inter-agency cooperation was part and parcel of the SIU's approach (which supports suggestions made in the first panel session for a networked approach to systemic corruption).

O'Brian said the SIU's approach is to take criminal action and disciplinary action against perpetrators, and at the same time to implement systemic changes to ensure that the same problems do not occur again. The emphasis, she said, cannot only be on deterrence but neither can it be solely proactive. Rather, there needs to be a balance (echoing Berg's presentation). O'Brian said it was worse to investigate a crime and then not do anything about it than to do nothing at all. For this reason the SIU, which has no powers of arrest, needs to work with other agencies to ensure that criminal and disciplinary action is taken against the guilty.

O'Brian defined 'systemic corruption' as corruption that takes place routinely, so that it is regularly experienced as 'business as usual'. When things not done in the right way become the norm, this is systemic corruption, and undermines institutional processes. She said that for corruption to thrive, a certain environment must exist – one in which controls are weak, management is bad, and oversight is poor. Systemic corruption is not

individualised – it always involves collusion, which makes it so much more difficult to detect.

O'Brian used the example of driver's licence scams in South Africa to illustrate systemic corruption, pointing out aspects in the social environment that promote corruption among both police officials and the public. Because it is difficult to get a booking for a driver's test, people get so disillusioned that they pay a bribe in order to get a test booking, or just buy a licence. If very serious action is not taken against the officials involved, they simply calculate the risk of detection into their plan, and add the cost of any potential fine they might receive, into the bribes they demand of civilians, she said. She stressed that in order to address widespread, systemic corruption, multi-agency approaches are needed.

O'Brian closed by saying that the South African government has realised that if it does not tackle corruption very soon, corruption could destroy the country. She said that research into corruption in South Africa is needed in order to identify solutions. The common approach, too often, is to 'patch things here and there' in the hope that things will get better. However, this will not work, she said, and more thought is needed around how to tackle corruption throughout the country.

THE HAWKS' APPROACH TO INVESTIGATING POLICE CORRUPTION

COLONEL SIANE LEBAKENG

Directorate for Priority Crime Investigation's Anti-Corruption Unit

Lebakeng's presentation introduced the anti-corruption unit of the Directorate for Priority Crime Investigation (Hawks): a unit that has not previously been discussed in a public forum. Lebakeng said that systemic corruption was a particular area of concern for her unit. She also reflected on the broader approach taken by the SAPS to investigating corruption.

Lebakeng said the DPCI is mandated to investigate, prevent and combat corruption both within and outside the SAPS. The DPCI anti-corruption unit is mandated to investigate corruption claims against Hawks members, as well as against any SAPS member holding the rank of colonel or above. Hawks members are screened through

an internal integrity unit that conducts lifestyle audits. She said the anti-corruption unit reports directly to the head of the DPCI, General Dramat, and works closely with specialised commercial crime unit prosecutors.

The Directorate's commercial crime units investigate corruption reported by government departments, excluding the SAPS, while its organised crime units investigate offences relating to Chapter 2 and Section 34 of the Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004). Serious corruption cases are defined as those in which large amounts of money or high value goods are involved, or where several SAPS employees or employees from more than one station, provincial division or national division are involved. Lebakeng mentioned that cases considered 'less serious', involving SAPS employees at a particular station, must be investigated by General Investigations: Detective Service from a neighbouring station.

In conclusion Lebakeng said that corruption spanning more than one province had to be investigated by a province designated by the head of the DPCI, or by a task team comprising members from a number of provinces, including personnel from the national office. Alternatively personnel from the national office can investigate them alone.

TACKLING CORRUPTION IN THE DURBAN METROPOLITAN POLICE SERVICE

SUPERINTENDENT SBONELO MCHUNU

Durban Metropolitan Police Service Inspectorate

The Durban Metropolitan Police Service (DMPS), the oldest metro department in the country, has experienced many problems in the area of corruption. Mchunu said that within the DMPS there had been many changes, with various departments being opened or closed due to lack of cooperation between units. The latest anti-corruption strategy was the creation of the DMPS Inspectorate focusing on police corruption, brutality and inefficiency.

The Inspectorate of the DMPS works with other stakeholders, he said, because alone it cannot succeed. In the past when the Durban unit had turned corrupt members over to the SAPS for investigation or arrest, little had come of it. Mchunu said corruption cannot be dealt with on a case-by-case basis, especially as police unions are skilled at defending corrupt officers. He wanted to see the introduction of an agreement that would bar unions from purposefully defending an officer they know to be guilty. The salary levels are not the primary cause of the problem, he said; the problem is the environment.

Mchunu said the Durban metro police had worked extensively with the ICD to investigate brutality, corruption

and other violations. He said the Inspectorate hopes to continue working with the ICD's successor, the IPID.

Lamenting the quality of police officers, Mchunu said police agencies should not be a dumping zone for the unemployable. He said that if would-be officers are signing up because they can't find work elsewhere, then there is a problem. Such people, he said, have no love of the profession and no desire to be a proud police officer. In such circumstances, he said, police corruption was inevitable. To illustrate the pressure of jobless applicants, the DMPS had recently advertised 300 skills development posts and received 25 000 applications. Mchunu said at present, new recruits in the DMPS are simply being taught to be corrupt and that the introduction of AARTO would give metro police even more discretionary power and hence opportunities for corruption. He suggested that it would be better to target young people in high school and mentor them to become police officers.

Mchunu said police corruption was a reflection of South African society as a whole, as evidenced by the fact that over 50 per cent of bribe-taking metro police officers are tempted by the public. He said that it may be possible through the new Bill to make progress against corruption, but it will require a multi-agency approach.

PANEL DISCUSSION

Ekhuruleni metro police chief Msimang highlighted the challenge of different metro departments using different codes of conduct, which are themselves different from those of the SAPS. He said there should be one code for all police agencies. He added that anti-corruption interventions are too reactive, and that the sub-cultures within organisations that allow corruption to occur, are not taken into account.

Pinky Mathabathe of the Tswane MPS said the ICD does not assist them when they need help. She says that when she has been able to dismiss her staff for corruption, prosecution has often not followed because of breakdowns in other agencies. She added that the metro police service should not be blamed for all traffic corruption as the provinces had their own traffic agencies. The ICD responded that they did not have a mandate to investigate other traffic enforcement agencies.

A member of the Hawks suggested that the ICD was perfectly situated to create a database of police accused or found guilty of transgressions and corruption. He suggested that the ICD work with the SIU to learn from its experience in this area.

SAPU members said their union was against corruption because it undermines the gains of democracy. They said SAPU had recently adopted three new agendas, one of

which was to address police corruption. Superintendent Mchunu replied that before unions start arguing for better police salaries and conditions, they should argue for a better calibre of police official.

Gareth Newham of the ISS said that individual punishment for corruption was not sufficient to make a real difference. He suggested that once the IPID identified patterns of corrupt behaviour, it would need to take them to the secretariat and to the police agencies, and go beyond making case-specific recommendations. An ICD member said that the new Secretariat Act does not mention the metros, which could be a problem.

A member of the Hawks raised the question of who would investigate what, now that the IPID was to share its corruption-investigation mandate with the Directorate for Priority Crime Investigation. Mr Beukman of the ICD said that matters would continue to be referred to the SIU and Hawks, but that the memorandum of understanding between the agencies would need to be redefined. He added that there was a place for all agencies to share the goal of reducing corruption in the police.

An overview of the ICD experience with investigating police corruption

REFLECTIONS ON THE POLICE CORRUPTION MANDATE OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE IN RELATION TO CURRENT CAPACITY

TOMMY TSHABALALA

ICD head of investigations

Tshabalala began by providing some background to the ICD, mentioning its nine provincial offices and six satellite offices, and focused on the ICD's Anti-Corruption Command (ACC) founded in 2005. The ACC had a staff of four, who, over five years, engaged with 600 complaints of corruption reported through the National Anti-Corruption Hotline, through public complaints and whistleblowers in the police. Out of these, 22 convictions had been made, some of which were high-profile cases. Originally the idea was to grow so that each province had its own unit, but this had not happened.

Tshabalala admitted that due to the Anti-Corruption Command's limited budget and size and its overwhelming workload, its success had been limited. Police were not obliged to report back on ICD recommendations on corruption cases, police management did not support the ACC's work, and disciplinary mechanisms in police agencies did not serve as deterrents to corrupt officers. Furthermore, he said, there was little protection of whistleblowers in the police, and sometimes even commanders were afraid to take action against members. Tshabalala said police management did not readily make

available information on misconduct – making it difficult to gauge the extent of the problem.

Tshabalala stressed that it was not up to an external body to clean up police agencies, as this needed to happen from within. He suggested that the overlap in the mandate of the IPID with that of other agencies might be a problem. It would be pointless for the IPID to take on anything and everything and to try, as the ICD had done, to be a 'general dealer'.

The current approach, he said, is to deal with very simple corruption, roadside bribery and the like. He asked whether the IPID would be able to make an impact on systemic corruption. With a limited budget, it would need to ask itself where it would best make an impact. He said that although the ICD had struggled over the years, it had earned respect from some elements in the police. The IPID would need to nurture its new 'brand' so that it is not 'butchered' like that of the ICD, Tshabalala said.

Corruption, he said, always involves a corruptor and a 'corruptee'. This leads to the question: what should be done to educate communities about corruption? Communities should be educated about the fact that they have rights, but that rights go with responsibilities. Citizens cannot expect police to uphold the law when they don't play their part as the community.

Tshabalala said the ICD in its current and future form would continue to consult with other agencies to find ways of cooperating. He emphasised the ICD's willingness to work with civil society as well. On its own, he said, the ICD will not succeed.

Exploring the corruption mandate of the IPID

In this session delegates broke into six groups, with each group given a different hypothetical scenario describing possible police corruption. For the particular scenario they'd been given, each group had to consider the following questions:

- Which law enforcement agency is best placed to investigate the above situation?
- Is this the type of matter that the IPID should be investigating?
- The Minister of Police asks the IPID to investigate this allegation. How should the IPID approach this matter to ensure that the perpetrators are brought before the courts?
- Is this an example of systemic corruption, and why/why not?
- If it is systemic corruption, what are the main factors driving this type of corruption and what role should the IPID have in addressing them?

Below are the case studies and summaries of each group's answers.

GROUP 1: HIGH-LEVEL TENDER CORRUPTION

Scenario: Evidence suggests that either the national police chief or three of his most senior management staff have irregularly awarded tenders worth hundreds of millions of rands.

The case should be investigated by the Special Investigations Unit and IPID because they both share a mandate for such investigations. However, the SIU should take the lead in the partnership due to its expertise.

IPID investigators should learn from the SIU in the process. Other agencies such as the Asset Forfeiture Unit and Hawks could get involved too.

If the minister were to approach the IPID it would have to take the lead on the investigation. What is most important is to ensure that the team that is put together has the right mix of experience and capabilities to conduct this kind of investigation. Make sure

the resources allocated are appropriate. Ensure that all agencies involved are co-opted from the start so that everyone knows where they will come in at a later stage.

In theory and law, the police chief should be suspended, but in practice this is not possible.

It is systemic corruption, because the system has been abused to produce a different outcome to the intended outcome. Investigators must look at the supply chain management system, asking where the gaps are. That is where they can fix it. The way the system is set up is open to abuse. Systemic corruption is an interplay between opportunity and desire. There is a lack of monitoring and oversight, and this is where it can be changed.

In this case the IPID needs to identify the systemic gaps and plug them, and then act against the perpetrators. They can do this through prosecution and recommendations for disciplinary action. They should also work with the secretariat to come up with a policy on a code of conduct to limit such acts.

On a macro level the IPID and all other relevant agencies need to allocate the time and resources required to fix such flawed systems.

GROUP 2: PLANTING EVIDENCE

Scenario: A team of detectives plant fingerprints at a crime scene in order to implicate their prime suspect, a man they have previously linked to a number of violent crimes, including murder. They then lie under oath in court regarding the evidence and the suspect is convicted.

Two offences have been committed: defeating the ends of justice, and perjury. Therefore the SAPS should be allocated the docket but the IPID should monitor the case. The IPID does have a mandate to investigate this case, but only if asked to do so by the minister. (The group held two different views about the systemic nature of this crime. One view was that because it involved a group of detectives and was possibly ongoing, it was systemic. The other was that it was not systemic because it did not involve an institution.)

The factors leading to the crime were mainly related to poor operational supervision. If a group commander were

present, together with the duty officer, then the detectives would not have been allowed to perform such practices. Performance management may also play a part here, in that there might be pressure from the seniors to improve detection rates, in which case the guilty detectives may have done this to improve their performance. The criminal justice system as a whole may also be to blame due to frustration over the lack of convictions in court. Perhaps the detectives know this man is notorious, and in order to convict him they fabricate the evidence.

An investigation should be conducted into the faults and problems in the detective branch involved.

GROUP 3: POLICE TRAFFICKING DRUGS

Scenario: Two SAPS members regularly use a police van to transport drugs for known drug traffickers. In return they are rewarded with cash.

The IPID can investigate, but the SAPS would be best placed to do so, specifically through the Hawks. The IPID does not have the capacity that the Hawks have. It should not investigate every corruption case because its resources are limited. Investigations should be led by the Hawks, not the IPID. The IPID should work with banks to monitor how much money is regularly deposited into members' accounts, and then conduct lifestyle audits.

Police should charge those involved, both criminally and departmentally. It is easy for the Hawks to request suspensions and to avoid interference in investigations.

Corruption may be systemic here, but it is only systemic if it occurs regularly and is ongoing.

The IPID should conduct research to find out the causes. Poor management through lack of supervision is a problem at this station, as the commander does not know what his people are doing. Other challenges would be lack of accountability, failure to comply with standing orders and procedures, and poor screening and recruitment in the SAPS. Poor salaries also play a part.

GROUP 4: DETECTIVES SELLING A DOCKET

The Hawks should ideally investigate the case, although according to the IPID Bill the IPID may investigate it too.

Scenario: A detective agrees to sell a case docket to a gang member accused of assault with grievous bodily harm (GBH) and rape. The detective does not think he has a good chance of getting a conviction based on the evidence, but does not tell the gang member. Instead he tells him he will go to jail for many years and convinces the accused to buy the docket for R20 000. Nobody else knows about the detective's deal. He has sold dockets twice before in his 8-year career.

The IPID should work closely with the SAPS here, exploring the controls and systems at the station where the detective is based. They should explore the individual's past case withdrawals to see whether there is a pattern. If so, and if it involves gangs, it can be classified as systemic corruption. The IPID can continue investigating cases of this nature, always taking into consideration that the branch commander may also be involved.

GROUP 5: METROPOLITAN POLICE BRIBERY

Scenario: Two metro police officers set up an unofficial roadblock near a busy city off-ramp. They wear official uniforms and badges, but there are no marked police cars in the vicinity. They extort money from motorists by looking for faults on their vehicles or licences and threatening them with large fines.

The case should be investigated by the metro police department involved. The city manager or head of department should institute disciplinary action as soon as he or she becomes aware of this case. The metro should recommend that the offenders be charged both criminally and departmentally.

Based on the Bill, the IPID may become involved. If instructed to do so, the IPID should conduct a full investigation, open a criminal case and charge the offenders with extortion. If there is evidence that the members will do this again in the future they should recommend departmental discipline and expulsion.

There are indications that this is systemic corruption as there is a problem of command and control. Commanders should know where their members are at all times and vehicles should be visible. This lack of supervision has allowed members to identify a vacuum in which they can do whatever they want without detection.

Awareness campaigns and outreach programmes should be conducted to discourage the public from paying such bribes. The IPID should recommend to the metro police that they strengthen their supervision system. The disciplinary codes of the metros need to be aligned with those of the SAPS. Perhaps the IPID can help advocate for such changes.

GROUP 6: POLICE EXTORTION FROM UNDOCUMENTED FOREIGN NATIONALS

Scenario: A number of police officials who work in an inner-city precinct make an average of R700 per shift by extorting money from foreign nationals, many of whom are in the country illegally.

The SAPS should investigate this case, as the IPID should only focus on project-type investigations (in a project

approach the investigating body would focus on the crime as well as conduct lifestyle audits). Other agencies that could get involved might be the Asset Forfeiture Unit, the National Prosecuting Authority and the Department of Home Affairs. The IPID can monitor interagency progress.

This case can be described as systemic corruption because members are working in an environment where such behaviour is widespread. They target illegal foreigners who are vulnerable victims and therefore have no choice but to pay extortion money.

This type of systemic corruption is caused by poor conditions of service in the SAPS. Environmental factors under which members work sometimes breed corruption. Poor border control is also to blame, for if there were not undocumented foreign nationals in the country, the police would not be able to extort money from them. Systems must be monitored, as legislation and rules are not enough.

PANEL DISCUSSION

Dr Monique Marks of the University of KwaZulu-Natal said that the shift from the ICD to the IPID was going to require a big change in the way the IPID staff thinks. There is still a strong sense in the ICD of needing to fulfil legislative requirements, whereas what is now

needed is to move beyond that and consider systemic corruption.

Claudia O'Brian (SIU Programme Management Office) said that both the ICD's and the IPID's names contain the word 'independent'. If the IPID was truly independent, she asked, why was it being suggested that it 'run back to the SAPS' to do the investigations every time? The IPID really needs to be independent, she said – to set up its own resources and capacity internally, and to conduct independent investigations. If this is not going to happen then why create this legislation to give IPID members the same powers as the SAPS, only to hand the cases over to the same agency the IPID is investigating? Conflicts arise when colleagues investigate colleagues. This is why the IPID needs to stand on its own.

A member of the ICD responded by saying that the IPID must work with other agencies and that not all police are corrupt.

A member of the SAPS said that it was a mistake for the IPID to be reporting to the Minister of Police as he has to impress Parliament regarding both the performance of the police and police oversight. The IPID should be placed under the Public Protector, he said. He agreed that the IPID should not palm off all its investigations to the Hawks, and it should be ensured that the IPID is not closed down like the Scorpions.

Summation

SUMMARY AND REFLECTION ON THE KEY ISSUES DISCUSSED AT THE WORKSHOP ON THE CORRUPTION MANDATE OF THE IPID

DR MONIQUE MARKS

University of KwaZulu-Natal

Marks began by saying there was a widely held view that the current administration is committed to rooting out corruption in the public service. Part of this faith has been earned by government's renewed engagement with civil society, which gives the appearance of a shift away from a top-down policy-development approach. However, she questioned whether we should in fact be this positive considering the 'moral deficits and inconsistencies of government and politicians' in South Africa – in fact, for her, the government's stance against corruption is a joke. She said clear legislation and good structures and mechanisms were much more important to bolstering any optimism.

The ICD's responsibility is to ensure that the legislation is very clear, and not to allow any loopholes for senior police and government officials to change their minds about what the ICD should do. What we need, she said, is watertight legislation. She also said civil society needs to maximize the space currently afforded it to engage with government.

Marks said we need not always look to other countries for models that we can copy. We should realise that we are capable of developing models ourselves, and realise that other countries look to us in the same way that we look to them.

She said there is a need to increase public participation in the fight against police corruption in that there is currently little mobilisation or buy-in from the public. Perceptions of the police need to be changed in the eyes of both the police and the public.

She said the IPID should focus on promoting the broad professionalisation of police, including ethical standards, shared minimal training, and registration requirements.

About the new legislation, Marks said that the culture of an organisation is as important as its formal aspects. Reflecting on Berg's two-paradigm approach she said that

wherever possible one should focus on the offence rather than the offender. Punishment is not always the solution; it is necessary to make reflective interventions that seek to change systems. In order to make these systemic changes the IPID will need to engage with other networks – a diversity of actors will bring together a diversity of viewpoints. Some of these networked relationships should be formalised, bearing in mind that within such a networked structure different actors will have differing degrees of commitment as well as different goals. As such, responsibilities will need to be clearly delineated.

Addressing the subject of union involvement in the fight against corruption, Marks said unions are powerful, with all police members having to be part of a union. If the unions are not fully involved in the process to reduce corruption, then a big part of the process will be missing. She said there are many examples abroad where unions have worked to clean up police but that was not happening in South Africa. She believed unions were 'conservative', in the sense that they like to defend what they have. They do not want more training, they do not want anti-corruption units and other initiatives that would professionalise and improve the police. The only way this will change, she said, is if the unions are involved in the promotion of democratic policing, which is not happening at the moment.

Marks suggested the IPID explore, investigate and profile cases of systemic corruption in order to develop innovative mechanisms for 'cleaning' the system. These models could be referred to when similar systemic problems are found elsewhere in the organisation. The IPID should promote the idea of restoration rather than punishment in regard to corrupt police officers. It should display real independence and willingness to deal decisively with high profile cases with political implications. It should examine the influence of police performance management, recruitment, training and socialisation on all levels and types of corruption within the police. The IPID, she said, should encourage mechanisms for affirming good cops and exemplary organisational practice, build strong bonds with police at all levels of the organisation, and assist in the referral of cases to other appropriate anti-corruption bodies where necessary.

Annexure A

Programme

Towards understanding the IPID's mandate
for addressing police corruption

DAY 1	
9:30	Tea/coffee & registration
10:00	Introductory remarks & outline of objectives by the chair Gareth Newham, programme head, Crime & Justice Programme, Institute for Security Studies
10:10	Welcoming note from the ICD Francois Beukman, Executive Director, Independent Complaints Directorate
10:20	Can we tackle police corruption in South Africa? A review of police anti-corruption investigative initiatives Andrew Faull, Researcher, Institute for Security Studies (ISS)
10:50	Beyond 'good cop'/'bad cop': everyday police corruption in South Africa Dr Julia Hornberger, Forced Migration Studies Project, University of the Witwatersrand
11:20	From hierarch to networks: does the IPID mandate require a paradigm shift? Julie Berg, Centre for Criminology, University of Cape Town
11:50	Plenary discussion on the key lessons for the IPID for investigating corruption
12:30	Lunch
13:30	Towards understanding the IPID's mandate for addressing police corruption Claudia O'Brian, Project Manager, Programme Management Office, Special Investigating Unit (SIU)
14:00	The Hawks' approach to investigating police corruption Colonel Lebakeng, Head of Anti-Corruption, Directorate for Priority Crime Investigation (DPCI)
14:30	Tackling corruption in the Durban Metropolitan Police Service Durban Metropolitan Police Department
15:00	Plenary discussion on key lessons for the IPID mandate and approach to tackling police corruption
16:00	Close
DAY 2	
8h00	Tea/coffee
8h30	Welcome and recap of the previous day Gareth Newham

8h40	Reflections on the police corruption mandate of the IPID given current capacity Tommy Tshabalala, Head of Investigations, ICD
9h10	Exploring the corruption mandate of the IPID Working Groups
9h40	Working Group Feedback to Plenary
10h00	Tea/Coffee
11h00	Summary and reflection on the key issues discussed at the workshop on the corruption mandate of the IPID Monique Marks, University of KwaZulu-Natal
12h30	Lunch
Workshop Ends	



ISS Head Office

Block D, Brooklyn Court, 361 Veale Street
New Muckleneuk, Pretoria, South Africa
Tel: +27 12 346 9500 Fax: +27 12 346 9570
E-mail: iss@issafrica.org

ISS Addis Ababa Office

5th Floor, Get House Building Africa Avenue,
Addis Ababa, Ethiopia
Tel: +251 11 515 6320/24/67/98 Fax: +251 11 515 6449
E-mail: addisababa@issafrica.org

ISS Cape Town Office

2nd Floor, The Armoury Building, Buchanan Square
160 Sir Lowry Road, Woodstock, South Africa
Tel: +27 21 461 7211 Fax: +27 21 461 7213
E-mail: capetown@issafrica.org

ISS Dakar Office

Stèle Mermoz, 100x El Hadji
Ibrahima Niasse MZ83
Tel: +221 33 824 0918/21 Fax: +221 33 824 2246
E-mail: dakar@issafrica.org

ISS Nairobi Office

Braeside Gardens,
Off Muthangari Road, Lavington, Nairobi, Kenya
Tel: +254 20 386 1625 Fax: +254 20 386 1639
E-mail: nairobi@issafrica.org

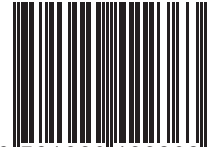
ISS Pretoria Office

Block C, Brooklyn Court, 361 Veale Street
New Muckleneuk, Pretoria
Tel: +27 12 346 9500 Fax: +27 12 460 0998
E-mail: pretoria@issafrica.org

www.issafrica.org

WORKSHOP REPORT

ISBN 978-1-920422-36-3



9 78 1920 422363

This publication was made possible through funding provided by the Open Society Foundation for South Africa.
In addition, general Institute funding is provided by the governments of Denmark, the Netherlands, Norway and Sweden.



OPEN SOCIETY FOUNDATION
FOR SOUTH AFRICA