

# ARE SOUTH AFRICA'S COPS ACCOUNTABLE?

## RESULTS OF INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE INVESTIGATIONS

David Bruce

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## INTRODUCTION

This report arises from concerns about the Independent Police Investigative Directorate (IPID) that have emerged as a result of a series of articles by Viewfinder, an accountability journalism project. The articles, the first of which appeared on 7 October 2019, suggest that IPID investigations are concluded prematurely, that is, before the investigations may reasonably be regarded as complete. Among the allegations are that cases are assigned 'decision-ready' status, supposedly indicating that the investigations are complete, or are closed as 'special closures' without proper investigations having been conducted. Whistle-blower reports published by Viewfinder suggest that the practice is systemic, widespread across South Africa, and has evolved over many years.<sup>1</sup>

According to IPID, investigations are complete only once 'a quality investigation' which involves the collection of 'all necessary evidence' has been conducted.<sup>2</sup> IPID consistently reports that cases are all effectively investigated before they are referred to the National Prosecuting Authority (NPA) or are concluded for other reasons.<sup>3</sup>

IPID is an independent civilian oversight body tasked with investigating cases involving members of the main official police services in South Africa, including both the South African Police Service (SAPS) and the six municipal police services (MPSs). IPID's function can be regarded as being twofold in nature:

- One of the main purposes of IPID is to promote equality before the law by ensuring that criminal cases that appear to implicate police officials are properly investigated.<sup>4</sup> IPID is, therefore, intended to help ensure that victims of crimes committed by police officers also have the potential to have the perpetrators held accountable, and that police officials who violate the law do not enjoy impunity.
- There are also cases that IPID investigates, such as deaths linked to the use of lethal force by the police (deaths as a result of police action) and deaths in police custody, which are not necessarily linked to allegations of wrongdoing but where there is possible police wrongdoing. Insofar as these cases are not linked to criminal acts, IPID's role is intended to be that of verifying that the police have acted lawfully in

such instances. IPID is thereby intended to help contribute to ensuring that policing in South Africa is undertaken in terms of high standards of conduct and contributes to respect for, and trust in, the police.

The concern expressed in the Viewfinder articles is that many IPID investigations are inadequate. The quality of IPID's investigations is important for ensuring police accountability for wrongdoing. This is linked to whether victims, or other complainants, receive a consistent quality of service from IPID. In addition, unless there is confidence in IPID, IPID will not perform its second function. The fact that there has been no finding against, or prosecution of, a police officer will not be interpreted as an indication that the police are likely to have acted lawfully, and, in addition, it will not promote confidence in the police.

## Overview of the report

This report focuses on the completion or finalisation of investigations by IPID. It includes an examination of legislation and regulations relevant to the conclusion of investigations by IPID and links this to an analysis of IPID data on the completion of investigations.

The approach taken is somewhat different from that in the Viewfinder exposé. The data and analysis presented are indeed consistent with the view that many investigations conducted by IPID are fairly superficial in nature. However, partly to do with the resources available to investigative agencies, it is recognised and accepted internationally that investigative agencies cannot apply consistent standards to all investigations that they undertake. This applies even more so to investigative agencies like IPID that are very poorly resourced relative to their workload. This report therefore argues for a system of case screening to be implemented by IPID in order to ensure that investigative resources are used in an optimum manner.

## Key issues highlighted

The following are some of the key issues that this report highlights:

- The purpose or role of IPID is to promote police accountability through investigations. However, IPID does not provide a coherent account of its work that is aligned with its own data. One example is that IPID policies over the period 2015 to 2019 specified that all decision-ready cases be referred to the NPA. Notwithstanding this, IPID data on cases referred to the NPA for the period indicate that only a quarter of the cases completed (Table 12) were referred to the NPA (Table 18).
- IPID receives cases for different reasons. Some cases are complaints involving allegations of wrongdoing against the police that are reported directly to IPID or are referred to IPID by the police. Other cases, such as deaths as a result of police action and deaths in police custody, generally do not involve allegations of wrongdoing and are mostly reported to IPID in terms of mandatory reporting provisions. Yet other cases are probably reported to IPID because the police have wrongly interpreted the mandatory reporting provisions (there is thus no legal obligation on IPID to investigate these cases). Nevertheless, IPID does not differentiate between these different types of cases in its reporting.
- IPID's priority focus should be on addressing problems concerning police conduct in South Africa. However, IPID's emphasis is on completing investigations. This is in conflict with the need for the emphasis to be placed on IPID's impact on police conduct. In order to better impact on police conduct, IPID should not simply seek to increase the rates of criminal and disciplinary convictions as a result of its investigations. It must



focus on ensuring that its investigative performance is enhanced in relation to the most serious manifestations of police criminality.

- Prior to April 2015, IPID used the term 'completed' to refer to investigations that had been finalised. However, from April 2015, it has used the term 'decision-ready' for investigations that have been completed. Nevertheless, whether cases are described as 'complete' or 'decision-ready' does not clarify what conclusion the investigation has reached. IPID therefore needs to provide greater clarity about the results of its investigations.
- From April 2015 onwards, the term 'decision-ready' began to be used to refer to investigations that had been completed. However, definitions of the term have changed. IPID's Standard Operating Procedures (SOPs), including SOPs issued in 2015 and 2019, are confusing and internally contradictory in the manner in which they define the term. This contributes to the creation of confusion about the results of investigations.
- IPID's SOPs also suffer from other problems, including the use of vague definitions. An example is that the term 'referred' is defined in a confusing manner and is used inconsistently by IPID. This contributes to the confusing nature of the information provided by IPID about the results of investigations. IPID does not clearly differentiate between referrals to the SAPS or another investigative agency for further investigation (investigative referrals), referrals for an inquest, referrals to the NPA for prosecution (criminal referrals), and referrals to the SAPS or MPSs for disciplinary hearings (departmental referrals).
- During IPID's first seven years, criminal convictions were secured in 1.3% of cases received by IPID. Disciplinary convictions were secured in 3.2% of cases (Table 7). IPID reports indicate that it has completed investigations into 76% (32 106 out of 42 365) of the cases that it has received (Table 13). Relative to investigations completed, the figure for criminal convictions is 1.7% and for disciplinary convictions 4.3% (Table 15).
- IPID is most effective in investigating cases of homicide related to domestic violence (intimate-partner homicide) and other personal disputes involving police officers. These are the IPID investigations which result in the highest criminal conviction rates. Compared with conviction rates in other categories, IPID investigations also result in a relatively high percentage of convictions in cases of rape by a police officer (4% of investigations completed). One of the main impacts of IPID is therefore ensuring some accountability for violence against women by police officers. Nevertheless, the rate of convictions for IPID investigations into rape by a police officer are lower than that achieved by the SAPS for rape generally.
- Criminal prosecutions sometimes take a long time and not all cases related to investigations conducted during IPID's first seven years are necessarily complete. Nevertheless, the available information indicates that, other than in relation to homicides associated with interpersonal disputes (including intimate-partner homicides), IPID investigations translate into very low rates of criminal conviction for alleged police criminality. Furthermore, IPID investigations translate into very few convictions for torture and other cases of the use of excessive force by the police, or police brutality related to the performance of police duties, as well as police corruption.
- There are various inconsistencies in the data presented by IPID. For instance, there appear to be 3 024 cases that have 'gone missing' from IPID annual reports. Moreover,

IPID data on outcomes achieved does not differentiate cases in which there have been both criminal and disciplinary outcomes (convictions or acquittals) from those in which there is only a disciplinary or criminal outcome.

- The NPA declines to prosecute more than 70% of cases that are referred to it by IPID. IPID does not appear to have a clear policy with respect to the referral of cases to the NPA. It is unclear to what extent cases are referred to the NPA if there is a prima facie criminal case only or when cases are referred to the NPA for other reasons.
- IPID's latest annual reports indicate that forms of case screening are used by IPID. According to IPID's 2018–19 annual report, priority is given to 'high-value' or 'high-impact' cases. These terms are used interchangeably but they are not clearly defined and it is not clear what they mean. Insofar as IPID uses case screening, its approach to screening is not clearly explained or substantiated.

It must be emphasised that the shortcomings highlighted by this report cannot exclusively be attributed to IPID. Problems within the NPA may also contribute to the low rates of prosecutions and convictions. More generally, the results and outcomes of IPID investigations do not depend only on IPID. Notwithstanding its formal status as an independent agency, the outcomes of IPID investigations are also influenced by other agencies and services, including not only the NPA, but also the quality of autopsies that are conducted by state pathologists, the forensic and ballistic services that are provided by the SAPS, and the overall levels of cooperation received from the SAPS and MPSs.

It may reasonably be assumed that problems highlighted by this report are not exclusively problems internal to IPID but are a combination of internal and external factors. However, this is not the same as saying that the challenges facing IPID are exclusively external. IPID should be expected to be self-critical in tackling the challenges that it faces rather than assigning the blame for shortcomings exclusively to other parties.

## Recommendations

**Recommendation 1:** IPID should account for what appears to be the disproportionately large number of section 28(1)(c) (complaints relating to the discharge of an official firearm) and section 28(1)(f) (specifically assault) cases that originate from the Free State and Western Cape. It should clarify if there are differences in police reporting practices, or other factors that contribute to this, and whether there is consistency between these and other provinces in the interpretation of, and compliance with, section 28 and section 29(1) of the IPID Act. IPID should issue a notice for purposes of clarification in order to ensure greater consistency in reporting between provinces. This notice should be circulated to all police stations and units.

**Recommendation 2:** IPID should provide clear definitions of the term 'referred' and take steps to ensure that these definitions are consistently implemented. Definitions should distinguish between investigative referrals, referrals to the NPA, referrals for disciplinary action, and referrals for an inquest. (It may also be important to distinguish between referrals to an inquest that are made by IPID and referrals that are made by the NPA after cases have been referred to it.)

**Recommendation 3:** IPID should present clear information on the results of investigations for each category (deaths in custody, deaths as a result of police action, etc.) of completed ('decision-ready') case. (See the full recommendation on page 33 for details of the recommended categories.)

**Recommendation 4:** IPID SOPs should have clear provisions regarding the classification to be applied for closure (or suspension) of investigations that are not referred to the NPA, or for police disciplinary action, after the investigation has been completed. (See the full recommendation on page 34 for details of recommended categories.)

**Recommendation 5:** IPID data on the final outcome of cases ('manner of closure') should disaggregate cases according to whether they were subject to criminal and/or disciplinary prosecution, and according to the outcomes of those prosecutions, in line with the different options outlined in Table 17.

**Recommendation 6:** Both for internal and public purposes, IPID should clarify what its policy criteria are for referral of cases to the NPA. IPID's policy should clearly provide that cases be referred when there is a prima facie criminal case. If there are any circumstances where cases should be referred to the NPA when they do not provide the basis for a prima facie criminal case, these circumstances should be clearly defined. In IPID reporting, cases that are referred to the NPA for other reasons should be differentiated from cases that are referred on a prima facie basis.

**Recommendation 7:** There is a need for greater clarity about why the NPA declines to prosecute such a high proportion of cases that are referred to it by IPID. In order to improve NPA responsiveness to IPID referrals, research should be carried out to gain further insight concerning this question.

**Recommendation 8:** Efforts to strengthen IPID's effectiveness should not focus exclusively on IPID. Such efforts should recognise that other agencies contribute to the investigative outcomes achieved by IPID. However, IPID should also be expected to be self-critical and acknowledge its own limitations rather than assigning the blame for shortcomings exclusively to other parties.

**Recommendation 9:** IPID should enter into a Memorandum of Understanding (MoU) with the SAPS Family Violence, Child Protection and Sexual Offences (FCS) units regarding the investigation of cases of rape by a police officer. In particular, this agreement should expedite rapid responses to the cases of rape that take place at locations some distance away from IPID offices in order to try to ensure that there is a quicker investigative response to these cases.

**Recommendation 10:** IPID should develop an MoU with the Hawks and the NPA Directorate on serious, high-profile or complex corruption in order to facilitate cooperation in the investigation of high-level corruption in the SAPS .

**Recommendation 11:** IPID should put in place a properly administered screening system that prioritises cases for dedicated investigative attention, taking into account factors of seriousness and solvability (probability of achieving a criminal conviction).

**Recommendation 12:** The assessment of IPID's performance should shift to focusing on how it is impacting on the most serious crimes committed by the police. IPID should have a system of case screening which is intended to contribute to ensuring that IPID has a greater impact on these crimes. The most serious crimes should be seen to include:

1. Cases of murder and culpable homicide – the focus here should be on cases where there are grounds for suspicion that deaths recorded under sections 28(1)(a) and (b) are linked to criminal acts committed by the police. Cases where there are grounds for suspicion that disciplinary infringements have contributed to deaths should also be prioritised in this way;

2. Complaints relating to the discharge of an official firearm where there is a reasonable suspicion that attempted murder or assault with intent to do grievous bodily harm (GBH) has been committed;
3. Cases of rape by a police officer;
4. Cases of rape in police custody – though the focus of these investigations may be on possible disciplinary infractions by the police, this should not lead to these cases being treated as ‘less serious’;
5. Cases of torture; and
6. Cases of corruption – especially those allegedly implicating SAPS or MPS members who are part of senior management or of officer rank.

**Recommendation 13:** The Minister of Police, the Portfolio Committee on Police, and others involved in influencing and shaping IPID’s priorities should:

1. Understand that IPID is likely to be most effective if it focuses its resources more selectively on the basis of a clearly defined system of case screening;
2. Recognise the need for IPID to focus on the most serious types of crime allegedly committed by the police (as reflected in Recommendation 12); and
3. Understand the various impediments that IPID faces and that it cannot reasonably be expected to maintain an equal standard of high-quality investigations in respect of all cases that it receives.

## Terminology

This report distinguishes between:

- The result of IPID investigations – such as the conclusion that there is a prima facie criminal case and that the case should be referred to the NPA; and
- The outcome of IPID investigations – such as prosecutions, and the conviction or acquittal of accused police. Where the investigation concludes that there is a prima facie criminal or disciplinary case, the case is therefore referred to another agency. The ‘outcome’ also reflects the action that the other agency has taken.

As discussed further below (see the main types of conclusions reached), some investigations may come to the conclusion that there is no prima facie disciplinary or criminal case. In these cases, ‘the result’ and the ‘outcome’ may be the same. It is only where cases are referred to another agency for further action to be taken that the result and outcome are not the same.

## THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

IPID is an independent civilian oversight body (ICOB) that came into operation on 1 April 2012 and whose function is to provide oversight in respect of the police. Internationally, the manner in which ICOBs perform their functions differs considerably from one country to another, and from one agency to another. In IPID's case, its oversight role is performed through investigations. IPID's investigative mandate is defined by sections 28(1) and (2) of the IPID Act. Section 28(1) provides as follows:

- 28. (1) The Directorate must [in the prescribed manner] investigate –**
- (a) any deaths in police custody;*
  - (b) deaths as a result of police actions;*
  - (c) any complaint relating to the discharge of an official firearm by any police officer;*
  - (d) rape by a police officer, whether the police officer is on or off duty;*
  - (e) [the] rape of any person while that person is in police custody;*
  - (f) any complaint of torture or assault against a police officer in the execution of his or her duties;*
  - (g) 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,<sup>5</sup> an MEC<sup>6</sup> or the Secretary,<sup>7</sup> as the case may be; and*
  - (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be.*

Section 28(2) provides that IPID 'may investigate matters relating to systemic corruption involving the police'.

### Background to IPID's establishment

IPID's predecessor, the Independent Complaints Directorate (ICD), was established in terms of the South African Police Service (SAPS) Act<sup>8</sup> and became fully operational in April 1997. The IPID Act (Act 1 of 2011) provided for IPID to be established in the place of the ICD. The ICD was only required to investigate deaths in police custody and deaths as a result of police action. IPID, however, is required to investigate a wider range of alleged or possible offences as listed in section 28(1).<sup>9</sup>

As implied by its name, the ICD also had a general responsibility to receive complaints against the police, though it could refer these to the police with a view to monitoring the police internal investigation of the complaint.<sup>10</sup> The IPID Act was passed at the same time as the Civilian Secretariat for Police Service (CSPS) Act (Act 2 of 2011). The combined effect of the IPID Act and CSPS Act was that responsibility for dealing with complaints that did not fall under section 28(1) of the IPID Act was now transferred back to the police, with the CSPS given the responsibility to 'assess and monitor the police service's ability to receive and deal with complaints against its members'.<sup>11</sup> The ICD had also been allocated responsibility for addressing issues to do with compliance by the police with the Domestic Violence Act (Act 116 of 1998). The CSPS Act now gave the CSPS the responsibility to 'monitor and evaluate compliance with the Domestic Violence Act'.<sup>12</sup>

The ICD was therefore an independent police oversight body with a mandate that included investigations of deaths as a result of police action and in police custody, and investigating or monitoring complaints against the police. The ICD, therefore, had a dual investigative and monitoring function. IPID, on the other hand, is exclusively an investigative body.

As with the ICD, IPID has responsibility not only for cases involving members of the SAPS, but also for cases involving members of the municipal police.<sup>13</sup> As of 31 March 2019, the SAPS comprised 150 885 police officers (as well as 41 392 civilian personnel). The combined personnel strength of the six municipal police services (MPSs) may be in the region of 10 000 police members. IPID is therefore responsible for carrying out investigations into the eight categories of cases that fall under section 28(1) in respect of seven police organisations with a total personnel strength of roughly 160 000 police officers. It may also investigate systemic corruption in respect of these seven organisations.

## Categories of cases received by IPID

### *Deaths in custody and deaths as a result of police action*

Relative to cases received (Tables 2 to 7) and investigations completed (Table 12), section 28(1)(b) cases (deaths as a result of police action) constitute the category that results in the highest percentage of criminal prosecutions and convictions. As reflected in Table 2, IPID investigations have resulted in criminal convictions in a far higher proportion of cases relating to deaths as a result of police action (7%) than in relation to cases of deaths in custody (0.4%). During IPID's first seven years, deaths as a result of police action accounted for 36% of criminal convictions (193 out of 530) and for 31% of prosecutions that were completed by means of a verdict (245 out of 796).

**Table 1:** Deaths as a result of police action cases received by IPID – domestic violence and other private-capacity deaths (April 2012–March 2019)

	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	Total	Percentage (%)
<b>Domestic violence deaths</b>	42	32	33	23	37	22	33	222	7.9
<b>Other private-capacity deaths</b>	21	26	22	16	16	10	21	132	4.7
<b>Other subcategories</b>	368	332	341	327	341	404	339	2 452	87.4
<b>Total</b>	431	390	396	366	394	436	393	2 806	100.0

**Table 2:** Completed criminal and disciplinary prosecutions in respect of cases falling under sections 28(1)(a) and (b) (April 2012–March 2019)

	Cases received	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
<b>Deaths in custody</b>	1 686	7	11	18	0.4	30	28	58	1.8
<b>Deaths as a result of police action</b>	2 806	193	52	245	6.9	104	48	152	3.7

To analyse IPID's investigative performance in respect of cases involving deaths as a result of police action, it is necessary to disaggregate the cases and the investigative outcomes achieved. As reflected in Table 1, 354 (13%) out of the 2 806 section 28(1)(b) cases that IPID received were linked to interpersonal disputes involving the police. These are not disputes that the police intervene in as part of the performance of their duties. They are interpersonal disputes in which the police are active participants and which culminate in them killing their wives or another person. Of these, the majority (8%) involve intimate-partner or other domestic violence, but there are also another 5% that are linked to other 'private' disputes.<sup>14</sup>

The available information suggests that upwards of 56% of convictions that IPID achieves with regard to section 28(1)(b) cases are in respect of cases in these two subcategories.<sup>15</sup> This therefore implies that IPID has a conviction rate of 30% or higher with respect to deaths in these two subcategories.<sup>16</sup> It is not unusual that IPID achieves higher conviction rates for these kinds of deaths. Internationally, it is recognised that the rates at which the police solve homicide cases are linked to the circumstances in which homicides take place.<sup>17</sup> The implication, however, is that IPID has a conviction rate of 3.5% for the remaining 87% of deaths as a result of police action.<sup>18</sup> As indicated, it also has a negligible rate of criminal convictions (0.4%) for deaths in police custody.

More than 50% of IPID's criminal convictions for cases falling under sections 28(1)(a) and (b) (i.e. deaths) are likely to be in respect of cases that fall into the two subcategories of interpersonal dispute that are highlighted in Table 1. IPID therefore has a higher conviction rate for deaths linked to interpersonal disputes, a much lower conviction rate for deaths as a result of police action linked to the performance of police duties ('in the line of duty'), and an even lower conviction rate for deaths in police custody.

The cases under sections 28(1)(a) and (b) in which IPID secures convictions are therefore cases where it is apparent immediately after death that a crime is likely to have been committed. These are not cases that rely on investigative methods and techniques to ascertain whether the police acted lawfully. The police are required to notify IPID about all deaths in custody and all deaths as a result of police action. Most IPID investigations into deaths therefore do not originate with allegations that there has been wrongdoing by the police. Insofar as deaths may be related to police wrongdoing, this therefore can in most cases only be revealed by investigation.

IPID data indicating that 7% of deaths as a result of police action result in criminal convictions therefore does not demonstrate that IPID consistently conducts high-quality investigations in relation to deaths. Instead, it may primarily reflect the fact that killings related to interpersonal disputes tend to receive more focused investigative attention. Available information on deaths in custody and deaths as a result of police action that are 'in the line of duty' does not indicate that a large proportion of these are linked to criminal wrongdoing by the police.<sup>19</sup> Nevertheless, it is likely that evidence of wrongdoing would be revealed in more of these cases if more thorough investigations were consistently undertaken.

### *Complaints relating to the discharge of an official firearm*

The discharge of an official firearm is not in itself an offence. But a complaint relating to the discharge of an official firearm (section 28(1)(c)) is likely to amount to an alleged criminal offence such as attempted murder or assault with intent to inflict grievous bodily harm (assault GBH) or other offences under the Firearms Control Act.<sup>20</sup> If investigated properly, these cases should therefore lead to a significant number of criminal convictions. However, the statistics in Table 3 show that this is one of the categories of cases that records criminal convictions at a very low rate (1%) relative to the number of cases received.

There is an apparent anomaly in respect of the number of Western Cape cases in this category. This may indicate that reporting behaviour is different in the Western Cape (see, further, below in respect of the high number of cases relating to firearm discharges, and to assault, which are reported in the Western Cape). Nevertheless, cases in this category that originate from the Western Cape account for only 20% of cases (1 183 out of 5 991) in this category. Insofar as there may be different patterns of reporting between different provinces, this does not account for the low conviction rates in this category.<sup>21</sup>

IPID should also clarify if there are cases that it receives which are recorded in this category but do not originate from complaints. The legislation states that IPID is required to investigate 'any complaint relating to the discharge of an official firearm'. IPID is, therefore, not obliged to investigate cases relating to the discharge of an official firearm that do not originate from complaints. There are already provisions in SAPS Standing Orders for an internal investigation to be conducted into incidents where firearms are discharged by SAPS members.<sup>22</sup> If IPID is investigating cases of the discharge of an official firearm that do not originate from complaints, it is duplicating functions that are supposed to be performed by the SAPS. Cases related to the discharge of an official firearm that do not originate from complaints would be far less likely to translate into convictions or prosecutions.

**Table 3:** Completed criminal and disciplinary prosecutions for cases falling under section 28(1) (c) (April 2012–March 2019)

	Cases received	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
<b>Complaint of discharge of an official firearm</b>	5 991	56	12	68	0.9	118	54	172	2.0

#### *Cases under sections 28(1)(d), (e) and (f)*

IPID is responsible for investigating two categories of cases relating to rape, namely rape by a police officer (section 28(1)(d)) and rape in police custody (section 28(1)(e)). Where it is alleged that a person in custody had been raped, but the alleged perpetrator is a police officer, it appears that cases are mostly recorded under section 28(1)(d) (i.e. rape by a police officer). Section 28(1)(d) is the category in which IPID has achieved the second-highest rate of convictions relative to cases received (after deaths as a result of police action).

Cases of rape in police custody (section 28(1)(e)) are apparently mostly allegations that a person was raped in custody by someone other than a police officer (generally, this is likely to be another person in custody), though, due to inconsistencies in recording by IPID, a few cases of rape in custody by a police officer may also be recorded in this category. It appears that IPID's approach is that the criminal investigation into section 28(1)(e) cases should be conducted by the police. It is probably for this reason that there are barely any criminal convictions (1) and completed criminal prosecutions (3) in this category. There are many more convictions (31) and completed prosecutions (45) for section 28(1)(d) cases. IPID apparently mainly investigates section 28(1)(e) cases in relation to the possibility that misconduct by the police may have been a contributing factor in enabling the rape to take place. As indicated in Table 4, IPID investigations have resulted in many more completed disciplinary prosecutions (14) than criminal prosecutions (3) for section 28(1)(e) cases.



The categories of rape by a police officer, and complaints of assault and torture as provided for in sections 28(1)(d) and (f), are all direct allegations of criminal offences by the police. IPID receives many more cases of torture and assault than cases of rape. However, rates of criminal and disciplinary prosecutions and convictions are far lower for torture and assault than for rape.

**Table 4:** Completed criminal and disciplinary prosecutions for cases falling under sections 28(1)(d), (e) and (f) (April 2012–March 2019)

	Cases received	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
Rape by a police officer	844	31	14	45	3.7	66	24	90	7.8
Rape in custody	140	1	2	3	0.7	13	1	14	9.3
Torture	1 078	2	1	3	0.2	22	16	38	2.0
Assault	26 590	160	146	306	0.6	749	527	1 276	2.8

### *Corruption – section 28(1)(g) and section 28(2)*

In terms of section 28(1)(g), IPID is required to investigate –

*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, as the case may be.*

In addition, section 28(2) provides that IPID ‘may investigate matters relating to systemic corruption involving the police’.

The IPID Act and the IPID Regulations do not define ‘systemic corruption’. The question as to ‘what systemic corruption is’, is therefore a matter of interpretation. The Cambridge online dictionary indicates that ‘a systemic problem’ is ‘a basic one, experienced by the whole of an organisation or a country and not just particular parts of it’.<sup>23</sup> Systemic corruption would therefore be types of corruption that are widespread in the SAPS. In general, it is probably true that there are many types of corruption that are widespread not only in the SAPS,<sup>24</sup> but also in some, or all, of the MPSs.<sup>25</sup> Individual cases of corruption that are recorded by IPID under section 28(1)(g) are generally manifestations of systemic-corruption problems.

It is not clear what framework IPID applies when it classifies cases as systemic corruption. Arguably, the difference between cases that fall under section 28(1)(g) and section 28(2) should not relate to the types of corruption that they focus on but to the types of investigation. If a case of corruption is investigated under section 28(1)(g), one would expect that it would be treated as an individual instance of criminality. If cases are investigated under section 28(2), this implies that individual cases are being treated as manifestations of pervasive organisational problems within the SAPS or an MPS. A ‘systemic-corruption’ investigation would therefore implicitly be a completely different investigation from the standard type of criminal and disciplinary investigations that IPID usually engages in.

IPID’s data shows that, during IPID’s first seven years, it recorded 844 corruption cases, of which 95% (801) were recorded under section 28(1)(g) and 5% (43) under section 28(2).

The section 28(1)(g) cases have resulted in some criminal and disciplinary prosecutions and convictions. Systemic-corruption cases have not led to any completed criminal prosecutions and to only one disciplinary prosecution. Therefore, systemic-corruption cases are largely irrelevant to analysing the investigative outcomes achieved by IPID. In practice, the authority to investigate 'systemic corruption' has not been a meaningful part of the IPID mandate. It is probably something that IPID is not resourced, or equipped, to deal with.

**Table 5:** Completed criminal and disciplinary prosecutions for cases falling under sections 28(1)(g) and 28(2) (April 2012–March 2019)

	Cases received	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
<b>Corruption</b>	801	23	7	30	2.9	31	16	47	3.9
<b>Systemic corruption (section 28(2) of the IPID Act)</b>	43	0	0	0	0.0	1	0	1	2.3

#### *Other cases resulting in criminal or disciplinary prosecutions*

Tables 2 to 5 do not account for all cases received and criminal and disciplinary prosecutions pursued following investigations by IPID. As reflected in Table 6, there are a significant number of criminal prosecutions arising from 'other criminal offences'. The 55 convictions obtained in this category account for more than 10% of the total number of 530 criminal convictions obtained (Table 7). Although it is a criminal offence, there are apparently few criminal prosecutions for non-compliance with the IPID Act (Table 6 indicates that four have been completed). However, along with other criminal offences, non-compliance with the IPID Act makes a significant contribution to the total number of disciplinary prosecutions, with 107 completed disciplinary prosecutions being in this category. Non-compliance with the IPID Act leads to a higher percentage of disciplinary convictions (17%) than for any other category of offences.

**Table 6:** Completed criminal and disciplinary prosecutions in respect of cases falling under section 33(3) and other criminal offences (April 2012–March 2019)

	Cases received	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
<b>Non-compliance with IPID Act (section 33(3) of the IPID Act)</b>	490	2	2	4	0.4	84	23	107	17.1
<b>Other criminal offences</b>	1 896	55	19	74	2.9	135	60	195	7.1

**Table 7:** Total completed criminal and disciplinary prosecutions for all cases falling under sections 29(1)(a) to (g) (April 2012–March 2019)

	Cases received	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as % of cases received
<b>Total</b>	42 365	530	266	796	1.3	1 353	797	2 150 <sup>26</sup>	3.2

Overall, then, of the roughly 43 000 cases received by IPID, less than 2% (796) have led to completed criminal prosecutions, and just over 5% (2 186) have led to completed disciplinary prosecutions. Among the 796 cases that resulted in completed criminal prosecutions, 67% (530) have led to convictions. Among the 2 186 completed disciplinary prosecutions, 63% (1 379) have led to convictions. Of the criminal convictions obtained, 193 (36%) have been for deaths as a result of police action. It is likely that the majority of convictions for deaths are for killings related to domestic or other personal disputes. Another 30% of criminal convictions (160) have been for assault.

The data and analysis presented above suggest that IPID investigations are more likely to lead to criminal convictions if they involve cases of intimate femicide, homicide related to other interpersonal disputes in which police officers are involved, or rape by police officers. IPID investigations into corruption cases (but not ‘systemic corruption’) and ‘other criminal offences’ are also relatively productive in terms of generating prosecutions and convictions. However, for complaints relating to the discharge of an official firearm, and complaints of assault and torture, a very small percentage of IPID cases result in criminal convictions.

Of the 1 379 disciplinary convictions, 749 (54%) are for assault and 135 (10%) for other criminal offences, with 118 (9%) linked to complaints relating to the discharge of an official firearm and 104 (8%) linked to deaths as a result of police action. Relative to cases received in each category, however, the highest percentage of disciplinary convictions is for non-compliance with the IPID Act (17%), followed by rape in custody (9%).

The statistics in Table 7 omit a further 36 completed disciplinary prosecutions and 26 disciplinary convictions for other cases investigated by IPID which constituted misconduct but did not fall under any of the other categories. The 42 365 cases received also omit a further 549 cases which IPID took over from its predecessor, the ICD, when it (IPID) was established.<sup>27</sup> It should also be noted that there is other IPID data that indicates that the total number of cases in which criminal convictions were obtained was 625 rather than 530, and that the total number of criminal acquittals was 487 rather than 266 (so that the total number of criminal cases finalised with a verdict is 1 112 rather than 796). Aspects of this data (e.g. the ‘manner of closure’) are discussed later in the report. No note is made of the discrepancy, or an explanation given for it, in IPID’s annual reports.

## Possible inconsistencies in respect of reporting of cases to IPID by the police

As indicated above, there appear to be a disproportionately large number of complaints relating to the discharge of an official firearm (section 28(1)(c)) that are recorded in the Western Cape. Of the 5 991 cases relating to the discharge of an official firearm, 1 183 (20%) were recorded in the Western Cape. This number is disproportionate relative to the number of people in the Western Cape (in 2019, 11% of people living in South Africa were living in the Western Cape).<sup>28</sup> However, if there were exceptionally high levels of firearm usage by the police in the Western Cape, this would help to explain the high number of complaints relating to the discharge of a firearm. One indicator that this number is disproportionately high is the number of cases recorded under section 28(1)(c) as opposed to deaths as a result of police action (section 28(1)(b)). It is reasonable to assume that complaints relating to the discharge of an official firearm would be highest in provinces recording the highest rates of deaths as a result of police action, as the latter are also mostly linked to police shootings.

However, the 1 183 section 28(1)(c) cases recorded in the Western Cape mean that there were four cases under section 28(1)(c) for every one of the 284 fatal incidents recorded (a ratio of 42:10). By contrast, in KwaZulu-Natal, the province that recorded the highest number of fatal shooting incidents, there were 922 complaints relating to the discharge of an official firearm and 754 fatal incidents (a ratio of 12:10). In Gauteng, which recorded the second-highest number of deaths as a result of police action, there were 937 complaints relating to the discharge of an official firearm and 739 fatal incidents (a ratio of 13:10). The above figures therefore suggest that cases recorded by IPID in this category reflect differences in reporting practices between different provinces. The Free State also recorded complaints relating to the discharge of an official firearm at a ratio of 40:10 fatal incidents (570 to 141), a ratio only slightly lower than that for the Western Cape. The disparity between the Western Cape and other provinces in respect of recorded cases is accentuated even more in relation to cases of assault (section 28(1)(f)). During IPID's first seven years, 26% of assault cases recorded by IPID (7 006 out of 26 950) were recorded in the Western Cape.

The Free State, which in 2019 was home to 5% of South Africa's population, is another outlier province in terms of recording a disproportionately large number of section 28(1)(c) cases (570, which amounts to almost 10% of the 5 991 cases recorded nationally), as well as complaints of assault (3 780 which is 14% of the national total). The lowest number of assault cases recorded in the Western Cape was in 2015–16, when 871 were recorded. After the Western Cape, the province that has recorded the highest number of assaults in a single year is the Free State, which recorded 730 assault cases in 2012–13).

There appear to be certain anomalies in the cases recorded by IPID. Some provinces recorded certain categories of cases at rates that are much higher than in other provinces relative to population, as well as other indicators such as number of deaths as a result of police action. While underlying levels of police violence may play a role in this (in addition to the high percentage of assaults (14%), the Free State was also responsible for 12% of torture cases recorded nationally), it is possible that there are other factors that contribute to the profile of cases recorded in each province.

One possible factor may be differences in police reporting practices. This may include both factors to do with levels of police compliance with mandatory reporting practices, and also different approaches to the interpretation of sections 28 and 29 of the IPID Act. For instance, it is possible that the higher rates of section 28(1)(c) cases recorded in provinces such as the Western Cape or Free State may reflect the fact that cases where police discharge their firearms are reported in some provinces even when they do not originate in

complaints from members of the public. Perhaps some police commanders deal with these cases, like deaths, as cases that require mandatory reporting even if they are not the subject of a complaint.

**Recommendation 1:** IPID should account for what appears to be the disproportionately large number of section 28(1)(c) (complaints relating to the discharge of an official firearm) and section 28(1)(f) (specifically assault) cases that originate from the Free State and Western Cape. It should clarify if there are differences in police reporting practices, or other factors that contribute to this, and whether there is consistency between these and other provinces in the interpretation of, and compliance with, section 28 and section 29(1) of the IPID Act. IPID should issue a notice for purposes of clarification in order to ensure greater consistency in reporting between provinces. This notice should be circulated to all police stations and units.

## FRAMEWORK FOR ANALYSING THE COMPLETION OF INVESTIGATIONS AND CLOSURE OF CASES

The focus of this report is on the completion of investigations and not the closure of cases. As will be discussed, where an investigation has been concluded, the Independent Police Investigative Directorate (IPID) may refer it to the National Prosecuting Authority (NPA) (for criminal charges to be considered) or the South African Police Service (SAPS) or municipal police service (MPS) (for disciplinary steps to be taken). IPID may regard its investigative responsibilities in respect of these cases to have been completed. However, there may be requests from the NPA for further information to be provided. Investigators may also still have to attend court if the case is prosecuted. In IPID's 2019 Standard Operating Procedures (SOPs), the stage after the case has been referred to the NPA, SAPS or MPS is termed the 'post-decision-monitoring' stage.<sup>29</sup> It may only be some time after this, that is, after criminal prosecutions and/or disciplinary steps have been completed, that the case is 'closed' on the IPID case management system (CMS).

As the statistics provided in Table 7 indicate, less than 2% (796 out of 42 365) of IPID cases have resulted in completed criminal prosecutions, and only 5% (2 186 out of 42 365) have resulted in completed disciplinary action. IPID data indicate that only a small minority of the cases referred to the NPA result in prosecutions, and that no disciplinary action may be taken in some cases referred to the police as well.

In addition, an investigation may not generate prima facie evidence that a criminal or disciplinary offence has been committed. Questions therefore arise as to how such cases should be classified and disposed of. Currently, IPID closes as many as 50% of cases without referring them for criminal prosecution or disciplinary action.

### Main types of conclusions ('results') in respect of investigations – analytical framework

IPID's function is to ensure that cases that fall under section 28(1) (and potentially section 28(2)) are properly investigated.<sup>30</sup> However, IPID's investigations are different from those of ordinary police crime investigation agencies in that they are focused on people who are state employees. They therefore need to assess not only whether the evidence gathered indicates that criminal offences have been committed, but also whether the evidence indicates that the police may have committed violations under disciplinary regulations.

If a case falls within IPID's mandate and is properly investigated by IPID, there are therefore potentially three main types of investigative conclusions:

- 1. Type 1:** That there is a prima facie criminal case – this implies that the available evidence suggests that a criminal offence has been committed by one or more police members and that the police members allegedly responsible are identifiable. In this situation, the appropriate course of action is to refer the docket to the NPA. The NPA should then conduct its own independent assessment of the docket and, if it agrees with IPID's assessment and believes there is a prosecutable case, initiate a prosecution against the police members identified.
- 2. Type 2:** That there is a prima facie disciplinary case – if there is a prima facie criminal case, then there is implicitly also a prima facie disciplinary case, as the SAPS disciplinary regulations provide that misconduct includes any failure to comply with, or contravention of, 'an Act, regulation or legal obligation'.<sup>31</sup> However, there may be a prima facie disciplinary case even if there is not a prima facie criminal case, for instance where

the disciplinary infringement that is revealed by the investigation does not constitute a criminal offence (e.g. a death in custody or rape in custody perpetrated by a custody inmate) but there is evidence that SAPS members failed to comply with certain regulations related to the management of persons in custody.

- 3. Type 3:** That there is no prima facie disciplinary or criminal case – this may be for a range of different reasons:
- (a) No criminal or disciplinary offence committed:** The investigation may conclude that it is likely that no offence was committed by a police member – for instance, a person died in custody of natural causes but had a prior medical condition and the evidence indicates that the police complied with national instructions pertaining to the provision of medical assistance for people in custody. Further, none of the statements or other evidence indicates that any criminal offence or failure to comply with regulations by the police contributed to the death. Likewise, in respect of a death as a result of a shooting by the police, the evidence may support the conclusion that the police acted lawfully in order to protect themselves or another person, or that the use of lethal force was justified in terms of section 49 of the Criminal Procedure Act.<sup>32</sup>
  - (b) No perpetrator identified:** The investigation may conclude that an offence was probably committed but that there is not sufficient, reasonable evidence to identify a suspect. For instance, there may be strong evidence that someone was raped by a police member but it has not been possible to identify a likely perpetrator.
  - (c) The evidence is inconclusive for other reasons:** For instance, there may be a witness who claims that the police were acting illegally but the witness's evidence is contradictory in some respects. It is therefore not likely that a court will be able to rely on the witness's evidence to convict the accused; or a person claims that they were assaulted or tortured by the police and forced to make a confession, but the police deny this and there are no independent witnesses. There is thus no inherent reason for accepting the account of one party or the other, as both have a motive for not telling the truth.
  - (d) Case withdrawn by the complainant:** In, for instance, a case of assault, the complainant may decide to withdraw the complaint. Though this does not in itself necessarily indicate that no offence was committed, without the cooperation of a complainant it is likely to be futile to continue to pursue the case.
  - (e) Death of the alleged perpetrator:** Even if there is a prima facie case, the case may also be closed if the evidence indicates that the perpetrator was likely to have been someone who has died since the alleged offence took place.

As indicated above, in terms of terminology used in this report, Type 1 and Type 2 results are distinct from the 'outcome' of the case. However, Type 3 results are not necessarily distinct from the outcome of the case (though see further below in respect of the distinction between 'suspending' and 'closing' an investigation).

## Completing investigations and closing cases

One of the questions that arises is: When, in principle, should it be acceptable to close a case? In principle, a case should be regarded as suitable for closure if there has been a final outcome related to Type 1 (a criminal case has been completed) or Type 2 (a disciplinary case has been completed, even if the NPA declined to prosecute or the case was not referred to it for prosecution). However, the tendency is for IPID to regard cases as finalised and therefore

suitable for closure if they have been submitted for a decision to the NPA, but the NPA has declined to prosecute. Something similar may apply in respect of cases submitted for disciplinary action where no disciplinary action has been taken. Nevertheless, section 30(2)(a) of the IPID Act does require that the police 'initiate disciplinary proceedings' if IPID refers a case to them for disciplinary action to be taken. IPID may therefore contest the failure to take disciplinary action.

In terms of investigations that reach Type 3 conclusions, the answer is more complex. If a proper investigation is conducted and the investigation concludes that no crime or disciplinary infringement has been committed, it is in principle acceptable to close the case. Also, in many jurisdictions it is acceptable to close a case if the complainant/victim withdraws their cooperation or the alleged perpetrator has died.<sup>33</sup>

As indicated, the evidence may show that it is likely that a crime was committed but the police may not be able to arrest someone for the crime. The evidence may, for instance, be inconclusive as to the identity of the perpetrator. In such circumstances, it is not in principle appropriate to close the case. If there are no other leads, and there is no clear way of solving the case, some police departments would classify the investigation as 'suspended' rather than closed.<sup>34</sup> This is likely to mean that no further investigative attention is given to the case and is therefore the equivalent of closing the case. However, the classification of a case as suspended does serve as an acknowledgement that the investigators have not been able to bring the case to a definite conclusion.

## Case screening

Ideally, all cases should be fully investigated before the investigation is concluded. However, police departments, and other investigative agencies such as IPID, generally face resource constraints and cannot give full investigative attention to all cases. As a result, it is necessary for investigative agencies to introduce systems for 'case screening'. These aim to optimise the impact of investigative resources by prioritising cases on the basis of their seriousness as well as whether or not there are 'solvability factors' that indicate that an investigation has a greater chance of being successfully concluded. The need for case screening is amplified if agencies have a very large caseload and are poorly resourced relative to the caseload that they have, as is the case with IPID.

Unless resources are unlimited, it is inevitable that investigative agencies will apply their investigative resources selectively. It is therefore preferable that this be done in a rational and strategic manner. Systems for case screening impact on the amount of investigative attention that is given to each type of case. In practice, some cases are prioritised for investigation while others are concluded without a full and comprehensive investigation being conducted. The questions that this raises, however, are: What criteria are used for the screening of cases; are these criteria coherent and defensible; and are such criteria applied consistently?

Viewed in this way, it is therefore not in principle problematic if IPID does not investigate all cases comprehensively. It does mean, however, that IPID should provide a coherent account of how its investigative resources are used, of which cases are being prioritised for investigation, and of how this is linked to the types of investigative outcomes that are being achieved.



## THE RESULTS OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE'S (IPID) INVESTIGATIONS

Sine IPID is an investigative body, the finalisation of investigative work on cases is clearly an important stage in its work. During its first seven years (April 2012–March 2019), IPID received close to 43 000 cases.<sup>35</sup> It states that it has completed investigations into over 32 000 of these cases. Unfortunately, however, IPID does not report clearly on the results of its investigations. For instance, it is not possible to ascertain from IPID's annual reports how many of these investigations came to the conclusion that there was a prima facie criminal or disciplinary case against a South African Police Service (SAPS) or municipal police service (MPS) member.

### Approaches to concluding investigations within IPID

In order to interpret information about the conclusion of IPID investigations, it is necessary to understand something about the legal and regulatory framework that applies, and has applied, to IPID and its predecessor, the Independent Complaints Directorate (ICD). The IPID Regulations, for instance, outline what are supposed to be the minimum investigative steps to be taken by IPID investigators when cases are referred to them.<sup>36</sup> Regulation 4, for example, which deals with cases under sections 28(1)(a) and (b), states that, in all death cases, IPID investigators must take various steps that include, but are not limited to, attending 'the scene where the death occurred, [overseeing] the scene and [conducting] a preliminary investigation', identifying and recording 'particulars of all potential witnesses for purposes of interviewing them', visiting 'all identified witnesses for purposes of obtaining statements that may assist in the investigation', attending 'the post-mortem', and advising 'the person conducting the post-mortem of observations made at the scene of death as well as areas that should be concentrated on'.<sup>37</sup>

Once these investigative steps have been taken, investigators must:

*submit a report on the investigation of the death containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Services or criminal prosecution of such member, to the Executive Director or the relevant provincial head, as the case may be.*<sup>38</sup>

At this point, the investigation should be complete, or what has come to be called 'decision-ready'.

### The legal framework

#### *The Independent Complaints Directorate (ICD)*

Questions to do with the completion of investigations were not dealt with in detail in the provisions of the SAPS Act applicable to the ICD. The main provision in the Act (the provisions were repealed when the IPID Act came into force in April 2012) referred to the power of the ICD Executive Director to 'submit the results of an investigation to the attorney-general for his or her decision'.<sup>39</sup> The Attorney General was the equivalent at that time to the Director of Public Prosecutions (DPP) of the National Prosecuting Authority (NPA). The provision used the word 'may' and therefore implied that the Executive Director was required to exercise some discretion as to whether to submit the results of an investigation to the Attorney General. However, it may be assumed that the Executive Director was obliged to submit the results of an investigation to the NPA if the investigation provided prima facie evidence that an offence had been committed.

It is possible that one aspect of the institutional culture of the ICD that was carried over to IPID was the centrality attached to getting dockets to a stage where they were ready to be handed over for a prosecutorial decision. Initially, this was to the Attorney General. However, as from October 1998 (when the NPA Act came into operation),<sup>40</sup> this was to a DPP. This may partly explain why the emphasis and focus on preparing dockets for prosecutorial decision have sometimes been translated into an idea that, once an investigation is complete, it must be handed over to the NPA for its decision, irrespective of the conclusions arrived at.

### *The IPID Act*

The IPID Act contains provisions similar to those in the SAPS Act. The Act states that the IPID Executive Director must refer 'criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution.'<sup>41</sup> The Act also refers to the authority of the Executive Director to refer disciplinary recommendations to the police.<sup>42</sup>

There are differences in the wording of the provisions applicable to the ICD ('may refer the results of an investigation') and in the IPID Act ('must ... refer criminal offences revealed as a result of an investigation ... for prosecution'). What is important to note is that neither provision requires that all investigations be referred to the prosecuting authority. In the case of the ICD, the authority of the Executive Director was discretionary. In the case of the IPID Act, it is explicitly stated that the results of an investigation must be submitted to the NPA only when an investigation confirms that there is prima facie proof that a criminal offence was committed. The provision would apply only in situations where an investigation provides prima facie evidence that a specific person (i.e. a police member) has committed a criminal offence. If the investigation shows that an offence has been committed, but that no suspect is clearly identifiable, this would not require referral to the NPA, as such a case would not be referred 'for prosecution'.

## **Reporting on completed cases**

### *The first three years (April 2012–March 2015)*

Since IPID was established in 2012, in the place of the ICD, there have been shifts in how the finalisation of investigations has been recorded in IPID annual reports. During the first three years of operation, IPID referred to the conclusion of investigations as 'completed'. During this period, IPID annual reports used indicators referring to 'cases completed within 90 days'<sup>43</sup> and reported separately on cases that had been completed during the full financial year.<sup>44</sup>

Although the reports stated that cases were complete, it was not clear what criteria were used by IPID in deciding to refer cases to the NPA. The reports sometimes indicated that cases were referred to the NPA only 'where there [was] evidence of wrongdoing',<sup>45</sup> and, likewise, that disciplinary referrals were made where there was evidence of disciplinary infringements, though IPID reports were sometimes confusing regarding this issue.<sup>46</sup>

But, if cases were referred to the NPA 'where there [was] evidence of wrongdoing', this raises questions about the large number that were not prosecuted. IPID data on the 'manner of closure' indicates that, over the last seven years, the NPA declined to prosecute 89% of the cases submitted to it (see Table 8 on the following page).<sup>47</sup>

**Table 8:** IPID cases submitted for prosecution as reflected in IPID data on ‘manner of closure’ (April 2012–March 2019)

	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019 <sup>48</sup>	Total	Percentage (%)
<b>Acquitted</b>	35	45	64	56	132	122	33	487	4.9
<b>Convicted</b>	52	79	137	72	124	135	26	625	6.3
<b>Declined to prosecute</b>	127	469	1 034	1 041	2 480	2 601	1 051	8 803	88.8
<b>Total</b>	214	593	1 235	1 169	2 736	2 858	1 110	9 915	100.0
<b>% of all cases (7 years)</b>	2.2	6.0	12.5	11.8	27.6	28.8	11.2	100.0	
<b>% of cases in year convicted</b>	24.3	13.3	11.1	6.2	4.5	4.7	2.3	6.3	
<b>% of cases in year declined</b>	59.3	79.1	83.7	89.1	90.5	91	94.7	88.8	

### *Cases completed in the April 2015–March 2019 period*

In April 2015, IPID put in place new Standard Operating Procedures (SOPs). The SOPs introduced the term ‘decision-ready’ to describe cases where the investigation had been completed. According to IPID’s 2015 SOPs, a case is ‘decision-ready’ ‘where an investigator has conducted quality investigations [sic] and obtained all necessary evidence to enable the [NPA]<sup>49</sup> to make a decision whether to prosecute or not.’<sup>50</sup> The SOPs state that all cases under section 28(1)(a) to (g) ‘must be referred for a decision’ to the Senior Public Prosecutor or Director of Public Prosecutions’ before closure’.

One implication is that, whether or not the evidence supports the conclusion that a criminal offence has been committed and the investigation provides firm evidence about the identity of the alleged perpetrator, a case must still be referred to the NPA for it to make a decision. A further implication is that the term ‘decision-ready’ refers to a decision that must be made by the NPA. The SOPs imply that, though IPID decides whether a case is ‘decision-ready’ or not, it is ultimately the NPA’s function to assess the merits of all cases and what to do with them on the basis of the evidence that is presented.

If an investigation comes to the conclusion that there is prima facie evidence that a criminal offence has been committed, the implication is also that there is prima facie evidence of a disciplinary offence. There is, therefore, likely to be an overlap between cases that are referred to the NPA and cases that are referred to the SAPS or one of the MPSs for disciplinary action. Partly for this reason, IPID data are unclear as to the total number of cases that are referred to the NPA and/or the police for prosecution and/or disciplinary action.

These problems of lack of clarity are reflected in IPID data on the closure of cases (‘manner of closure’). In this data, cases are classified as ‘acquitted’, ‘convicted’ and ‘declined to prosecute’. However, it is unclear whether these categories refer only to criminal cases referred to the NPA or whether they also include cases referred only for disciplinary action. The categories nevertheless imply that these are all cases referred for consideration of either a criminal or disciplinary prosecution.

As reflected in Table 8, there was a slight decline in the total number of cases closed following submission for prosecution (from 1 235 to 1 169) in the year in which the new SOPs were introduced (2015–16). However, in the following two years, the number of cases of this kind surged dramatically to 2 480 (in 2016–17) and then to 2 601 (in 2017–18). Out of the seven years since IPID was established, 56% (5 594 out of 9 915) of all the cases that have been closed following submission for prosecution, were closed in the two years from April 2016 to March 2018.

The data on ‘manner of closure’ indicates that there was a change in the profile of case outcomes after the introduction of the 2015 SOPs:

- Prior to the introduction of the SOPs in 2015–16, the percentage of cases closed as ‘convicted’ had never been less than 11%. In 2015–16, however, it decreased to 6%. In the following years, it has consistently been less than 5%.
- Prior to the introduction of the SOPs in 2015–16, the percentage of cases closed as ‘declined’ had never exceeded 84%. In 2015–16, however, it increased to 89%. In the following years, it has consistently been greater than 90%.

The data on manner of closure indicates that the number of prosecutions that were completed with a verdict increased in the two years subsequent to 2015–16 (only 128 were completed in 2015–16, but 256 were completed in 2016–17 and 257 in 2017–18). Nevertheless, in terms of other measures, the increased rate of referrals did not translate into an improvement in results:

- During this period, the percentage of cases that culminated in a decision not to prosecute increased to over 90%.
- In addition, convictions declined not only as a percentage of all cases referred for prosecution, but also relative to cases prosecuted and finalised with a verdict. According to this IPID data, 2016–17 was the first year in which the number of acquittals (132) exceeded the number of convictions (124). In the following year, the number of convictions (135) was only slightly greater than acquittals (122).

(Note that, in the above part of the analysis, which refers to IPID data on ‘manner of closure’, the 2018–19 data has been largely ignored for purposes of analysis, as it appears to be incomplete and is also incompatible with other IPID data on case outcomes in 2018–19. The reason for these inconsistencies is unclear).

### *The 2019 SOPs*

New IPID SOPs came into effect on 1 April 2019. The 2019 SOP substantially redefines the concept of ‘decision-ready investigation’ as ‘an investigation where an investigator has conducted [a] quality investigation and obtained all the necessary evidence to either refer the case to the NPA for a decision, or make a recommendation to the SAPS/MPS or make a policy-related recommendation, or a general recommendation.’<sup>51</sup>

The 2019 definition involves an apparent shift in the meaning of the term ‘decision-ready’ in terms of who is responsible for decision-making at this stage:

- In terms of the 2015 definition, classification of a case as decision-ready implies that the case is now ready to be submitted to the NPA for the NPA to make a decision as to whether the evidence provided in the docket provides a sufficient basis for a prosecution.
- In terms of the 2019 definition, the ‘decision’ that is referred to is now a decision that is to be made by IPID, not by the NPA. ‘Decision-ready’ therefore means that the

investigation has been brought to a stage of completion that requires IPID decision-making as to what type of further action, if any, should be taken. The 2019 definition refers to NPA decision-making as one further possibility, but now does not imply that the NPA is the only important decision-making agent.

Consistent with the new definition, the 2019 SOPs provide for four categories of 'decision-ready investigation'<sup>52</sup> (also referred to as 'methods of completion')<sup>53</sup>:

- **Decision-ready investigation (criminal referral)** – i.e. an investigation in respect of which IPID is in a position to refer a case to the NPA for a decision;
- **Decision-ready investigation (departmental recommendation)** – i.e. an investigation in respect of which IPID is in a position to refer a recommendation to the SAPS/MPS;
- **Decision-ready investigation (policy recommendation)** – i.e. an investigation in respect of which IPID is in a position to refer a policy-related recommendation to the SAPS/MPS, the Civilian Secretariat for Police Service or the Minister; and
- **Decision-ready investigation (general recommendation)** – i.e. an investigation in respect of which IPID is unable to complete a case based on the aforementioned methods. These types of recommendations are made where cases are referred to any relevant stakeholder for investigation or are completed as 'undetected'.

There are some confusing aspects to the manner in which the term 'decision-ready' is used in the SOPs. In the section dealing with investigative procedure and the conclusion of investigations, the SOP states that a case is not in fact 'decision-ready' if it is a decision-ready 'departmental recommendation' or decision-ready 'policy recommendation'.<sup>54</sup> Cases are to be referred to the NPA only if they are 'decision-ready (criminal referral)' cases. (The SOPs make an exception to this in relation to 'unnatural deaths'. All of these must be referred to the NPA if there is evidence of police involvement. Otherwise, they are to be referred to the SAPS for further investigation.)<sup>55</sup> Notwithstanding their classification as 'decision-ready', cases that are categorised as 'decision-ready (departmental referral)' and 'decision-ready (policy recommendation)' cases are apparently not to be regarded as 'decision-ready'. Compliance with these provisions would imply that a case cannot be closed even if IPID has concluded that there is no criminal case and the disciplinary case has been concluded with a verdict.

Leaving aside these confusing provisions, there are at least two main mechanisms for concluding that an investigation is complete:

- One is by classification of the case as 'decision-ready (criminal referral)'.<sup>56</sup> In terms of the IPID 2019 SOPs, once a case is classified as 'decision-ready (criminal referral)', it falls under a section of the Regulations dealing with 'post-decision monitoring' (PDM).<sup>57</sup> The case will then be closed once a prosecution is completed (either by way of a conviction or an acquittal) or (the available information suggests) if the NPA declines to prosecute.
- The other is by classification of the case as 'decision-ready (general recommendation)'.<sup>58</sup> Under the 2019 SOPs, if a case is completed as a 'general recommendation', this means that the case is to be closed.<sup>59</sup>

(Definitions of 'result of case' also indicate that cases can be closed as 'policy completion', 'duplicate', and 'outside mandate'. It is not clear what the distinction is between 'outside-mandate' cases and those that may be referred to another organisation for investigation and closed as 'general recommendations').

## Alternative completions – general results, completions or recommendations and ‘special closures’

For purposes of analysing the finalisation of investigations by IPID, it is therefore possible to distinguish three periods:

- During the first three years (April 2012–March 2015), it would appear that the practices regarding the completion of cases within IPID were those carried over from the ICD.
- In April 2015, new SOPs introduced the term ‘decision-ready’ to refer to cases which were ready to be referred to the NPA. The SOPs stated that all cases had to be referred to the NPA once the investigation was complete (i.e. decision-ready). This SOP was in force for the following four years up to March 2019.
- In April 2019, further revised SOPs came into force.

During four of the last seven years, IPID SOPs therefore provided that all cases had to be referred to the NPA once the investigation had been completed. However, IPID data on the manner of closure indicates that this has not been the case. As reflected in Table 9, over the last seven years, more than 50% of IPID cases that have been closed, have been closed without being referred for either criminal or disciplinary prosecution.

As reflected in Table 9, the number of cases closed by IPID began to surge in 2015–16, increasing to 3 050 from 2 234 in 2014–15. However, as noted above (in Table 8), in 2015–16, the number of cases closed after referral for prosecution in fact declined slightly compared with the previous year (from 1 235 to 1 169). The surge in the overall number of cases closed was primarily the result of a dramatic increase in cases closed without referral for prosecution. These numbered 1 881 in 2015–16, accounting for 62% of cases closed in that year.

In the 2016–17 period, there was an even more dramatic increase in the number of cases closed, with the number closed in that year reaching an all-time high of 4 914. This reflected a further increase in cases closed without referral for prosecution (from 1 881 to 2 178) but was also the result of the dramatic increase in cases referred for prosecution to the NPA.

**Table 9:** Cases referred, and not referred, for prosecution (IPID data on ‘manner of closure’ – April 2012–March 2019)

	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	Total	Percentage (%)
<b>Cases referred for prosecution ('prosecution cases')</b>	214	593	1 235	1 169	2 736	2 858	1 110	9 915	49.6
<b>Cases not referred for prosecution ('non-prosecution cases')</b>	1 053	1 676	999	1 881	2 178	1 381	905	10 073	50.4
<b>Total</b>	1 267	2 269	2 234	3 050	4 914	4 239	2 015	19 988	100.0
<b>% of all cases closed (7 years)</b>	6.3	11.4	11.2	15.3	24.6	21.2	10.1	100.0	
<b>% of non-prosecution cases closed during this year</b>	83.1	73.9	44.7	61.7	44.3	32.6	44.9	50.4	

Table 10 provides IPID data on the ‘manner of closure’ pertaining to the 10 073 cases that were closed without referral for prosecution. Over the first three years, namely April 2012 to March 2015, IPID cases that were closed without referral for prosecution were generally classified as ‘unsubstantiated’, ‘referred’ or ‘withdrawn’ if they were not referred for prosecution. Overall, in the first seven years of IPID’s existence, 86% of closures have been in these three categories.

- In all years except 2018–19, more cases were closed as ‘unsubstantiated’ than in any of the other categories listed in Table 10.
- In the first three years of IPID, more cases were closed as ‘withdrawn’ (539) than as ‘referred’ (366). The 539 cases closed as ‘withdrawn’ during this period constitute two-thirds (66%) of the 812 cases closed as ‘withdrawn’ during the seven years of IPID’s existence.
- There was a peak in cases classified as ‘referred’ over the three years from April 2015 to March 2018, with 69% of cases closed as ‘referred’ (1 214 out of 1 754) in this period.

Overall, IPID’s approach has been inconsistent. The impression created is not that clearly defined terms have been applied in a consistent way. Rather there have been periods in which some terms have been preferred. In other periods, other terms have come into favour.

**Table 10:** IPID data on cases closed without referral for prosecution (April 2012–March 2017)

	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	Total	Percentage (%)
Unsubstantiated	777	1 397	593	907	1 464	753	216	6 107	60.6
Referred	179	70	117	541	410	263	174	1 754	17.4
Withdrawn	90	191	258	76	86	97	14	812	8.1
Undetected	0	0	0	0	0	142	451	593	5.9
Indeterminate	0	0	0	159	45	0	2	206	2.0
Unfounded	0	0	0	65	51	8	2	126	1.3
Duplicate	0	0	0	102	74	40	10	226	2.2
Other six categories	7	18	31	31	48	78	36	249	2.5
<b>Total</b>	<b>1 053</b>	<b>1 676</b>	<b>999</b>	<b>1 881</b>	<b>2 178</b>	<b>1 381</b>	<b>905</b>	<b>10 073</b>	<b>100</b>
<b>% of all cases (7 years)</b>	<b>10.5</b>	<b>16.6</b>	<b>9.9</b>	<b>18.7</b>	<b>21.6</b>	<b>13.7</b>	<b>9.0</b>	<b>100.0</b>	

### *Terminology used for closed alternative completions*

As indicated, the 2015 SOPs stated that all cases had to be referred to the NPA. However, they also provided that a case could be concluded (and, by implication, closed) either if there was a ‘criminal result’ (prosecution leading to a conviction, an acquittal, etc.), a ‘departmental result (disciplinary measures potentially leading to a conviction, an acquittal, etc.)’ or a ‘general result’ where ‘no recommendation [was] made.’<sup>60</sup> The SOPs provided six subcategories under which a case could be concluded as a ‘general result’. These included the ‘unsubstantiated’<sup>61</sup> and ‘referred’ categories that were already in use, as well as a number of other categories.

### *Misleading and confusing terminology*

It is unlikely that any of these subcategories have been applied in a consistent manner. Their use is likely to have varied between different IPID offices and different IPID officials. One factor that is likely to have contributed to this is that they are often poorly defined.

### *Unsubstantiated*

Until 2018–19 (when ‘undetected’ took over this function), the ‘unsubstantiated’ category appears to have been used as a general ‘catch-all’ for cases closed that were assessed to be unsuitable for criminal or disciplinary prosecution. As indicated, 61% of cases that were closed without referral for prosecution were classified in this category, with the largest numbers in

2013–14 (1 397) and 2016–17 (1 464). The term ‘unsubstantiated’ implies that IPID received a case that contained *allegations* of wrongdoing by the police, and that such allegations had not been substantiated by the investigation. The use of the category is particularly inappropriate as a ‘catch-all’ for ‘general recommendations’ closures in relation to section 28(1)(a) and (b) cases (deaths in police custody and as a result of police action) that were received by IPID. Of deaths-in-custody cases closed between April 2012 and March 2019, for instance, 49% (585 out of 1 197) were classified as ‘unsubstantiated’.

The police are required to report all death (section 28(1)(a) and (b)) cases to IPID irrespective of whether there are allegations of wrongdoing. It therefore does not make sense to apply the term ‘unsubstantiated’ when closing death cases unless the original case included allegations of wrongdoing by the police. Broadly, death cases may be differentiated in terms of whether:

- They include allegations of wrongdoing – these would include most deaths related to domestic violence and other private disputes (see Table 1). These account for the minority of death cases (13% of deaths as a result of police action).
- They are reported in terms of mandatory reporting provisions but do not include allegations of wrongdoing. Most death cases are reported to IPID in terms of mandatory reporting provisions and do not include allegations of wrongdoing. Insofar as these deaths may be related to wrongdoing by the police, this is only likely to be revealed if it is exposed by way of an investigation. However, many investigations into deaths are probably fairly superficial. Figures provided by IPID in 2018–19 indicate, for instance, that IPID personnel did not attend 41% of deaths-in-custody scenes (88 out of 216)<sup>62</sup> and 37% of deaths-in-custody post-mortems (79 out of 216).<sup>63</sup> Even if an in-depth investigation is conducted, it would be preferable in these cases for IPID to use a classification that clearly indicates that the investigative steps that were taken did not find any evidence of criminal or disciplinary infringements,<sup>64</sup> rather than implying that there were allegations that were ‘unsubstantiated’.

### *Referred*

The ‘referred’ category is also ambiguous in its meaning. In the 2015 SOP, it was defined to mean a case ‘referred to the most appropriate organisation or institution’ by the Executive Director or Provincial Head,<sup>65</sup> and the 2019 SOPs have a similar definition.<sup>66</sup> However, these definitions do not adequately clarify the intended meaning of the term. The term ‘closed as referred’ is also defined as one of the subcategories of ‘general result’. In other words, the 2015 SOP indicates that a case that is closed as ‘referred’ is a case that has not been referred to the NPA, or to the police for disciplinary action. Instead, it has been referred to another organisation. The most appropriate circumstances for referring a case to another organisation (other than the NPA, or to the police for disciplinary action) is that the case does not fall within the mandate of IPID and needs to be referred to another investigative agency (e.g. it may be a case implicating the police but not one that falls under section 28(1) or (2)). In other words, it is an ‘investigative referral’ rather than a referral for prosecutorial decision-making or disciplinary action.

IPID has used the term ‘referred’ extensively to account for the closure of cases that, at face value, fall within its mandate. As reflected in Table 11, 30% of cases referred were cases of assault, and a combined 36% were either cases of deaths in custody (18.4%) or complaints relating to the discharge of a firearm (17.6%). Closing cases as ‘referred’ has been especially significant as regards deaths in custody, with 11% of cases received closed as ‘referred’ (322 of 2 806 death-in-custody cases). Deaths in custody clearly fall within the mandate of IPID and it would be inappropriate to refer them to another body for investigation. It therefore seems possible that some of the deaths in custody that are referred to an inquest are also classified as ‘referred’ (IPID data on the manner of closure also includes the category ‘inquest’, which accounts for 43 closures). This, then, is a



category of referral which is distinct from investigative referrals as well as cases referred to prosecutors, or to the police for disciplinary action. (It should be noted that section 7(9) of the IPID Act enables the IPID Executive Director to refer investigations to the SAPS National or Provincial Commissioners. Presumably, this only applies to cases that fall outside of section 28(1), as IPID is apparently obliged to investigate cases that fall within section 28(1)).

**Table 11:** Cases closed as ‘referred’ by IPID (April 2012–March 2019)

	No.	Percentage (%)
Deaths in custody	322	18.4
Deaths as a result of police action	148	8.4
Complaint of discharge of an official firearm	308	17.6
Rape by a police officer	19	1.1
Rape in custody	14	0.8
Torture	20	1.1
Assault	533	30.4
Corruption	83	4.7
Non-compliance with IPID Act	1	0.1
Other criminal matters/misconduct	117	6.7
Systemic corruption	0	0
Misconduct <sup>67</sup>	188	10.7
<b>Total</b>	<b>1 754<sup>68</sup></b>	<b>100.0</b>

**Recommendation 2:** IPID should provide clear definitions of the term ‘referred’ and take steps to ensure that these definitions are consistently implemented. Definitions should distinguish between investigative referrals, referrals to the NPA, referrals for disciplinary action, and referrals for an inquest. (It may also be important to distinguish between referrals to an inquest that are made by IPID and referrals that are made by the NPA after cases have been referred to it.)

### *Other subcategories*

Apart from ‘unsubstantiated’ and ‘referred’, some of the other subcategories introduced by the 2015 SOPs in respect of cases closed as ‘general results’ were ‘indeterminate’,<sup>69</sup> ‘unfounded’,<sup>70</sup> and ‘duplicate’.<sup>71</sup> As can be seen from Table 9, there was some enthusiasm for using these categories in 2015–16, with 17% (326 out of 1 881) of non-prosecution cases that were closed in that year being closed in one of these subcategories. However, in the following years, use of these categories tailed off and they were infrequently used. Instead, in 2017–18, a new category, ‘undetected’, came into use and appears to have then become established as the default category for classification of ‘non-prosecution’ cases, with 50% (451 out of 905) of non-prosecution closures in this category in 2018–19.

### *Note of caution*

As a result of the uncertainty as to how terms are used by IPID, it is necessary to introduce a note of caution with respect to the distinction between cases referred for prosecution and cases ‘not referred’ as used above. However, the element of uncertainty that is introduced by the lack of

clarity about these terms does not detract from the overall analysis presented in this report.<sup>72</sup> Terms used in Table 10 that are relevant here include the following:

- As already indicated, the term 'referred' is defined in an ambiguous manner. Cases classified in this way may include some cases referred for prosecution.
- As indicated, 'withdrawn' has also been a significant classification, particularly in the early years of IPID prior to the introduction of the 2015 SOPs. However, cases may be withdrawn by the victim or complainant during the investigation phase but may also be withdrawn by a prosecutor (e.g. if new evidence emerges that demonstrates convincingly that there is no basis for the charges).<sup>73</sup> It is possible that cases classified by IPID as withdrawn include both types of case.
- There are two categories, 'dismissed' (168 cases or 0.8% of all cases closed) and 'discharged' (2 cases), which are not defined by IPID. It is not clear what 'dismissed' means, as it could refer to the outcome of a disciplinary procedure or the disposal of cases in court. One use of the term 'discharged' is to refer to cases that are suspended by the presiding officer in court after the prosecution case has been closed and where the presiding officer concludes that the accused has no case to answer.

The information available indicates that, prior to 2015, it was permissible for IPID to close cases without referring them to the NPA. However, as shown, from April 2015 onwards, SOPs required that all cases be submitted to the NPA. IPID data nevertheless indicate that, notwithstanding these provisions, as many as 50% of closed cases were closed without submission either to the NPA or to the police for consideration of disciplinary action.

### *'Special closures'*

IPID has itself alleged that there were irregularities involving the 'alleged premature closure of cases without proper investigations' during the period from 12 March 2015 to October 2016 when IPID Executive Director Robert McBride was on suspension and other members of his senior management team had been transferred from their positions or subjected to disciplinary processes.<sup>74</sup> A November 2019 IPID presentation to the Portfolio Committee on Police on its investigation into these irregularities indicated that the investigation was focused on 1 661 cases that had been closed as 'special closures'. Of these cases, 1 259 (76%) were in KwaZulu-Natal, 154 (9%) in Gauteng, 121 (7%) in the Free State, and 67 (4%) in the Western Cape, with the remaining 60 being distributed over the other five provinces. The period during which these cases were closed appears to extend from 2015 to 2017,<sup>75</sup> and therefore extends beyond the period during which McBride was suspended. It is not clear why these 1 661 cases were singled out and what distinguished them from other 'special closures' during this period. (It is interesting that the IPID investigation focuses mainly on 'special closures' in KwaZulu-Natal. As reflected in Table 14, KwaZulu-Natal is in fact the province that has classified the smallest percentage of investigations as 'complete'. This suggests that KwaZulu-Natal may be the province in which it is least likely that cases will be closed prematurely, and that an investigation that is focused on cases that have been closed irregularly should focus more on the other provinces.)

The presentation stated that 'special closure' is a 'process to enable provincial management to complete and close cases which do not require referral to the NPA or recommendations to the SAPS/MPS'.<sup>76</sup> 'Special closure' therefore appears to be another term for what is referred to in the 2015 SOPs as a 'general result' and in the 2019 SOPs as a 'general completion'<sup>77</sup> or 'general recommendation'.<sup>78</sup>

Notwithstanding the provisions of IPID's 2015 SOPs, once an IPID investigation is complete it can therefore be referred to the NPA, and/or be referred for disciplinary purposes to the SAPS or MPS,

or can be closed by way of a 'general result/special closure'. Throughout IPID's existence, therefore, IPID has closed a number of cases without referring them to the NPA or the police. IPID's data indicates that the number of cases closed in this manner is in the region of 10 000. As reflected in Table 10, over 40% of cases closed in this manner were closed in 2015–16 (19%) and 2016–17 (21%). Nevertheless, this type of closure has been a consistent feature of IPID's existence.

## IPID data on completed investigations

As reflected in Table 12, according to IPID, over the seven years from April 2012 to March 2019, 32 109 investigations were finalised. As can be seen, there was a surge in the number of investigations classified as 'decision-ready' in 2015–16, with the number of cases (7 407) being 2 270 more than the number completed in the previous year (5 137) and 3 000 more than the number completed in any subsequent year.

The surge in the number of cases completed was achieved primarily by way of a major escalation in cases of assault classified as 'decision-ready', with these increasing by 1 996 from the previous year. Cases of assault accounted for 88% (1 996 out of 2 270) of the increase in investigations finalised in 2015–16, compared with the previous year.<sup>79</sup> Data from IPID annual reports indicates that this increase in assault cases classified as 'decision-ready' was partly concentrated in the Western Cape, with an additional 1 215 cases of assault (1 874 in 2015–16 as opposed to 659 in 2014–15). The 1 215 additional assault cases completed in the Western Cape accounted for 61% of the additional 1 996 assault cases and 54% of the additional 2 270 investigations classified as 'complete'.

**Table 12:** IPID data on investigations completed or 'decision-ready' (April 2012–March 2019)

	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	Total	Percentage (%)
Deaths in custody	180	235	267	229	140	179	180	1 410	4.4
Deaths as a result of police action	319	379	373	470	115	227	280	2 163	6.7
Complaint of discharge of an official firearm	393	422	866	959	805	271	552	4 268	13.3
Rape by a police officer	106	128	119	130	61	102	127	773	2.4
Rape in custody	12	12	27	25	5	14	14	109	0.3
Torture	14	30	53	124	63	62	129	475	1.5
Assault	2 261	3 322	3 074	5 070	2 040	1 841	2 707	20 315	63.3
Corruption	53	84	87	130	66	101	85	606	1.9
Other criminal matters/misconduct	461	367	120	123	110	82	41	1 304	4.1
Systemic corruption	2	1	4	2	1	5	4	19	0.1
Non-compliance with IPID Act	95	48	52	88	43	50	52	428	1.3
Misconduct <sup>80</sup>	67	17	95	57	0	0	0	236	0.7
<b>Total</b>	<b>3 963</b>	<b>5 045</b>	<b>5 137</b>	<b>7 407</b>	<b>3 449</b>	<b>2 934</b>	<b>4 171</b>	<b>32 106</b>	<b>100.0</b>

Table 13 compares the data on cases completed with data on cases received. There are substantial disparities between different categories of cases with respect to the percentage classified as complete. At the upper end, 92% of investigations of rape by a police officer, 87% of cases of non-compliance with the IPID Act, 84% of cases of deaths in custody, and 78% of cases of rape in police custody have been classified as complete. At the lower end, only 44% of torture cases and 44% of systemic corruption cases have been categorised in this way.

**Table 13:** IPID data on categories of cases completed or 'decision-ready' as a percentage of cases received (April 2012–March 2019)

	Cases received	Investigations completed (decision-ready)	Percentage (%)	Rank
Deaths in custody	1 686	1 410	83.6	3
Deaths as a result of police action	2 806	2 163	77.1	5
Complaint of discharge of an official firearm	5 991	4 268	71.2	8
Rape by a police officer	844	773	91.6	1
Rape in custody	140	109	77.9	4
Torture	1 078	475	44.1	11
Assault	26 590	20 315	76.4	6
Corruption	801	606	75.7	7
Other criminal matters/misconduct	1 896	1 304	68.8	9
Systemic corruption	43	19	44.2	10
Non-compliance with IPID Act	490	428	87.3	2
Misconduct	May be included in data on 'other criminal matters'	236	May be included in data on 'other criminal matters'	?
<b>Total</b>	42 365	32 106	75.8	

Table 14 compares cases received and cases classified as decision-ready on a provincial level. In terms of the rate at which cases are classified as decision-ready, there are again major differences between provinces. In the Northern Cape, 95% of cases received have been classified as decision-ready, while, in the Free State, 92% have been classified in this way. On the other hand, in KwaZulu-Natal, only 52% have been classified as decision-ready, while, in Gauteng, 64% have been classified as decision-ready. In terms of the number of cases classified as decision-ready, by far the greatest number (7 370) of cases have been in the Western Cape. However, the number of cases received (9 129) is substantially greater than the number received in any other province (Gauteng with 5 274 is the next-highest). As a result, the Western Cape only falls in the middle of the ranking in terms of percentage of cases classified as decision-ready.

The data in Table 15 show that, relative to investigations completed:

- The highest rates of criminal convictions and prosecutions have been achieved for deaths as a result of police action, with 9% of completed investigations translating into a conviction. As indicated, the majority of these convictions are for intimate-partner killings and other killings relating to private disputes. Relative to investigations completed for these types of deaths, it is possible that up to 50% have translated into convictions.<sup>81</sup> The rate of convictions for the balance of section 28(1)(b) cases is 6% relative to investigations completed.<sup>82</sup>

- In other categories, rates of criminal convictions are lower, with ‘other criminal offences’ (4.2%), rape by a police officer (4.0%) and corruption (3.8%) being the next-most productive categories in generating criminal convictions.
- Complaints relating to the discharge of a firearm generate criminal convictions in 1.3% of cases. All other categories have generated criminal convictions in less than 1% of cases, with 0.8% of complaints of assault and 0.4% of cases of torture (2 cases out of 475) resulting in convictions.

**Table 14:** IPID cases completed or ‘decision-ready’ as a percentage of cases received in each province (April 2012–March 2019)

	Cases received	Investigations completed (decision-ready)	Percentage (%)	Rank
Eastern Cape	5 109	3 868	75.7	7
Free State	5 274	4 838	91.7	2
Gauteng	6 757	4 349	64.4	8
KwaZulu-Natal	6 274	3 289	52.4	9
Limpopo	2 571	2 183	84.9	4
Mpumalanga	2 769	2 179	78.7	6
North West	2 441	2 086	85.5	3
Northern Cape	2 041	1 943	95.2	1
Western Cape	9 129	7 370	80.7	5
<b>Total</b>	<b>42 365</b>	<b>32 105<sup>83</sup></b>	<b>75.8</b>	

The picture in relation to disciplinary cases is somewhat different:

- Although non-compliance with the IPID Act is a criminal offence, it appears that there is little investment in pursuing such non-compliance as a criminal matter. However, the disciplinary picture is very different, with 25% of cases completed in this category being pursued through disciplinary prosecutions and 20% leading to convictions.
- As indicated (above Table 4), cases of rape in custody generally do not implicate the police in criminal offences but may implicate them in disciplinary ones. Of investigations completed, 12% led to disciplinary convictions – with these representing virtually all (13 out of 14) disciplinary cases in this category that were completed by means of a verdict.
- Relative to other categories, there is also a relative high number of disciplinary convictions for cases recorded as misconduct (11%), for ‘other criminal offences’ (10%), and for rape by a police officer (9).
- Other than in these categories, 5% or less of investigations completed led to disciplinary convictions. The category that generates the highest number of disciplinary convictions is assault, which accounts for 54% (749 out of 1 379), but these are only 4% of completed assault investigations.

A notable feature of the data is the relatively low number of completed-assault criminal prosecutions that resulted in convictions. Of the 306 cases that were prosecuted, only 146 (48%) resulted in convictions, with 160 (52%) ending in acquittals. The small number of criminal prosecutions for deaths in custody, rape in custody, and non-compliance with the

IPID Act also had very low conviction rates. Overall, 33% of criminal cases that were finalised with a verdict (266 out of 796) resulted in acquittal. For disciplinary cases, the figure (37%, or 807 out of 2 186) is higher. Assault cases accounted for nearly 60% of disciplinary prosecutions that resulted in a verdict (1 276 out of 2 186). As with criminal prosecutions, however, they also had high rates of disciplinary acquittal (41%), similar to the rates of acquittal for torture (42%), with rates of acquittal for death-in-custody disciplinary prosecutions being particularly high (48%).

**Table 15:** IPID data on criminal and disciplinary outcomes relative to investigations completed, by category (April 2012–March 2019)

	Investigations completed ('decision-ready')	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
Deaths in custody	1 410	7	11	18	0.5	30	28	58	2.1
Deaths as a result of police action	2 163	193	52	245	8.9	104	48	152	4.8
Complaint of discharge of an official firearm	4 268	56	12	68	1.3	118	54	172	2.8
Rape by a police officer	773	31	14	45	4.0	66	24	90	8.5
Rape in custody	109	1	2	3	0.9	13	1	14	11.9
Torture	475	2	1	3	0.4	22	16	38	4.6
Assault	20 315	160	146	306	0.8	749	527	1 276	3.7
Corruption	606	23	7	30	3.8	31	16	47	5.1
Systemic corruption	19	0	0	0	0.0	1	0	1	5.3
Non-compliance with IPID Act	428	2	2	4	0.5	84	23	107	19.6
Other criminal offence	1 304	55	19	74	4.2	135	60	195	10.4
Misconduct	236	0	0	0	0.0	26	10	36	11.0
<b>Total</b>	<b>32 106</b>	<b>530</b>	<b>266</b>	<b>796</b>	<b>1.7</b>	<b>1 379</b>	<b>807</b>	<b>2 186</b>	<b>4.3</b>

The data in Table 16 show that there are also substantial differences between provinces in terms of the outcomes of investigations completed:

- KwaZulu-Natal is particularly distinctive, as it generates the highest rate of criminal convictions (2.8%) but the lowest rate of disciplinary ones (1.2%). The 91 criminal convictions generated in KwaZulu-Natal constitute the largest number generated in any province.
- Limpopo is similar in that it generates the second-highest rate of criminal convictions (2.7%) but relatively low disciplinary ones (1.8%).
- On the other hand, the Northern Cape generates relatively high criminal (2.5%) and disciplinary conviction (6.2%) rates.
- North West generates the highest disciplinary conviction rates (12.6%), but its criminal convictions rates are among the lowest (1.4%).

- Gauteng also has especially low rates of disciplinary convictions (1.4%). Gauteng's rates of criminal conviction (1.7%) are also on the low side, though higher than those for the Free State and Mpumalanga (1.6%), North West (1.4%) and the Western Cape (0.7%).

**Table 16:** IPID data on the outcomes of criminal and disciplinary cases relative to investigations completed, by province (April 2012–March 2019)

	Investigations completed ('decision-ready')	Criminal				Disciplinary			
		Convictions	Acquittals	Total	Convictions as a % of cases received	Convictions	Acquittals	Total	Convictions as a % of cases received
<b>Eastern Cape</b>	3 868	65	45	110	1.7	185	92	277	4.8
<b>Free State</b>	4 838	77	29	106	1.6	269	196	465	5.6
<b>Gauteng</b>	4 349	74	16	90	1.7	61	49	110	1.4
<b>KwaZulu-Natal</b>	3 289	91	23	114	2.8	38	60	98	1.2
<b>Limpopo</b>	2 183	60	32	92	2.7	39	47	86	1.8
<b>Mpumalanga</b>	2 179	35	55	90	1.6	253	128	381	11.6
<b>North West</b>	2 086	29	15	44	1.4	262	63	325	12.6
<b>Northern Cape</b>	1 943	48	8	56	2.5	121	107	228	6.2
<b>Western Cape</b>	7 370	51	43	94	0.7	151	65	216	2.0
<b>Total</b>	32 105 <sup>84</sup>	530	266	796	1.7	1379	807	2186	4.3

## DISCUSSION

### Information on the results of 'complete' or 'decision-ready' investigations

Given that the Independent Police Investigative Directorate (IPID) is an investigative agency, one would expect it to provide clear information on the conclusions that it has reached in relation to each category of investigation. But, when it states that investigations have been completed (referred to as 'decision-ready' since 2015), IPID generally fails to indicate what conclusions were reached by the investigation. For IPID to merely state that investigations have been completed (or are 'decision-ready') is clearly inadequate, as it fails to clearly account for the results of IPID investigations.

**Recommendation 3:** IPID should present clear information on the results of investigations for each category (deaths in custody, deaths as a result of police action, etc.) of completed ('decision-ready') case. The categories used should be:

*Cases in which there is an investigative finding against the police*

1. Prima facie evidence of a criminal and disciplinary offence (referral to the National Prosecuting Authority (NPA) and the South African Police Service (SAPS) or municipal police service (MPS) – see further below on the need for greater clarity regarding IPID's framework for dealing with cases in this category).
2. Prima facie evidence of a disciplinary offence only (referral to the SAPS or MPS only).

*Cases in which there is no investigative finding against the police*

3. Investigative referral – IPID may conclude that a case falls outside its mandate when it receives the case (in which case, it is closed by referral prior to the investigation stage). However, it may also do so after an investigation has been completed. For instance, though IPID initially believed that a case was one that fell within its mandate, the investigation may eventually conclude that it was not one (e.g. the investigation concludes that a death which was believed to be a death as a result of police action was in fact a killing by someone who is not a police member). In such circumstances, the case would be referred to the SAPS for further investigation. This is therefore an investigative referral to the SAPS and not a referral for disciplinary purposes.
4. The evidence is inconclusive as to:
  - (a) Whether a criminal or disciplinary offence may have been committed by a member of the police; and/or
  - (b) The identity of the perpetrator.
5. No evidence of a criminal or disciplinary offence was revealed by the investigation. For instance, a section 28(1)(c) investigation may conclude that the use of a firearm was likely to have been legally justified. However, for cases that involve allegations of wrongdoing, reaching this conclusion should be the exception as far as IPID is concerned. Such investigations should rather be closed as inconclusive, unless the investigation has been very thorough and the result is definitive.



6. If the investigation is an investigation into a death (section 28(1)(a) or (b)) and the investigation concludes that no evidence of a criminal or disciplinary offence was revealed by the investigation (as in Option 5 above), it should also be indicated whether:

- (a) The post-mortem indicated that the death was a death as a result of unnatural causes. If it was such a death, the investigation results should be referred for an inquest.
- (b) The post-mortem indicated that the death was a death as a result of natural causes. IPID should clarify how it disposes of such cases.

**Recommendation 4:** IPID SOPs should have clear provisions regarding the classification to be applied for closure (or suspension) of investigations that are not referred to the NPA, or for police disciplinary action, after the investigation has been completed:

1. Investigative referral (Option 3 in the above list) – the case should be closed as an ‘investigative referral’.
2. Where the evidence is inconclusive (Option 4 in the above list), the SOPs should specify whether a case is to be closed. As indicated above, an alternative option is to classify the investigation as ‘suspended’. In exceptional cases, IPID may also decide to reopen such cases for further investigation (in which case, the classification as ‘decision-ready’ or ‘suspended’ would be revoked).
3. No evidence of a criminal or disciplinary offence was revealed by the investigation (Option 5 in the list above) – the case should be closed as ‘no offence identified’.
4. If the investigation is an investigation into a death (section 28(1)(a) or (b)), and the investigation concludes that no evidence of a criminal or disciplinary offence was revealed by the investigation, and:
  - (a) The death was a result of unnatural causes – the decision to close the case should be dependent on the inquest findings. If there is no evidence of a criminal or disciplinary offence by a police officer but the death is linked to an offence by another person, the case may be closed as an ‘investigative referral’.
  - (b) The death was a result of natural causes – the case should be closed as ‘death by natural causes’.

## **Lack of clarity regarding cases resulting in criminal and disciplinary verdicts**

As indicated earlier, SAPS disciplinary regulations provide that misconduct includes any failure to comply with, or contravention of, ‘an Act, regulation or legal obligation.’<sup>85</sup> Any case that leads to a ‘criminal recommendation’ to the NPA should therefore also provide the basis for a disciplinary recommendation to the SAPS. However, IPID annual reports do not clarify how this issue should be approached. Do all investigations that result in ‘criminal recommendations’ also result in disciplinary recommendations? Does IPID have a standard framework or

approach for dealing with the disciplinary implications of cases that lead to criminal recommendations? Do the IPID figures on disciplinary recommendations include all of the cases that are the subject of criminal recommendations?

IPID cases that are referred to the NPA (for consideration of criminal prosecution) or to the SAPS or MPS (for disciplinary action) may be concluded in any of the nine ways (A–I) outlined in Table 17. But it is unclear whether data on criminal outcomes (convictions and acquittals) overlaps with data on disciplinary outcomes. IPID data indicates that, during its first seven years of existence, 1.7% of investigations completed by IPID resulted in criminal convictions and 4.3% resulted in disciplinary convictions. Overall, 2.5% of investigations led to criminal prosecutions that were finalised with a verdict (796 out of 32 105). For disciplinary prosecutions that were finalised with a verdict, the figure was 6.8% (2 186 out of 32 105). As illustrated in Table 17, it is not clear how many cases altogether are affected. For instance, it could be that many of the 2 186 cases in which disciplinary verdicts were achieved, were also cases in which criminal verdicts were achieved (outcomes A, B, D or E in Table 17). We can conclude that somewhere between 6.8% and 9.3% (i.e. 6.8% plus 2.5%) of investigations that were completed, resulted in a criminal or disciplinary verdict. However, data provided by IPID in its annual reports does not clarify what the total number of cases affected are.

**Table 17:** Matrix of possible outcomes of IPID cases referred for criminal and disciplinary prosecution

		Criminal outcome		
		Conviction	Acquittal	No criminal prosecution
Disciplinary outcome	Conviction	A: Criminal conviction and disciplinary conviction	B: Criminal acquittal and disciplinary conviction	C: Disciplinary conviction only
	Acquittal	D: Criminal conviction and disciplinary acquittal	E: Criminal acquittal and disciplinary acquittal	F: Disciplinary acquittal only
	No disciplinary prosecution	G: Criminal conviction only	H: Criminal acquittal only	I. No criminal or disciplinary prosecution

**Recommendation 5:** IPID data on the final outcome of cases ('manner of closure') should disaggregate cases according to whether they were subject to criminal and/or disciplinary prosecution, and according to the outcomes of those prosecutions, in line with the different options outlined in Table 17.

### Lack of clear information on the results of other investigations

IPID data shows that, during its first seven years, 32 106<sup>86</sup> investigations were completed. As indicated, it is unclear how many investigations resulted in a criminal and/or disciplinary verdict, though IPID data does indicate that the number is between 2 186 (6.8%) and 2 982 (9.3%).

A key question that is raised by this report concerns the investigative conclusions that were reached in relation to the remaining cases which, at a minimum, numbered 29 124 and, at a maximum, 29 920 cases. According to IPID data on the manner of closure, the NPA or the police declined to prosecute 8 803 cases (Table 8). Another 10 073 cases were closed without being referred for prosecution (Tables 9 and 10). The rough, overall picture that we have from IPID data is, therefore, that, relative to the 32 105 investigations that were completed:

1. At most (probably less than) 2 982 cases (9.3%) resulted in a criminal or disciplinary verdict (criminal or disciplinary conviction or acquittal);
2. The NPA or the police declined to prosecute 8 803 cases (27.4%) that were referred to them (these may include some cases in which disciplinary verdicts were reached); and
3. A total of 10 073 cases (31.4%) cases were closed without being referred for prosecution.

Neither the result of the investigation nor the final outcome of the case is accounted for in relation to more than 10 247 (32%) of the cases in respect of which investigations were completed.

## Missing cases

According to the figures provided by IPID, it received at least 42 914 cases over the seven years from April 2012 to March 2019.<sup>87</sup> IPID data moreover indicates that it carried over 7 784 cases (18%) into the 2019–20 year.<sup>88</sup> It also states that it completed (or finalised as ‘decision-ready’) investigations into 32 106 (75%) cases. In terms of these statistics, there are therefore 3 024 (7%) cases that are unaccounted for. It is unclear from the manner in which IPID presents its data how to account for these ‘missing cases’. These cannot be cases that fall outside IPID’s mandate and that were therefore referred to another agency for investigation. IPID data on the ‘manner of closure’ indicates, for instance, that 1 754 cases were closed as ‘referred’ (Table 11). However, IPID’s use of the term ‘referred’ (when applied as an explanation for why cases are closed) applies to cases that fall outside its mandate that are referred to another body for investigation. But roughly 83% of cases closed as ‘referred’ (1 447 out of 1 754) are cases that appear to fall within IPID’s mandate (see Table 18).<sup>89</sup> Such cases should be referred to another agency only after an investigation has been completed. If so, these cases should be included in the 75% of cases that are classified as decision-ready. They thus do not account for the 3 024 ‘missing’ cases.

**Table 18:** IPID data on cases referred to the NPA (April 2012–March 2019)

	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	Total	Percentage (%)
Deaths in custody	6	19	9	2	7	17	11	71	0.8
Deaths as a result of police action	40	72	33	57	54	105	141	502	5.9
Complaint of discharge of an official firearm	8	33	31	74	117	94	132	489	5.7
Rape by a police officer	11	34	24	23	18	51	52	213	2.5
Rape in custody	1	0	0	0	0	1	0	2	0.0
Torture	0	0	4	0	0	0	23	27	0.3
Assault	384	1 200	812	721	861	1 058	1 625	6 661	77.8
Corruption	7	18	12	8	16	27	23	111	1.3
Other criminal matters/ misconduct	71	81	48	34	37	42	6	319	3.7
Systemic corruption	0	0	0	0	0	0	0	0	0.0
Non-compliance with IPID Act	17	13	10	38	30	33	31	172	2.0
<b>Total</b>	<b>545</b>	<b>1 470</b>	<b>983</b>	<b>957</b>	<b>1 140</b>	<b>1 428</b>	<b>2 044</b>	<b>8 567</b>	<b>100.0</b>

## IPID and the NPA

IPID data therefore indicates that 786 cases culminated in a prosecution which resulted in a criminal verdict. In addition, IPID data indicates that it referred 8 567 cases to the NPA. Of the 8 567 cases referred to the NPA, 9.2% resulted in a criminal prosecution that was completed with a verdict (with 6.2% resulting in a conviction). Though some of these cases may still have been in court and the NPA may still have been considering prosecution in some of the cases, it is nevertheless clear that the NPA declines to prosecute, or withdraws in court, at least 72% of cases referred to it by IPID,<sup>90</sup> and possibly substantially more.

The first question that this raises is what IPID's framework is for referring cases to the NPA. It is not possible to clearly ascertain from IPID's Standard Operating Procedures (SOPs) and reports in what circumstances cases are referred to the NPA. It appears that some cases are referred to the NPA even when it is believed that there is no prima facie case that can serve as the basis for a prosecution. But this does not happen with all completed investigations. As indicated, the 2015 SOPs provided that all section 28(1)(a) to (g) cases had to be referred to the NPA. The 2019 SOPs provide that all 'unnatural deaths' must be referred to the NPA 'unless it [is] found that there [is] no SAPS/MPS involvement'.<sup>91</sup> On the other hand, if the data in Table 12 is compared with that in Table 18, the comparison indicates that, during its first seven years, IPID referred only 5% of completed death-in-custody cases (71 out of 1 410) and 23% of completed cases of death as a result of police action (502 out of 2 163) to the NPA.

**Recommendation 6:** Both for internal and public purposes, IPID should clarify what its policy criteria are for referral of cases to the NPA. IPID's policy should clearly provide that cases be referred when there is a prima facie criminal case. If there are any circumstances where cases should be referred to the NPA when they do not provide the basis for a prima facie criminal case, these circumstances should be clearly defined. In IPID reporting, cases that are referred to the NPA for other reasons should be differentiated from cases that are referred on a prima facie basis.

The NPA declines to prosecute a high proportion of cases referred to it by IPID. There are broadly four possibilities:

- 1. No prima facie case:** Some cases are referred to the NPA even though there is no prima facie case. Although it is clear that IPID does this, it does not do so consistently. Furthermore, it is not clear why it does this.
- 2. NPA standards for prosecuting cases:** The NPA may be very selective about prosecuting cases. It may, therefore, not be sufficient for there to be a prima facie case. The NPA may, for instance, only prosecute a case if there is a very good chance that the case will result in a guilty verdict.
- 3. Poor-quality investigation by IPID:** Even though IPID claims that the case has been fully investigated, IPID investigations may frequently have significant shortcomings. This may affect the number of cases that the NPA regards as prosecutable.
- 4. Other reasons:** Even though there is a prima facie, or perhaps highly winnable, case, the NPA may decide not to proceed with it. This may be for other reasons such as the high workload of the NPA, the possibility that certain categories of cases received from IPID (such as assault cases) are not seen as a priority, or a bias in favour of the police.

The fact that a case is classified as 'declined' on the IPID internal system is an internal classification. It is possible that some cases are classified in this way without in fact being referred to the NPA or SAPS. Unless classifications are applied in a rigorous manner and are subject to quality-control checks, this possibility also cannot be eliminated. The general lack of clarity in IPID SOPs may also contribute to IPID personnel mistakenly using the 'declined' classification.

**Recommendation 7:** There is a need for greater clarity about why the NPA declines to prosecute such a high proportion of cases that are referred to it by IPID. In order to improve NPA responsiveness to IPID referrals, research should be carried out to gain further insight concerning this question.

## IPID's constraints and limitations

IPID is responsible for carrying out investigations pertaining to seven different police organisations with a combined staff complement of 160 000 personnel (excluding support staff). Most, if not all, of these police organisations are characterised by chronic problems of corruption and other misconduct. At the same time, IPID has a fairly complex investigative mandate and has been poorly supported by the fiscus when it comes to financial resources. Against this background, a body such as IPID is highly likely to face challenges. These challenges will probably be accentuated if IPID has internal problems that are characteristic of many government departments in South Africa, such as limited skills and possible management weaknesses.

At the same time, IPID is partly dependent on other agencies for its own performance. Notwithstanding its formal status as an independent agency, the outcomes of IPID investigations are also influenced by other agencies and services, including not only the NPA, but also the quality of autopsies that are conducted by state pathologists, the forensic and ballistic services that are provided by the SAPS, and the overall level of cooperation that IPID receives from the SAPS and MPS. It may reasonably be assumed that the poor outcomes achieved by IPID (see, further, below) are not associated exclusively with problems internal to IPID but are a combination of internal and external factors.

**Recommendation 8:** Efforts to strengthen IPID's effectiveness should not focus exclusively on IPID. Such efforts should recognise that other agencies contribute to the investigative outcomes achieved by IPID. However, IPID should also be expected to be self-critical and acknowledge its own limitations rather than assigning the blame for shortcomings exclusively to other parties.

## Investigative outcomes achieved by IPID

As indicated, during IPID's first seven years, between 6.8% and 9.3% (i.e. 6.8% plus 2.5%) of investigations that were completed, resulted in a criminal or disciplinary verdict. It is not a simple matter to simply say that any of the figures are low or high. As this report has already emphasised, IPID is not exclusively responsible for the criminal and disciplinary outcomes of its investigations. In addition, uniform standards for assessing investigative outcomes cannot be applied across all categories of cases.

## *Deaths in police custody and as a result of police action*

As indicated (see Table 2), barely any cases of deaths in custody have resulted in criminal convictions. On the other hand, deaths as a result of police action (section 28(1)(b)) accounted for 36% of criminal convictions (193 out of 530) and for 31% of prosecutions that were completed by means of a verdict (245 out of 796). However, if investigations into deaths are disaggregated further, the picture changes considerably. As shown:

- It is likely that the majority of convictions secured for death cases have been for deaths related to intimate-partner or other personal disputes. Of the total of 200 convictions for deaths reflected in Table 2, it is estimated that roughly 108 (54%) were for killings related to disputes of this kind. This translates into an estimated conviction rate of 50% for completed investigations.
- The balance of criminal convictions for deaths were mainly convictions for other deaths as a result of police action, many of which were related to the performance of police duties. For completed investigations into these killings, an estimated 6% resulted in convictions.
- As indicated in Table 16, criminal convictions were secured in 0.5% of cases relating to deaths in police custody for which investigations were completed.

In other words, IPID has high rate of convictions for deaths linked to interpersonal disputes, a much lower rate of convictions for deaths as a result of police action linked to the performance of police duties ('in the line of duty'), and an even lower rate of convictions for deaths in police custody.

This is where the challenge of interpretation comes in. It is reasonable to believe that the low rates of criminal convictions and prosecutions for killings by police 'in the line of duty' and for deaths in custody are partly a reflection of the fact that these deaths are not generally linked to illegal action by the police. However, it is also apparent that police violence related to the performance of police duties ('excessive force') continues to be a significant problem in South Africa and is likely to be a contributing factor to some of these deaths. Related to this, it is likely that there are a number of deaths each year, either in custody or as a result of police action, that are linked to excessive force, but where this is not revealed by the IPID investigation. One implication is likely to be that IPID does not constitute a significant deterrent to the use of excessive force by the police.

The available information therefore indicates that IPID tends to secure convictions in homicide cases where there is evidence at the outset that a crime has been committed. It is likely to also be an indication that IPID does not undertake detailed investigative work in respect of each death case (deaths in custody and as a result of police action) in order to assess whether a crime may have been committed. If it is not apparent at the outset that a crime has been committed, IPID is unlikely to investigate the case very thoroughly and the investigation is likely to be fairly superficial in nature.

## *Rape*

As reflected in Table 15, IPID investigations resulted in 45 convictions for cases of rape by a police officer (section 28(1)(d)), representing 4% of the investigations completed in this category. If investigative results are measured by criminal convictions, this means that this category is the one in which IPID achieved its third-best investigative result (after deaths as a result of police action and 'other criminal offences'). Although the investigations in these cases were completed, there may be some cases of 'rape by a police officer' that were still in court at

the end of March 2019, so the overall rate of convictions for these cases may be marginally higher. The available evidence indicates that rape investigations generally suffer from very high rates of case attrition. The SAPS achieves conviction rates of roughly 8% in rape cases.<sup>92</sup> Even though the figure appears to be low, it is roughly double the rate of convictions achieved by IPID and raises the question whether victims of rape by the police are well served by the fact that this offence forms part of IPID's mandate. In the SAPS, rape cases are generally dealt with by specialised units responsible for dealing with sexual violence. It is possible that better results would be achieved in these cases if they were investigated by these units.

On the other hand, as indicated, cases are apparently generally only recorded as cases of rape in police custody (section 28(1)(e)) if the alleged perpetrator of the rape is not a police officer (if he or she is, then it is classified as a section 28(1)(d) case). IPID's responsibility is to investigate cases in which the police are implicated. For this reason, IPID does not generally make recommendations relating to criminal prosecution in respect of section 28(1)(e) cases (see Table 18). The fact that there are few criminal prosecutions in this category is therefore not an indication of IPID's shortcomings. However, the fact that only 12% of completed investigations have translated into disciplinary convictions indicates that it is also rare for cases of this kind to result in disciplinary consequences for the police.

**Recommendation 9:** IPID should enter into a Memorandum of Understanding (MoU) with the SAPS Family Violence, Child Protection and Sexual Offences (FCS) units regarding the investigation of cases rape by a police officer. In particular, this agreement should expedite rapid response to the cases of rape that take place at locations some distance away from IPID offices in order to try to ensure that there is a quicker investigative response to these cases.

### *Allegations of non-lethal police brutality and excessive force and of corruption*

Above, it is argued that IPID does not constitute a significant deterrent to the police's use of excessive force, and this contention is certainly borne out by IPID statistics on criminal convictions for complaints relating to the discharge of an official firearm (1.3% of cases completed), torture (0.4%), and other assault cases (0.8%). In comparison with section 28(1)(b) cases (deaths as a result of police action), assault investigations resulted in more prosecutions (306 out of 796) but fewer convictions (160 out of 530). However, relative to the number of cases received (20 315), even the number of prosecutions (1.5% of cases) is very small. Likewise, complaints in respect of the discharge of an official firearm account for 11% of convictions (56 out of 530) but cases that are prosecuted account for only 1.6% of the cases received (68 out of 4 268).

It should be noted that, if they do go to court, many cases of alleged assault and torture are likely to come down to a 'swearing contest' between the complainant and the police in which the two parties provide conflicting versions of events. International evidence indicates that, in cases of this kind, the courts are often likely to decide in favour of the police.<sup>93</sup> Even if they do not, they might often decide that the case is not proved beyond a reasonable doubt. Partly for these reasons, prosecutors may not be in favour of prosecuting these cases. Thus it may generally only be in cases where the investigator has managed to come up with additional evidence to support the allegations made by the complainant that it may be worthwhile to prosecute the case.

Torture and assault cases are therefore frequently cases in which it is difficult to achieve criminal convictions. But this on its own is not likely to be an adequate explanation for the

low conviction rates achieved in these cases. All of these categories by definition involve allegations of criminal wrongdoing by the police (though note the concerns raised about possible inconsistencies in reporting practices). The overall levels of prosecution and conviction inevitable strongly suggest that IPID frequently classifies investigations as 'complete' despite the fact that the investigations conducted have not been of a high quality.

Similarly, IPID does not have a very impressive record in respect of convictions obtained in corruption cases, in which only 30 cases out of 606 (5%) have thus far resulted in completed prosecutions and only 23 out of 606 cases (3.8%) have resulted in convictions (see Recommendation 10 below).

## The screening and prioritisation of cases

### *IPID Regulations*

There are some provisions in the IPID Regulations that provide authorisation for case screening. However, these only apply to 'complaints relating to the discharge of an official firearm by a police officer (section 28(1)(c)), and it is not clear why these cases are singled out in this way. The Regulation provides that investigators in these cases must conduct a 'preliminary investigation' in order 'to enable the Executive Director or the relevant Provincial Head, as the case may be, to determine whether a full investigation is warranted or not'.<sup>94</sup> But the Regulations give no indication as to what considerations should influence the decision as to whether a full investigation should be conducted or not.

### *Prioritisation in 2017–18 of corruption cases involving senior police*

In recent years, IPID has started to publicly acknowledge the need to prioritise some cases over others. In its 2017–18 Annual Report, IPID states that it 'has had to focus on low-volume, high-value investigations' as a result of 'inadequate resources'.<sup>95</sup> The 'low-volume, high-value investigations' are 'corruption cases involving senior police officers'. It further states that the investigations into these cases:

*have begun to yield fruits in that several people have already appeared in court to answer for corruption. Additional allegations of massive corruption involving several billions of rand have been uncovered against more officers and service providers who are at the highest echelons of the SAPS and, as a result, more senior police officers and service providers will be added to the current accused in the Phahlane matter.<sup>96</sup> At the time of writing, the case against Phahlane has been provisionally withdrawn due to some forensic investigations having to be completed and additional accused having to be added to the original three. The forensic reports have now been completed. The IPID believes that the case against both police officers and service providers is quite formidable.<sup>97</sup>*

It is important that high-level corruption in the SAPS be treated as a priority problem and IPID should, therefore, be commended for its decision to prioritise corruption cases involving senior police officers. IPID appears to have faced a sustained attempts to derail its investigation into the allegations of corruption against Acting National Commissioner Phahlane. Accordingly, it should also be commended for having faced down these attempts and for having succeeded in ensuring that a prosecution against Phahlane was initiated.

The investigation took place at a time when the Directorate for Priority Crime Investigation (the Hawks), which is supposed to be South Africa's principle anti-corruption investigation agency, was in a highly dysfunctional state. However, IPID is not in general well equipped to carry out investigations involving complex financial crimes. As this report indicates, it faces challenges in carrying out basic investigations into alleged crimes committed by police members.



**Recommendation 10:** IPID should develop an MoU with the Hawks and the NPA Directorate on serious, high-profile or complex corruption in order to facilitate cooperation in the investigation of high-level corruption in the SAPS .

### *The 2018–19 Annual Report*

It is clear that IPID does not have a coherent framework for prioritising cases. The manner in which the prioritisation of cases is substantiated in the 2017–18 Annual Report bears little relation to the way in which it is articulated in the following year. In its 2018–19 Annual Report, IPID stated that certain cases had been ‘prioritised in terms of impact. These cases related to death, rape and corruption.’<sup>98</sup> The report refers to these as ‘high-impact’ cases, though this term is used interchangeably with the term ‘high-value.’<sup>99</sup>

In the absence of any explanation, it might be assumed that the terms refer to cases that are adjudged to be the most serious. According to IPID, in virtually all categories of cases, it exceeded its performance targets with regard to the number of investigations completed (‘decision-ready’). The explanation given for this achievement is, it states, ‘due to prioritisation of cases in terms of high value as a result of limited resources’. While, in one section of the report, it states that cases prioritised ‘related to death, rape and corruption’, later in the report, cases of torture and ‘backlog cases’ are also referred to as ‘high-value.’<sup>100</sup>

It is not self-evident what IPID means when it refers to ‘high-value’ cases. For instance, one category that is deemed high-value in nature relates to deaths in custody. However, less than 3% of deaths-in-custody investigations that are completed result in criminal or disciplinary prosecutions. The majority of them are not linked to allegations of wrongdoing by the police. Most deaths-in-custody investigations are, at best, likely to involve taking down one or two perfunctory statements and placing a post-mortem report in the file. If IPID is ‘prioritising’ getting deaths-in-custody cases to the ‘decision-ready’ stage, then this implies that it is trying to close them as quickly as possible.

### *Case screening*

IPID clearly does not have the resources to investigate all cases thoroughly. Considering the fiscal constraints facing South Africa, this situation is not likely to improve in the foreseeable future. Investigative agencies in wealthier countries make use of systems of case screening. However, considering the resource constraints that IPID faces, it is inevitable that it must prioritise some cases over others. The only question is whether it does so in a clearly thought-through and substantiated manner.

The broad options available to IPID may be understood in relation to the matrix in Table 19. Option A, where not even straightforward cases receive proper attention, is clearly not worthy of consideration. On the other hand, the situation where all of the cases that IPID receives are the focus of high-quality investigations (Option D) is also not realistically an option for IPID.

**Table 19:** Matrix of investigative options

		Number of investigations relative to cases received	
		Small number of cases investigated	Large number of cases investigated
Quality of investigations	Poor-quality investigations	A: Small number of rudimentary investigations	B: Large number of rudimentary investigations
	High-quality investigations	C: High-quality investigation of prioritised cases	D: Large number of high-quality investigations

IPID's current manner of operation appears to resemble Option B in which a large number of rudimentary investigations are conducted, with few cases being investigated thoroughly. In order to improve the impact of its investigations, it needs to move towards Option C in which the emphasis is on more thorough investigation of selected cases. The middle ground between the two options is where an attempt is made to ensure that a large number of cases receive some investigative attention, but the major emphasis is placed on ensuring that there are dedicated personnel and resources available to focus on priority cases. The key question, then, is: What type of cases should be prioritised for dedicated investigative attention in order to improve IPID's impact?

Table 20 addresses the factors that should inform the selection of cases for priority investigative attention. Generally, it is recognised that systems of case screening should assess cases on the basis of two factors: their seriousness and their solvability, with the latter being related to the potential that investigation of the case will result in a criminal conviction.<sup>101</sup> Cases in Category E (more serious and more solvable) would include many of the cases of domestic violence and 'other private-capacity' killings by the police that are highlighted by Table 1. These cases are partly defined by the fact that they are serious (i.e. cases of alleged murder), but they are also readily solvable. This is not only because it is apparent at the outset that a crime has been committed, but also that it is frequently relatively straightforward to prove the case as a result of the fact that there are witnesses as well as ballistic evidence that corroborates their evidence. In addition, the alibi provided by the accused in an attempt to escape culpability often lacks credibility.

**Table 20:** Options for case screening

		Seriousness	
		More serious	Less serious
Solvability (probability of achieving convictions)	More solvable	E	F
	Less solvable	G	H

The key tension in systems of case screening is that between cases in Category F (less serious but more solvable) and G (more serious but less solvable).<sup>102</sup> The tension is linked to the fact that it may be tempting to invest a lot of resources in the category F cases (if, for instance, there are many common assault cases that appear more solvable) in order to improve overall conviction rates but to neglect the Category G cases on the basis that there is little prospect of convictions being attained. While there should definitely be an investment in the investigation of Category F cases, it is imperative that a substantial part of the investigative resources of the investigative agency be channelled towards focusing on cases in Category G (less solvable but more serious).

The problem with the application of this framework to IPID is that many of the cases that it receives fall into Category G. These include numerous cases of deaths in custody, the 87% of deaths as a result of police action that are not linked to interpersonal disputes, many of the cases of rape by a police officer, complaints relating to the discharge of a firearm (notably including attempted murder or assault GBH cases in this category) and torture. This, then, implies that IPID's systems for case screening need to classify cases not only into Categories E, F, G and H, but also to differentiate cases within Category G. One line of differentiation is between cases in Category G (which are therefore, at face value, serious cases) in which there are allegations or complaints of criminal offences and other cases in Category G in which there is no indication at the outset of the case that members of the police have been involved in a crime. This would mean that, unless there is reason for suspicion that a crime has been committed, cases falling under section 28(1)(a) and (b) (deaths in police custody and as a

result of police action) are not given priority investigative attention. This might be seen as problematic in terms of the inherent seriousness of these cases. However, it might at least mean that more focused investigative attention can be given to death cases in which there are grounds for suspicion of the police. It would also mean that more focused attention is devoted to more serious cases of non-fatal, alleged excessive force and police brutality such as cases of torture and complaints relating to the discharge of an official firearm which constitute allegations of attempted murder or assault GBH. The advantage of this approach would then be that IPID becomes more effective in holding the police accountable for torture and other excessive force.

IPID currently does not have a coherent framework for prioritising cases:

- Insofar as it appears to have some system for prioritising cases, it seems to prioritise cases only in terms of seriousness (if this is what 'high-impact' and 'high-value' are intended to mean) rather than solvability.
- In addition, its criteria for assessing seriousness are not articulated. Insofar as certain broad categories of cases are identified as 'high-value', this is not done in a consistent manner. For instance, South Africa is a signatory to the United Nations Convention against Torture and it should be assumed that allegations of torture would be understood to be extremely serious cases that involve direct allegations against the police in South Africa. But IPID's investigative outcomes in respect of cases of torture are very poor and it is not clear that IPID regards these cases as a priority. IPID appears to regard cases of deaths in custody as being more important than torture cases, notwithstanding the fact that most deaths are not linked to allegations of wrongdoing by SAPS members.

**Recommendation 11:** IPID should put in place a properly administered screening system that prioritises cases for dedicated investigative attention, taking into account factors of seriousness and solvability (probability of achieving a criminal conviction).

## Institutional changes implemented by IPID to ensure quality investigations

Over the years, IPID has taken various steps which are reported to be intended to ensure the quality of IPID investigations. During the 2014–15 year, IPID established a Vetting and Integrity Strengthening Unit.<sup>103</sup> It appears that the responsibilities of the Unit may have included inspecting dockets and ensuring compliance with regulations and SOPs. After further complaints and allegations about the premature closure of cases and termination of investigations, IPID again amended its internal regulatory framework, apparently with a view to ensuring more rigorous docket inspection and supervision of investigations. Regulatory measures that are provided for in the 2019 SOPS include the following:

- All dockets must be inspected by the supervisor on specified dates. The supervisor ('inspecting official') must evaluate compliance with directives/ instructions issued and give guidance to the investigator 'as to outstanding aspects'.<sup>104</sup>
- A case investigative report must be submitted to provincial management on each case 'indicating what has been done relating to the investigation' and suggesting the 'method of completion' that should be approved, following which provincial management 'will make a determination' as to the method of completion.<sup>105</sup>
- The 'referral/ recommendation report' (this appears to be the same as the case investigative report<sup>106</sup>) must be sent to the supervisor for review and electronic

approval. The supervisor must complete a 'quality control form/docket checklist' and verify that 'the investigation is a quality investigation'. (It is not clear why this provision comes later than the previous one.)<sup>107</sup>

- The investigation must then be referred to provincial management for approval as well as the final post-investigation classification. Provincial management 'verifies the quality-control form/docket checklist' and must then confirm if the investigation complies with a quality investigation.<sup>108</sup>

On paper, IPID therefore has a system in place to ensure that all investigations that are completed are quality investigations. At the same time, however, IPID performance measures place emphasis on the number of cases that are classified as 'decision-ready'. While provincial management is responsible for monitoring the quality of investigations, it is also responsible for ensuring that performance targets are achieved. There is, therefore, an inherent conflict of interest embedded in provincial management's quality-assurance role.

It may be possible to improve the SOPS by, for instance, inserting minimum quality standards in them. But this does not resolve the problem. Unless the resources available to IPID can be dramatically increased, IPID cannot improve its performance by trying to ensure that all investigations meet a uniform set of standards. It can only improve its performance (if this is measured in terms of its impact in securing convictions for the most serious crimes committed by the police) by putting in place a system for screening cases which takes into account factors of seriousness and solvability. In such a system, IPID would therefore need to apply quality-control measures to ensure that screening is implemented in a consistent manner and that cases prioritised for focused investigative attention meet minimum investigation standards.

## Meaning of 'decision-ready' conclusion

The performance measure that IPID gives most prominence to is the number of investigations that are completed or 'decision-ready'. However, the focus on getting cases to the 'decision-ready' state carries within it an inherent conflict of interest. The number of cases classified as being of 'decision-ready' status is highly problematic as a measure of the performance of IPID, particularly if it is elevated above the need for IPID to contribute to ensuring police accountability for serious crimes. Notwithstanding the quality-control measures that have been introduced, the system for finalising cases within IPID by classifying them as decision-ready is clearly open to abuse. Giving priority to getting cases to the decision-ready stage can easily shift towards a focus on trying to close cases as quickly as possible at the expense of ensuring that the police are held accountable for serious crimes. As one IPID investigator interviewed by Viewfinder stated:

*The main aim of IPID is to move as many cases from 'active' to 'decision-ready' (i.e. 'completed') as quickly as possible. By itself, the 'decision-ready' status is meaningless. It has no actual impact on the offender. Without an arrest, without a prosecution, without a conviction there is no [police] accountability.<sup>109</sup>*

IPID suffers from major resource constraints. The statement by IPID that a case is 'decision-ready' cannot be understood to mean that a 'quality investigation' has been completed. Rather, it is a statement that 'this is all we have been able to do with this case with our current capacity and resources'. The classification of cases as 'high-value' or high-impact' also does not mean that priority is given to ensuring that a quality investigation is conducted. It merely means that priority is given to classifying cases as 'decision-ready'.

**Recommendation 12:** The assessment of IPID's performance should shift to focusing on how it is impacting on the most serious crimes committed by the police. IPID should have a system of case screening which is intended to contribute to ensuring that IPID has a greater impact on these crimes. The most serious crimes should be seen to include:

1. Cases of murder and culpable homicide – the focus here should be on cases where there are grounds for suspicion that deaths recorded under section 28(1)(a) and (b) are linked to criminal acts committed by the police. Cases where there are grounds for suspicion that disciplinary infringements have contributed to deaths should also be prioritised in this way;
2. Complaints relating to the discharge of an official firearm where there is a reasonable suspicion that attempted murder or assault with intent to do grievous bodily harm (GBH) has been committed;
3. Cases of rape by a police officer;
4. Cases of rape in police custody – though the focus of these investigations may be on possible disciplinary infractions by the police, this should not lead to these cases being treated as 'less serious';
5. Cases of torture; and
6. Cases of corruption – especially those allegedly implicating SAPS or MPS members who are part of senior management or of officer rank.

## CONCLUSION

IPID is an investigative agency that is intended to promote police accountability. There are many such agencies around the world, but the context in which they operate differs considerably from one country to another. The contrast between two different contexts is highlighted in Table 21. The Police Ombudsman for Northern Ireland (PONI) is responsible for investigating complaints against the Police Service of Northern Ireland (PSNI) as well as a few other agencies.<sup>110</sup> As compared with the South African Police Service (SAPS), which has roughly 150 000 police members, the PSNI, which is the agency that accounts for 98% of the complaints received by PONI, has in the region of 6 800 members.<sup>111</sup> This is fewer than the roughly 10 000 members of the six municipal police services (MPSs), who account for a small part of the workload of IPID. Yet PONI's budget is two-thirds (67%) of that of IPID.<sup>112</sup> The complexity and seriousness of cases received by IPID are also considerably greater than those investigated by PONI. Annually, PONI receives about 2 600 complaints. During 2017–18, for instance, the largest category of complaints received by PONI related to failure to conduct criminal investigations or carry out other police responsibilities (i.e. 'failure of duty'). The task of investigating cases of this kind is far simpler than that involved in investigating cases of death, rape, torture and corruption.

**Table 21:** Matrix: Context of investigations by civilian oversight agencies

	Low volume of cases (little serious misconduct and low levels of police misconduct)	High volume of cases (high levels of serious police misconduct)
High level of resources (as compared with number and complexity of cases)	Example: Police Ombudsman for Northern Ireland (PONI)	
Low level of resources (as compared with number and complexity of cases)		Example: IPID

IPID therefore works under conditions that are far from favourable and it is therefore not realistic to expect it to be able to perform a quality investigation in all cases that it receives. While this is far from ideal, the implications need to be clearly understood. A focus on completing investigations creates perverse incentives which are likely to lead to a general neglect of considerations to do with the quality of investigations. If IPID's focus is purely on convictions, this also creates perverse incentives, as it may mean that less serious cases which are easier to solve are prioritised above more serious cases that are more difficult to solve (see Table 20). IPID therefore needs to put in place a system of case screening in order to ensure that it gives greater priority to more of the more serious cases.

This implies not only that there should be a shift in IPID's framework for investigations, but also that there is a need for clarity to be provided on these issues by the Minister of Police, the Portfolio Committee on Police, as well as other bodies that play a role in shaping IPID's priorities.

**Recommendation 13:** The Minister of Police, the Portfolio Committee on Police, and others involved in influencing and shaping IPID's priorities should:

1. Understand that IPID is likely to be most effective if it focuses its resources more selectively on the basis of a clearly defined system of case screening;
2. Recognise the need for IPID to focus on the most serious types of crime allegedly committed by the police (as reflected in Recommendation 12); and
3. Understand the various impediments that IPID faces and that it cannot reasonably be expected to maintain an equal standard of high-quality investigations in respect of all cases that it receives.

## **ACKNOWLEDGEMENTS**

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## ENDNOTES

- 1 Key articles include the following by Daneel Knoetze: 'Key takeaways: IPID's cover-up of police brutality in SA', 7 October 2019, <https://viewfinder.org.za/key-take-aways-ipids-cover-up-of-police-brutality-in-sa/>; 'IPID's cover-up of police brutality in SA', 7 October 2019, <https://viewfinder.org.za/kill-the-files/>; 'Month-end at the IPID: A time for "killing files"?', 7 October 2019, <https://viewfinder.org.za/month-end-at-the-ipid-a-time-for-killing-files/>; 'Special closure": The high-water mark of IPID's cover-up', 18 November 2019, <https://viewfinder.org.za/special-closure-the-high-water-mark-of-ipids-cover-up/> or <https://www.dailymaverick.co.za/article/2019-11-17-special-closure-the-high-water-mark-of-ipids-cover-up/>. Other articles related to the investigation can also be found at <https://viewfinder.org.za>.
- 2 IPID, Standard Operating Procedures, 1 April 2015, 7.
- 3 Robert McBride, Viewfinder report: 'There were a few things overlooked', 10 October 2019, *Daily Maverick*, <https://www.dailymaverick.co.za/article/2019-10-10-viewfinder-report-there-were-a-few-things-overlooked/>.
- 4 The history of IPID can be traced back to section 222 of the interim Constitution (Act 200 of 1995) which provided that an independent complaints mechanism should be established to ensure 'that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner'.
- 5 The Minister of Police.
- 6 A member of a Provincial Executive Council.
- 7 The head of the Civilian Secretariat for Police Service (CSPS).
- 8 South African Police Service Act, 68 of 1995, Chapter 10.
- 9 However, it should be noted that section 7(9) of the IPID Act appears to enable the IPID Executive Director to refer investigations to the SAPS National or Provincial Commissioners.
- 10 David Bruce, 'Gripes or grievances? What the Independent Complaints Directorate statistics tell us (or not).' *SA Crime Quarterly* 4, June 2003:25–30.
- 11 CSPS Act, 2 of 2011, section 6(1)(j).
- 12 Ibid., section 6(1)(c). See, also, Lisa Vetten, 'Aluta continua: Accountability and the Domestic Violence Act, 116 of 1998', *South African Crime Quarterly* 59, 2017.
- 13 See, for instance, the IPID Act, 1 of 2011, Preamble and section 2(b), (d) and (g).
- 14 Note that data on cases reflects the number of incidents. In some incidents, more than one person is killed, so these data do not reflect the total number of deaths as a result of police action.
- 15 Based on an analysis of outcomes in 77 cases of 'death as a result of police action' in which convictions were secured. IPID itself does not present data on this, but see, for instance, the summaries of cases that resulted in convictions in the IPID 2012–13 Annual Report (IPID, Annual Report 2012–13, 76).
- 16 If 56% of convictions were for deaths in these two subcategories, this means that 108 out of the 193 convictions for section 281(1)(b) cases were for homicides in these two subcategories. Convictions in 108 out of 354 cases translates into a conviction rate of 30.5%.
- 17 Pizarro, J. M., Terrill, W. & LoFaso, C. A. (2020). 'The impact of investigation strategies and tactics on homicide clearance.' *Homicide Studies*, 24(1):3–24; Liem, M., Suonpää, K., Lehti, M., Kivivuori, J., Granath, S., Walser, S. & Killias, M. (2019). 'Homicide clearance in Western Europe.' *European Journal of Criminology*, 16(1):81–101.
- 18 If the balance of convictions (44%) were for deaths in these other subcategories, this means that 85 of the 193 convictions for section 281(1)(b) cases were for homicides in the other subcategories. Convictions in 85 out of 2 452 cases translates into a conviction rate of 3.3%.
- 19 Failure to comply with police regulations, such as the failure to provide prompt medical care, is likely to play a more significant role (David Bruce, 2019, 'The risks of police custody – the potential for independent monitoring of police custody in South Africa', African Policing Civilian Oversight Forum, Research Paper, No. 26, <http://apcof.org/wp-content/uploads/026-risks-of-police-custody-the-potential-for-independent-monitoring-of-police-custody-in-south-africa-david-bruce.pdf>). This may be linked to the fact that there have been more completed disciplinary prosecutions (58) than criminal prosecutions (18) for deaths in custody.
- 20 It should be noted that the category only refers to the discharge of an official firearm. The illegal pointing of a firearm is not covered by this category.



- 21 During the seven years from April 2012 to March 2019, there were three criminal convictions and three acquittals in the Western Cape. Excluding the Western Cape, there were 53 convictions out of 4 108 cases or a conviction rate of 1.3% in respect of cases received.
- 22 SAPS, Standing Order 251.
- 23 *Cambridge dictionary*, 'systemic', <https://dictionary.cambridge.org/dictionary/english/systemic>.
- 24 Andrew Faull & Gareth Newham, 'Protector or predator? Tackling police corruption in South Africa', Institute for Security Studies, 2011; Statistics South Africa (Stats SA), Victims of Crime Survey, 2017/18, 2018, 63, [http://www.statssa.gov.za/?page\\_id=1866&PPN=Po341&SCH=7678](http://www.statssa.gov.za/?page_id=1866&PPN=Po341&SCH=7678).
- 25 Corruption Watch, 'The law for sale – endemic corruption in the Johannesburg Metropolitan Police Department', 2012, <https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-The-law-for-sale-summary.pdf>.
- 26 As reflected in Tables 15 and 16 and elsewhere in this report, the total number of disciplinary convictions and acquittals was 2 186. The total of 2 150 excludes 36 cases which were recorded as 'misconduct'.
- 27 IPID, Annual Report 2012–13, 39.
- 28 Stats SA, Mid-year population estimates 2019, vi, [http://www.statssa.gov.za/?page\\_id=1854&PPN=Po302&SCH=7668](http://www.statssa.gov.za/?page_id=1854&PPN=Po302&SCH=7668).
- 29 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, section 8:11, 42.
- 30 Cases that are received that fall outside of IPID's mandate are classified as 'outside-of-mandate cases' and are not investigated by IPID (IPID, Standard Operating Procedures, 1 April 2015, 10; IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, 11(15)).
- 31 See, for instance, Minister of Police, The South African Police Service Discipline Regulations, 1 November 2016, Regulation 5(3)(a).
- 32 Act 51 of 1977.
- 33 Sometimes referred to as 'closure by exception' or by 'exceptional means', Temple University, Campus Safety Services, Disposition definitions, <https://safety.temple.edu/reports-logs/disposition-definitions>; Albuquerque Police Department, SOP 2–60: Preliminary and Follow-Up Criminal Investigations, 29 June 2016, <http://documents.cabq.gov/police/standard-operating-procedures/2-60-preliminary-and-follow-up-criminal-investigations.pdf>.
- 34 Albuquerque Police Department, *ibid.*, 2.
- 35 Figures from IPID annual reports indicate that the cumulative case intake over the first seven years of IPID's existence was 42 365 cases. In addition, when IPID was established, it took over 549 cases from its predecessor, the ICD (IPID, Annual Report 2012–13, 39).
- 36 IPID Regulation 4 deals with steps that must be taken in respect of deaths in police custody or as a result of police action. IPID Regulation 5 deals with 'criminal matters' (28(1)(d), (e), (f) and (g)). Regulation 6 deals with the investigation of the discharge of an official firearm (28(1)(c)). Regulation 8 deals with the investigation of matters referred under section 28(1)(h) (Minister of Police, Regulations for the Operation of the Independent Police Investigative Directorate, February 2012).
- 37 *Ibid.*, 8–9.
- 38 *Ibid.*, 9.
- 39 South African Police Service Act, 68 of 1995, section 53(6)(g).
- 40 National Prosecuting Authority Act, 32 of 1998.
- 41 IPID Act, 1 of 2011, section 7(4).
- 42 IPID Act, section 7(6) and (7) read with section 30. The Act in fact only mentions referring such matters to the SAPS. It omits to indicate that such matters can also be referred to municipal police departments.
- 43 See, for instance, IPID Annual Report 2014–15, 29.
- 44 *Ibid.*, 71.
- 45 *Ibid.*, 79.
- 46 See, for instance, IPID Annual Report 2012–13, 50–51.
- 47 Figures are as follows: cases declined (8 803), acquitted (487), convicted (625). Note that these figures appear to reflect some figures for disciplinary cases and not only criminal cases.

- 48 It is likely that these data are incomplete. Elsewhere, IPID indicates that it achieved 91 criminal convictions in the 2018–19 year.
- 49 The SOP refers to the National Prosecution Service (NPS), the arm of the NPA responsible for instituting prosecutions.
- 50 IPID, Standard Operating Procedures, 1 April 2015, 7.
- 51 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, 13.
- 52 Ibid., 13.
- 53 Ibid., 8.10.5, 37.
- 54 Ibid., 8.10.5, 38.
- 55 Ibid., 39.
- 56 Ibid., 8.10.5, 38.
- 57 Post-decision monitoring is, however, only relevant to cases that have been referred to the NPA or to the SAPS, as well as to any policy recommendations (ibid., 8.11, 42–43).
- 58 Ibid., 8.10.5, 38.
- 59 Ibid., 8.10.8, 41.
- 60 IPID, Standard Operating Procedures, 1 April 2015, 11.
- 61 Defined as ‘there is no evidence to support the allegations contained in the case and IPID cannot make a recommendation of wrongdoing against any member’.
- 62 IPID, Annual Report 2018–19, 61.
- 63 Ibid., 62.
- 64 The 2019 SOPs appear to do away with the term ‘unsubstantiated’, replacing it with the term ‘undetected’. One subcategory that this provides for is ‘undetected – crime/offence cannot be identified’.
- 65 IPID, Standard Operating Procedures, 1 April 2015, 11.
- 66 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, 17.
- 67 Where ‘o’ is entered, this may indicate that misconduct cases are included under ‘other criminal matters or misconduct’.
- 68 The total is in fact 1 753, indicating that there is a minor inconsistency within Table 10.
- 69 ‘Indeterminate’ is defined variously as ‘unable to prove allegation’ and ‘a case cannot be fully investigated because of lack of cooperation from any relevant stakeholder or the case was investigated by the IPID before and there is no new evidence or facts; or the suspect is deceased’.
- 70 ‘Unfounded’ is defined as ‘there is no evidence to link the member to the allegations made’.
- 71 The sixth subcategory under ‘general result’ was ‘closed as systemic corruption’.
- 72 A further 36 cases were closed as ‘corrective counselling’ (26), ‘policy referred’ (7) or ‘systemic corruption’ (3).
- 73 In terms of the 2015 SOPs, ‘withdrawal’ was only provided for as an option for ‘criminal’ and ‘departmental’ closures but not for ‘general result’ (IPID, Standard Operating Procedures, 1 April 2015, 11). As indicated, however, the category was primarily used in the first three years of IPID prior to the 2015 SOPs.
- 74 IPID Annual Report, 2016–17, 10.
- 75 IPID Presentation, November 2019, 9.
- 76 IPID, Presentation on IPID special-closure investigation, IPID Presentation to the Portfolio Committee on Police, 27 November 2019, 3.
- 77 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, 13.
- 78 Ibid., 1 April 2019, 38.
- 79 Other categories that reflected significant numerical increases were ‘deaths as a result of police action’ (an increase of 97 cases) and ‘complaints relating to the discharge of an official firearm’ (an increase of 93 cases). The combined increase in cases finalised in these two categories (190) accounts for less than 10% of the 1 996 increase in cases of assault categorised as ‘decision-ready’.
- 80 Where ‘o’ is entered, this may indicate that misconduct cases are included in the ‘other criminal matters’ category.

- 81 Using the figure provided above of 108 convictions related to disputes. With reference to Table 1, it is assumed that 13% of completed section 28(1)(b) investigations (i.e. 216) are in respect of investigations into disputes.
- 82 Based on 85 convictions for the balance of section 28(1)(b) cases (1 446).
- 83 Note that the total in Tables 12 and 13 is 32 106. There is a discrepancy of 1 case relating to IPID data for 2014–15.
- 84 As noted in Table 14, the figure in Tables 12 and 13 is 32 106. There is a discrepancy of 1 case relating to IPID data for 2014–15.
- 85 See, for instance, Minister of Police, The South African Police Service Discipline Regulations, 1 November 2016, Regulation 5(3)(a).
- 86 As indicated above, there is a discrepancy of one case between Tables 12 and 13 and Table 14 that relates to IPID data for 2014–15.
- 87 These are the 42 365 cases that it received between April 2012 and March 2019 (as reflected in Table 7) and the 549 cases which IPID took over from its predecessor, the ICD (IPID, Annual Report 2012–13, 39).
- 88 Of a total workload of 11 955 cases, 4 171 were classified as ‘decision-ready’ (IPID, Annual Report 2018–19, 55).
- 89 If cases of ‘other criminal offences and misconduct’ in Table 11 are excluded on the basis that they do not necessarily fall within IPID’s mandate.
- 90 Data on 1 485 cases referred to the NPA that is provided in IPID annual reports for the six years from April 2013 to March 2019 indicates that the NPA declined to prosecute 1 056 (71.1%) cases and withdrew 12 cases (0.8%) in court.
- 91 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, 39.
- 92 Mercilene Machisa, Ruxana Jina, Gerard Labuschagne, Lisa Vetten, Lizle Loots, Sheena Swemmer, Bonita Meyersfeld & Rachel Jewkes, ‘Rape justice in South Africa: A retrospective study of the investigation, prosecution and adjudication of reported rape cases from 2012’, South African Medical Research Council, 2017, 34, <http://www.mrc.ac.za/sites/default/files/files/2017-10-30/RAPSSAreport.pdf>.
- 93 Stephen J. Schulhofer, ‘Confessions and the courts’, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3869&context=mlr>; Yale Kamisar (1980). *Police interrogation and confessions: Essays in law and policy*. Ann Arbor: University of Michigan Press.
- 94 Subregulation 6(3), 11.
- 95 IPID, Annual Report 2017–18, 11. See, also, in the same report: ‘Provinces are also reprioritised with the small resources to focus on serious cases or high-profile matters in order to ensure high-impact per province’ (78).
- 96 Khomotso Phahlane was the SAPS Acting National Commissioner until he was suspended on 1 June 2017 on the basis of allegations of corruption against him (Khaya Koko, ‘Suspended ex-top cop Phahlane earns R4m while on “paid holiday”’, *The Star*, 12 December 2019, <https://www.iol.co.za/the-star/news/suspended-ex-top-cop-phahlane-earns-r4m-while-on-paid-holiday-39116542>).
- 97 IPID, Annual Report 2017–18, 11. Similar remarks were made by Mathews Sesoko, Head of Investigations at IPID, when he appeared before the Moerane Commission in December 2017 (Moerane Commission, Report of the Moerane Commission of Enquiry into the Underlying Causes of the Murder of Politicians in KwaZulu-Natal, 2018, 360).
- 98 IPID, Annual Report 2018–19, 21.
- 99 *Ibid.*, 28–30.
- 100 *Ibid.*, 28–30.
- 101 Sarah Marsh & Patrick Greenfield, ‘Met police dropped 30,000 criminal investigations in first 24 hours last year’, *The Guardian*, 9 September 2018, <https://www.theguardian.com/uk-news/2018/sep/09/met-police-dropped-30000-criminal-investigations-in-first-24-hours-last-year>.
- 102 Classification of cases as ‘less serious’ is inevitably somewhat controversial. This is partly because, in terms of the principles of the rule of law, all crimes should be taken seriously. In addition, application of this category might mistakenly be seen to imply that some alleged crimes are ‘not serious’. Nevertheless, it seems reasonable to suggest that, without seeking to imply that cases of assault are ‘not serious’, it might readily be agreed that cases of possible murder, rape, torture, attempted murder, and assault GBH can be seen as more serious.

- 103 IPID, Annual Report 2014–15, 22.
- 104 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, section 8.10.3 (page 36) read with the definition of ‘brought forward’ (section 5.7, page 7).
- 105 Ibid., section 8.10.5, 37.
- 106 ‘Case investigative report’ (CIR) is defined in the 2015 SOPs (page 6) and 2019 SOPS (page 8) but not ‘referral/recommendation report’.
- 107 IPID, Investigative and Firearm-Related Standard Operating Procedures, 1 April 2019, section 8.10.6, 39.
- 108 Ibid., section 8.10.7, 39.
- 109 Daneel Knoetze, ‘IPID’s cover-up of police brutality in SA’, 7 October 2019, <https://viewfinder.org.za/kill-the-files/>.
- 110 PONI, Annual Statistical Bulletin of the Police Ombudsman for Northern Ireland, 2017/18, 10.
- 111 As of 1 January 2020, the total personal strength of the PSNI was 6 848 (Police Service of Northern Ireland, ‘Strength of police service statistics, <https://www.psni.police.uk/inside-psni/Statistics/strength-of-police-service-statistics/>).
- 112 Based on the budget for personnel of the PONI (GBP 7 081 590 for 2018–19, which is the equivalent of R133 million) and IPID (R197 million).

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David Bruce is a Johannesburg-based independent researcher and writer specialising in the fields of policing, crime, criminal justice and public security. He has published numerous reports and journal articles, as well as articles in the press. A focus of some of his work has been on aspects of policing and police accountability, including the use of force by police, public order policing (crowd management) with a specific focus on the Marikana shootings, police corruption, and the management of persons in police custody. He is also a visiting research fellow at the School of Governance at the University of the Witwatersrand.

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