

ON THE RECORD...

Interview with Francois Beukman, Executive Director of the Independent Complaints Directorate

The Independent Complaints Directorate (ICD) is South Africa's primary independent agency responsible for investigating complaints against the police. It was established in 1997 under Chapter 10 of the South African Police Service Act. The Act makes the ICD's sole compulsory mandate the investigation of deaths in police custody or as a result of police action. However, the ICD has also been open to receipt of complaints of police involvement in criminal activity, and failure to comply with the Domestic Violence Act.

A new Bill, the Independent Police Investigations Directorate (IPID) Bill, is likely to be adopted in the third quarter of 2011. The new Act will significantly change the current functions of the ICD and will guide the transformation of the ICD into the Independent Police Investigations Directorate (IPID), providing it with its own legislation (independent of the SAPS Act). Under the new legislation the IPID will be mandated to investigate not only deaths in police custody or as a result of police action, but also complaints relating to the discharge of an official firearm by a police official; rape by a police official, rape of any person in police custody; complaints of torture or assault against a police official in the execution of his or her duties; and systemic corruption. The Bill also puts an onus on SAPS managers to report to the IPID on action taken against members following the submission of post-investigation IPID recommendations.

Andrew Faull speaks to ICD Executive Director, Francois Beukman, about the changes taking place.

Andrew Faull (AF): Can you tell me a bit about your background and what you were doing before you were appointed ED of the ICD?

Francois Beukman (FB): I did a BA (Hons) and MA (political science) at the University of Stellenbosch and a BProc and LLB at the University of South Africa. I worked in the Department of Constitutional Development as a senior constitutional planner during the multi-party negotiation process. For the last two years of the Constitutional Assembly I was the Department of Justice and Constitutional Development's representative in Cape Town. In 1995 I left the department for the private sector, did my articles, worked for law firms, became a director of a law firm, and in 1999 was elected to parliament where I served for ten years. From 1999 to 2005 I was a Member of Parliament for the NNP, and from 2005 to 2009 I was a Member of Parliament for the ANC. For three years I was the chairperson of

Parliament's Standing Committee on Public Accounts (SCOPA) and also served on other portfolio committees. In August 2009 I was appointed Executive Director of the ICD.

AF: How do you envisage the IPID Bill will change the way the ICD currently functions?

FB: We are preparing for the implementation of the Act, which we expect to be tabled by October. The one important thing is that we must be ready from an operational point of view. That means the re-organisation of the ICD moving to the IPID, bringing our crime investigation in alignment with that of the Act. We are bringing in Legal Services as a new Chief Directorate, a new division. We are also strengthening the provinces. The posts of Provincial Head are being upgraded so we have to advertise for these. We're going to add new talent and address the issue of gender equity at the same time.

Very importantly, we must be ready from the perspective of dealing with more serious crimes, moving from a complaints-driven organisation to one that focuses proactively on investigations, not waiting for complaints to come to us but dealing with matters when they are detected. I think that our approach in the last few months has been in line with that. If we anticipate a matter coming up we go for it. If there is something happening out there we must be able to respond. I think that should be the approach. So the culture of the organisation needs to change to become more proactive. That is going to take a lot of effort in terms of training. Our investigators must be trained in the new six priority crimes so that they are *au fait* with new developments. We will ensure that our training modules are up to date and that we have the necessary skills in the organisation to deal with priority crimes.¹

AF: What do you mean by becoming more 'proactive' in your work?

FB: If we become aware of an abuse that has not been reported we will look at it. In the past a lot of these cases have come from the media or third party sources, not necessarily a complaint that has been formally registered. So the message to ICD managers is that they must be proactive. They must be aware of what's happening in their community. If you are aware of what is happening in your province it will be easier to deal with cases effectively.

AF: How will the IPID Bill change the impact of the Directorate?

FB: There are going to be serious obligations on the police in terms of reporting. There will also be sanctions if they do not report matters in time. The police have to institute disciplinary procedures against members within 30 days of the IPID making recommendations to them following an investigation, and they will have to report back to us on those. So there is now a checking mechanism in place to ensure that on the one hand, if there are priority crimes being committed by police, we must be alerted to the fact. If they don't alert us there will be sanctions.

So it's going to be a much more regulated environment.

The Bill also puts an onus on police as individuals. If you have a group of police who assault somebody and an individual police official witnesses this, but doesn't alert us to the crime, all of them are going to be liable. There will be sanctions in terms of the IPID Bill in addition to the Criminal Act. So there will be a lot of focus on that, but also on the ability of the IPID to respond to reports, to deal with them from a management point of view. In this regard we have introduced a new software programme that will enable us to better monitor the progress of cases. We must be able to give more regular feedback to complainants about the progress of their cases. So IPID investigators must keep complainants informed in this regard.

AF: Do you think the Bill will lead to changes in police conduct?

FB: We believe it will have a positive effect in terms of general police conduct and culture, as well as a greater responsiveness to the community in terms of adherence to the Constitution and police regulations. We believe that by giving the IPID the necessary 'bite' our work will lead to a re-think of police procedures and protocols. In the end that is the rationale for police oversight, to ensure that the culture changes. So we believe it will have a positive long-term effect.

AF: The IPID Bill significantly expands the mandate and powers of the ICD, yet the budget allocated to the Directorate for the 2011/12 financial year was only R151,6 million. Additionally the Directorate has very few actual investigators. Is it reasonable to expect the IPID to fulfil the new mandate without a substantial increase in budget and manpower?

FB: Increases in budget and manpower are a precondition for us to fulfil the intention of the legislation. We must have the necessary human and financial resources and logistical capability. We have prepared a submission to the Executive Authority and Treasury for the next three years

that will go to the Portfolio Committee for Police in early June, and we are making substantial proposals in line with the Medium Term Expenditure Framework. If the Act is signed off before August, we have proposed that in October we get a further allocation to ensure that we have the necessary framework in place, and then next year the budget will look at bringing in more investigators, satellite offices and so on. It is going to be very important because in terms of the priority crimes like rape, assault and shooting incidents, if you are not able to be at the scene soon after the crime occurs; it's going to be an academic exercise. So it's going to be necessary to broaden our footprint in the country.

We have funds from Treasury this year for one additional satellite office. We're going to put it in George in the Southern Cape. There have been a lot of high profile cases there in recent years and we don't have any footprint currently in the Southern Cape, or the Eastern Cape, near Port Elizabeth, so hopefully the George office can fulfil that role. Then hopefully next year we can open a satellite office in Mpumalanga. But we will try to increase our footprint in priority areas. In our presentation to the Portfolio Committee in June we will propose two or three more offices in each province.

AF: Since 2006 we have seen drastic increases in shooting incidents involving police, as well as increases in complaints of attempted murder and assault laid against police. Why do you think this is the case?

FB: One should look at this holistically. There was a major increase in the number of police recruited in recent years and increases in major crime in certain provinces, so I think incidents in which violent crime occurred increased and that impacted on those figures.

AF: So do you think we are seeing an increase in the misuse of force by police and an increase in brutality?

FB: I think it must be looked at over a three-year term, and we will release our figures in

September. I think there's more focus in the media on police brutality than there was previously, but whether there is an actual increase, one would need to look at the final figures in September. I think it's clear that there has been a recent focus on police brutality and I think that is line with the thinking of the Portfolio Committee to bring in assault and torture as priority police crimes, and I think that is an appropriate response and will assist to curb that trend.

AF: So you don't feel there is necessarily an increase in abuse by police?

FB: I think the reporting is more comprehensive than it used to be. We can ask: Is this the full picture? Is there still underreporting in the rural areas? But that is why every incident must be reported and registered with us so that we can get a real assessment of what is happening and how we should respond.

AF: In a 2006 ICD report on investigations into deaths as a result of police action the Directorate stated that 'A critical issue further highlighted by the research relates to the public utterances in the media by high ranking police officials and politicians, which, although not necessarily incongruent with or overriding official policy regarding the use of force by police, could be interpreted as such by especially those young inexperienced police officers, the majority of whom work in the front line...high ranking police officials should not fall in the trap of being driven by emotion when briefing the media in the aftermath of criminal activities that tend to generate intensive media interest'.² These sentiments have been echoed by analysts who have cautioned against overly aggressive rhetoric from police leadership. What is your comment on this rhetoric and the perceived link with police brutality?

FB: It has always been our view that every case reported to us should be investigated and dealt with accordingly. I think it's important to determine in each case what the overriding factor was influencing that conduct. Is it a criminal case and can we present a firm case to the NPA? In

terms of misconduct, did the police person operate in terms of the police regulations, yes or no? So that is really our core mandate and we are going to focus on that.

AF: But this observation was made in an ICD report...

FB: Once again, looking at the statistics, if you look at the past financial year we couldn't find any link between utterances that were apparently made and the incidences, because there was a downward trend in some categories in that same financial year. So I think one should look more specifically at issues of command and control at local level, experience of police officers and so on.

AF: What are the limitations of the ICD's role in preventing police brutality and violence?

FB: One important factor that we must always promote and instill is that we are an oversight body. You cannot work from a premise that you are just another government department or institution. Of course you are a public service department but employees of the ICD should be prepared to go the extra mile. So it's also about the philosophy that you are there to protect the public, you are the last resort for a lot of people with no access or no resources to contest a certain incident. It's vitally important in this move from the SAPS Act to the IPID Act that we foster and instill that in our employees, and future investigators coming here. That is a very important thing, to have the cultural change to ensure that we execute our duty without fear or favour.

Then also the question of resources and logistical capability. It's vitally important that it should be upgraded so that we can deal effectively with matters arising. So the human resources element is vital, I've said this at the Portfolio Committee level, that we must improve our national and provincial management, we must strengthen it, bring in new talent, get expertise in terms of our new priority crime areas so that we have the expertise to do it. We can't outsource it; we must be able to deal with those cases. So it's very

important that we have the financial, logistical and human skills to fulfil our mandate going forward.

AF: Is it the role of the ICD to contribute to reductions in police abuse and brutality?

FB: Absolutely, I think the mere fact that we are there is an indication of this. We must in a sense be a deterrent to any police member who thinks 'If I'm going to engage in acts that are against the Constitution, that's against the law and against the police ethos, there is an institution that will come in and I will be held accountable.' I think it's vitally important that we can make that contribution.

AF: The issue has been raised that it took less than a week to make all the arrests in the Andries Tatane case, but 18 months in the Olga Kakane case.³ Why was there such a big difference between the two?

FB: I think that especially with criminal cases it depends on a case-to-case basis. In the Tatane case we had the video feed, it was easy to determine what happened, we had good witnesses; we had it in real time. Nobody could dispute the version of what happened. In other cases maybe there are no witnesses involved, maybe it's difficult to get cooperation, so it depends. That is why it is very important that there must be very good cooperation between us and the NPA. Since I came here I have worked very hard on that, to ensure that there is good cooperation, to ensure that we have regular meetings, to check if there are any issues that are hampering us, are we doing enough? I will be the first to say that we must improve on that. In terms of the IPID Act there is an obligation on the NPA and us to work closely together.

If there are cases for instance where the public feels we are dragging our feet or there's not progress then they must put it on the table and we must address it. It might be related to technical issues but it might be our investigators, maybe there is not the correct supervision, and we must correct that. We can't have cases dragging out, but

again, in technically difficult cases we are unfortunately not the only role player. I don't want to blame other institutions, but especially in court cases there are a lot of issues that come into play. But we want to improve our current track record. Unfortunately some cases take a long time. It's not necessarily that people are dragging their feet but they want to make sure that when cases go to court that there are no loopholes, that they've got their witness statements in, so it's a complex chain and one outstanding issue can delay that.

AF: Can we expect more of the kind of rapid response we saw to the Tatane killing as we move forward?

FB: My approach is that we must improve. You can have a lot of excuses but we must focus on the issues and we must work in a team-oriented approach, especially if it's a more complex matter. We must get a mix of experienced investigators together and say 'run with it'. So we're getting a whole mix of investigative skills together in a team. We must update our approach. There is a lot of room for improvement, so we will see a shift in the investigative model. You must be sure that the expertise you are bringing in to deal with complex cases can deal with them sufficiently, otherwise that case won't reach the court, that is just reality.

AF: The changes in the Act will lead to fundamental changes in the way the ICD functions and is likely to cause various management challenges. Given the substantially expanded mandate which doesn't appear to be matched by the ICD budget for this financial year, how are you handling the kinds of insecurities and concerns that must be manifesting in the organisation?

FB: With any change process there are of course going to be challenges. The status quo is comfortable for people and if you make changes there will of course be resistance in some quarters. But our approach is that everybody will have job security and a role to play. In cases where people's functions are no longer needed, we will look at other options such as placement in another

government department, but everyone will be catered for. As with any change process there will be some turbulence but that's anticipated. The only way to deal with that effectively is for people to understand the new mission and vision and buy into that approach. The only way we're going to improve our capability and ability to improve police conduct and reduce police crimes is to ensure that we have the necessary skills and management experience, so that's why we want to make sure that we've got the correct team to do it. Hopefully we'll be able to do it over the next three years.

AF: These are exciting times to be heading up the ICD. What is your vision for the IPID in coming years?

FB: That we will be an effective organisation able to fulfil our mandate and deliver an effective service to the public, and to make sure that police conduct is in line with the Constitution. I think that will be our major focus. If we've got the necessary resources and skills I think we will be able to attain that.

NOTES

1. In this context 'priority crime' refers to offences outlined in the IPID Bill that the new Directorate will engage with, such as rape or torture by a police official. Within the SAPS the term 'priority crime' refers to those crimes considered most important by police.
2. Proactive Research Unit, Independent Complaints Directorate, *An Investigation into Deaths as a Result of Police Action in Kwazulu-Natal, the Eastern Cape and Gauteng*, 2006.
3. In April 2011 Andries Tatane was allegedly shot and beaten to death by police in Ficksburg in the Free State during a protest march over poor service delivery. The incident was captured on camera by television news journalists and broadcast on prime time news across the country. Olga Kakane was allegedly shot dead by police in October 2009 in Mabopane, Gauteng after they mistook her for a hijacker and opened fire on the car she was driving. Two other occupants were injured in the same incident.