



independent complaints directorate

Department:
Independent Complaints Directorate
REPUBLIC OF SOUTH AFRICA

**PRESENTATION TO THE PORTFOLIO
COMMITTEE ON POLICE**
30 August 2011, Parliament

Departmental Task Team

**BRIEFING ON
CROWD CONTROL**

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Constitutional mandate

Section 206(6) of the Constitution of the Republic of South Africa makes provision for the establishment of an independent police complaints body and stipulates that:

“On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police services in the province.”



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Current legislative mandate

Current mandate: Chapter 10 of the South African Police Act , 1995
(Act 68 of 1995)

Section 53(2) stipulates that the ICD:

May *mero motu* or upon receipt of a complaint, investigate any **misconduct or offence** allegedly committed by a member, and may, where appropriate, refer such investigation to the commissioner concerned.

Shall *mero motu* or upon receipt of a complaint, investigate any **death in police custody or as a result of police action.**

May investigate any matter referred to the ICD by the minister or member of the executive council (MEC).



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IPID mandate

New mandate: Independent Police Investigative Directorate Act, 2011 (Act 1 of 2011)

Section 28 (1) stipulates that the IPID must investigate -

- any **deaths in police custody**;
- **deaths as a result of police actions**;
- any **complaint relating to the discharge of an official firearm** by any police officer;
- **rape by a police officer**, whether the police officer is on or off duty;
- **rape** of any person while that person is **in police custody**;
- any **complaint of torture** or assault against a police officer in the execution of his or her duties;
- **corruption matters** within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- **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.



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IPID mandate (cont)

New mandate: Section 28 of the Independent Police Investigative Directorate Act, 2011 (Act 1 of 2011)

Section 28 (2) stipulates that the IPID may investigate -

- matters relating to **systemic corruption** involving the police.



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Effect of the IPID Act

1. Reporting Obligations

The Station Commander or any member of the SAPS or MPS must -

- immediately after becoming aware, notify the Directorate of any matters that must be investigated by the Directorate; and
- within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any such matter.



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Effect of the IPID Act (cont)

2. Cooperation by SAPS and MPS

The members of the SAPS or MPS must provide their full cooperation to the Directorate, including but not limited to -

- the arrangement of an identification parade within 48 hours of the request made by the Directorate;
- the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated; and
- any other information or documentation required for investigation purposes.



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Statistics-Received cases per Classification and Year (2002-2011)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Assault Common	-	-	-	1	-	2	2	-	1	2	8
Assault GBH	1	1	2	2	-	2	4	44	7	24	87
Attempted Murder	1	4	2	3	2	9	9	5	15	5	55
Murder	-	2	5	-	3	3	10	9	11	9	52
Pointing of firearm	-	-	-	-	-	-	-	1	-	-	1
Torture	-	-	-	-	-	-	-	-	1	-	1
Total	2	7	9	6	5	16	25	59	35	40	204



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Summary of Statistics (2002-2011)

- **ICD received a total of 204 cases related to crowd control over a period of ten years (2002-2011)**
- **The highest number of alleged cases was in terms of Assaults with the Intention of causing Grievous Bodily Harm (Assault GBH) - a total of 87 cases were reported**



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Statistics-Received cases per Classification and Province (2002-2011)

	Eastern Cape	Free State	Gauteng	KwaZulu- Natal	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape	Total
Assault Common	1	1	1	-	-	2	-	1	2	8
Assault GBH	2	1	5	-	3	60	7	2	7	87
Attempted Murder	1	4	9	7	9	2	11	2	10	55
Murder	2	4	9	15	5	12	1	2	2	52
Pointing of firearm	-	-	-	-	-	-	1	-	-	1
Torture	-	-	-	-	-	1	-	-	-	1
Total	6	10	24	22	17	77	20	7	21	204



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Summary of Statistics

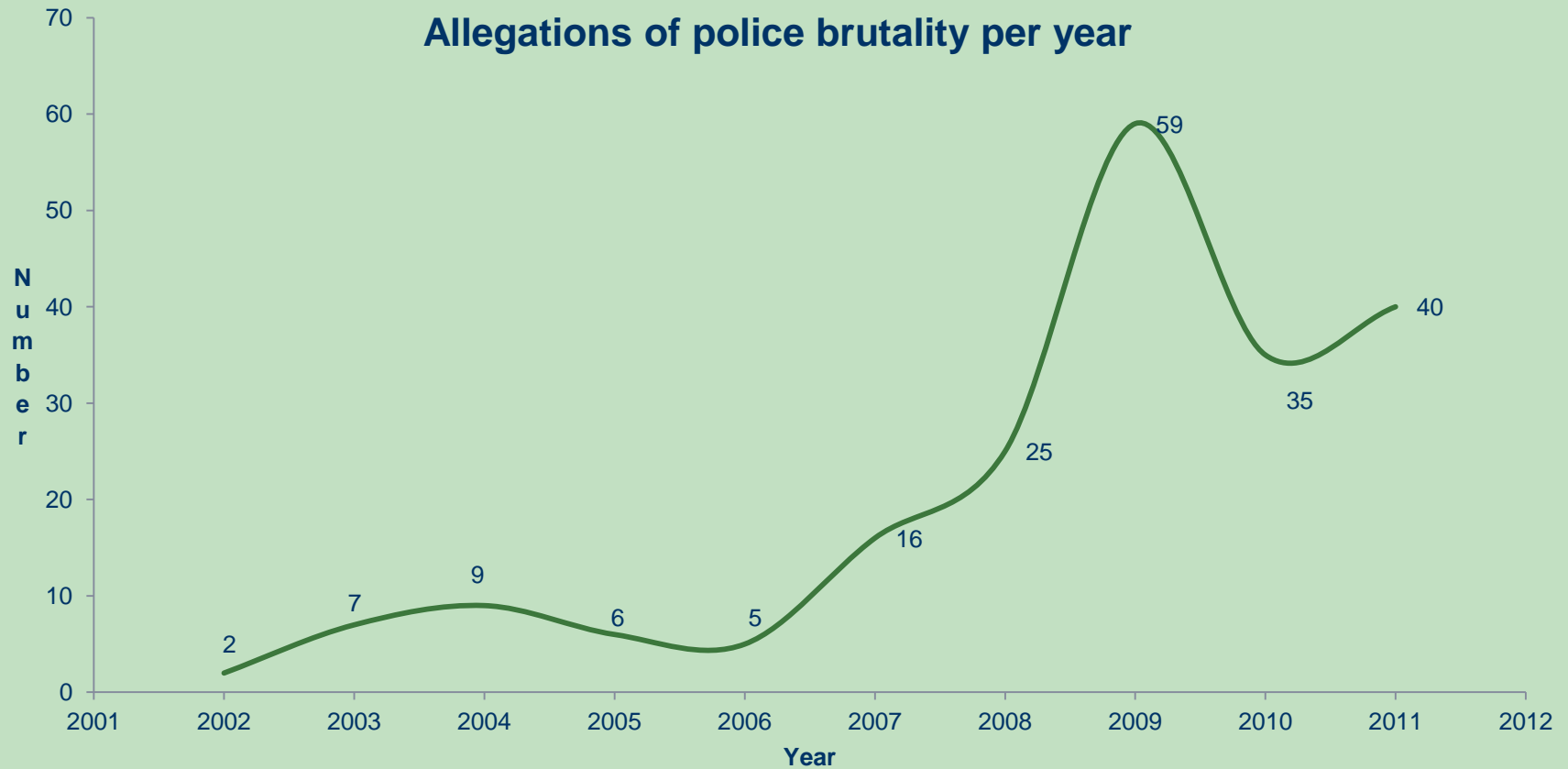
- **Of the 204 alleged cases, Mpumalanga received a total of 77 cases from 2002 to 2011, followed by**
- **Gauteng with 24 alleged cases and KwaZulu-Natal with 22 alleged cases**
- **Of the 87 alleged Assault GBH cases, a total of 60 cases were reported by Mpumalanga**



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Statistics – Received cases (2002-2011)





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Summary of Statistics (2002-2011)

- **The ICD recorded a year on year increase of alleged cases of brutality, from 5 in 2006, 16 in 2007 and 25 in 2008, to 59 cases in 2009**



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Statistics-Received cases per Policing Unit and Province (2002-2011)

Policing Unit	Eastern Cape	Free State	Gauteng	KwaZulu -Natal	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape	Total
Metro Police	-	-	-	1	-	-	-	-	1	2
Organized Crime Unit	-	-	-	-	-	1	-	-	-	1
POP	1	7	-	3	2	-	4	4	-	21
POP & Station Members	-	1	-	3	-	36	4	1	-	45
Station Members	5	2	-	15	15	-	12	2	17	68
TRT Members	-	-	-	-	-	13	-	-	-	13
POP, Intervention Unit & TRT	-	-	-	-	-	27	-	-	-	27
Internal Investigation Unit	-	-	-	-	-	-	-	-	1	1
Station Members & Metro Police	-	-	-	-	-	-	-	-	2	2
Unspecified	-	-	24	-	-	-	-	-	-	24
Total	6	10	24	22	17	77	20	7	21	204



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Summary of Statistics (2002-2011)

- **Most accused members were from Stations (68) followed by POP & Station members (45) in incidents where they were jointly involved**
- **59% of the victims were involved in protest marches or demonstrations**

Statistics-Status of cases per Province (2002-2011)

Province	Active	Completed	Closed	Withdrawn	Total
Eastern Cape	3	-	3	-	6
Free State	1	3	6	-	10
Gauteng	-	10	14	-	24
KwaZulu-Natal	6	8	7	1	22
Limpopo	5	12	-	-	17
Mpumalanga	18	46	13	-	77
North West	1	5	14	-	20
Northern Cape	2	-	5	-	7
Western Cape	1	1	17	-	21
Total	39	85	79	1	204



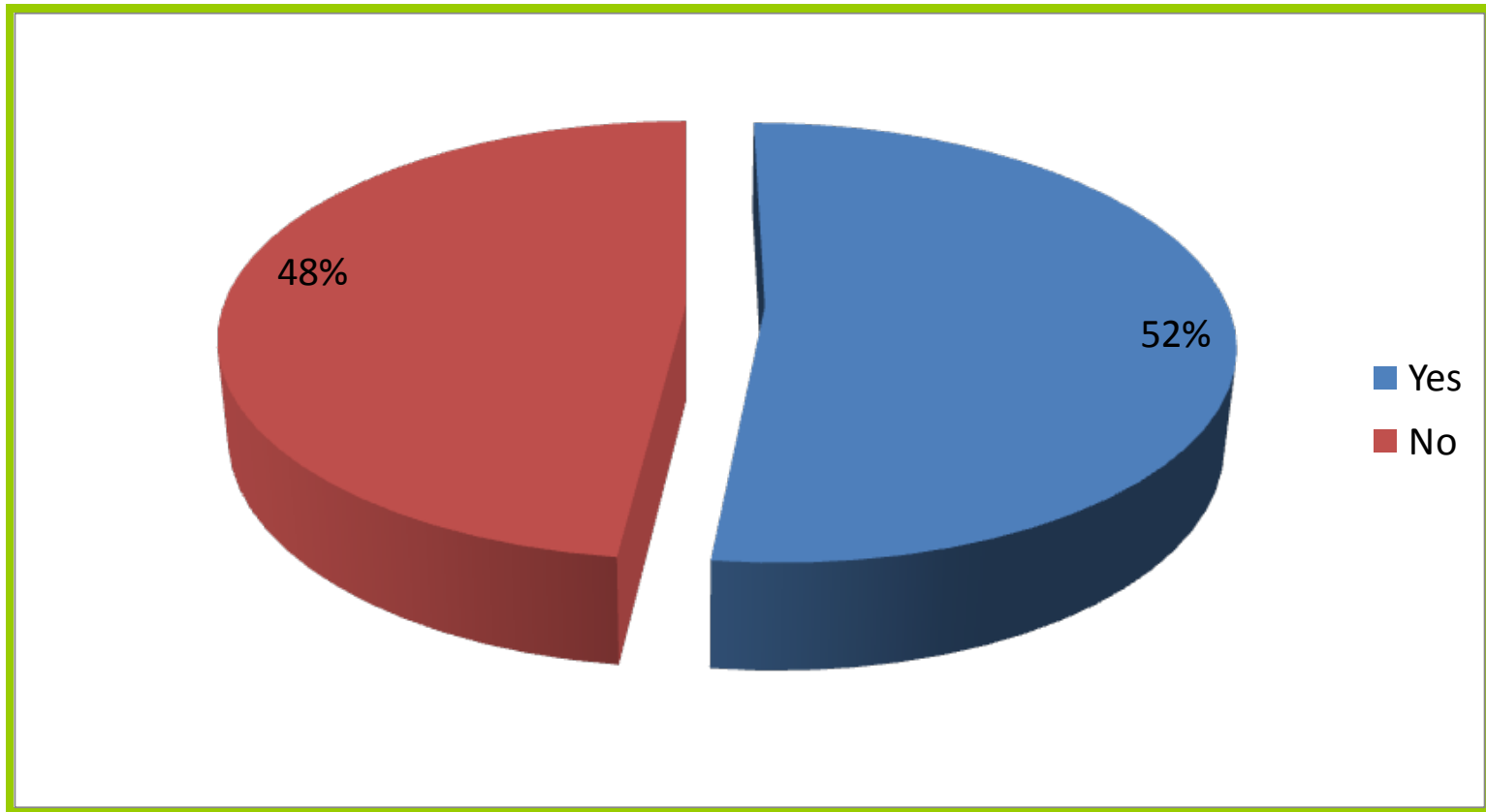
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Summary of Statistics (2002-2011)

- **In 85 of the 204 cases received, investigations were already completed and**
- **79 cases of the 204 cases received were already closed. Of the 79 closed cases -**
 - **4 cases resulted in prosecution (of which 2 cases resulted in acquittals, 1 case in an inquest and 1 case in a conviction); and**
 - **75 cases were closed as Unsubstantiated as members could not be identified.**

Statistics-Recommendations made on Criminal Cases (2002-2011)





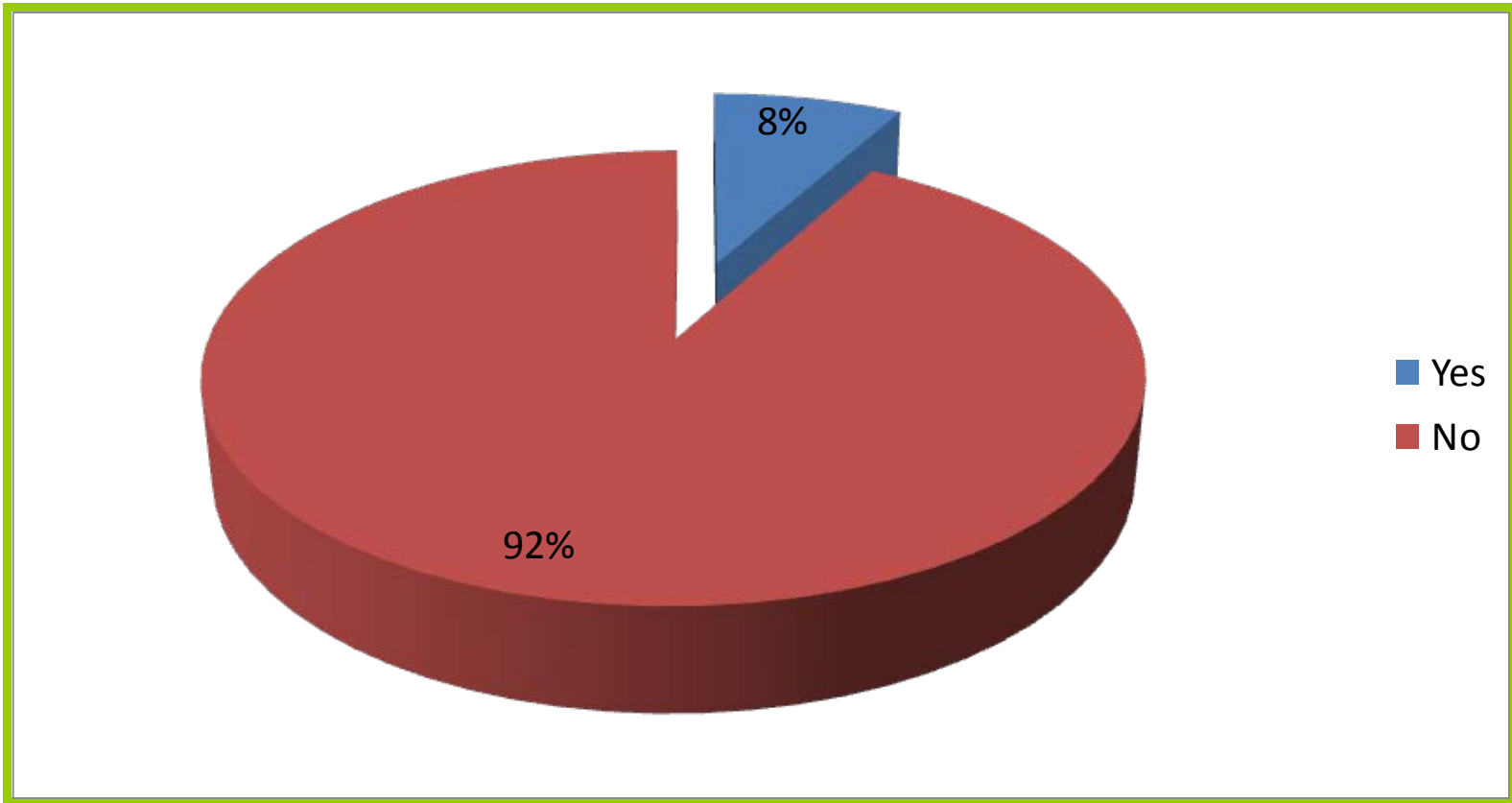
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Summary of Statistics 2002-2011

- **In 52% of all the cases received, recommendations were made to the Public Prosecutor in terms of the criminal aspects involved.**

Statistics-Recommendations made on Departmental Cases (2002-2011)





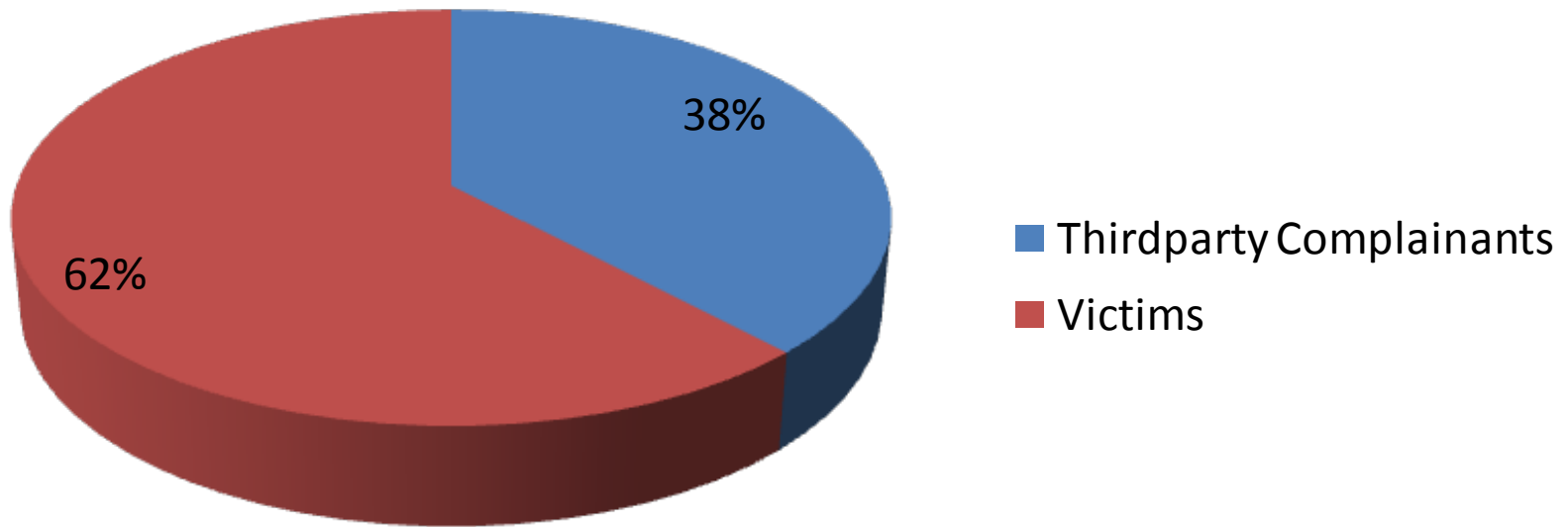
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Summary of Statistics (2002-2011)

- In 8% of all the cases received, recommendations were made to the Police in terms of the departmental aspects involved

Statistics-Received cases per Complainant Classification (2002-2011)





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Summary of Statistics (2002-2011)

- **62% of the cases were received from the victims themselves and**
- **38% of the cases were received from a third party complainant**



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Challenges and recommendations

CHALLENGES	RECOMMENDATIONS
Identification of members involved in the actual crowd control and any other incidents including shooting, assaults and arrest	Unit Commanders to ensure that SAP 15's are completed before every intervention by the Public Order Policing Units including the serial number of firearms, shotguns, number of live rounds and rubber bullets and the members carrying teargas/pepper sprays and any equipment including helmets. Commanders must certify the issuing of such equipment.
Training of members in respect to crowd dispersing and crowd management	The SAPS to provide updated training to members of the Public Order Policing Units. These members must be trained on a regular basis, and on current and international best practices.
Lack of information to hold Identification Parades	With correctly completed SAP 15's it would be easier to identify members who were involved in any unlawful activities during any event/protest/strike.



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Challenges and recommendations

CHALLENGES	RECOMMENDATIONS
Other units/members involved in unplanned events/protests/strikes	These units/members must report to the Station Commander or the Commander of the Public Order Policing Unit on duty.
Co-operation from members of the SAPS and Metro Police Services	Senior members/Commanders involved in any crowd management must be compelled to assist the Independent Complaints Directorate in any investigations arising from such crowd management.
Dress code of members during activities involving crowd control	Police members must be easily identifiable. Name-tags must be visible or their bullet proof vest must be marked with visible numbers; the helmets worn by members of the Public Order Policing Units must be clearly marked with a numbers and handed to identified members. (Similar identification markings should also be developed for other police members deployed for crowd control.)



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Challenges and recommendations (cont)

CHALLENGES	RECOMMENDATIONS
Difficulties in cordoning off crime scenes	The area must be properly cordoned off using barbed wire as a method to secure the scene.
Identifying members using crowd control equipment	There is a need for the police to procure crowd management equipment that can be linked to a specific user.
Lack of crowd control equipment at Police Stations	Police Stations must be stocked with minimum crowd control equipment to be able to respond appropriately to unplanned events.
Lack of post-events/protest/strike reports	Commanders must be responsible for preparing detailed post-crowd control reports, which must be made available to the ICD for investigation purpose.



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Challenges and recommendations (cont)

CHALLENGES	RECOMMENDATIONS
Lack of command and control.	Members involved in a crowd control situation must only act on instruction and direction of the Commander. Commanders need additional training and must be able to provide good command and control throughout the operation.

Closure



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- **IPID Act creates a new oversight framework**
- **Consideration of International Best Practice**
- **Consideration of Recommendations**
- **Review of Standard Operating Procedures**



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ANNEXURE : DEFINITIONS

- **Crowd:** a large number of people gathered together; a group of people with a common interest (SA Oxford Dictionary, 2002)
- A large group of individuals in the same physical environment, sharing a common goal. These individuals may act in a different way than when they are alone or in small groups (Musse & Thalmann, 1997)
- Crowds are temporary groupings of people in close proximity who share a common focus or interest, concentrated in time and space in that they usually span a few days or hours and operate within a specific area or locality with a collaborative goal
- **Crowd management:** the policing of assemblies demonstrations and all gatherings as defined in the Act whether recreational, peacefully or of an interest nature (SAPS SO (G) 262). Police must guard against the ill treatment of all involved in crowd gatherings and protect public safety & strike a balance between respecting the rights of individuals and enforcing the law.
- **Brutal:** savagely violent without any attempt to disguise unpleasantness (SA Oxford Dictionary 2002).
- **Brutality:** the state or quality of being ruthless, cruel, harsh and unrelenting (Free Dictionary, 2000). A behaviour that is very cruel or violent, showing no feelings for others... (Cambridge Dictionaries Online, nd.).



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DEFINITIONS CONT...

- **Member:** an official appointed in terms of the South African Police Service (SAPS) Act, 1995(Act 68 of 1995) as amended, and includes a member of the Municipal Police Service (MPS) (SAPS Act 68, 1995).
- **Victim:-** The United Nations declaration states that “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws (Victims of Crime NT, nd.)
- **Victim** also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.
- **Demonstration:-** includes any demonstration by one or more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action.
- **Gathering:** “any assembly, concourse or procession of more than 15 persons in or any public road as defined in the Road Traffic Act, 1989 (Act No. 29 of 1989), or any public place or premise wholly or partly open to the air –
(a)which the principles, policy, actions or failure to act of any government, political party organization, whether or not that party or organization is registered in terms of any applicable law, are discussed, attacked, criticised, promoted or propagated: or



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DEFINITIONS CONT...

- (b) Held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for opposition to the views, principles, policy, actions or omissions of any person or body of persons or institution, including any government, administration or governmental institution”.
- **Unplanned gatherings:** are spontaneous events which just occur and do not comply with the provisions of the Act (Act 205 of 1993).
 - **Planned gathering:** is an event which complies with the provisions of the Regulation of Gathering Act (Act 205 of 1993)
 - **Maintenance of Public Order:** the policing of assemblies mass actions and or gatherings of persons, whether peaceful or of an unrest nature.
 - **National Forum:** a national structure established to ensure cooperation and interaction among role players; in this instance, the Independent Complaints Directorate (ICD), the SAPS, and members of the MPS, later became the National Forum for Municipal Police Services (NFMPS). It is based on the Strategic Framework for the NFMPS, which establishes mechanisms and processes that ensure effective co-operation and service delivery outcomes among the role players, especially in respect of communication, consultation and co-operative processes (NFMPS, 2005).
 - **SAP 15:** A register for recording of members’ details and equipment when they are placed on duty at a station or for a specific project.



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DISTINCTION BETWEEN SAPS & MPS

❖ SAPS FUNCTIONS

- ensure the safety and security of all persons and property in the national territory;
- uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
- ensure co-operation between the Service and the communities it serves in the combating of crime;
- reflect respect for victims of crime and an understanding of their needs; and
- ensure effective civilian supervision over the Service; (SAPS Act 68 of 1995)

❖ MPS FUNCTIONS

- Traffic policing, subject to any legislation relating to road traffic;
- The policing of municipal by-laws and regulations which are the responsibility of the municipality in question; and
- The prevention of crime (NFMPS, 2005).



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LAWS, REGULATIONS & DECLARATIONS

- ❑ The 1948 UN Declaration of Human Rights, 57;
- ❑ The International Covenant on Civil and Political Rights (1976);
- ❑ The International Covenant on Economic, Social and Cultural Rights (1976) 58;
- ❑ The European Convention for the Protection of Human Rights and Fundamental freedoms (1950);
- ❑ The provisions of the Treaty of Amsterdam which refers to implementing areas of Freedom, Security and Justice;
- ❑ Regulation of Gatherings Act, 205 of 1993; and
- ❑ Standing Order (General) 262.