



# Complaints Audit Sierra Leone



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## **ABBREVIATIONS AND ACRONYMS**

<b>APCOF</b>	African Police Civilian Oversight Forum
<b>CDIID</b>	Complaints, Discipline and Internal Investigation Department
<b>HRCSL</b>	Human Rights Commission of Sierra Leone
<b>IPCB</b>	Independent Police Complaints Board (Sierra Leone)
<b>IPID</b>	Independent Police Investigative Directorate (South Africa)
<b>IPOA</b>	Independent Police Oversight Authority (Kenya)
<b>MoU</b>	Memorandum of Understanding
<b>NGO</b>	non-governmental organisation
<b>PSC</b>	Police Service Commission
<b>SLP</b>	Sierra Leone Police
<b>SOPs</b>	standard operating procedures

# 1 INTRODUCTION

In July 2013, the government of Sierra Leone passed regulations to establish an Independent Police Complaints Board (IPCB). The IPCB has the authority to receive and investigate complaints of general misconduct involving a police officer above the rank of Superintendent and complaints involving the excessive use of force by any police member.<sup>1</sup>

This Complaints Audit (Audit) forms part of a broader review of the mandate of the IPCB and also a review of complaints lodged against the Sierra Leone Police (SLP) (received between 2013 and 2014) undertaken by the African Police Civilian Oversight Forum (APCOF).<sup>2</sup> This research will inform the recommendations of the process to be undertaken to operationalise the IPCB, and specifically the development of Standard Operating Procedures (SOPs) and the capacity requirements of the IPCB.

This Audit provides:

- A baseline data on police complaints that can later inform the monitoring and evaluation process to determine impact of the IPCB.
- An assessment and identification of trends and gaps in existing complaints processes.
- Recommendations on areas where complaints management can be improved.
- Areas for further development.

## 2 SCOPE OF THE AUDIT

Three state authorities receive and investigate complaints against the police. These bodies include the Ombudsman, the Human Rights Commission of Sierra Leone (HRCSL) and the SLP's Complaints Discipline and Internal Investigation Department (CDIID).<sup>3</sup> The Audit analysed complaints against members of the police received by these three bodies between 2013 and 2014.

The Audit also includes a comparative analysis of complaints bodies in other jurisdictions: South Africa, Kenya and Nigeria. Input from Kenya and South Africa provided useful insight into the type and nature of complaints, allocation of cases to investigators and information on complaints handling processes. The comparative data provides useful lessons to enhance recommendations contained in this Audit.

## 3 METHODOLOGY OF THE AUDIT

The methodology employed in preparation of this Audit consisted of desktop, quantitative and qualitative research methods.

### 3.1 Quantitative methods

The Audit analysed complaints data provided by the HRCSL, Ombudsman and CDIID. Primary data was collected using a data information sheet, attached as **Annexure A**, which was distributed by the IPCB to the aforementioned organisations. Data on 465 complaints was submitted by the CDIID, HRCSL and Ombudsman as part of populating the data sheets distributed to these organisations.

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1 For full details on the legal mandate of the IPCB to receive and investigate complaints see the *IPCB First Progress Report to the Parliament of Sierra Leone*.

2 For more details on the support of the UNDP and APCOF's role please see the *IPCB First Progress Report to the Parliament of Sierra Leone*, and for the Preferred Staff Establishment Capacity see the Work Study.

3 The Ombudsman and HRCSL receive and investigate complaints against the police as part of their broader complaints mandate.

The 465 complaints contained detailed information on complaints against members of the SLP received by the HRCSL, Ombudsman and CDIID.

The CDIID also provided additional statistical information on complaints received by the SLP. This informed the quantitative and descriptive analysis of cases likely to be received by the IPCB.

The information submitted on the data sheet by the Ombudsman, HRCSL and CDIID was analysed and assessed alongside information on complaints management processes from the Kenyan Independent Police Oversight Authority (IPOA) and the South African Independent Police Investigative Directorate (IPID). Although the legislative framework for the Police Service Commission (PSC) was also reviewed, information concerning its complaints handling procedures was not available. This informed the formulation of recommendations on how the IPCB processes could be improved and duplication between the agencies mandated to receive police complaints addressed.

## 3.2 Qualitative methods

In addition, a desktop review of legislation and policy that impact on police complaints was undertaken. This included a review of legislation in Sierra Leone and specifically the *Ombudsman Act (Act 2 of 1997)*, the *Human Rights Commission of Sierra Leone Act (Act 9 of 2004)*, the *Police (Discipline) Regulations of 2001* and the *Independent Police Complaints Board Regulation of 2013*.

The desktop review also assessed comparative legislation in Kenya, Nigeria and South Africa, including the *Independent Police Oversight Authority Act of 2011* (Kenya), the *Independent Police Investigative Directorate Act of 2011* (South Africa), the *Police Service Commission Act of 2001* (Nigeria), as well as the *Regulations for the Operations of the Independent Police Investigative Directorate of 2013* (South Africa).

The complaints processes of the IPID and the IPOA during 2013 and 2014 were also assessed. The assessment looked at how complaints are received, processed, and resolved.

Finally, the IPCB systems were reviewed against the benchmarks set by the United Nations Special Rapporteur on Extrajudicial Summary or Arbitrary Executions.<sup>4</sup>

## 4 LIMITATIONS OF THE AUDIT

Scant data on complaints and inconsistencies in classification of complaints limited the study.

Challenges included:

- The categories used to classify complaints by CDIID, the Ombudsman and the HRCSL differed across agencies. The CDIID classified complaints largely based on the type of disciplinary offence the police officer was alleged to have committed,<sup>5</sup> whilst the Ombudsman and HRCSL categorised

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4 Philip Alston: Human Rights Council Fourteenth session Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development – Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/14/24/add8, 28 May 2010.

5 Some of the key categories used by the CDIID include the following:

- 1) **Lack of civility** is a dismissible offence, which refers to unlawful detention and abuse of persons, and failure to show respect for their human rights.
- 2) **Corrupt or improper practice** is a dismissible offence, which includes taking bribes or passing information to any person on warrant or summon which has been or is about to be issued against such a person.
- 3) **Act/Conduct:** This is a dismissible offence and refers to any unprofessional behaviour not specified in the Police Regulations 2001, but is against common practice, e.g. stealing or unlawful killing of a person.
- 4) **Unfair treatment:** This is dismissible but depends on the nature of the issue. It is an act of bias or prejudicial treatment, wherein a person makes a report and the police officer in question fails to take action, and where such action to be taken lies in his power.

their complaints more on the actual nature of the incident itself. This made analysis and ultimately a determination of the number of incidents potentially falling within the IPCB mandate difficult.

- The absence of detail on the nature of some of the incidents made it difficult to establish whether complaints received by the CDIID (which accounted for the majority of cases of police complaints) would indeed fall within the mandate of the IPCB. This was because the CDIID did not always provide comprehensive details on the specific act that led to the categorisation of disciplinary breach alleged. For example, complaints of assault are generally captured only as falling within a category of “lack of civility” but did not in most instances contain sufficient detail on circumstances of incident. In cases where descriptions were provided significant inconsistencies in categorisation was evident. Whereas some assaults were captured and recorded “lack of civility” others were captured under the category of “act/conduct”. This latter category was generally used by the CDIID to capture more serious infringements such as unlawful killings, theft and other criminality, which is why it became difficult to conduct an analysis when assaults were included in this category.
- While the HRCSL and Ombudsman were able to provide detailed information about complaints for both the 2013 and 2014, the CDIID was only able to provide detailed information for complaints received during the period January to June 2014 and statistical data for the period June to December 2014. The statistical data submitted by the CDIID did not include details of the actual incident alleged to have occurred.
- All specified complaints reviewed across the three entities (with the exception of two cases from the HRCSL) occurred in the western region of the country. While this may be as a result of the data management systems and the fact that the three bodies all have their headquarters in this western region, it meant that it was not possible to produce a complete picture of the geographical breakdown of complaints across all three bodies because this data on complaints occurring outside the western region was not available, except as statistical data provided by the CDIID.
- Given the above, the statistical data provided by the CDIID, which provided the number of complaints received in their different regions, was used as a baseline for the geographical breakdown of complaints the IPCB may be expected to manage in the future.

## 5 REVIEW OF THE LEGISLATIVE MANDATE OF THE IPCB

The regulations establishing the IPCB represent an important milestone in the transformation of the security sector and particularly the Sierra Leone police. The regulations also highlight the Sierra Leone government’s commitment to developing a national police accountability framework. Key to the success of the IPCB is ensuring that the body has the necessary resources to enable it to function as an effective independent oversight body. The United Nations Special Rapporteur on Extrajudicial Summary or Arbitrary Executions has identified five key characteristics for a successful oversight mechanism, which provided the standard against which the IPCB regulations were reviewed.

The legal mandate of the IPCB was assessed against the five key elements required for a successful independent police oversight mechanism, as identified by the United Nations Special Rapporteur on

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- 5) **Neglect of family responsibilities:** This non-dismissible offence involves male personnel who fail to provide welfare support to their spouse or children.
  - 6) **Neglect of duty:** This relates to failure to do official duty or responsibilities under the direct control of personnel.
  - 7) **Absence without leave:** This refers to absence from work without permission; and unlike other offences, a dismissal decision is taken by the human resource department of the police.
  - 8) **Unlawful discharge of firearms** is a dismissible offence and refers to the discharge of a weapon without order.

Extrajudicial Summary or Arbitrary Executions.<sup>6</sup> Utilising the Special Rapporteur's standards as a benchmark to evaluate the IPCB systems is important because this provides an opportunity to assess the extent to which the IPCB meets these standards. In addition it provides a measure to assess the ability of the IPCB to provide professional and effective oversight over the SLP. These benchmarks are: The necessary powers to carry out oversight; the capacity and resources to perform effectively; the ability to operate independently and without interference; the ability to operate transparently with community and political support.

## 5.1 The necessary powers for effective oversight

### ***Mandate of IPCB***

The IPCB regulations provide the IPCB with a clear mandate to receive and investigate complaints of police involvement in assaults or injuries, shooting, deaths while in police custody and death as a result of a road accident involving the police. The regulations also allow the IPCB to receive and investigate any other matter where it believes the actions of the police are likely to impact significantly on the confidence of the people. This provides the IPCB with the necessary mandate to investigate any serious abuse of police power and excessive force.

### ***Investigative powers***

In carrying out this mandate, the regulations provide the IPCB with powers similar to those provided to the HRCSL and Ombudsman. The powers assigned to the IPCB give the body the right to access any necessary information, access premises and to interview and question police officers and members of the public.

Clear sanctions also exist to address anyone who obstructs or refuses to cooperate with the IPCB.<sup>7</sup>

The IPCB like the HRCSL is also empowered to hold public or private hearings and has the necessary powers to ensure police cooperation with any hearings held.<sup>8</sup>

### ***Power and impact of recommendations***

The Regulations charge the IPCB with advising the police on steps that could be taken to prevent future abuses and with making recommendations to the Director of Public Prosecutions where a crime has been committed. The IPCB is also empowered to "invoke" disciplinary action against a police officer.<sup>9</sup>

One area not articulated in the regulations is what happens to the recommendations once made to the police. There is no obligation on the part of the police to implement or respond to general advice provided by the IPCB. Further, once the IPCB invokes disciplinary sanctions against a police officer, the regulations are silent on who is responsible for ensuring this happens. There is a need for a clear communication channel to be developed between the IPCB and the SLP to provide feedback mechanisms and systems between the IPCB and SLP.

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6 Philip Alston: Human Rights Council Fourteenth session Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development – Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/14/24/add8, 28 May 2010.

7 Section 28 of the Independent Police Complaints Board regulation, 2014.

8 Section 17 of the Independent Police Complaints Board regulation, 2014.

9 Information submitted by the HRCSL and Ombudsman on challenges faced in addressing complaints lodged against the SLP.



In contrast to this, both the Ombudsman and HRCSL have clear procedures setting out in legislation regarding how government should respond to findings. Yet even given these procedures, a challenge raised by both bodies during the Audit was delays in police implementation of findings and recommendations.<sup>10</sup>

This challenge is not unique to Sierra Leone and the legislation of both IPOA (in Kenya) and IPID (in South Africa) makes specific provision to address police implementation of findings and recommendations. For example, in Kenya, IPOA may go to court to enforce the implementation of its findings and recommendations.<sup>11</sup> In South Africa, during a review of IPID's legislation, the Parliament of South Africa inserted clauses in the legislation that removed the police's discretion in implementing recommendations made by IPID. The police are now obliged to report back on the progress made in implementing these recommendations.<sup>12</sup> These clauses were inserted in the legislation based on the frustrations Parliament previously experienced with the police's failure to implement recommendations arising from IPID investigations. The clauses have led to extensive processes being established within the South African Police Services to ensure that the SAPS effectively deals with recommendations by IPID.

The ability of an oversight mechanism not just to carry out its investigation but also to ensure that its findings are implemented is an important aspect of the success of such a mechanism and needs to be addressed going forward.

## **5.2 The capacity and resources to perform its functions effectively**

The IPCB Regulations allow the IPCB to engage any suitably qualified person to provide it with services. However, the regulations do not stipulate how the budget of the IPCB is expropriated.

Funding of the office of the Ombudsman is to be charged to the Consolidated Fund.<sup>13</sup> Similarly the HRCSL is financed from funds appropriated from Parliament and from donors (as long as the latter does not compromise the independence of the Commission).<sup>14</sup>

In both South Africa and Kenya, IPID and IPOA receive their budgets through monies appropriated from their respective Parliaments.

The funding of the IPCB needs to be clarified. In clarifying this, consideration needs to be given to the IPCB being funded directly from funds appropriated from Parliament. This should be strengthened by inclusion in legislation.

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10 Follow-up information on the datasheet received from the HRCSL and Ombudsman on challenges faced in investigating complaints against the SLP electronically received 28/01/2015.

11 Independent Police Oversight Act (Act No. 35 of 2001) clause 29 (2).

12 The Independent Police Investigative Directorate Act, (Act No. 1 of 2011) requires the police to report to their Executive Authority, IPID and its sister oversight body, the Civilian Secretariat for Police.

13 Section 20 of the Ombudsman Act (Act No. 2 of 1997).

14 Section 21 of the Human Rights Commission of Sierra Leone Act (Act No. 9 of 2004).

## 5.3 The ability to operate independently and without interference from the police or political influence

The IPCB Regulations establish the intentions of the Sierra Leone government to establish an independent police oversight body. This is confirmed in the composition of the Board.<sup>15</sup> However there is lack of clarity on the reporting lines of the IPCB as well on the issues of funding and the role of Parliament.

## 5.4 The ability to operate in a transparent manner and to report regularly on its activities

The IPCB regulations make provision for the IPCB to report back in writing on the outcome of a complaint to both the complainant and the police officer involved in the complaint. The regulations also entitle the IPCB to disseminate information to any private or public body in order to perform its functions. The IPCB is also required to keep a permanent record of all complaints and investigations.

The regulations do not place any obligation on the IPCB to report to government, parliament or the public. By comparison the HRCSL has strict reporting obligations spelt out in legislation requiring it to report annually to parliament.<sup>16</sup>

Both IPID and IPOA are required to produce annual reports to their parliaments. These reports are then made accessible to the public.<sup>17</sup> In Nigeria the Police Service Commission must submit an annual report to the president who must then ensure that this report is tabled in the National Assembly of the Nigerian Parliament.<sup>18</sup>

While the current Board of the IPCB has made it clear that it intends to follow a similar process with regard to reporting to Parliament, there is no legal obligation on the body to do so. In the future a different board may decide such reporting is unnecessary and not required, which may be problematic for purposes of operating in a transparent and accountable manner.

## 5.5 Communities and political support and the participation of civil society

The IPCB regulations make provision for members of the Board of the IPCB to be drawn from various sectors. In addition, the regulations empower the IPCB to work in consultation and cooperation with any person or body, whether public or private. The latter clause provides the IPCB with powers to engage and work with both public bodies and civil society.<sup>19</sup>

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15 Clause 2 of the IPCB regulations state that the board shall consist of:

- a) a chairperson appointed by the president from among persons with formal qualifications in any profession or discipline relevant, or appropriate to the functions of the board;
- b) a commissioner of the Human Rights Commission of Sierra Leone selected by members of the commission;
- c) a representative of the Anti-Corruption Commission;
- d) a representative of the Inter Religious Council;
- e) a representative of the Police Council who is not a member of the police force; and
- f) a retired police officer selected by the minister responsible for Internal Affairs.

16 Clause 24 of the Human Rights Commission of Sierra Leone Act (Act No. 9 of 2004).

17 Clause 29 of the Independent Police Investigative Directorate Act (Act No. 1 of 2011) and Section 38 of Independent Police Oversight Act (Act No. 35 of 2001).

18 Sections 16 and 17 of the Police Service Commission (Establishment) Act, 2001.

19 Clause 7 of the Independent Police Complaints Board Regulations, 2013.

## 6 OVERVIEW OF THE COMPLAINTS AUDITED

### 6.1 Nature of the complaints

Between 2013 and 2014 the HRCSL received a total of 464 human rights complaints, of which 36 or nearly 8% were complaints made against the police. During the same period the Ombudsman received seven complaints against the police. However by far the majority of complaints were received by the CDIID and in the period of six months (between June and December 2014) the CDIID Headquarters alone received 423 complaints.

Of the complaints received by the HRCSL, 16 (or 3.5%) could be considered as falling within the mandate of the IPCB due to the nature of the complaint lodged. A total of 19 (or 4% of complaints received) concerned issues that were not within the direct mandate of the IPCB and involved cases of neglect, failure to investigate or arrest. One complaint was a labour matter and was lodged by a police officer who was affected. The 16 complaints received that could be classified as falling within the mandate of the IPCB included complaints related to unlawful detention,<sup>20</sup> torture/assault, death in custody and intimidation. (The threat of violence against members of the public needs to be considered as part of excessive use of authority and force.)

Only one of the cases lodged with the Ombudsman could be considered as possibly falling within the mandate of the IPCB. (Although not specifically mentioned in the regulations of the IPCB, unlawful detentions have been included in this category not only due to the extent of this practice and its impact on public perception but also because this action is also often accompanied by acts of assault and other excessive use of force. The other six cases relate to labour and payment issues within the police.)

The detailed data on complaints submitted by the CDIID revealed that 78 of the complaints contained sufficient detail to identify these complaints as matters that would fall within the mandate of the IPCB. These complaints involved assaults, rape, murder (unlawful discharging of a firearm), intimidation and unlawful detention. In addition there were 52 cases where details of the specific act were not specified but where the complaint could well fall within the mandate of the IPCB. These 52 cases were complaints received from members of the public and captured under the categories of lack of civility, act/conduct and unfair treatment of members of the public.<sup>21</sup>

### 6.2 Complaints falling within IPCB mandate

Based on the complaints that could clearly be classified as falling within the mandate of the IPCB; assaults/torture accounted for 55% of the complaints, followed by intimidation at 22% and unlawful detention at 17%.<sup>22</sup>

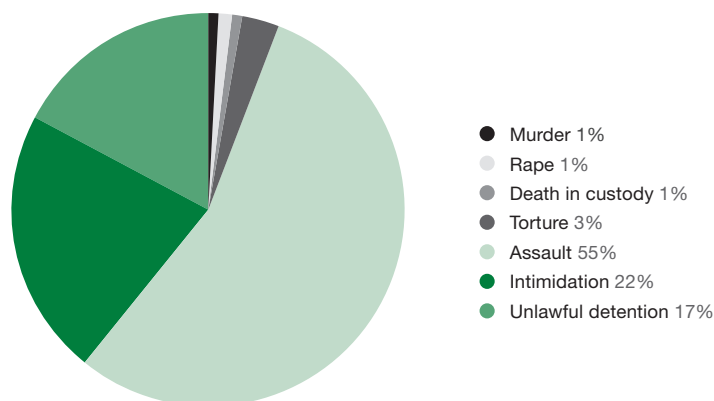
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20 Although not specifically mentioned, unlawful detentions have been included in this category not only due to the extent of this practice and its impact on public perception but also because this action is also often accompanied with acts of assault and other excessive use of force.

21 Information based on datasheets provided by the HRCSL, Ombudsman and HRCSL.

22 Information obtained from datasheets submitted by the HRCSL, Ombudsman and CDIID.

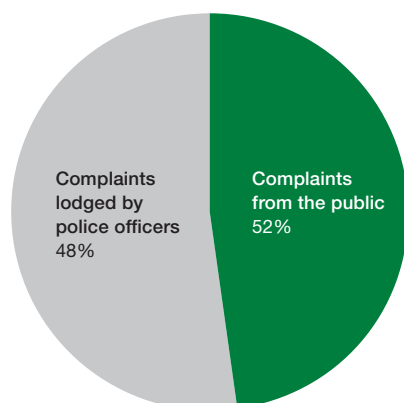
**Figure 1:** Breakdown of nature of complaints that fall within IPCB mandate



### 6.3 Source of complaints

With regard to the 423 complaints received by the CDIID for the six month period, 219 were received from members of the public and 204 were received from within the police. All of these complaints were listed as being received in person by the CDIID.

**Figure 2:** Breakdown of source of complaints received by the CDIID



The 36 complaints received by the HRCSL were all received verbally from the complainant. All the complaints received by the Ombudsman were made in writing in accordance with the Ombudsman's legislative requirement.<sup>23</sup>

### 6.4 Regional breakdown of complaints

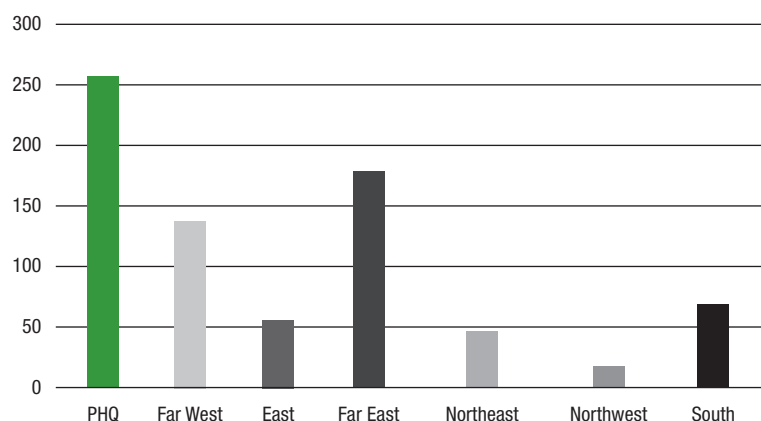
The detailed information of the complaints received for the Audit did not provide a geographical breakdown of the complaints. However, the statistical data that was received from the CDIID for the period January to June 2014 did provide some basic information on the complaints received from the different regional offices of the CDIID. (The CDIID disaggregated the complaints received during this period into seven areas: the police headquarters,<sup>24</sup> the far western region, the eastern region, the far eastern region, the northeastern region, the northwestern region and the southern region).

<sup>23</sup> Section 9 of the Ombudsman Act (Act 2 of 1997) states that a complaint should be made in writing to the Ombudsman.

<sup>24</sup> Situated in Freetown in the western region of the country.

The figure below gives a breakdown of these complaints based on the seven CDIID areas.

**Figure 3:** Regional breakdown of CDIID cases: June to December 2014



Based on the statistics provided by the CDIID, the region that received the most complaints is the western region of Sierra Leone (398) followed by the eastern region (225) and the southern region (75) and finally the northern region (72).

## 6.5 Method of resolution

Nine complaints handled by the HRCSL were resolved through engagements with management of the SLP, 16 complaints were referred to the CDIID for further processes and investigation and one matter was referred to the DPP for possible prosecution.

## 6.6 Outcome of investigations

Twenty-five of the complaints lodged with the CDIID were still under investigation or had not been finalised. However of the assault cases finalised, one police officer had been dismissed and two cases had been closed due to lack of evidence. Other assault cases had resulted in the following sanctions: official warnings and/or corrective training; restitution being paid by the police officer to the victim, the police officer involved being fined or the police officers involved paying the medical bill of the victim, while others had been “informally resolved”. The cases involving rape and unlawful discharge of a firearm resulted in dismissal of the police members involved.

# 7 ESTABLISHING A BASELINE NUMBER OF COMPLAINTS THE IPCB MAY EXPECT TO HANDLE

## 7.1 IPCB – Sierra Leone

Based on the detailed information provided by the Ombudsman and HRCSL as well as the detailed information from the CDIID for the period June to December 2014, combined with the statistical data provided by the CDIID for the period January to June 2014, it is possible to estimate the likely case load. In combining these complaints, the total number that would have fallen to the IPCB had it been operational in 2013/2014 is 302.

However, this figure should be considered as conservative for the following reasons:

- Detailed information received from the CDIID for the period June to December 2014 is for complaints received from the police headquarters and excludes other areas in the country.<sup>25</sup>
- The estimate does not include the category “act/conduct” and some complaints in this category may also fall within the mandate of the IPCB. (This category was not included because the details of the cases were not provided and therefore it was not possible to ascertain with any certainty that the complaint definitely falls within the mandate of the IPCB).
- Once the IPCB is fully operational and its mandate communicated to members of the public, additional complaints may be received from the public who feel more confident laying a complaint with an independent body. Also once the public become aware of the IPCB complaints mechanism the IPCB may experience an increase in the number of complaints.

## 7.2 Overview of complaints received by South Africa and Kenya<sup>26</sup>

The number of cases received by the IPID in South Africa and IPOA in Kenya for the 2013 and 2014 years were substantially higher than the number of cases received by the three organisations receiving complaints in Sierra Leone. However, using these two bodies as a benchmark for the number of complaints is not necessarily applicable for the IPCB, because the material conditions are not the same. Population and police demographic variables are obvious distinctions. IPOA also handles complaints on a broad range of issues, including general service delivery. Therefore it is also likely to receive substantially more complaints than the IPCB.

The complaints received by IPOA in Kenya during 2013 do however provide some insight into who lodged complaints with the oversight body. During this period, the majority of the complaints received came from members of public (54%), followed by the complaints received from police members themselves (26%). The rest of their complaints came from non-governmental organisations (NGOs) or from other state bodies.<sup>27</sup>

In South Africa, the type of complaints received provide interesting points of comparison. More than half of the complaints received by IPID during the 2014 year were allegations of police involvement in assaults. Police involvement in the unlawful discharging of a firearm accounted for the second highest number of complaints received, followed by deaths as a result of police action, and then deaths in custody.<sup>28</sup>

One common feature that emerges within the complaints processes of both IPID and IPOA is that these bodies received a number of complaints that fall outside their mandate. In such cases, the two bodies would try to assist in ensuring that the complainant was referred to the relevant body and in providing advice to the complainant on how the matter should be handled.

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25 The reason for only receiving data for provincial headquarters is largely due to the CDIID still capturing some complaints manually and this made it difficult for the CDIID to provide comprehensive data on all complaints.

26 Although the initial proposal included a review of complaints received by the Police Service Commission in Nigeria, this information is not publicly available. Accordingly, this information is excluded from the Audit.

27 The Independent Police Oversight Authority – Progress Report to Parliament 2013.

28 Independent Police Investigative Annual Report – 2013/2014.

## **8 CHALLENGES IDENTIFIED BY THE HRCSL AND OMBUDSMAN**

The HRCSL and Ombudsman identified a number of common challenges the two bodies experience when dealing with complaints related to the police.<sup>29</sup> These challenges include the following:

- Delays and difficulties in accessing documents and files.
- Lack of cooperation from the police officer involved.
- Delays in the police implementation of recommendations.
- Managing the expectations of complainants.
- Lack of understanding of the mandate of the Ombudsman and HRCSL.<sup>30</sup>

## **9 KEY AREAS TO BE CONSIDERED IN THE MANAGEMENT OF COMPLAINTS**

### **9.1 Capturing data on complaints**

A crucial aspect of the complaints management process is the accurate classification and capturing of complaints on a system that will enable the IPCB to draw out trends and patterns in the excessive use of force by police. This process will also allow the IPCB to effectively monitor progress with regard to complaints received and also contribute to ensuring that a permanent record of complaints is maintained and audited.

The information captured would also allow the IPCB to analyse trends in police misconduct and to develop responsive interventions.

### **9.2 Capacity to manage complaints**

In order for the regulations to be implemented effectively, the IPCB requires the necessary capacity to receive, manage and investigate complaints.<sup>31</sup> The geographical breakdown of the complaints received by the CDIID also provides an indication of the need for the IPCB to be able to receive and manage complaints in areas outside the western region of the country.

In addressing the limitations that may exist regarding the development of this capacity, the IPCB should consider developing partnerships with civil society organisations and bodies such as the HRCSL to explore ways of working together to enhance the capacity of the IPCB.

In the short term, the IPCB will employ different approaches to some of the categories of complaints it receives. This could involve the IPCB prioritising investigations that are of a serious nature, while managing other complaints through auditing and monitoring how the CDIID addresses these complaints. The process of oversight bodies auditing and monitoring complaints investigated by other bodies as opposed to assuming a large workload is a practice used by some oversight bodies internationally.

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<sup>29</sup> Information supplied by the Ombudsman and the HRCSL electronically.

<sup>30</sup> Information supplied to the audit team by the HRCSL and Ombudsman during the Audit.

<sup>31</sup> This capacity is addressed in the work study on the staffing of the IPCB.

## 9.3 Referral process for complaints outside the IPCB mandate

Most oversight bodies receive complaints falling outside their mandate, often because members of the public are either not aware of where to take these complaints or because they have not received appropriate responses from the bodies to whom they have previously complained. The IPCB would need to develop a clear referral process for such complaints and to work in conjunction with other bodies in order to ensure that citizens are made aware of the different avenues available to address their concerns.

## 9.4 Method of lodging complaints

The majority of the complaints audited were made by “walk-ins” with the HRCSL or CDIID. Accordingly the IPCB should expect the majority of their complaints being received through “walk-ins” and while complaint forms and web access to lodging a complaint would need to be made available, the IPCB can expect many complaints to be made in person. The IPCB could augment its capacity by using the foot print, resources and infrastructure of other organisations who may have a reach into areas where capacity limitations make it difficult for the IPCB to have a presence. Workshop and partnerships with these bodies could assist the IPCB in providing the necessary outreach in communities.

## 9.5 Follow-up process for complaints

A key challenge for many oversight bodies is tracking and reporting on the follow-up that needs to be made after a complaint has been finalised. While the implementation of the recommendations does not always lie with the oversight bodies, failure on the part of the police to implement these recommendations also impacts on the credibility of the oversight body itself.

The legislative overview in this report points to the need to clarify the responsibility of the SLP in implementing the recommendations and advice of the IPCB. There is also a need for the IPCB to have in place a monitoring mechanism which can access and track the progress made with any recommendations and advice provided by the IPCB, and to report on this progress.

## 9.6 Memorandum of Understanding with the SLP

Some oversight bodies, such as IPID, have entered into Memorandums of Understanding (MoU) with their respective police agencies and key stakeholders. These MoUs establish the detail of practical relations between agencies. An MoU between the SLP and IPCB could enhance the work of the IPCB and build the credibility of the police force itself because of the contractual liability that it establishes. An MoU of this nature could also expand on areas that are articulated in the regulations but where processes around implementation are not addressed.

## 9.7 Disciplinary regulations

The current process underway to review the disciplinary regulations of the SLP provides an opportunity for the IPCB to incorporate the responsibilities of the SLP in relation to the IPCB into the revised regulations. The regulations could also be used to clarify the different roles of the IPCB and CDIID.

## 9.8 Engagement with other legislative processes

The review of the *Sierra Leone Police Act* (No. 7 of 1964) also provides an opportunity for the IPCB to build on its regulations and to address some of the challenges and areas identified for improvement in the legislative benchmarking exercise conducted as part of this Audit.



In this regard the IPCB needs to consider engaging the Police Council around the review process and develop clear recommendations on how this review could be used to strengthen the IPCB's role. The IPCB may also want engage Parliament on this matter, as they will finally be responsible for enacting this legislation.

## **10 ROLES AND RESPONSIBILITIES REGARDING COMPLAINTS MADE AGAINST THE POLICE**

The IPCB needs to clarify its mandate with respect to other public agencies that investigate complaints against the police. Given the resource limitations of these bodies and community literacy there is an urgent need to address role clarification.

Based on the complaints audit and the benchmarking exercise undertaken, the following areas could be considered as part of clarifying the roles of oversight bodies:

### ***An MoU to clarify and agree the roles of the IPCB and CDIID***

The CDIID was established prior to the enactment of the IPCB Regulations, and a number of the complaints being managed by the CDIID now fall within the mandate of the IPCB. In the future, cases falling within the mandate of the IPCB and currently being handled by the CDIID should be referred to the IPCB. Given the capacity limitations the IPCB, the immediate and full transfer of these complaints to the IPCB is not feasible. A phased-in approach can be addressed through the MoU with the SLP. The CDIID must notify the IPCB of such complaints. The IPCB should then prioritise which complaints need to be handed over for investigation and which complaints should be processed by the CDIID subject to monitoring and auditing by the IPCB. Where the IPCB takes over complaints from the CDIID, the CDIID would be both responsible for providing required information and would need to play a role in implementing administrative sanctions.

Roles and responsibilities need to be addressed through the MoU initially with the HRCSL, Ombudsman and CDIID. The roles and responsibilities need to be clearly communicated to civil society organisations, the public, parliament and other government bodies.

### ***An MoU to clarify and agree the roles of the HRCSL, Ombudsman and IPCB***

Cases involving police abuse often fall within the ambit of the national human rights Institutions. It is therefore not uncommon for there to be overlap in the roles and responsibilities of the police oversight bodies and national human rights commissions, such as the HRCSL. For example, the vast majority of complaints received by the Ombudsman relate to matters that fall outside the mandate of the IPCB; however there are a few instances where there could be an overlap between these cases.

An MoU will establish protocols for referrals, communication with the public and victims, as well as investigating cases. In addition, the following areas can be addressed:

- The process for sharing information of receipt of complaints and findings.
- Procedures for the referral of cases between bodies.
- Procedures for conducting joint investigations or public hearings, where appropriate.

## 11 CONCLUSION

Many of the elements essential for the effective functioning of an independent police oversight body, not currently specified in the Regulations, can be incorporated into the processes adopted as part of operationalising of the IPCB, such as through standard operating procedures and other rules governing the functioning of the IPCB.

The shortcomings in the legislative prescripts are also not unique to Sierra Leone. A number of oversight bodies have started out with a set of prescripts or legislation and then over time have refined and enhanced these prescripts and legislation to strengthen their role. In South Africa, an initiative was undertaken in 2011 to overhaul the legislation governing the civilian police investigative body and resulted in the Independent Police Investigative Directorate Act, which considerably strengthened IPID's role and powers.<sup>32</sup>

Broad categories of disciplinary offences like "lack of civility" are unhelpful. As the SLP is currently engaging in a process to review its disciplinary regulations, input from the HRCSL, Ombudsman and the IPCB mechanisms on categorisation can be considered. In particular, the HRCSL and the IPCB, who both have a mandate to investigate human rights abuses by the police, should clarify how these abuses are articulated in the police disciplinary regulation.

In addition, the Police (Discipline) Regulations were promulgated before the establishment of the HRCSL and the IPCB and the SLP, and the two bodies may want to look at how their respective powers and mandates interface. An example of how this interface can take place can be found in the revised South African Police Disciplinary Regulations 2013. During the revision process the regulations were amended to include an offence if police failed to report incidents of deaths in custody or as a result of police action within a defined period of time, thereby allowing IPID to more effectively investigate such matters.

The processes to review the Sierra Leone Police Act could also provide a similar opportunity to the IPCB and HRCSL to make inputs and for certain areas not covered in the IPCB regulations to be addressed.

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32 See Memorandum of Objectives attached to the Independent Police Investigative Directorate Act (Act 1 of 2011).

## Annexure A: Information on complaints against the police

Date of complaint	Area where the complaint was made	Nature of complaints/what were the complaints about?	How was the complaint received?	Who specifically was the complaint against, i.e. what section of the SLP, or rank of persons?	Was the complaint investigated and what was the outcome?	Were there any problems experienced with the investigation of the complaint?	What feedback was given to the complainant?







## About the Independent Police Complaints Board

The Independent Police Complaints Board (IPCB) is an independent police oversight body established by the Police Council under Section 158 of the Constitution of Sierra Leone 1991 (Act No.6 of 1991). The mandate of the IPCB is enshrined in The Independent Police Complaints Board Regulations, published on 11 July 2013.

The board exists to ensure that the Sierra Leone Police Force is responsive to the needs and concerns of the people of Sierra Leone, which it serves.

The board's mission is to build public trust and confidence in the Sierra Leone Police Force by seeking to establish the truth, determining facts, and ensuring that justice can prevail.

## Contact the Independent Police Complaints Board

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