



# 2 POLICE OVERSIGHT

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Photo cover:

A woman argues with a police officer during a candlelight vigil in Monterrey, Mexico, May 2011.

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*“Without external oversight, police are essentially left to police themselves. Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result. Especially in cases of intentional unlawful killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences. Importantly, external oversight also plays a role in increasing community trust of the police service, and can thereby increase public-police cooperation and improve the effectiveness of the police force’s ability to address crime.”*

Philip Alston, Study on Police Oversight Mechanisms, A/HRC/14/24/Add.8, par. 3

*“[...] state control over the police must in an open democratic society be complemented with the means for the police to be answerable to the public, that is the citizens and their representatives. Police accountability vis-a-vis the public is a crucial condition for making the mutual relationship between the police and the public a reality. There are several means of rendering the police accountable to the public. The accountability can be direct or channelled through bodies representing the public. Generally, openness and transparency of the police are, however, basic requirements for accountability/control to be effective [...].”*

Commentary of the Committee of Ministers to member states on Article 59 of the European Code of Police Ethics, adopted on 19th of September 2001

*“An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.”*

Council of Europe, Opinion of the Council of Europe Commissioner for Human Rights (12 March 2009)

## Introduction

Law enforcement officials worldwide play a significant role in protecting society from violence, enforcing the law and securing the rights of people. In doing so, they should at all times respect and protect human dignity and maintain and uphold the human rights of all persons. However, they can also be violators of exactly those rights. Ranging from the unlawful use of force or firearms, torture, unlawful detention or arrests, to matters of discrimination or the failure to carry out their duties, human rights violations committed by police can occur in a variety of situations and in any given country. The discretionary powers of individual police officers, as well as the operational discretion of the police as such, bear an additional risk of an abuse of power. Even though discretionary powers are undoubtedly crucial to ensure effective policing, it is equally crucial to ensure effective scrutiny of police conduct to prevent impunity, arbitrariness and eventually the loss of legitimacy – at least in the eyes of the public.

Effective oversight mechanisms are, thus, necessary to balance the powers of law enforcement officials and ensure that individuals, as well as the agency as such, operate within the law. This will not only lead to the prevention of misconduct or a disciplinary or criminal response to particular incidents, but will also contribute to improving policing on a wider scale, in turn strengthening the legitimacy of the police agency.

In order to ensure effective oversight, a system of multiple actors is required to balance and mutually reinforce each other. This comprises internal accountability structures within the police agency, accountability to the branches of the State, in particular the judiciary, public accountability and accountability to external oversight mechanisms.

Though all of the above named actors undoubtedly play an important part in holding police accountable, the main focus of this paper will lie on external oversight mechanisms which are crucial to ensure independent and impartial oversight over the police agency. Independent oversight bodies have the potential to investigate misconduct effectively without bias, and their findings are often considered more credible by the public. Their tasks may range from investigating individual complaints or incidents of misconduct to reviewing general policies and procedures, to not only establish individual accountability but identify and eliminate the root causes that lead to violations committed by the police.

External oversight bodies can take various shapes, from Ombudsmen to Boards or Commissions, and from mechanisms dedicated to police to institutions with a broad mandate to oversee various public bodies. It is important to emphasise that it is neither possible nor desirable to create a certain model for an external oversight mechanism, as every structure has to be adapted to the specific system of a country and needs of the community they are established in. Nevertheless, there are certain key elements which should be present in any external oversight mechanism to ensure that it can function properly and effectively to hold police accountable.

As will be outlined in section 2, international and regional treaties and principles impose various duties on States that are relevant to police accountability and point to an obligation to provide for independent oversight, such as the obligation to promptly, thoroughly and impartially investigate allegations of human rights violations. The right to an effective remedy, which is explicitly set out in a variety of international human rights treaties and soft law documents, means – among others – that states must establish a right to complain in national law and have an adequate structure and procedures in place to receive and investigate complaints. Building on the considerable general reflection work that has already been done in a more general way<sup>1</sup>, we will then in section 3 have a look at a number of mechanisms from different

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1 See for further reading references at the end of this document.

countries around the world, to highlight the minimum criteria for such a mechanism to be effective and efficient and more concretely the different ways in which they can be implemented. We try to identify shortcomings and areas for improvement, as well as cases of good practice that can serve as an example for others. It is not the purpose of this paper to define an ideal external accountability mechanism, as we understand that a “One size fits all” model could not be functional due to the diverse issues that different societies are facing. Nor is it our aim to criticise or praise any specific country mechanism, but to define common principles which should apply to any oversight mechanism, which can serve as guidance to evaluate and improve an existing mechanism, or as a framework of reference when a new body is established.

To that end, we further look at the process of establishing an external oversight mechanism in section 4, from the moment the need for enhanced external oversight is identified to the passing of the legislation. The aim of that section is not to serve as a step-by-step guide, as the process is a different one in every country, depending on the state system, existing accountability structure and needs of society. Instead, we aim to identify the different ways the process can be initiated and shaped, the variety of actors involved and possible obstacles and challenges.

No matter how good the mechanism, effective accountability can not be achieved by an external oversight body alone. For this reason, section 5 will look at two additional forms of police oversight, namely internal police accountability structures and *ad hoc* mechanisms set up in response to specific events. Police internal oversight, if set up and executed properly, has the potential to complement external bodies and a well-coordinated interplay between both structures can lead to a strong system of accountability. *Ad hoc* mechanisms provide the possibility to thoroughly investigate large scale police abuses or failures in a timely manner, to not only establish accountability but analyse underlying issues to prevent a situation from re-occurring.

## The Legal Framework: International and Regional Legal Standards

### 2.1 Introduction

Like everyone else, police officials are accountable to the law. As stated by the Human Rights Committee, referring to violations of rights covered in the ICCPR, “[...]no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility.”<sup>2</sup>

In order to achieve effective accountability, it is, thus, essential that police misconduct is thoroughly investigated, that law enforcement officials are held accountable to the law and are brought to justice for unlawful actions according to the procedures of criminal justice in the ordinary criminal justice system and, if convicted, subjected to penalties commensurate with the gravity of the human rights violation.<sup>3</sup> Further, the right to an effective remedy means that victims of unlawful conduct must have a right to complain and to receive effective reparation. These aspects are interconnected, as pointed out by the European Court of Human Rights, referring to the prohibition of ill-treatment:

“[...] if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity [...]”.<sup>4</sup>

International human rights law imposes a number of obligations on States to combat impunity and secure the rights of those who have become victims of police abuse. This section will provide an overview of the main provisions relevant to that end. The first part looks at binding international treaties and a number of international documents and principles that give important guidance to Member States with regards to police oversight. The second part focuses on both relevant hard and soft law at the regional level.

### 2.2 International Standards

#### a) *Binding international treaties*

While accountability as such is not mentioned in any of the binding international treaties, there are provisions that are relevant to police oversight, mainly with regards to the right to remedy when one’s rights have been violated. The **International Covenant on Civil and Political Rights**, for instance, states that State Parties shall ensure that any person whose rights granted by the Covenant have been violated has effective remedy, “[...] notwithstanding that the violation has been committed by persons acting in an official capacity”. Further, State Parties shall “ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and [...] develop the possibilities of judicial remedy” and that the competent authorities shall enforce such remedies when granted (Article 2.3). The state’s duty to investigate is closely linked on the one hand to the duty to prevent reoccurrence of violations and to the right to remedy on the other.



2 Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), par.18.

3 Ibid., par. 15, 18.

4 Case of Gäfgen v. Germany, Application no. 22978/05, par. 119.

As stated by the Human Rights Committee:

*“[...]failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.”*<sup>5</sup>

The Covenant also specifically attributes everyone who has been a victim of unlawful or arbitrary arrest an enforceable right to compensation (Art. 9.5).

The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** also contains the right for redress and adequate compensation to victims of torture, “[...] *including the means for as full rehabilitation as possible*” (Art. 14). It further obliges State Parties to the Convention to “[...] *ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction*” and that “[...] *any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities*” (Art. 12 and 13). Complainants and witnesses shall further be protected against ill-treatment or intimidation (Art. 13). The Optional Protocol to the Convention aims to establish a system of regular visits to detention facilities, in order to prevent violations in places where people are most vulnerable.

### **b) International soft law**

Besides the legally binding treaties, there are several international soft law documents and principles that are relevant to police oversight.

The **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims declaration)**<sup>6</sup> calls on States to establish and strengthen judicial and administrative measures “[...] *to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.*” (Art. 5) Victims should be provided with information about the proceedings (Art. 6(a)), should be allowed to present their views and concerns at appropriate stages during the proceedings (Art. 6(b)), and be provided with assistance to minimise inconvenience, protect their privacy and ensure their safety (Art. 6(d)). Victims have the right to restitution, and in case the crime has been committed by a person acting in official or quasi-official capacity, the victim should receive restitution from the respective State (Art. 11).

The **UN Code of Conduct for Law Enforcement Officials** is an important set of principles for accountable policing. Besides setting out general standards of behaviour for police officials, it specifies in Article 8 that any violation of the Code shall be reported to the superior authorities and, if necessary, to other “[...] *appropriate authorities or organs vested with reviewing or remedial power.*” In the General Assembly Resolution adopting the Code of Conduct, it is acknowledged that “[...] *every law enforcement agency should be representative of and responsive and accountable to the community as a whole*”.<sup>7</sup> The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials<sup>8</sup> further state that an effective mechanism should be established to ensure internal discipline, external control and supervision of law enforcement officials, and that this mechanism should be authorised to receive complaints from the public (Part I, B3 and 4).

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5 Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), par. 15.

6 A/RES/40/34.

7 General Assembly Resolution A/RES/34/169 adopting the Code of Conduct for Law Enforcement officials, (a).

8 ECOSOC Res. 1989/61, 24 May 1989.



**General Assembly Resolution A/RES/34/169 adopting the Code of Conduct for Law Enforcement officials, (d):**

*“[...] every law enforcement agency, in fulfilment of the first premise of every profession, should be held to duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcements officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizen’s committee or any combination thereof, or any other reviewing agency.”*

The **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** establish rules for the reporting and review of incidents when death or serious injury occurs as a result of the use of force and firearms, and whenever a firearm is used in the course of duty. Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In case of death or serious injury, a detailed report has to be sent to the competent authorities responsible for administrative review and judicial control (Principle 22). Persons affected by the use of force and firearms, or their legal representatives, shall have access to an independent process, including a judicial process (Principle 23).

The **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** also include the duty to launch a *“[...] thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death”* (Art. 9). The investigative authority shall have the power to obtain all information necessary for the inquiry and the power to oblige officials allegedly involved in the incident to appear and testify (Art. 10).

Further Principles that establish the right to complain are **The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (Principle 33) and the **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)** (Art. 9(3)(a)).

In view of their responsibilities to implement international human rights treaties, States should dispose of National Human Rights institutions that can also serve as external accountability mechanisms. The **Principles relating to the Status of National Institutions (The Paris Principles)** set out that *“[...] a national institution shall be vested with competence to promote and protect human rights”* (Art. 1). The Principles further define how national human rights institutions shall be set up: The mandate should be as broad as possible and established in a constitutional or legislative text. The institution shall be composed to be representative and independent, and have the right to take up any issue that falls within its competence, either upon its own initiative or as referred to it by the government. It shall have the power to hear any person and obtain any information and any documents necessary for assessing situations falling within its competence as well as submit reports on its findings and issue recommendations and proposals for reform and improvements. The additional principles concerning the status of commissions with quasi-judicial competence further outline that a national institution may be authorized to deal with complaints brought forward by individuals or organisations. The function of those commissions may be based on the principles of seeking settlement through conciliation or through binding decisions, informing the complainant of his/her rights and access to remedies, and making recommendations to the competent authorities.

## 2.3 Regional Instruments

### a) Africa

In its **Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa**, the African Commission on Human and Peoples' Rights urges State Parties to the African Charter to establish independent civilian policing oversight mechanisms which shall include civilian participation (Art. 3). It further urges States to implement the guidelines relevant to policing contained in the Robben Island Guidelines.



The **Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)** call for the establishment of "[...] readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment" (Art. 17). Further, State parties shall ensure that a prompt, impartial and effective investigation is conducted into all allegations of torture and ill-treatment. The Guidelines call to establish and support effective and accessible complaint mechanisms, independent from detention and enforcement authorities, to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment, and to establish, support and strengthen national institutions with the mandate to visit places of detention and to generally address the issue of prevention (Art. 40 – 41). Victims shall be protected from violence, offered medical care, have access to rehabilitation and be provided with appropriate compensation (Art. 49 and 50).

### b) Americas

The **American Convention on Human Rights** explicitly recognises the right to judicial protection, which includes the right to simple and prompt recourse when one's rights have been violated, "[...] even though such violation may have been committed by persons acting in the course of their official duties." (Art. 25(1)). State parties to the Convention are obliged to ensure that the persons claiming such remedy have their rights determined by a competent authority, to develop the possibilities of judicial remedy, and to make sure that the competent authorities enforce such remedies when granted (Art. 25(2)).



Article 8 of the **Inter-American Convention to Prevent and Punish Torture** assigns alleged victims of torture the right to have the case impartially examined, and obliges State Parties to conduct a proper and immediate investigation in case of an accusation or well-grounded reason to believe that an act of torture has taken place. Article 9 establishes the right to compensation for torture victims.

### c) Arab Countries

The Arab Charter on Human Rights (2004) obliges State Parties to provide for redress for torture victims within their legal systems and for the right to rehabilitation and compensation (Art. 8(2)). The Charter further grants the right for every person to seek legal remedy before the courts (Art. 12), and entitles victims of arbitrary arrest or detention to compensation (Art. 14(7)). Every person whose rights granted in the Charter have been violated shall have an effective remedy, "[...] notwithstanding that the violation has been committed by persons acting in an official capacity." (Art. 23).



#### d) Europe

The **European Code of Police Ethics** lays out that police should be subject to the same legislation as ordinary citizens (Art. 5), and that “[...] *it must always be possible to challenge any act, decision or omission affecting individual rights by the police before the judicial authorities*” (Art. 8). It sets out that the police shall be under the responsibility of civilian authorities (Art. 13) and be fully accountable for its actions on agency level, personal level and within the chain of command (Art. 15 - 17). Specific to oversight, the Code states that police shall be subject to efficient external control (Art. 59). State control shall be divided between the legislature, the executive and the judiciary, and public authorities shall ensure effective and impartial procedures for police complaints. Further, accountability mechanisms shall be promoted (Art. 60 - 62).



## 2.4 Summary

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International and regional instruments explicitly recognise the right to an effective remedy for victims of human rights violations. From this flows a set of rights of the individual and obligations of States that are particularly relevant for police oversight and accountable policing in view of the specific duties and powers of law enforcement officials. Broadly speaking, the provisions outlined in this section refer to three main categories, which are tightly interlinked: the victim’s right to complain, the State’s obligation to investigate and the victim’s right to redress and compensation.

- **The right to complain**

Victims of human rights violations have the right to complain to the competent authorities, which might be the judicial, administrative or legislative authorities, or another body provided for by the legal system. The right to complain also implicates the right to be protected from ill-treatment or intimidation as a result of the complaint, and the right to have the case promptly and impartially examined.

- **The State’s obligation to investigate**

States are obliged to promptly and impartially investigate allegations of human rights violations. Investigations have to be initiated upon receipt of a complaint, but also in the absence of a complaint when there is reasonable ground to believe that a violation has taken place. The investigative authority should be independent and have the power to obtain all necessary information for the inquiry as well as to oblige officials allegedly involved in the matter to appear before it and testify.

- **The right to redress and compensation**

The right to effective remedy encompasses the right of access to a judicial process, or other formal or informal procedures, and incorporates the right of victims to adequate redress and compensation. This includes the duty of the State to bring perpetrators to justice and prevent impunity, as well as measures to prevent violations from (re)occurring as effective remedy can not be achieved if the violation continues or might be repeated. And last but not least, it includes the right to (material and/or immaterial) compensation of the harm suffered.

This set of victims’ rights and states’ obligations, thus, requires the State to have a system in place to receive complaints, impartially investigate human rights violations and ensure that perpetrators are brought to justice and that victims are given due compensation.

### 3.1 Introduction

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As outlined in the previous section, States have the obligation to investigate human rights violations committed by law enforcement officials and hold the perpetrator accountable. Police investigations and internal oversight structures, together with the criminal justice system, play an essential part in realising this obligation and are certainly important components in establishing a system of effective accountability. However, police internal oversight mechanisms can not only be poorly structured or lacking financial means, but they are also vulnerable to bias when it comes to investigating themselves. While this is a risk everywhere, particularly in countries where the rule of law and general trust in the police is weak, internal accountability mechanisms on their own will hardly suffice to achieve accountable policing. Therefore, an external police oversight mechanism can fulfil an important complementary function. Due to its independence, it can be an important part of a system of “checks and balances”, which will guarantee that misconduct is investigated impartially, and helps to increase public trust in the police. Most importantly, it will contribute to the goal of preventing impunity for police misconduct and abuses.

In order to be able to fulfil this function, an external oversight mechanism has to be set up according to certain standards. It is important to note that it is not the intention of this analysis to sketch out what an ideal oversight body should look like, as any mechanism has to be adapted to the culture and conditions of the country it operates in. Rather, the purpose is to outline the minimum requirements that any mechanism should fulfil, to highlight possible pitfalls that should be avoided and point out examples of good practice.

For the purpose of this analysis, we have looked at a number of different external oversight bodies worldwide, to see how the different requirements can be, or should be, realised. The examples used should not be understood as criticism, or praise, to any of the bodies in question. Strengths and weaknesses are pointed out with regards to isolated provisions or practices, without judgement about the mechanism as a whole.

The following external oversight mechanisms have been studied in more depth for this analysis:<sup>9</sup>

- Brazil – State of Pará – Police Ombudsman
- England and Wales – Independent Police Complaints Commission (IPCC)
- Kenya – Independent Police Oversight Authority (IPOA)
- Mauritius – Police Complaints Division
- New Zealand – Independent Police Conduct Authority (IPCA NZ)
- Peru – Ombudsman (Defensoria del Pueblo)
- South Africa – Independent Police Investigative Directorate (IPID)

In addition to the mechanisms studied in detail, the following oversight bodies were used to provide further examples for specific issues covered in this analysis: Belgium – Standing Police Monitoring Committee (Comite P), Brazil: State of Pará – State Council on Public Security (CONSEP), Czech Republic – Ombudsman (Public Defender of Rights), Denmark – Independent Police Complaints Authority, Hungary – Independent Police Complaints Board, Israel – Internal Auditing and Public Complaints Department, Malaysia – Enforcement Agency Integrity Commission (EAIC), Mexico – National Human Rights Commission and Northern Ireland – Police Ombudsman.

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<sup>9</sup> Country sheets for these mechanisms can be found in the annex.

### 3.2 Legislation Establishing the Mechanism

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External oversight mechanisms should be established by law, to guarantee that the mandate and functioning of the mechanism is not influenced by political changes or subject to interference by particular interest groups. The legislative base should, thus, cover, at a minimum, the most important aspects that define the work of a mechanism. If important features are not established in legislation but left to be decided at an administrative level, this bears the risk that the mechanism in its setup and functioning may be subject to political pressure or undue interference by executive authorities, which would ultimately undermine its independence and impartiality. Apart from being an important safeguard against politicisation, a mechanism established by law also enhances public trust, which is crucial for the system to function.

The act or legislation establishing an oversight mechanism should, thus, be as specific as possible and consider all aspects that are important for the mechanism to function. These aspects include, but are not limited to:

- The mandate
- Accessibility and complaints procedure
- Powers to investigate and nature of recommendations
- Budget allocation
- The appointment or election procedure of its members, as well as procedures for their removal
- Accountability and reporting guidelines
- The possibility to appeal
- Civil society participation

The above aspects present the minimum requirements that are needed to establish a mechanism, and will be discussed in the following sections.

### 3.3 The Mandate

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#### a) *Broad mandate versus dedicated mechanism*

Police oversight can be incorporated into general complaints mechanisms with broad mandates that encompass handling complaints concerning all areas public services. The National Ombudsman of Peru, for example, deals with any issue related to public administration, of which police misconduct is only one part. Preferably though, a separate mechanism should be established to focus solely and specifically on misconduct of law enforcement officials. The main advantage of a complaint system devoted to police is that it is ensured that the complaints are sufficiently focused on police conduct. In mechanisms with a wider mandate, there is a risk that serious violations, including police abuses, might not receive adequate attention, or are put aside due to their potential sensitivity. A mechanism devoted to police is also more likely to have sufficient capacity and expertise to investigate complaints of this nature. Further to this, a comparative study of European mechanisms in 2008<sup>10</sup> has shown that specialised bodies receive a greater number of complaints than general complaints institutions, which seems to indicate that these mechanisms attract greater public awareness – and possibly greater confidence in the complaint being taken seriously.

According to a study conducted by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, dedicated police oversight agencies are often set up in response to protracted and serious police abuses or following periods of violence, such as in Northern Ireland or South Africa.<sup>11</sup> Also in Hungary, violent protests in 2006 and police abuses related to them led to the establishment of the Independent Police Complaints Board. Other examples of dedicated mechanisms are the Ombudsman in the Brazilian

<sup>10</sup> Monica den Boer and Roel Fernhout, *Policing the Police; Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competences* (2008).

<sup>11</sup> A/HRC/14/24/Add.8, par. 26.

State of Pará, the IPCC in England and Wales, the IPOA in Kenya, the Independent Police Complaints Authority in Denmark and the IPCA in New Zealand.

### **b) Issues that fall within the mandate**

The matters that fall within the scope of the mandate vary widely between different mechanisms.<sup>12</sup> Some mechanisms, such as Kenya's IPOA, investigate any disciplinary or criminal offence committed by a member of the police service. In Denmark, the Independent Police Complaints Authority likewise accepts complaints about both misconduct and criminal offences committed by police. Also the Mauritian Police Complaints Division accepts complaints about any police conduct, except for corruption matters and money laundering offences. The Mexican National Human Rights Commission investigates complaints against any federal authority on any matter, with few exceptions.<sup>13</sup>

Other mechanisms operate with a more focussed mandate and limit themselves to investigate allegations of serious misconduct and police abuse. The IPID in South Africa, for example, investigates cases of death as a result of police action, any death in police custody, any complaint against the discharge of an official firearm by a police officer, rape, torture, assault and corruption matters. Also the IPCC in England and Wales limits itself to investigate only the most serious of violations, including death or serious injury as a result of police action or in custody, serious assault, serious sexual offences, serious corruption, and conduct which constitutes a criminal offence or behaviour which is liable to lead to misconduct proceedings and which is aggravated by discriminatory behaviour.<sup>14</sup>

Equipping a mechanism with a broader mandate has the obvious advantage that more ground can be covered, as police should be held accountable for all types of misconduct, and not just for serious abuses. However, the mandate has to first and foremost be realistic. As will be elaborated on later in this section, external oversight is expensive. If resources are limited, a high workload might lead to a loss of focus on severe cases, as staff are kept busy and resources are swallowed by investigations into rather trivial incidents. Thus, the mandate should be set in view of what is feasible without compromising the quality of oversight.

### **c) Police cooperation**

For accountability to be effective, it is important that the police is by law explicitly permitted, if not required, to refer certain serious cases to the oversight mechanism. This should apply, as a minimum, to cases of death or serious injury resulting from police action, or occurring in custody, as it is the case for the IPCC in England and Wales.

*Police should be required by law to report all deaths in police custody or due to police action to the external agency, and there should be penalties for delayed or non-reporting.*

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Study on police oversight mechanisms, A/HRC/14/24/Add.8, par. 74*

12 According to the Commissioner of Human Rights of the Council of Europe, an Independent Police Oversight Body should have responsibility for complaints in which Article 2 or 3 of the ECHR is engaged, or in which an issue of criminal or disciplinary culpability arises. Council of Europe, Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009), CommDH (2009) 4, par. 40.

13 Judiciary authorities, electoral or jurisdictional resolutions are exempt.

14 Discrimination on the grounds of a person's age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation. IPCC, Statutory Guidance to the Police Service on the handling of complaints, Chapter 8.

In Kenya, failure to report incidents of death or serious injury to IPOA has also been established as a criminal offence. In their annual report for 2012/2013, the Authority noted though, that police stations around the country are not complying with the obligation, and if cases are referred, it mostly happens after the set timeline. It is, thus, questionable whether the obligation is taken serious and is sufficiently enforced to achieve cooperation.

In South Africa, the police is obliged to refer cases that fall within the mandate of the IPID (with the exception of complaints pertaining to corruption). As stipulated in the legislation, police has to notify the Directorate immediately after becoming aware of the matter, and has to submit a written report within 24 hours thereafter. Failure to comply with this obligation constitutes a criminal offence, and the respective police officer is liable on conviction to a fine or to imprisonment for a period not exceeding two years. This reporting obligation was introduced in the 2011 Act, which gave the Directorate its current format and name to replace the former Independent Complaints Directorate. After starting operations in 2012, the workload of the IPID has seen a 37% increase in 2012/2013, as compared to the workload of the Independent Complaints Directorate in the previous year.

**d) Individual cases and general assessment of policing**

An effective mechanism should not be limited to handling cases on an individual basis, but should also have the ability to analyse patterns of abuse, and examine and recommend on changing police policies and procedures. While dealing with incidents on a case-by-case basis is certainly important, restricting a mechanism to this task would only account for retrospective accountability, and would mean that inadequate procedures and patterns of misconduct remain unchanged. Investigations into individual cases should be seen as a starting point to identify wider areas that require improvement. Accountable policing can only be achieved if all areas of police work are subject to scrutiny, and open to criticism and recommendations for change.

In their report on the police response to attacks of armed groups in the area of Mpeketoni, Kenya's IPOA identified numerous shortcomings in the police structure and issued binding recommendations to the National Police Service and other state organs aimed at improving policing. For example, one recommendation pertained to the harmonisation of the command structure, to ensure a clear chain of command at all levels and among different units. Further recommendations concerned, among others, the deployment of the Rapid Deployment Units, which ought to be reviewed, the establishment of an annual refresher firearms training, improved cooperation between county policing authorities and community policing committees, and the establishment of disaster response plans and systems on county level.

*Independent Policing Oversight Authority, IPOA Report following the Mpeketoni Attacks (15 and 16 June 2014).*

Various oversight mechanisms incorporate this approach in their mandate. The Belgian Comité P, for example, functions as a 'police watchdog' by "[...] monitoring the overall working of the police, inspection and monitoring services and the way in which all officials with police powers perform their policing activities."<sup>15</sup>

15 Comité P, Mission Statement, <http://www.comitep.be/EN/index.asp?ID=Mission> (last consulted on 19th of January 2015).

To that end, Comite P investigates among other things the activities and methods of the police and internal guidelines and regulations. The Ombudsman of the Brazilian State of São Paulo has also made a number of policy recommendations, for example a “shoot to disable”, instead of a “shoot to kill” policy, which were then implemented by the police and might have led to the reduction in police killings.<sup>16</sup> Such recommendations can actually help tackling the root causes of human rights violations on a larger scale, instead of just exercising retrospective oversight in individual cases.

### 3.4 Accessibility and the Complaints Procedure

The oversight mechanism should be directly accessible to any person, that is victims, their family members, witnesses and civil society organisations alike, without the obligation to exhaust the possibilities of internal police accountability first. Especially in countries with a strong distrust in the police agency, having to approach the internal mechanism as a first instance would place a heavy burden on the complainant. *“Victims may often be reluctant to report abuse directly to the police, for fear of reprisals or because they believe that no serious investigation will result.”<sup>17</sup>*

Some countries require the complainant to exhaust internal complaints channels first. In the Czech Republic, for example, the complainant has to provide documentary proof that the complaint was addressed to the relevant authority, and that the authority failed to ensure remedy, before being able to address the Ombudsman.

Many countries have, however, established oversight mechanisms that are easily and directly accessible to the public. In Hungary, for instance, the complainant can freely decide whether he/she would like the police, or the Independent Police Complaints Board, to initiate the complaints procedure. In Denmark, complainants can complain directly to the Independent Police Complaints Authority, either orally or in writing. Also the Peruvian Ombudsman can be directly approached, and has offices throughout the country and offers a toll-free number for people to lodge a complaint. The IPID in South Africa is likewise represented by an office in every province of the country, and people have the possibility to lodge a complaint in person, by phone, e-mail or letter. The possibility to lodge a complaint online, or retrieve the complaints form from the website, is also given by numerous other mechanisms, such as in Kenya, Malaysia and Hungary.

Especially in multi-lingual countries, the form should further be available in all common languages. The Northern Irish Police Ombudsman, for instance, offers the form not only in the official languages English and Gaelic, but also in Chinese, Lithuanian, Polish, Portuguese, Russian, and Ulster Scots. As not only the form, but also the complaints procedure, is available in all these languages, it is ensured that potential language barriers do not prevent people from complaining, at least for the most common groups of immigrants.



Website of the Police Ombudsman for Northern Ireland. Screenshot taken in January 2015.

16 Joel Miller, *Civilian Oversight Of Policing: Lessons from the Literature*, Vera Institute of Justice (2002), [http://www.vera.org/sites/default/files/resources/downloads/Civilian\\_oversight.pdf](http://www.vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf) (last consulted on 19th of January 2015), p. 6.

17 A/HRC/14/24/Add.8, par. 3.



Once the complaint has been received, it should be dealt with within a reasonable period of time. Ideally, this should be set out in the regulations or procedures which regulate the work of the mechanism.<sup>18</sup> The South African IPID, for example, has set time frames for processing complaints. A complaint should be registered and allocated within 72 hours of receipt, and the investigation should be concluded and recommendations made within 90 days.<sup>19</sup> Recommendation Reports should be issued within 30 days after the investigation has been closed, and the complainant should be informed of the outcome of the case within the same time frame.<sup>20</sup>

Another facet of accessibility is the mechanism's ability to protect complainants and witnesses from potential intimidations and reprisal as a result of their complaint against police. If witness protection is lacking, complainants might not report abuses for fear of retaliation, or withdraw their complaints after being threatened. The Philippines, for instance, have a witness protection programme in place which was implemented by the Department of Justice, to provide witnesses with, among other things, secure housing, financial assistance, or in some cases relocation and a change of identity. Enrolling someone into the programme is, however, a lengthy process which can take months. As some complainants require immediate protection, the programme is not sufficiently suitable to ensure their safety. As a result, many are reluctant to report police abuses, or follow through the complaints procedure, due to fear of the consequences it might have.

### 3.5 Powers to Investigate and to Issue Recommendations

#### a) Investigative powers



Sealing off a crime scene in Monterrey, Mexico.  
© Daniel Becerril / Reuters

External mechanisms should be equipped with sufficient investigative powers to conduct an effective inquiry into a complaint. These powers should include the power to subpoena documents, to obtain search warrants, to summon any witness, to protect them, and to compel police cooperation.<sup>21</sup>

The investigators of some mechanisms have, at least in theory, similar powers to the ones held by the police.

A strong example of this is the South African IPID, which grants investigators the same powers as police

officers e.g. with regards to the investigation of offences, entry and search of premises, seizure and disposal of articles, arrests and the execution of warrants. Further, members of the South African Police Service have to provide their full cooperation to the Directorate. Also the Police Complaints Division of Mauritius allows their investigators to take all lawful measures that a police officer might take, with the exception of arrest. New Zealand's Independent Police Conduct Authority has the power to summon and examine witnesses under oath, and to request any paper, document, record or object, and failure to give evidence is established as an offence.

Kenya's IPOA, in addition to strong investigative powers into their 'own' complaints, has the power to take over ongoing internal investigations into misconduct or failure to comply with the law, if such investigations are "*inordinately delayed or manifestly unreasonable*".

18 If the Independent Police Complaints Authority in Denmark is not able to decide on a misconduct complaint within 6 months, they must inform the complainant and the police officer concerned about the reason for the delay, and provide them with the expected date of the decision. For complaints about an alleged criminal offence, the Authority must inform the complainant and any other involved party in writing if no decision has been made within 1 year.

19 Systematic Corruption cases are an exception and should be concluded within 12 months.

20 These time frames are targets, which have not been fully achieved by the IPID in 2012 / 2013; 86% of cases have been allocated within 72 hours; the number of cases closed within 90 days varies heavily depending on the type of complaint under investigation; in all cases, recommendation reports were generated and complainants informed about the outcome of the investigation within 30 days.

21 A/HRC/14/24/Add.8, p. 15.

In England and Wales, the Police (Complaints and Conduct) Act 2012 introduced the obligation for serving officers of the police and police bodies to attend interviews as witnesses for investigations carried out or managed by the IPCC. While this is certainly an improvement to the previous absence of a power to compel witnesses, the provisions unfortunately do not extend to retired police officers, who can be equally relevant for the investigation.



*IPCC in England and Wales appeals for witnesses in the investigation of the shooting of Jean Charles de Menezes by officers from the Metropolitan Police Service. © Ray Tang/Hollandse Hoogte*

In some cases, the investigative capacity or expertise of a mechanism might not be sufficient to conduct an investigation solely by itself. In these instances, it is important that the mechanism has the power to decide what needs to be done in order to proceed with a case. This also includes requesting support from other bodies, or calling upon technical experts, from for example the police agency itself. In such a case, in order to not compromise the impartiality of the investigation, the mechanism should not involve departments of the police agency linked to the individuals, units or departments which are the subject of the complaint, but should seek assistance from other police departments or agencies – for instance use federal police capacities when investigating against alleged misconduct of the municipal police.

Unfortunately, many country mechanisms are not able to hold their own investigations at all. Their roles are limited to receiving, recording and referring cases to the inspectorates or internal affairs units of the police, or to the public prosecutors. This is, for example, the case in the Brazilian State of Pará, where the Police Ombudsman has no investigative powers and depends on investigations conducted by the Internal Affairs Offices of the respective police force.<sup>22</sup> The Ombudsman receives complaints, requests and tracks the investigation and keeps the complainant informed. Should the Ombudsman consider the initial police investigation insufficient, he/she may request further investigations, however, there is no guarantee that this will actually happen.<sup>23</sup>



*Website of the Ombudsman for the Brazilian State of Pará, Information on how to make a complaint. Screenshot taken in January 2015.*

Besides the power to investigate upon receipt of a complaint, an effective mechanism should also have the power to initiate investigations upon its own initiative. This allows the mechanism to investigate cases that would otherwise go unreported, by an uncooperative police station or victims who do not dare to make a complaint, as well as to investigate patterns of abuse. The Czech Ombudsman, for example, can act on his/her own initiative on anything that falls within the body's mandate.

<sup>22</sup> There is no legal time frame or deadline set by when Internal Affairs have to respond to the Ombudsman. The Ombudsman does, however, have the possibility to forward a case to the prosecutor's office at any stage during the process.

<sup>23</sup> Julita Lemgruber, *Civilian Oversight of the Police in Brazil: the case of the ombudsman's offices*, Center for Studies on Public Security and Citizenship University Candido Mendes Rio de Janeiro – Brazil (2002).

The Police Ombudsman in Northern Ireland enjoys wide discretion to initiate investigations. He/she can start an investigation in any case it appears that a member of the police force has committed a criminal offence or behaved in a manner which would justify disciplinary proceedings.

If a mechanism has the power to start investigations on its own initiative, there should be guidelines to determine when it is advisable, or necessary, to do so. For oversight bodies with mandates focussed on serious police abuses, it should be obligatory to start an investigation into any founded allegation that comes to the body's attention. If the mandate is rather broad and encompasses also minor offences, acting on every incident of misconduct might not be feasible as it can easily over strain the mechanisms' capacities. Thus, certain criteria should be applied in deciding whether or not to start an investigation in the absence of a complaint, giving priority to the most serious matters.

In the process leading up to the establishment of the IPCC in England and Wales, a report by Liberty suggested a series of criteria to be considered in determining the appropriateness of an investigation. While the report referred to complaints that could be taken over from the police by the mechanism, the criteria are equally useful for considerations about own initiative investigations. The criteria include the likelihood that a criminal offence has been committed by a police officer, the degree of public interest in the case, considerations of the victim's position, the presence of a more widespread pattern, allegations of discrimination, and the involvement of a group of persons in the misconduct.

*Liberty, James Harrison and Mary Cunneen, An Independent Police Complaints Commission (April 2000).*

#### **b) The nature of recommendations**

When the investigation of a case is completed, an external oversight mechanism should issue conclusions and recommendations based on its findings. Depending on the matter at hand, recommendations can encompass criminal prosecutions, disciplinary sanctions, issuing compensation to the victim(s), and general changes in policies and procedures. A key question is whether recommendations should be treated literally as such, giving room for the relevant authority to either follow or not, or whether a mechanism should have the power to impose binding decisions.

While the latter option might at first sight indicate a more effective mechanism, it has to be acknowledged that an oversight body might lack the capacity and competence as well as the expertise to substitute decisions otherwise made by another agency such as the public prosecution or the police disciplinary bodies. For this reason, it is acceptable to have certain limitations on the powers that the oversight body can exercise over the agency. The oversight body should be seen as complementary to other authorities, in particular to the criminal justice system, not as their replacement. Bearing this in mind, the outcome of the investigation of an oversight mechanism for instance might be as follows:

- **The mechanism concludes that a criminal or disciplinary offence has been committed**

In case the mechanism concludes that there was criminal behaviour, it should refer the matter to the public prosecution. The conduct of investigations and the findings of an oversight mechanism may differ from a criminal investigation process and thus not allow to draw definite conclusions whether the results of the investigation provide for a sufficient base of evidence to bring a case to court. However, if the oversight body makes such a recommendation, there should be a presumption that the prosecution will ensure that any further necessary criminal investigation is carried out with a view to subsequent prosecution; if eventually the prosecution decides not to bring the case to court it should be obliged to provide a substantially motivated reply to the oversight body as to the reasons.

The arrest of a police officer in Kenya in September 2014 for alleged murder provides an example of a successful recommendation to prosecute. The family of one of the victims had complained to the IPOA, which started an investigation and recommended the arrest of the officer. The officer was charged with murder, remaining in custody pending his trial (scheduled to commence in May 2015).

The mechanism may also conclude that there is need for disciplinary measures (either in addition to the criminal proceedings or – if there was no criminal offence – as the only response to the matter investigated). It should refer the case to the responsible instance within the police agency, with the – ideally binding – recommendation to open the foreseen disciplinary proceedings with a view to decide – where indicated – on appropriate disciplinary penalties and/or other measures. Disciplinary penalties and other measures can include verbal and written warnings, obligatory re-training, fines, demotion, or, in severe cases, dismissal from service.

If the legal framework does not oblige the prosecution or police agency to carry out the action recommended, it should at least be ensured that it is taken serious. One way to achieve this is to oblige the respective authority to issue a detailed response within a reasonable time frame, explaining which measures have been taken or will be taken to follow up on it, and within which period of time – and, if the recommendation has not been accepted, or has been only partially accepted, giving a reasoned explanation for this. This information will enable the oversight body to verify at a later stage whether the recommendation has been sufficiently implemented, or whether further, more thorough, follow up is required.

Various countries have implemented a duty to respond, however, the provisions usually do not indicate what the reply should entail, and are often missing set time frames. In Mauritius, for example, the relevant Authority shall notify the Division “at the earliest opportunity” if it disagrees with the recommendation.

In South Africa, the Executive Director of the IPID must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority, which must notify him/her of its intention to prosecute. However, it is not indicated how or when. For disciplinary recommendations, though, it is set out that the National or Provincial Commissioner, to whom recommendations are forwarded, has to react within 30 days. Similarly in Peru, the police also has to reply to the Ombudsman’s recommendations within 30 days.

In the Czech Republic the relevant authority to which an Ombudsman’s recommendation is issued, is obliged to inform the Ombudsman within 30 days of the corrective measures that have been taken. If the Authority fails to do so, or if the measures are considered insufficient by the Ombudsman, he/she shall inform a superior Authority, or if there is no such Authority, the Government.



*Brochure informing about the mandate and complaints procedure of the South African IPID, p. 1, available for download on the IPID's website. Screenshot taken in January 2015.*

In some countries, there may be doubts with regards to the effective independence and impartiality of the public prosecution due to their usually quite close relationship to the police. In such situations, the establishment of specialist prosecution authorities with own investigators may address this problem.<sup>24</sup>

In any case, the oversight mechanism should – if not satisfied with the decision of the prosecution – have the possibility to have the decision reviewed, within the hierarchical structure of the prosecution, and ultimately, by a judicial authority. The same should apply for the response of other authorities, in particular the police, to the findings and recommendations of the mechanism.

In Denmark, for instance, the Independent Police Complaints Authority (as well as the complainant him/herself) can appeal to the Director of Public Prosecutions if they are dissatisfied with the decision of the regional prosecutor not to prosecute.

The Kenyan IPOA has the option to apply to the court for the enforcement of any of its recommendations, whether the recommendation is to prosecute, to impose disciplinary action, or improve or rectify police processes and procedures.

The Authority for example examined the police recruitment process, which it heavily criticised for a lack of transparency and accountability, and recommended to have the recruitment exercise repeated. As the police agency did not agree with this recommendation, the Authority filed a court case for the nullification of the recruitment of 10,000 trainees from July 2014, due to alleged malpractice and corruption in the process.

The High Court nullified the recruitment and ordered the National Police Service Commission to conduct the exercise anew, which illustrates the weight of the role and findings of IPOA.

The mechanism concludes that compensation or other forms of redress should be given to the victim. Ideally, the mechanism has the power to decide on necessary reparations, when there is a proven wrongdoing of the police. Reparations can take various forms such as psychological assistance, a public apology and financial compensation. The victim's right to reparations should not depend on individual criminal responsibility, but should be enforceable once it has been established that the State, through the actions of a State agent, is responsible for the offence.

In practice, the idea that the mechanism can make a binding decision on issuing reparations, or even provide/pay them itself, does not seem to have been implemented by most of the oversight bodies looked at for this analysis.<sup>25</sup> An exception is the Police Ombudsman in Northern Ireland, who is at least able to pay compensation to a complainant for expenses and loss of time, though not for the harm itself. For this, he/she can recommend to the Chief Constable to pay compensation to a complainant, of an amount considered appropriate by the Ombudsman.

Unfortunately, in many countries such as South Africa and Kenya, reparations are not even considered in the legislative Act when it comes to the types of recommendations that the mechanisms can issue.

24 Council of Europe, Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009), CommDH(2009)4, par. 85.

25 In their "Hheads of Argument", the Evidence Leaders of the Marikana Commission of Inquiry recommend to the Commission to recommend the payment of compensation to the victims of the police action without the need for the victims to go to court for obtaining compensation (Hheads of arguments, Evidence leaders, par. 1341-1344).

This is different in Mauritius, where the Police Complaints Division can refer a matter to the Attorney-General, with the recommendation to pay compensation or grant relief to a complainant. However, the recommendation is not binding.

In any case, the State should ensure that redress and compensation is provided if an oversight mechanism concludes that a victim's rights were violated by a State agent – and this independently if it is possible to establish individual criminal responsibility.

- **The mechanism identifies the need for a policy change**

The mechanism should have the power to recommend a review of police policies and procedures if it deems this necessary. The recommendation should identify the problem that needs to be addressed, not necessarily prescribe a pre-defined solution. Rather, it should leave the security system to take care of the issue itself. As with any other type of recommendation, the agency should, however, be required to reply to the recommendation, and the mechanism should be able to take further action if the agency's response is unsatisfactory.

The Czech Ombudsman, for example, is authorised to recommend the issuing, amendment to, or annulment of, legal or internal regulations. The relevant authority is obliged to respond by issuing a statement within 60 days, and just as with recommendations in individual cases, the Ombudsman shall inform a superior Authority or the Government if the authority fails to respond or does not take sufficient action.

Policy changes can be of major importance to combat the root cause of human rights violations and prevent incidents which led to complaints from reoccurring.

The IPCC in England and Wales called for amendments to the police codes of practice established pursuant to the Police and Criminal Evidence Act (PACE) to reduce the number of deaths and serious injuries in custody, and was successful in achieving their implementation in 2012. The IPCC identified the need for these changes following an investigation into an individual case, of a complaint made by the family of a detainee, who had fallen into a coma whilst in custody.

The first amendment, thus, changed the specification of detainees that should receive adequate care, including being roused every half hour (PACE Code C, Art. 9.3/Code H, Art. 9.4). A second amendment referred to the way improper treatment should be reported during detention. The interviewer now has a duty to report any apparent improper treatment that comes to notice during an interview, while previously, the duty only comprised the reporting of complaints (PACE Code C, Art. 12.9/Code H, Art. 12.10). A third amendment clarified that custody officers retain overall responsibility for the care of their detainees, even if tasks have been delegated to other officers, police staff, or private contractors (PACE Code C, Art. 1.15, 3.5/Code H, Art. 1.19, Art. 3.5).<sup>26</sup>

### 3.6 Resources

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#### a) *Financial Resources*

An external mechanism should be sufficiently funded to ensure that it can operate properly. This includes sufficient budget to employ skilled investigators and undertake serious investigations, in order to be able to fulfil its mandate.

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<sup>26</sup> Independent Police Complaints Commission, Police codes change following IPCC representations (15 August 2012), <https://www.ipcc.gov.uk/news/police-codes-change-following-ipcc-representations> (last consulted on 19th of January 2015).

The aim of police oversight is to improve policing, and good policing will in the end be more cost effective for the State. An example from South Africa shows how expensive “poor” policing can be: between 1995 and 1998, the South African Police Service spent over 50 million Rand in settlements and remedies for civil claims brought against them due to excessive use of force.<sup>27</sup>

Especially if the workload is high, underfunding might become an issue in dealing with the entirety of cases. If resources are limited, the budget should allow, at a minimum, to handle the most serious of police abuses. These should certainly comprise violations of the right to life (e.g. death in custody, death as a result of use of force), torture and serious corruption cases or patterns of corruption. Mechanisms that investigate only the most serious violations are for example the IPCC in England and Wales and the IPID in South Africa.

For the sake of transparency, the allocated resources should be made public, which is the case in numerous countries such as Kenya, South Africa, England and Wales and Peru. The legislation establishing the mechanism should further clarify who is allocating the budget. Ideally, this should be the legislative branch of the State, i.e. the parliament, as the executive is often also responsible for the police agency, which might compromise the independence of the mechanism. The process to allocate the budget should, thus, be set up in a way that ensures that the government, the executive branch, or the police agency can not attempt to influence the work of the mechanism by means of exercising financial pressure. In no circumstances should the budget allocation process affect the independence and decision making process of the mechanism. On a positive note, most of the mechanisms studied for this analysis indeed receive their budget allocation from the parliament.<sup>28</sup>

States have the responsibility to ensure effective independent oversight, and while especially post-conflict countries might have difficulties to adequately fund a mechanism, an apparent lack of means should not serve as an excuse for its absence. In case a country’s financial resources are limited, the government might consider making use of international cooperation resources to help finance independent oversight. Ideally, however, external funding should only be an intermediate solution, as states should seek to make sufficient funds available by their own means. Further, relying exclusively on external funding can have a negative impact on the sustainability of a mechanism.

#### **b) Human Resources**

The members of an external oversight mechanism should be appointed in an open and transparent procedure, which should be set out in the legislative act establishing the mechanism. In numerous countries, the parliament is responsible for the appointment of the head of a mechanism, or members of the governing board, respectively. Examples are Belgium, Mexico, New Zealand, Hungary and Peru. A good way to avoid politicisation is to recruit members through a representative selection panel in an accessible and transparent process, as it is the case in Kenya.

The legislative act establishing the mechanism should establish the criteria to be fulfilled by the person(s) responsible for the mechanism (be it a single person or a collective body). These criteria should pertain to the skills and competences required to fulfil the task and to the moral integrity of the person(s).

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27 Julie Berg, *Police Accountability in Southern African Commonwealth Countries*, Institute of Criminology, University of Cape Town (2005) p.16.

28 An exception is for example the Ombudsman of the Brazilian State of Pará, where the State Secretary of Social Defence, which is part of the executive, allocates the budget.

The Independent Police Oversight Authority Act, establishing the Kenyan IPOA, clearly outlines the appointment procedure for the members of the Board, which governs the mechanism. As a first step, the President appoints a selection panel, which has to consist of one person of each of the following bodies:

- the Office of the President;
- the Office of the Prime Minister;
- the Judicial Service Commission;
- the Commission for the time being responsible for matters relating to anti-corruption;
- the Kenya National Commission on Human Rights; and
- the Commission for the time being responsible for matters relating to gender.

The selection panel has to advertise the vacancies in at least 2 national daily newspapers, and processes the applications according to the qualification criteria outlined in the Act. The shortlist of candidates is again being published in the newspapers, and the candidates are interviewed in public. In the next step, a certain number of candidates are shortlisted and their names forwarded to the President who, if he agrees with the pre-selection, chooses the chairperson and members of the Board. The President's selection then has to be approved by the National Assembly before the successful candidates are being appointed for one term of six years.

This procedure applies to all members of the Board but one: The Chairperson of the Kenya National Human Rights and Equality Commission is an *ex officio* member of the Board.

Further, the procedure incorporates a safeguard for gender representation; at any given stage, from the shortlisting to the appointment, no more than two thirds of candidates shall be of the same gender.

Some mechanisms prescribe a certain level of education or relevant experience that a candidate must have. The chairperson of the board of the Kenyan IPOA, for example, has to be qualified for appointment as a judge of the High Court of Kenya, and the members of the board have to hold a university degree and have at least 10 years experience in a relevant field.<sup>29</sup> In Mauritius, the head of the Police Complaints Division (that is the chairperson of the National Human Rights Commission) has to be a former judge<sup>30</sup>, and the two members of the Division shall have knowledge and experience in certain pre-defined areas.<sup>31</sup> The Chairman of the Police Complaints Council governing the Danish Independent Police Complaints Authority must be a High Court Judge, and the board members must be one attorney, one professor of jurisprudence and two representatives of the general public.

Besides relevant professional competences, the moral integrity and impartiality of the person(s) governing the mechanism has to be ensured. Another criterion should, thus, be that the person(s) appointed are not members of the police force. While former police officers can certainly bring valuable expertise, there is an inherent risk of bias when employing them at the decision making level of an oversight mechanism.

Kenya's IPOA, for example, does not allow serving police officers, or retired police officers within 5 years of retirement, to become a member of the Board. It is also specified that members of the board can not hold an office in a political party, be a member of Parliament or a county assembly or a Governor or Deputy Governor.

29 The fields specified are: criminology, psychology, law, human rights and gender, medicine, alternative dispute resolution, security matters, or community policing.

30 The Protection of Human Rights Act 1998, Art. 3(2).

31 The fields specified are: human rights, law, employment, industrial relations, business administration, education, sociology, policing, social work, psychology, psychiatry, medicine or prison management.





Website of Kenya's IPOA. Screenshot taken in January 2015.

Further, board members may not have been convicted of an offence involving dishonesty, or another offence for which they were imprisoned without the option of a fine, be unable to perform the functions of the office due to mental incapacity, or be an undischarged bankrupt. Surprisingly and unfortunately, these criteria do not extend to the Director of the Authority.

If the governing instance of a mechanism is not one individual but a group of people, it should also be ensured that the members of the group are appointed according to the principle of pluralism, to be as representative as possible of the different strands of society.

Further, the legislation establishing the mechanism should set out the grounds and a procedure to remove individuals from the office if necessary. Reasons for removal should be limited to serious misconduct or inability to fulfil the duties of the office, to avoid suspensions due to personal preferences or unwelcome decisions or findings. If grounds for removal are allegedly given, the situation should be thoroughly assessed and the decision to remove a member should be taken in a similar procedure as the appointment, under involvement of the parliament. This is unfortunately not the case in for example South Africa, where the Minister of Police can remove the IPID's Executive Director on account of misconduct, ill health or inability to perform the duties of the office, without any further specification of the procedure.

In Kenya, on the contrary, the legislative Act establishing IPOA clearly sets out the grounds and procedure for removal of the chairperson or a member of the board. Reasons for removal might be a serious violation of the constitution or any other law, gross misconduct, physical or mental incapacity to perform the functions of the office, incompetence, or bankruptcy. If a person desires the removal of the Board's chairperson or a member, he/she can present a petition to the Public Service Commission, which can vote with a two-thirds majority to recommend the removal to the National Assembly. If the National Assembly is satisfied that a reason for removal is given, it forwards the petition to the President who appoints a tribunal to hear and determine the petition and suspend the person in question, if applicable.<sup>32</sup>

When it comes to the personnel working for the mechanism, the Ombudsman or governing board should have wide discretion in employing their own staff according to their needs.<sup>33</sup> Hiring investigative staff with experience in the police service might be an advantage, so long as it is ensured that the persons concerned are not active police officers anymore.

Especially when a mechanism is newly established, former police staff can provide important investigative expertise that non-specialist investigators might not yet have. Further, they can give valuable insight into police culture and their findings and recommendations might be more easily accepted by the police agency.

32 The tribunal shall consist of a chairperson, who holds or has held office as a judge of a superior court, at least 2 members who are qualified to be appointed as judges of the High Court, and one other member who is qualified to assess the facts with regards to the particular ground for removal.

33 The Ombudsman of the Brazilian State of Pará is unfortunately lacking the resources to hire his/her own staff, and has to depend on staff made available within the security system.

When incorporating former police officers into the investigative team, it should, however, be assured that they remain in the minority as compared to non-police staff, to preserve the impartiality of the mechanism.<sup>34</sup>

It should further be ensured that the persons in question have a clear record and confirmed moral integrity. At the South African IPID, for example, a security screening investigation is conducted before an investigator is hired, and investigators may be subjected to further screenings from time to time. Moreover, the law allows the Minister of Police to prescribe measures for integrity testing for members of the Directorate, which can include random control (even by way of entrapment), testing for the abuse of alcohol or drugs, or the use of a polygraph or similar instruments to evaluate the truthfulness of a statement.

Finally, there have to be sufficient human resources to ensure that the mechanism can function properly and carry out all its tasks. This does not only require adequate financial means to hire the required personnel, but also means that the mechanism has to be structured in a way that foresees accommodating a sufficient number of staff across the institution. This, for instance, includes incorporating local offices across the country into the mechanism's set up.

### 3.7 Transparency and Reporting

While holding police accountable for their conduct, it is important that also the mechanism itself is accountable for its actions, both to the government and to the public. It is, therefore, crucial for the mechanism to be as transparent as possible, while taking into account the need for confidentiality and witness protection.

Numerous countries have established the obligation to issue reports to the government in regular intervals, usually annually, as set out in the legislative acts establishing them. Ideally, the mechanism should be

accountable to the parliament, rather than to the executive branch of the government. This serves as a safeguard to ensure independence and impartiality, as the executive is often also responsible for the police agency. In some countries, this is unfortunately not the case. The South African IPID, for example, reports directly to the Minister of Police, who passes on a copy to the parliament. In other countries, such as Peru and Hungary, the mechanism is accountable to the parliament.

The reports issued should be made publicly available and provide a comprehensive overview on the work of the mechanism, including information on the number and types of complaints received, as well as on the outcome of those complaints. Further, the mechanism should report on its budget and expenses.



Website of the Peruvian Ombudsman (*Defensoría del Pueblo*), Annual Reports. Screenshot taken in January 2015.

34 In Liberty's Report on establishing an Independent Police Complaints Commission, it is recommended that no more than 25% of the investigative staff should be seconded or be ex-police officers (p. 39).

The Kenyan IPOA has to issue a performance report at least twice a year, as well as an annual report, to the Cabinet Secretary which transmits it to the National Assembly. As specified in the legislative Act, the annual report has to include, among other things, financial statements, recommendations issued, and consecutive actions taken by the authorities, and has to be published in the government Gazette. Further, all reports are available for download on the IPOA's website. Similarly, the Mexican National Human Rights Commission reports annually to the Senate, with the reports having to be made available on the website.

The annual report of the South African IPID provides a good example, as they detail not only the number and types of complaints received, but also numbers and details on cases completed, recommendations issued, and the realisation of issued recommendations. It further gives a number of case studies that led to convictions of the perpetrator. However, the case studies include the names of both, victims and offenders, which is problematic as this may unduly infringe the right to privacy of those concerned. As a rule, cases should be published anonymously, to preserve both the victims' and the perpetrators' right to privacy, as well as to ensure their safety and protect them from potential reprisals – unless the case is already known in public anyhow.

The Hungarian Independent Police Complaints Board, for example, publishes its resolutions to individual cases on its website in anonymous form, unless the complainant objects to the publication. Unfortunately, it is not mentioned if the Police accepted or rejected the resolutions.

This is different for the IPCC in England and Wales, which offers very detailed reporting and transparency. Besides extensive reports and statistics, the website also includes reports of cases that are being investigated, as well as updates and information on the outcome of cases. Since 1 October 2014, the IPCC further publishes all recommendations issued to the police on its website, and will publish the police response to the recommendation as well. As this feature has been newly introduced by the time of writing this paper, only few recommendations have been issued, and the police responses have not yet been published. It is, thus, not clear at this stage how much detail will be made available, and whether it will also include information on the follow-up.<sup>35</sup>

Besides being transparent to the public, a different facet of reporting concerns the communication with the complainant. Once a complaint has been lodged, the complainant should be regularly updated and informed of the outcome within a reasonable period of time. Many mechanisms are unfortunately lacking specified time frames and procedures to involve the complainant in the process. The Act establishing the Mauritian Police Complaints Division, for example, sets out that the complainant shall be informed of the outcome of the investigation and recommendations made, but does not specify a time frame. The South African IPID, on the contrary, provides a feedback report on the outcome of all investigations within 30 days of closure of the investigation.

### 3.8 The Possibility to Appeal

If the complainant disagrees with the findings of the investigation, the system should provide for the possibility to appeal against a decision. This possibility to appeal can take two forms: complainants can either appeal with the mechanism itself, or to another body, as for instance the public prosecution.<sup>36</sup>

35 In some other countries, reporting is unfortunately lacking. The Police Ombudsman of the Brazilian State of Pará, the Mexican National Human Rights Commission and the Peruvian Ombudsman, only report on the number of complaints received, but no information is available on the outcome of these complaints.

36 This principle was also mirrored by the Council of Europe Commissioner for Human Rights who stated that “[i]f the complainant challenges the way in which his or her complaint was handled or the outcome there should be a right of appeal to the IPCB [Independent Police Complaints Body] if investigated by the police, and by way of judicial review if investigated by the IPCB.” Council of Europe, Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009), CommDH(2009)4, para. 80.

Some mechanism unfortunately do not offer the possibility to appeal against the findings of the mechanism at all (e.g. Mexico and Denmark), or preclude the possibility to appeal if a complaint has been declared inadmissible (e.g. Peru). For other mechanisms, it is not clear if and how complainants can appeal against their findings. One of the exceptions is the Israeli Internal Auditing and Public Complaints Department, which accepts appeals upwards in the body's hierarchy. Decisions of the sub-district public complaints officer can, thus, be appealed against at the district level, and decisions of the district public complaints officer can be appealed against at the National Headquarters.

In Hungary, it is not possible to appeal against the conclusions of the Independent Complaints Board, though it is possible to appeal against a decision of the Head of the National Police Headquarters not to follow the Board's recommendations. In this case, the complainant is entitled to challenge the decision before the court.

In Northern Ireland, it is not possible to appeal against the findings of the police Ombudsman and his/her decision is final. It is, however, at least possible to appeal against the way the Ombudsman handled the complaint in case of maladministration, including unreasonable delays, discourtesy or failure to apologise. Such a complaint has to first be sent in writing to the Ombudsman, who will consider it and issue a written reply. If the complainant is still not satisfied, it is possible to complain to the Minister of Justice.

Other mechanisms, such as the IPCC in England and Wales, serve as an appeal instance in case the complainant was not satisfied with how the police has handled a complaint. Whether or not it is possible to appeal to the IPCC is specified in the complaint decision letter, which is issued by the local police force. The appeals that can be lodged are limited to appeals against the local resolution process, the police investigation into the complaint, a decision to disapply, the outcome of a complaint after the decision to disapply, discontinuation of an investigation, or that the original complaint was not recorded. The IPCC, in these cases, will not investigate the original matter, but the way the police handled the complaint. It is not possible to appeal against the IPCC's assessment of an appeal, and decisions made by the IPCC can only be overturned by the courts through the judicial review process.



Website of the IPCC for England and Wales, information on how to complain. Screenshot taken in January 2015.

### 3.9 Civil Society Participation and Public Trust

An external oversight mechanism can not function properly without the acceptance and trust of the public. It is unlikely that people will turn towards the mechanism if they do not know about it, or do not trust it. Furthermore, in countries which are marked by instability or high crime rates, convincing the public of the necessity of accountable policing can be difficult, as a “tough-on-crime” policing approach might be considered a better guarantor for security and stability. It is, thus, of vital importance to reach out to the community to explain the mechanism's role, and convey the importance of police accountability. For this purpose, the government should also publicly support the work of the mechanism and should take part in the process to raise awareness.

A lack of understanding for the mechanisms work has for example been an issue in Kenya, where more than half of the complaints received in 2012/2013 were out of scope, as the general population and police alike did not seem to be sufficiently aware of IPOA's mandate. There is thus a clear need to inform the police and the public about the purpose of the Authority. The Authority further faces an immense challenge in raising awareness and gaining the trust of those living in the informal settlements of the country. As people from these areas are generally disadvantaged, they are most vulnerable to police violence and abuse. Effective oversight is, therefore, of immense importance in these areas.

Visits of authorities to remote places or key areas most affected by police abuse could help improve the relationship between the mechanism and the people it is supposed to serve. The representation of the mechanism by offices throughout the country can also improve public awareness and trust for that purpose. The Peruvian Ombudsman, for example, is present in the whole country with 29 offices and 10 sub-offices, is known by the wide public and seems to have a good reputation among them. Also the South African IPID is represented in every province of the country, and aims for establishing more satellite offices to increase public accessibility.

The booklet *10 Things to Know about Police Reforms & Accountability*, is an example of how to inform about the value of accountable policing, and the role that the IPOA takes in the process. The booklet also outlines the matters it deals with, as compared to other instances such as the Internal Affairs Unit, or the National Police Service Commission.



Booklet *10 Things to Know about Police Reforms & Accountability*, p. 6: What are the Functions of IPOA? Reference: Commonwealth Human Rights Initiative and The Usalama Reforms Forum, *10 Things to Know about Police Reforms & Accountability*, n.d. Screenshot taken in January 2015.

An effective external oversight mechanism also involves civil society organisations in its work. For instance, many countries provide for the possibility of NGOs lodging a complaint about police conduct without preconditions or restrictions, such as Mexico, Kenya, South Africa, Peru, or Brazil (State of Pará). It is, however, also important that NGOs are regularly consulted by the mechanism. Ideally, they are able to influence public policies and have a right to be heard in policy making processes. The mechanism can profit from this in various ways: NGOs can have great monitoring capacities themselves due to their contact with the community, can bring important issues to the attention of the mechanism, and provide valuable expertise and input in reforming policies. They can further add to the outreach efforts of the mechanism, and their involvement can increase community support.

The State Council on Public Security (CONSEP) of the Brazilian State of Pará allows for active participation of civil society in policy-making discussions. CONSEP consists of a total of 15 members, of which 4 are representatives from civil society organisations, as established by law.

### 3.10 Summary: Key Elements of an External Oversight Mechanism

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#### **The Mandate**

- Ideally, countries should establish a mechanism exclusively dedicated to police oversight.
- The mandate should at a minimum cover the most serious of police abuses.
- Police should be obliged to report certain serious cases to the mechanism, such as incidents of death as a result of police action or in custody, and torture.
- The mechanism should be mandated, both, to investigate individual incidents and to assess general policing.

#### **Accessibility**

- The mechanism should be easily and directly accessible, without the requirement to exhaust internal accountability structures first.
- Once a complaint has been received, it should be dealt with within a reasonable period of time.
- The system should provide for appropriate witness protection.

#### **Powers to investigate and to issue recommendations**

- Ideally, the mechanism should have full investigative powers and capacities to conduct its own investigations. If this is not given, the mechanism should have the power to call upon other bodies for assistance, while remaining in charge of the case.
- The mechanism should be able to investigate upon receipt of a complaint and also start investigations out of its own initiative.
- Based on its findings, the mechanism should be able to issue recommendations for prosecutions, disciplinary sanctions, reparations and policy reviews. It should be entitled to a substantial and reasoned response from the relevant authorities and – when dissatisfied with the reply – to have the decisions reviewed by the higher hierarchy of the responding authority and by judicial authorities of the country.

#### **Resources**

- The mechanism should be sufficiently funded to deal with at least the most serious of complaints. The budget should be allocated by the legislative and should be made public.
- The appointment procedure and selection criteria for an Ombudsman, or members of the governing instance of a mechanism, should be set out in legislation, and guarantee that the process is open and transparent, and that the selection is based on skill, competence and personal integrity. The legislation should also outline procedures for removal.

#### **Transparency and reporting**

- The mechanism should be accountable to the legislative and issue regular report on its performance, including information on the outcome of cases and financial audits.

#### **The possibility to appeal**

- Complainants should have the possibility to appeal against the findings of a mechanism, either to the mechanism itself or to another body.

#### **Civil society participation and public trust**

- It is important for the mechanism to reach out to the community, in order to raise awareness of its work and gain public trust.
- The mechanism should allow for civil society organisations to play an active role in its work.

## The Process of Establishing an External Oversight Mechanism

### 4.1 Introduction

This section will look at the process of establishing an external oversight mechanism, from the moment that the need for external oversight is identified, to the drafting and passing of the legislation establishing the mechanism. The purpose is not to point out the specific steps that need to be taken, as this will differ widely between countries depending on their systems. Rather, it aims to outline how the process is generally being initiated, which actors can be, and should be, involved in the process, and what the common challenges and obstacles are.

### 4.2 The Decision to Establish Independent Police Oversight

Ideally, it should go without saying, that any country should dispose of an independent external oversight mechanisms for police as an indispensable element of checks and balances for the exercise of law enforcement duties and powers. However, as mentioned previously in this paper, serious police abuses can lead to the establishment of an oversight structure, supported by the public perception that police has to be held accountable. Situations like these can, and should, lead to considerations about the weaknesses and failures of the existing system, and as a positive outcome can lead to identifying the need for external police oversight. Further, peace accords or transitions to democracy can produce favourable conditions for establishing oversight structures.

The process of deciding on the establishment of the Kenyan IPOA serves as an example of this. Following the post-election violence in 2007, the two main contenders for political power signed the Kenyan National Dialogue and Reconciliation Agreement which identified 4 agenda items on the resolution of the political crisis and its root causes. Agenda Item 4, covering long term issues and solutions, stressed among other things the need for institutional reform and the need to address transparency, accountability and impunity.<sup>37</sup> The Commission of Inquiry into Post-Election Violence (CIPEV), which was established in response to Agenda Item 4, consequently recommended comprehensive reform of the Kenya Police Service.<sup>38</sup> As a result, the National Task Force on Police Reform was established by the President in 2009. After extensive research and consultation with various actors, as will be discussed in more detail later in this section, the Task Force identified that low levels of trust in the police, and general considerations of the police as being ineffective and corrupt, was a serious issue that needed addressed. In this light, they suggested the establishment of the Independent Police Oversight Authority.<sup>39</sup>



Website of the Kenya Law Reform Commission (KLRC), screenshot taken in January 2015.

- 37 Kenyan National Dialogue and Reconciliation (2008), <http://www.dialoguekenya.org/Agreements/1%20February%202008%20-Annotated%20Agenda%20for%20the%20Kenya%20Dialogue%20and%20Reconciliation.pdf> (last consulted 19th of January 2015).
- 38 Commission of Inquiry into Post Election Violence Report, [http://www.kenyalaw.org/Downloads/Reports/Commission\\_of\\_Inquiry\\_into\\_Post\\_Election\\_Violence.pdf](http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf) (last consulted on 19th of January 2015).
- 39 Report of the National Task Force On Police Reforms (2009), <http://www.icc-cpi.int/iccdocs/doc/doc1072888.pdf> (last consulted on 19th of January 2015).

In England and Wales, the need for independent police oversight, which eventually resulted in the establishment of the IPCC, was – among others – identified by the Home Affairs Committee and further stressed by the *Lawrence Inquiry*<sup>40</sup>, which acknowledged that “[...] *investigation of police officers by their own or another Police Service is widely regarded as unjust, and does not inspire public confidence*” and thus recommended “[...] *that the Home Secretary, taking into account the strong expression of public perception in this regard, consider what steps can and should be taken to ensure that serious complaints against police officers are independently investigated.*”<sup>41</sup>

In the above examples of Kenya and England and Wales, the government was actively involved in the decision to establish an oversight mechanism. India, however, provides an example of other actors initiating reform, after the government failed to do so. The need for police reform in India was long recognised, also by the government, but none of the main recommendations put forward by the National Police Commission (NPC), which was created in 1979, were adopted by the governments. In 1996, two former Director Generals of Police filed a Public Interest Litigation in the Supreme Court, asking the Court to direct governments to implement the recommendations.<sup>42</sup> In its verdict in 2006, the Court then ordered that reform must take place, and issued 7 binding directives to that end.<sup>43</sup> The Directives can be broadly categorised to fulfil two main objectives: to achieve functional autonomy for the police, and to enhance public accountability. Directive Number Six required every state to establish two Police



Police women in India. © Danish Ishmail / Reuters

Complaints Authorities – one at the district level and one at the state level. The Court specified that these Complaint Authorities should have the power to issue binding recommendations, and set out their basic framework with regards to their personnel, the utilisation of investigators and the types of complaints to be investigated.<sup>44</sup> As a result, a large number of the States in India have established Police Complaints Authorities, though not all of them are yet operational and some of them are temporarily operating under government orders until a legislation for their creation is passed.<sup>45</sup>

40 The Stephen Lawrence Inquiry was a public inquiry, ordered by the Home Secretary, that examined the investigation of the Metropolitan Police Service into the racist murder of a black British man, Stephen Lawrence, on 22 April 1993. The inquiry found that the investigation was flawed due to a combination of professional incompetence, institutional racism and a failure of leadership.

41 The Stephen Lawrence Inquiry Report Of An Inquiry By Sir William Macpherson Of Cluny (1999), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf) (last consulted on 19th of January 2015); Recommendation 58.

42 Commonwealth Human Rights Initiative (CHRI), Seven Steps to Police Reform (2010), [http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven\\_steps\\_to\\_police\\_reform.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf) (last consulted on 19th of January 2015). See also A/HRC/14/24/Add.8, Paragraph 48 on the financial costs of poor policing.

43 The seven Directives pertain to: (1) Constitution of a State Security Commission; (2) Selection and Minimum Tenure of the Director General of Police; (3) Minimum Tenure of Inspector General of Police & other officers; (4) Separation of the investigating police from the law and order police; (5) set up of a Police Establishment Board; (6) set up of Police Complaints Authorities; (7) set up of a National Security Commission. Court case Prakash Singh and Others v Union of India and Others (22 September 2006) 8 SCC 1.

44 Ibid.

45 For more details cf. Police Complaints Authorities in India, A Rapid Study Researched and Written By Devika Prasad, Commonwealth Human Rights Initiative (CHRI), December 2012.



### 4.3 Obstacles and Opposition

As noted in studies into oversight mechanisms in Africa and the Americas, the implementation of effective mechanisms of checks and balances was and is often hampered by governments that do not abide to the concept of democratic policing.<sup>46</sup> As pointed out by the African Policing Civilian Oversight Forum, where the police serves as “handmaiden” to the government, this poses a challenge to the establishment of effective police oversight.<sup>47</sup> Further, politicians may have “law and order” agendas not conducive to oversight, as they are willing to accept a “tough on crime” approach in policing, including police abuses.

A further obstacle to establishing an effective oversight body can be the police agency itself, which might not be in favour of sacrificing their virtual impunity and being scrutinised. As pointed out by Joel Miller, this was the case in North America, where police unions have often battled against the introduction of police oversight mechanisms.<sup>48</sup> As the continued success of an oversight body, however, depends, at least to some degree, on the cooperation from the police, it would be desirable to establish the mechanism with a view to creating a good relationship. Involving police representatives in the process can be beneficial to this end, as well as considerations to incorporate ex-police officers in the investigative staff of the mechanism, to obtain better cooperation with officials once the body is operating.

An argument often brought forward against the decision to establish an oversight mechanism is the lack of financial means, ignoring actually that it should be considered a worthy investment to prevent costs involved in bad policing.<sup>49</sup>

### 4.4 Actors Involved in the Process

Various actors are involved in the process that leads up to the establishment of an independent oversight mechanism. Those actors commonly include, at a minimum, the government, the police and civil society. It is important that the variety of interests are represented when shaping the mechanism, as the success of an oversight body, once established, depends at least to a certain extent on continuous commitment from all parties.

In Ghana, for example, a civil society coalition was formed to lobby for the establishment of a fully independent police oversight mechanism. While the process is still in the early stages, it is a positive example of how civil society initiates and actively involves itself into the process. The coalition had by the end of 2014 met several governmental agencies, such as the Minister of Interior, the Commission on Human Rights and Administrative Justice (CHRAJ) and the Parliamentary Committee on Interior and Defence, to discuss the possibilities of setting up the mechanism.

The Round Table Discussion held on 2 October 2014, themed “An Effective Independent Civilian Policing Oversight: Too Important to Neglect, Too Urgent to Delay”, aimed at bringing together all relevant stakeholders to discuss the setup of an Independent Police Complaints Commission in Ghana. While there was agreement on the need to establish the Commission, a point of discussion was for instance its location. The Police, which unfortunately did not attend the discussion, had proposed to establish the Commission under the Ministry of Interior, with an alternative suggestion being its establishment under the Human Rights Commission CHRAJ. Other matters of discussion were the body’s constitutionality, independence and composition.

46 African Policing Civilian Oversight Forum, *An Audit of Police Oversight in Africa* (2008); Canadian Defence & Foreign Affairs Institute, *Policing the Police: Formal and Informal Police Oversight Mechanisms in the Americas* (2011).

47 *Ibid.*, p. 3.

48 Joel Miller, *Civilian Oversight Of Policing; Lessons from the Literature*, Vera Institute of Justice, [http://www.vera.org/sites/default/files/resources/downloads/Civilian\\_oversight.pdf](http://www.vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf) (last consulted on 19th of January 2015), p. 11.

49 See section 3, section 6(a) on Financial Resources.

As mentioned above, the IPOA in Kenya was suggested by the National Task Force on Police Reform. During their work, the Task Force received input from various stakeholders, parties and experts, including the Cabinet Ministers, the Attorney General, the police, civil society, religious leaders, academia and Kenya's international development partners. The Task Force visited numerous provinces of Kenya for discussions with provincial administrators and police leadership, held public hearings, received written and oral representations from members of the public and from civic, spiritual, business and other stakeholders. They listened to junior ranks within the police and visited them in their stations and posts. They further visited different institutions in the country, such as the Kenya Police and Administrative Police Training Colleges. The Task Force also attended a two-day seminar in Nairobi on the issue of police oversight mechanisms, which was facilitated by international experts and organised and co-hosted by the United Nations Office on Drugs and Crime (UNODC) in Vienna and the Department for International Development Nairobi. Further, they visited Botswana, Sweden, the United Kingdom and Northern Ireland, to study policing structures and different policies, and operational approaches towards policing.<sup>50</sup>

### 4.5 Identifying the Model and Scope

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As a general consideration, it should be kept in mind that an independent body does not function in isolation, but that it needs to fit into the existing system and should complement existing police accountability structures. To that end, one should assess whether a whole new body is needed, or whether it is more effective to improve and strengthen an existing mechanism or structure – provided it is specifically dedicated to investigate police conduct.

In Mauritius, for example, the task to oversee police was incorporated into the existing National Human Rights Commission, which was restructured for this purpose to include a dedicated Police Complaints Division. In South Africa, the IPID is the enhancement of the Independent Complaints Directorate, which had existed since 1997. The new legislation, which came into effect in 2012, renamed the mechanism, focussed the mandate and strengthened its authority with regards to obliging the police to refer cases that fall under its mandate within 24 hours.

When deciding on establishing a new mechanism, or enhancing an existing structure, the existing system should be thoroughly assessed, to identify its strengths and weaknesses, and the challenges it faces and their causes. This will contribute to avoid building in the same flaws, and presenting the new mechanism with the same obstacles, that might have contributed to the failure of the previous system. Further, seamless coordination between the different bodies within the system needs to be ensured.

After the need for independent police oversight was identified in England and Wales, the government commissioned a feasibility study into the practicality of creating such a mechanism. The study was conducted by the Research, Development and Statistics Directorate and suggested the establishment of an “Independent Agency for Complaints Against the Police”. Simultaneously, Liberty, a UK civil liberties and human rights organisation, conducted their own feasibility study named “An Independent Police Complaints Commission”. The study looked at different potential models for the oversight mechanism, and issued numerous recommendations on the scope and functioning of the body.<sup>51</sup>

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50 Report of the National Task Force On Police Reforms (2009), <http://www.icc-cpi.int/iccdocs/doc/doc1072888.pdf> (last consulted on 19th of January 2015).

51 Liberty, James Harrison and Mary Cunneen, *An Independent Police Complaints Commission* (April 2000).

#### 4.6 The Legislative Process

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As stressed in the previous section, oversight bodies should be established by legislation, to ensure their impartiality and independence from political pressure.

In Kenya, after the establishment of IPOA was recommended, a Police Reform Implementation Commission was created to implement the recommendations. The commission, along with various stakeholders from government, police and civil society, met to discuss a draft Bill for an Independent Police Oversight Authority at a workshop organised by the Usalama Reform Forum, a Kenyan civil society forum dedicated to reforms in the security sector. The Usalama Reform Forum was also actively involved in the drafting process, as their legal drafters, together with the Police Reform Implementation Commission, prepared a new proposal for the IPOA that was eventually presented to the Commission for implementation.

In England and Wales, Liberty was also involved in the drafting process of the Police Reform Bill and Act as a member of the Program Board which was established to oversee the transition from the Police Complaints Authority to the IPCC.<sup>52</sup> Other members of the Board included the Chairman and a deputy from the Police Complaints Authority and representatives from the Police Federation of England and Wales. Passing legislation to establish an independent oversight mechanism as a statutory body can, however, be a lengthy and cumbersome process. Establishing a mechanism through an executive decree could, thus, be an interim solution if legislation cannot be passed in a timely manner. Though certainly not ideal, executive decrees can provide a temporary solution to ensure oversight when circumstances, such as political deadlocks, prevent the establishment of a mechanism in legislation at that given time. It should, however, only be seen as a provisional workaround, as the aim should always be to pass legislation as soon as possible.

The IPCC in Hong Kong, for instance, was first commissioned by the Governor in 1986, and remained a non-statutory, executive body for over 20 years.<sup>53</sup> The IPCC Bill was first introduced to the Legislative Council in 1996, aimed at turning the IPCC into a statutory body and providing for a legal basis for the discharge of its functions. However, a number of Committee stage amendments were deemed unacceptable by the administration, and the bill was subsequently withdrawn in 1997. In 2007, the Administration re-introduced a new bill into the legislative council, which, after 9 months scrutiny, was passed in July 2008. This example shows that the process to establish a mechanism in legislation can be long, and that a non-statutory body can at least fulfil the oversight function for the meantime. However, one also needs to be careful to go too easily for the quick interim solution, without at least attempting to achieve a fully fledged and thoroughly established oversight mechanism, as sometimes, provisional measures can have a longer life span than anticipated and helpful.

Similarly in Ghana, it was proposed to form a temporary body for a period of 3 years while the discussion around establishing a permanent body is ongoing, to be hosted either by the Ministry of Interior or the Commission on Human Rights and Administrative Justice. As mentioned above, an interim mechanism like this is not ideal and should not be considered the final solution, though for the time being it is certainly better than having no operational oversight body at all. The example of the Ombudsman office in the Dominican Republic illustrates that approving the legislation does not necessarily mean that in practice the mechanism is implemented in a timely manner. While the law establishing the office was

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52 The Police Complaints Authority had fewer powers than the IPCC, and was perceived to be less independent, as inquiries were conducted with or through the police.

53 When first commissioned, the body was called "Police Complaints Committee". It was renamed to "Independent Police Complaints Council" in 1994.

passed in 2001, an Ombudsman was not appointed for the following decade. In such situations, election periods can provide for an opportunity to put pressure on (future) decision makers, as illustrated by this example in the Dominican Republic: impending the presidential elections in May 2012, Amnesty International sent an open letter to the 6 candidates, calling on them to, among other things, ensure that the Ombudsman is appointed without any further delays and to equip the office with sufficient resources and powers.<sup>54</sup> In July 2012, Amnesty International, together with 25 local human rights institutions, further sent a joint letter to Mr. Abel Martínez Durán, President of the Chamber of Deputies, urging him to put in place all measures at his disposal to speed up the process to appoint a candidate.<sup>55</sup> In May 2013, an Ombudsman was finally appointed.

### 4.7 Conclusions

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Once the decision is made that an external oversight body is needed, a model has to be found that suits the needs of a country and fits into the existing system.

The establishment can be a lengthy and at times cumbersome process of consultation and negotiation that requires broad acceptance and commitment from various stakeholders, such as the government, the police agency and civil society. The lack of political commitment, or interests held for example by the police, can pose a major challenge to establishing an oversight mechanism, though a change in power can equally give rise to conditions favourable to instigating the process. As was shown in various examples, civil society can, and should, play an active role throughout the process. Civil society involvement ranges from initiating the process to bringing stakeholders together, contributing to defining the shape of mechanism, participating in drafting the legislation and ensuring and monitoring its implementation.

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54 Dominican Republic: Open Letter from Amnesty International to Dominican Presidential Candidates for the May 2012 Elections, 19 April 2012, AMR 27/005/2012.

55 Dominican Republic: Letter concerning the Appointment of the Ombudsman, 18 July 2012, AMR 27/010/2012.

## Internal Accountability Structures and *Ad hoc* Mechanisms

### 5.1 Introduction

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While this paper has so far stressed the immense importance of independent external oversight, an effective accountability system consists of various actors, and cannot be achieved by an external body alone. This section will look at two forms of accountability mechanisms that can contribute to a strong system of police oversight. The first part will discuss police internal accountability structures which can play an important role in complementing external oversight. The second part will look at *ad hoc* mechanisms set up in response to particular events, based on the examples of the Marikana Inquiry, the Göteborg Commission and the NSU Committee of Inquiry of the German Bundestag.

### 5.2 Internal Accountability Structures

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Though it has been stressed previously in this paper that internal accountability structures might be prone to bias, its lack of independence should not be understood as internal mechanisms being necessarily ineffective. On the contrary, a well-constructed internal oversight structure has the potential to deal efficiently with misconduct, and has in some cases the advantage over external oversight of having direct access to the necessary information, and a better understanding of policies, procedures and the police culture as such. Further, recommendations issued by internal mechanisms might find greater acceptance within the agency, providing the mechanism with more power to make a change.

Especially issues evolving around less serious misconduct might also be solved quicker by the police themselves. During a local resolution process<sup>56</sup> the police can explain their action to the complainant or issue an apology. In some cases, this can be sufficient to resolve a complaint, without the need to initiate investigations. Complaints to that end also offer the police the opportunity to improve themselves by means of feedback, as well as effective complaint handling can increase public trust in the agency. Effective internal oversight starts with a clear chain of command and effective supervision, to ensure it is possible to identify at all levels who is responsible for individual acts and omissions, and to maintain discipline and prevent impunity. To that end, an effective reporting system is essential to ensure accountability. The police should further have an effective internal disciplinary system in place, which should include dealing with complaints from the public and from police officials.

As stated before, the complainant should ideally have the option to address his/her complaint directly to an external oversight body. This, however, should not exclude the option to also complain directly to the police, if the complainant wishes to do so. Whether complainants feel comfortable addressing the police with their complaints depends to a great extent on the public confidence in the agency.

When accepting complaints from the public, the system should, thus, be set up with a clear, transparent and non-discriminatory process. It should further be ensured that the officer who receives the complaint is obliged to accept it, as leaving this decision to the individual discretion of an officer might result in the denial of a complaint due to personal interest in hiding malpractice. Further, it must be guaranteed that the complainant is not threatened or intimidated when addressing the police.

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<sup>56</sup> Local resolution process refers to dealing with complaints at a local level. The IPCC in England and Wales, for example, defines local resolution as “[...] a flexible process that can be adapted to the needs of the complainant. The complaint will be handled in the main at a local managerial level, not within professional standards departments.” It can involve providing an explanation, information, an apology or a meeting between the complainant and the officer complained about. It will not result in disciplinary or misconduct proceedings. IPCC, Statutory Guidance to the police service on the handling of complaints (2013), Chapter 5.

One way to prevent such threats, or the perceived possibility thereof, is to not require the complainant to make the complaint in person, or to the local police station to which the alleged offender belongs. Many countries offer the possibility to complain in writing or online, in some cases to dedicated departments that have no direct connection to the officers complained about. This is for instance possible in England and Wales, where complaints can be directed to the Professional Standards Departments of the respective police force. The New Zealand Police offers the option to arrange being interviewed elsewhere, if the complainant is reluctant or unable to make the complaint at a police station.



Screenshot from the Annual report 2013/2014 of the IPCC in Hong Kong, illustrating Hong Kong's two-tier Police Complaints System, p. 11. Screenshot taken in January 2015.

The police oversight structure in Hong Kong is a good example of how the interplay between internal and external mechanisms can contribute to the overall system of accountability. Hong Kong has a two tier system, with complaints first being handled by the Complaints Against Police Office (CAPO), which is an internal unit of the police. CAPO aims at dealing with complaints in a timely and efficient manner, with a clearly established process to keep the complainant informed on a regular basis.

For every case that CAPO deals with, an investigation report is submitted to the Independent Police Complaints Council (IPCC HK), an external body, for review. In case the IPCC HK does not agree with the investigation result, they have the option to seek further clarification from CAPO, or reject the report altogether and request CAPO to re-investigate the complaint, interview witnesses themselves or discuss the case during a joint meeting.<sup>57</sup>

The IPCC HK can further issue recommendations to the Commissioner of Police or Chief Executive if it identifies faulty or deficient police practices and procedures that might have led to a complaint and can examine the actions taken against police officials subject to a complaint. With this system in place, it is ensured that complaints, though not investigated by an independent body, are monitored and reviewed impartially. Further, the fact that every case report is reviewed puts the positive pressure on the internal mechanism to perform a proper and thorough investigation, and to follow up on disciplinary measures against the offender.

Similarly in Scotland, complaints against the Police have first to be made with the police agency itself. If the complainant is not satisfied with the outcome of the police complaint, he/she can apply to the Police Investigations and Review Commissioner, an independent institution, to have the case reviewed. Depending on the outcome of the review, the Commissioner can issue recommendations to the police to change their policies and procedures, or demand to have the complaint reconsidered. In this case, the complaint will be re-investigated by a member of the police that had no previous involvement in the case. Depending on the seriousness of the case and considering the public interest, the Commissioner might supervise the re-investigation.

<sup>57</sup> The latter option does not seem to be used in practice, though: during the reporting period 2012/2013, all CAPO reports were either accepted right away, or after additional explanation from CAPO.

While, unlike in Hong Kong, not every case is reviewed independently in Scotland, the possibility of such a review taking place can influence the police to handle cases properly, and the option of being supervised by the Commissioner when re-investigating a case adds an additional layer of scrutiny to the investigation.

### 5.3 *Ad hoc* Mechanisms

Besides oversight mechanisms that are established on a permanent basis, *ad hoc* inquiries offer the possibility to review and investigate certain events in which widespread police abuses have taken place. Especially when exceptional circumstances, such as prolonged periods of public disorder or strikes, have led to an alleged failure of the police in handling the situation a dedicated temporary mechanism has the potential to not only hold individual officers accountable for their conduct, but to identify weaknesses within the police agency and the system as such. *Ad hoc* mechanisms can further serve to examine failures of police in effectively and successfully investigating serious cases and patterns of crime.<sup>58</sup>

While existing accountability mechanisms might not have the capacity or the mandate to investigate issues on such a large scale, a body tasked with looking into the particular issues surrounding the respective events can thoroughly assess the situation and issue recommendations that are crucial to prevent the same situation from reoccurring. To ensure that investigations are conducted in a timely manner, the legislative framework of a country should allow for the government to set up such a temporary mechanism immediately after events have taken place.

*Ad hoc* mechanisms can take various forms, as will be shown with the following 3 examples from South Africa, Sweden and Germany.

#### a. *The Marikana Commission of Inquiry*

Employees of the Lonmin Mine company in the Marikana area near Rustenburg had gone on strike, when after several days of peaceful protest, violence erupted between strikers and police, leading to 44 deaths and more than 70 persons being injured between 11 and 16 August 2012.

On 23 August 2012, the President of South Africa, Jacob Zuma, appointed the Marikana Commission of Inquiry, composed of a chair, Ian Gordon Farlam, a retired judge of the Supreme Court of Appeal and two members, the Advocates Bantubonke Regent Tokota and Pingla Devi Hemraj.



*Crosses at the Marikana site near Rustenburg, South Africa.*  
© REUTERS/Siphiwe Sibeko

The Commission – which was still operating at the time of writing of this paper – was mandated to “investigate matters of public, national and international concern arising out of the events”<sup>59</sup>, referring especially to the conduct of the involved parties: the Lonmin Plc, the South African Police Services, the Association of Mineworkers and construction Union, the National Union of Mineworkers, the Department of Mineral Resources and other government departments or agencies, and individuals or groups contributing to the conflict.

58 See for example the Stephen Lawrence Inquiry in England and Wales in footnote 40.

59 Proclamation by the President of the Republic of South Africa, Establishment of a Commission of Inquiry into the tragic incident at or near the area commonly known as the Marikana Mine in Rustenburg, North West Province, South Africa, Staatkoerant 12 September 2012, No. 50, 2012, p. 3.

Specifically regarding the conduct of the police service, the Commission looked at the standing orders, policies, legislation and other instructions that were applied in dealing with the situation, the circumstances that gave rise to the use of lethal force and whether this was reasonable and justified, the role of respective units, and whether they, by act or omission, directly or indirectly caused loss of life or harm to persons or property.

To conduct their investigations, the Commission was equipped with the power to enter and search premises and demand and seize documents, and to summon witnesses. Refusing to answer to the Commission had been established as an offence. Further, the Commission had the power to refer any matter concerning the conduct of specific persons to an appropriate law enforcement agency or other body for prosecution or further investigation.

Upon its establishment, the Commission was meant to conclude its work within 4 months. This deadline had, however, been postponed several times, eventually until 14 November 2014, when the Commission was able to conclude its hearings. The extended time it took for the Commission to finalise the investigation should, however, not be attributed to a failure to work effectively, but rather points to the scale of the issues at hand, the volume of evidence gathered and the obstruction they faced while conducting their work.

The work of the Commission is immensely transparent, with detailed day by day transcripts of their actions and witness examinations accessible on their website. During their work, the Commission thoroughly investigated and reconstructed the events of those days. They heard hundreds of witnesses, watched dozens of hours of videos, and looked at thousands of pages of documents and computer data. This allowed them to reveal a considerable number of facts which the police attempted to hold back, despite lacking cooperation from many of the involved.

*“[...] the Commission’s task is hampered by the fact that it has to be said, frankly [...] that there is good reason to doubt the truthfulness of a large number of the witnesses who gave evidence to the Commission. It has been, for me, one of the most dispiriting aspects of this Commission. In an attempt to avoid accountability many witnesses have avoided truth telling”.*

Geoff Budlender, evidence leader, Transcription of the Commission of Inquiry Marikana, Oral Closing Arguments, 5 November 2014, p. 35800.

Nevertheless, the Evidence Leaders were able to draw significant conclusions based on the information gathered. For example, they suggest to consider criminal liability for a number of commanders, for issuing orders that have led to the deaths of strikers, or the failure to exercise command and control to prevent them.<sup>60</sup>

It has to be noted though, that there has not yet been a definite outcome of the Marikana inquiry. The submission of the final report on the findings and recommendations of the Commission to the President is scheduled for March 2015, and at the time of writing of this paper it is not possible to appreciate whether the Commission will be successful in establishing effective accountability. This will not only depend on its findings as such, but also on whether its conclusions will be accepted and followed up on.

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60 The Marikana Commission of Inquiry, Heads of Argument of Evidence Leaders, 27 October 2014.





Police officers and protesters during the EU summit in Göteborg in 2001 © Ray Tang/Hollandse Hoogte

was tasked with reviewing the events in Göteborg and gather experiences of similar events, “[...] to consider and propose measures that [...] can contribute to preventing and combating serious public disturbances.”<sup>61</sup>

In the original set up, the Commission consisted of Former Prime Minister Ingvar Carlsson as chairman and former governor Ulf Adelsohn as a committee member. Later on, on 2 August, two additional members joined the committee.

During their work, the Commission conducted about 200 interviews, travelled to various cities, took part in open meetings, examined documentations, studied films, articles and books, and took part in several seminars on related topics. While the Commission was meant to conclude its work by 31 May 2002, this deadline was later extended to 31 December 2002 when the final report was issued.

In its findings, the Commission pointed to serious shortcomings in the coordination of responsibilities between the police and the security service. It further stressed the importance of training in the field of crowd management, with a focus on non-confrontation and de-escalation of potentially violent situations. It was also identified as a problem that the police was only equipped with batons and firearms, instead of having access to a range of weapons that would allow for a more graduated response. The Committee suggested considering equipping police with tear gas and fixed water cannons and recommended the acquisition of protected vehicles and a new radio system to ensure better communication during operations. Further recommendations referred to improving the dialogue between police and political organisations, and banning demonstrators from wearing masks as a measure to prevent the resort to violence.<sup>62</sup>

The Committee’s conclusions led to a proposal for the development of National Police Tactics, which was implemented by the Swedish National Police Board in 2004. National Police Tactics focus on dialogue, de-escalation and non-confrontation in everyday police work and at major events, with Special Police Tactics dedicated to crowd management during special events with a high risk of confrontations or public order disturbances. They consist of various units, one of them being the Dialogue Police, which functions as a link between organisers and police command before, during and after an event, to inform demonstrators on how police operations contribute to peaceful protests and security, and to set limits as to what is acceptable to avoid injuries and disorder.<sup>63</sup>

61 Betänkande av Göteborgskommittén, Göteborg 2001 (Summary), SOU 2002:122, p. 2.

62 Ibid.

63 Swedish Police, Dialogue Police: Experiences, observations and opportunities, RPS Rapport 2010:4.

### **c. The NSU Committee of Inquiry**

The Nationalsozialistischer Untergrund (National Socialist Underground, NSU), a German far-right terrorist group, committed at least 10 murders, two bomb attacks and more than a dozen brutal robberies between 1998 and 2011. Though the crimes were investigated at the time, the police failed to establish the connection between them and their underlying racist motivation, and was unable to identify the perpetrators, until the NSU claimed responsibility for the acts in a video in November 2011.



Members of the NSU Committee of Inquiry speaking to a victim.  
© Oliver Berg/dpa/Corbis

A committee of inquiry was established by the German Bundestag, to examine the failures of police and secret service to successfully investigate the crimes. The Committee consisted of 11 members of parliament, representing the various political parties. They started their work in January 2012 and over a period of 16 months, interviewed numerous police officials, public prosecutors and home secretaries, and considered the files, documents and other evidence that was available during the investigations. In their final report, which was published in August 2013, the Committee concluded that the failure to prevent these acts and identify the perpetrators presents a “[...] *shameful defeat of the German security and investigation services*”.<sup>64</sup> They found serious administrative failings and errors, as well as a lack of organisation from federal authorities and federal states, especially in information exchange, analytical capacities, staff selection and prioritisation.

A total of 47 recommendations were issued for police, judiciary, constitutional protection authorities and security agencies. For the police, for example, the Committee recommended that in all cases of potentially racist or other politically motivated violence, the background motivation shall be thoroughly examined and clearly documented, with greater consideration for statements of victims and witnesses. Further, the criteria for the detection of right-wing political crimes and violence are to be revised, and there should be a compulsory exchange of information between police and judiciary, at least for politically motivated crime. If an investigation into a particular serious crime is ongoing but unsuccessful, there should be, after a certain period of time, a re-investigation by personnel previously not involved in the case. Other recommendations referred for instance to the responsibilities of the federal public prosecutor, which should be expanded in important cases.

## **5.4 Conclusions**

Holding officials accountable for their action by means of internal supervision and reporting can play an important role in preventing police abuses from occurring. When dealing with complaint cases, internal oversight mechanisms can potentially resolve complaints in an effective way by means of local resolution processes and investigations, provided that the public has sufficient trust in the agency to address complaints to the police, and that complaints are taken serious and handled in a way that does not allow for bias or intimidation of the victim. Complaints should, thus, be handled by personnel not connected to the complaint. Ideally, internal complaint investigations should be subject to scrutiny from an external

64 Deutscher Bundestag, 17. Wahlperiode, Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes, 22 Aug 2013, Drucksache 17/14600, p. 877: “[...] *eine beschämende Niederlage der deutschen Sicherheits- und Ermittlungsbehörden.*”

oversight body. This has the potential to strengthen the internal mechanism by means of ensuring impartial investigations, hence increasing legitimacy and public trust in the system. Finally, an internal mechanism may have stronger influence as regards to change of policies.

*Ad hoc* mechanisms set up in response to particular events have the potential to thoroughly investigate police misconduct and underlying causes that have led to the failure of individuals and the police agency as a whole to deal with a given situation adequately. Besides establishing accountability, recommendations issued by such mechanisms can prevent the same situation from reoccurring, by means of rectifying the issues that have contributed to the mishandling of the situation, such as lack of training, poor communication or coordination. The *ad hoc* mechanisms discussed in the examples of this section were established within days or weeks after the respective events/the identification of a problem and can, thus, be understood as an immediate acknowledgement of governments that something had gone wrong and needed urgent attention and rectification. While inquiries into such events should certainly be conducted in a timely manner, the time frames set for the mechanisms to conclude their work should nevertheless be realistic and allow for a thorough investigation.

## List of Acronyms

CAPO	Complaints Against Police Office, Hong Kong
CHRAJ	Commission on Human Rights and Administrative Justice, Ghana
CONSEP	State Council on Public Security, Brazil, State of Pará
EAIC	Enforcement Agency Integrity Commission, Malaysia
HMIC	Her Majesty's Inspectorate of Constabulary, England and Wales
IPCA (DK)	Independent Police Complaints Authority, Denmark
IPCA (NZ)	Independent Police Conduct Authority, New Zealand
IPCC	Independent Police Complaints Commission, England and Wales
IPCC (HK)	Independent Police Complaints Council, Hong Kong
IPID	Independent Police Investigative Directorate, South Africa
IPOA	Independent Police Oversight Authority, Kenya
PACE	Police And Criminal Evidence Act, United Kingdom

## Selected References for Further Reading

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### 8.1 Brazil – State of Pará: Police Ombudsman

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#### 1. Legal Basis

Law 5944, 02/02/1996 – Art. 4, §4 (Ombudsman), Law 7584, 2011.

#### 2. Mandate

Receives complaints against law enforcement officials, requests investigation by inspectorates, monitors cases and keeps complainant informed. He/she does not investigate or decide on sanctions.

#### 3. Powers

The Ombudsman has no own investigative powers. He/she refers the cases and oversees investigations done by the police inspectors or other bodies in the security and judicial system. Decisions are not binding.

#### 4. Structure

- a. Body's composition: 16 staff in 2007 (26 staff in 1999), including social workers, lawyers and administrative staff.
- b. Appointment: Elected by CONSEP (State Public Security Council). He/she is a civilian (with no connections to the Public Security System).
- c. Annual budget: controlled by State Secretary of Social Defense (Executive)
- d. Resources: Ombudsman has to invite employees from the Public Security System to work in his/her team.

#### 5. Access to mechanism

- a. Who is able to lodge a complaint? Any person/NGO
- b. When is it allowed? Any time (no specific timeframe given)
- c. Where?/How? Office based in the capital city, telephone (toll free number), email, through media channels, NGOs, public prosecutors office.
- d. Possibility to appeal? No. The Ombudsman is entitled to bring the case to the attention of CONSEP or Prosecutor.

#### 6. To whom accountable

The Ombudsman reports to CONSEP, which then reports to the State Secretary (executive level).

#### 7. Short analysis

The office of the Police Ombudsman is regulated by a State Law and an internal regulation, and the mandate and independence of the Ombudsman are specified in those instruments. He/she takes part in the meetings of the Council (CONSEP) and eventually brings cases to their attention. CONSEP is composed of several stakeholders, not only from the government but also from civil society, therefore, being one of the only public security councils in Brazil that allows active participation of civil society, not only as a complainant but also in policy-making discussions. The composition of this council is established by law, and it has started its activities more than 15 years ago.

For this mechanism to operate there are no budget guarantees, the Ombudsman is completely dependent on the budget allocated by the Public Security System (under the State level Executive). The Ombudsman unfortunately has no investigative powers and he/she does not have the resources to hire staff, but has

to make use of staff (made) available within the security system. Further, statistics and reports are not available to the public which compromises the transparency of the mechanism and does not allow for public scrutiny of its work.

The Ombudsman is also only physically present with one office which is located in the capital city, which might be insufficient for a population of 7.5 million and an area of 1,2 million km<sup>2</sup>.

Important to note that this is a State level police ombudsman, which means that this is a limited analysis that does not reflect the entirety of the situation in Brazil which has 26 States and one Federal District. There are other several states in the country which also have a police ombudsman in place, as for instance in Sao Paulo, Alagoas and Minas Gerais. All state Ombudsmen meet on a regular basis to exchange information and discuss security policy issues.

**8. Website Reference** (last consulted on 19th of January 2015):

<http://www.ouvidoria.ssp.pa.gov.br>

## 8.2 England and Wales: Independent Police Complaints Commission (IPCC)

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### 1. Legal Basis

Police Reform Act (2002)

### 2. Mandate

The IPCC monitors complaint handling by police and issues guidance. The police is obliged to refer the most serious of violations to the IPCC, including complaints and recordable conduct matters relating to death or serious injury as a result of police conduct, serious assault, serious sexual offences, serious corruption, and discriminatory behaviour that would constitute a criminal offence or lead to misconduct proceedings. The IPCC can decide to independently investigate these matters, to manage or supervise the police investigation into these matters, or not to involve itself.

### 3. Powers

IPCC investigators, in certain circumstances, have full police powers and rights of access to premises, documents and other evidence when requested.

Recommendations are not binding, however, there is a legal duty to respond to the recommendations within 56 days.

### 4. Structure

- a. Body's composition: The IPCC is governed by the Commission, consisting of a chairman, 10 operational members, and 2 non-executive members.
- b. Appointment: Chairman of the Commission appointed by the Crown on the recommendation of the home secretary; members of the Commission appointed by the home secretary in a public appointment procedure.
- c. Annual budget: Allocated by the Home Office.
- d. Resources: Approximately 400 staff, including own investigative staff.

### 5. Access to mechanism

- a. Who is able to lodge a complaint? Complaint must be recorded by the relevant police force. A complaint can be lodged by any member of the public who has been affected by the conduct or has witnessed it, or by a person who has been authorised (in writing) by a victim or witness to act as a representative.
- b. When is it allowed? No time limit, however, if more than 12 months have passed since the incident, the police can decide not to investigate the complaint.
- c. Where?/How? First, the complaint must be lodged with the relevant police force. This can be done in person, online through the police force's website (depending on the police force) or online through the IPCC website.
- d. Possibility to appeal? If the complainant is not satisfied with how the police handled the case, he/she can appeal to the IPCC if this is specified in the complaint decision letter (issued by the local police force) and the appeal concerns one of the following matters: complaint was not recorded, the local resolution process, the police investigation into the complaint, a decision to disapply, the outcome of a complaint after the decision to disapply, or the discontinuation of an investigation. The IPCC will not investigate the original complaint, but the way the police handled the complaint. Appeal has to be submitted through a form available on the IPCC website. The IPCC's decision on an appeal is final and can only be overturned by the Courts in a judicial review process.



## 6. To whom accountable

Reports annually to the Secretary of State. The Secretary of State has to lay a copy before the parliament and ensure the publication of the report. Publishes annual and quarterly statistics on complaints recorded by police forces (quarterly statistics are force specific). Investigation reports and recommendations issued to police forces are available on the website.

## 7. Short analysis

The IPCC is not directly accessible to the public, as any complaint has to be lodged with, and in many cases handled by, the relevant police force first. The IPCC only independently investigates certain matters that refer to the most serious violations, and otherwise has a supervisory function to the police complaint handling system as a whole. In this role, the IPCC it serves as an appeal instance if the complainant is dissatisfied with the initial complaint handling and sets the standards by which police should handle complaints, but without investigating the matter as such.

The IPCC also seems to be dependent on having cases referred to it by the police, without being able to initiate investigations into matters in the absence of a referral.

The IPCC further conducts research into specific issues, for example regarding the use of tasers, or the handling of allegations of discrimination, and issues recommendations based on its findings. This enables the mechanism to execute oversight beyond individual cases, and address problems on a larger scale to improve policing.

The work of the IPCC is highly transparent. The mechanism issues regular detailed reports and complaints statistics, and publishes its investigation reports as well as recommendations submitted, and responses received, on its website. This level of transparency allows for public scrutiny, which might also put pressure on the relevant police forces to follow up on the recommendations. It further has the potential to enhance confidence in the system, as it is visible to the public that violations are taken serious and followed up on.

## 8. Website Reference (last consulted on 19th of January 2015):

<https://www.ipcc.gov.uk>

### 8.3 Kenya – Independent Police Oversight Authority (IPOA)

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#### 1. Legal Basis

Independent Policing Oversight Authority Act No. 35 of 2011.

#### 2. Mandate

IPOA is mandated to investigate any disciplinary or criminal offence committed by a member of the service, upon receipt of a complaint, or upon its own initiative, and investigate any death or serious injury in police custody. The Authority also monitors and investigates policing operations; in further monitors, reviews and audits investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the Police.

#### 3. Powers

Power to take over on-going internal investigations into misconduct if such investigations are inordinately delayed or manifestly unreasonable.

The Authority has the power to recommend on prosecution, disciplinary measures, improvement of processes and procedures. It can apply to the Court for the enforcement of its recommendations.

#### 4. Structure

- a. Body's composition: Governed by the Independent Policing Oversight Board (consisting of a chairperson, 7 members and the chairperson of the Kenya National Human Rights and Equality Commission).
- b. Appointment: The board: The president appoints a selection panel of 6 people (1 person each from Office of the President, Office of the Prime Minister, Judicial Service Commission, Commission for Anti-Corruption Matters, National Commission on Human Rights, and a Commission responsible for gender matters). The selection panels advertises the vacancies in at least 2 national daily newspapers, deals with the applications and shortlists candidates for the president to select from. The National Assembly approves or rejects the selection.
- c. Annual budget: Allocated by the parliament, and money granted, donated or lent from any other source, with approval from the Cabinet Secretary and the Cabinet Secretary for Finance.
- d. Resources: The Board can appoint the staff necessary for the discharge of its functions, including own investigative staff.

#### 5. Access to mechanism

- a. Who is able to lodge a complaint? Individual, organisation, police official.
- b. When is it allowed? Any time (no specific time frame given).
- c. Where?/How? A complaint can be lodged online, in writing, by email or telephone to the agency (toll-free number available), or to the Ombudsman (who is mandated to handle complaints against public sector officials and institutions).
- d. Possibility to appeal? No.

#### 6. To whom accountable

Performance Report published at least twice a year to the Cabinet Secretary, the Cabinet Secretary publishes the report and brings it before the National Assembly.

Annual Report to the Cabinet Secretary, Cabinet Secretary brings it before the National Assembly and – the Authority publishes the report in the Gazette. Some figures on number of complaints: a total of 594 complaints received in 2012/2013, of which 212 were within mandate.

### **7. Short analysis**

IPOA has a broad mandate, which allows for police oversight from various angles. The mechanism not only investigates upon receipt of a complaint, but has the right to investigate upon its own initiative, monitor and, if necessary, take over internal complaint investigations, and oversee police operations if the public is affected. As part of this, the IPOA for example examined the police recruitment process, which it heavily criticised for a lack of transparency and accountability. It also monitored police operations during the general elections in 2013. Hence, instead of only holding police accountable retrospectively, involvement like this has the potential to improve police operations as a whole. Another important aspect is that the IPOA's recommendations have binding legal effect, and that their implementation is monitored. Also, the recruitment of Board members through a selection panel takes away some potential for bias and politicisation, and by specifying that the vacancies must be advertised in national newspapers, the process becomes open and accessible.

When the most recent annual report had been published for 2012/2013, the IPOA had only been operational for 1 year. For this reason, it might be too early to properly evaluate its efficiency in practice. Within its first year of work, it was still lacking staff and getting organised internally, which also led to the IPOA spending less than half of the budget it was allocated. For 2013/2014, the budget allocated to the mechanism was, however, cut down considerably. From the amount that the IPOA had estimated necessary, only one quarter was eventually granted, which might turn out to be problematic. Another issue that the IPOA encountered within its first year is that the public, as well as the police, do not seem to have a clear understanding of its role. From the 594 complaints it received, less than half were within scope. For example, a large number of cases referred by police pertained to issues such as dismissals and promotions. A baseline survey further revealed that only 34.3% of the participants believed that the IPOA can effectively hold the police accountable. There is, thus, a clear need to better inform the society of the IPOA's function and improve public trust. Another area that needs to be improved is the cooperation from police. The mechanism noted in its annual report that police stations around the country are not complying with the duty to notify the IPOA of incidents of death and serious injury. If they refer a case, it mostly happens after the set time line.

### **8. Website Reference** (last consulted on 19th of January 2015):

<http://www.ipoa.go.ke>

#### 8.4 Mauritius: Police Complaints Division (Division of the National Human Rights Commission)

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##### 1. Legal Basis

The Protection of Human Rights (Amendment) Act 1998 (Act No. 19 of 2012, establishing the Divisions of the National Human Rights Commission); The Police Complaints Act 2012 (Act No. 20 of 2012, establishing the Police Complaints Division).

##### 2. Mandate

The Division is mandated to investigate any complaint against police conduct except corruption or money laundering offences; any death resulting from police action or that occurred in police custody; advisory role towards police. No own initiative investigations, it can only investigate based on complaints.

##### 3. Powers

The investigator may take all lawful measures that a police officer may take, except arrest. The Division issues recommendations to prosecute to the Director of Public Prosecution, recommendations for disciplinary proceedings to the Disciplined Forces Service Commission, and/or recommendations for compensation to the Attorney General.

Recommendations are not binding; if the relevant authority disagrees, it shall inform the Division “*at the earliest opportunity*”.

##### 4. Structure

- a. Body's composition: Chairperson of the National Human Rights Commission as the head of the Division, a deputy chairperson and 2 members.
- b. Appointment: Members of the Division appointed by the President, acting on advice of the Prime Minister – the Prime Minister shall consult the Leader of the opposition before issuing his advice. Members are appointed for a 4 year term, and can be re-appointed.
- c. Annual budget: Not specified for the Police Complaints Division, budget for the National Human Rights Commission allocated by the Parliament.
- d. Resources: The National Human Rights Commission shall provide the Division with *adequate staff* (not further defined).

##### 5. Access to mechanism

- a. Who is able to lodge a complaint? Any person.
- b. When is it allowed? Within 1 year of the incident (except in special circumstances).
- c. Where?/How? Complaint needs to be made in writing, either by filling in a complaints form at the office in Port Louis, or request a complaints form by phone (form also available on the website) and return the form by mail, or pick a form up in Rodrigues (a remote island) and post it, or send a letter to the office in Port Louis.
- d. Possibility to appeal? No.

##### 6. To whom accountable

Annual report to the President, President passes report to the Assembly (not specified that it shall be published).

In 2013, NHRC received 128 complaints of physical or verbal abuse by police – 35 complaints were withdrawn or dismissed for lack of evidence – 93 cases remained under investigation (Source: Country Reports on Human Rights Practices for 2013 (Mauritius), United States Department of State retrieved from <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>; last consulted on 19th of January 2015).

### **7. Short analysis**

Following a restructuring process through several years, an internal complaints unit of the police was moved to become a dedicated Police Complaints Division within the National Human Rights Commission in 2012. In order to function properly, though, it needs to be ensured that the Commission is provided with sufficient resources to be able to operate in the new setup, but this seemed to be difficult in the past years: For instance, since 2008, the Commission has not been able to produce an annual report, due to lacking funds and staff, but also due to the afore mentioned restructuring process.

It was acknowledged by the Prime Minister that the previous mechanism, the Complaints Investigation Bureau, was perceived as biased, thus now being an external mechanism might help to improve this perception. In order to gain public trust, the Division should be as transparent as possible. Judging from the legislation though, there is a risk of the mechanism becoming politicised, as members of the division are appointed by the president upon advice of the prime minister, without any further specification of the recruitment process. Further, it is not specified that the annual reports of the Division should be published.

To date, no reports or numbers have been published by the division that would allow any evaluation on their functioning or insight into their workload. Since their mandate is rather broad and comprises investigations into complaints about basically any police conduct without limitations to disciplinary or criminal offences, there is a risk that the Division will be swamped by trivial complaints, unless the Divisions gives priority to the most serious cases in order to be able to handle cases within a reasonable time.

While being broad with regards to the conduct they can investigate, the mandate does not allow to investigate corruption and money laundering offences, and limits the Division to only act on complaints without having the right to investigate upon their own initiative. This limits the mechanism to “retrospective” oversight, instead of being involved in, and making an improvement to, police procedures as such. Since the Police Complaints Division only started operating in late 2013, it is yet to be seen whether it is able to function as an effective mechanism.

### **8. Website Reference** (last consulted on 19th of January 2015):

<http://nhrc.govmu.org/English/functions/Pages/default.aspx>

## 8.5 New Zealand: Independent Police Conduct Authority (IPCA)

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### 1. Legal Basis

Independent Police Conduct Authority Act of 1988 (and its 2007 amendment).

The body also has responsibilities as one of several 'national preventative mechanisms' under the Crimes of Torture Act 1989, and the Crown Entities Act 2004.

### 2. Mandate

To receive and investigate complaints alleging misconduct or neglect of duty, or concerning any Police practice, policy or procedure affecting a complainant.

Own initiative investigations into incidents in which a member of Police in the course of duty has caused or appears to have caused death or serious bodily harm.

Monitors conditions of detention and treatment of detainees in police custody.

### 3. Powers

IPCA has the power to summon and examine witnesses under oath, and to request any paper, document, record or thing. The police is required to provide all information and assistance needed for the Authority to carry out its functions. Failure to give evidence is established as an offence.

IPCA can make recommendations for disciplinary or criminal proceedings. The Authority cannot lay charges or take disciplinary action. If the Authority is unsatisfied with the police response to its recommendations, the Authority informs the Attorney-General and the Minister of Police. The Attorney-General must then inform parliament (section 29).

Power to direct/oversee police investigations, assured by peer review and oversight from the Manager of Investigations and the Authority Chair.

### 4. Structure

- a. Body's composition: The Authority can have up to 5 members, including the chairperson, who must be a judge or retired judge.
- b. Appointment: Members of the Authority are appointed by the Governor-General on the recommendation of the House of Representatives.
- c. Annual budget: Controlled by Parliament.
- d. Resources: The Authority is supported by a small management team, investigators, the Complaints Management and Review Group and communications and support staff.

### 5. Access to mechanism

- a. Who is able to lodge a complaint? Any person.
- b. When is it allowed? Any time.
- c. Where?/How? Complaints can be lodge through telephone (toll free number), in writing through post or online form, at the Authority's office in Wellington.
- d. Possibility to appeal? As a rule no. Only when the case is referred to the police and the complainant is not satisfied with their findings, the case can be reviewed by the Authority.

**6. To whom accountable:**

Authority is accountable to the Parliament. Issues an annual statement of intent which sets out the Authority's budget and the performance measures against which its operations can be judged; and an annual report to Parliament, which sets out how the Authority has performed against its budget and performance measures. Furthermore, IPCA issues four-monthly reports to the Minister of Justice.

**7. Short analysis**

The IPCA in New Zealand has a broad mandate. A complaint can not only be lodged if it concerns police misconduct or neglect of duty related to specific incidents, but it is also possible to complain about police practices, policies and procedures. It has the power to start own initiative investigations into cases of death and serious injury caused by police.

The IPCA further has a specific mandate to monitor detention places and therefore contributes to the prevention of torture. The Authority published its third annual report in 2011/12 monitoring places of detention in New Zealand under OPCAT and presented the report to Parliament. This report has been published together with four other agencies, including the Ombudsmen, Human Rights Commission, Office of the Children's Commissioner and the Inspector of Service Penal Establishments.

Due to the broad mandate on the one hand and its limited resources to deal with over 2000 complaints received per year on the other, the Authority tends to look at the most serious cases, which seems to make the work load manageable. Less serious cases can be referred to the police inspectorates, with the Authority overseeing or reviewing the investigations. In any case the complainant is notified of the Authority's decision.

The level of transparency in reporting cases seems to be quite high. Besides the annual reports made public, the Authority's website reports on specific cases and their final decision on them. It also seems that complaints are generally dealt within a reasonable time frame: as of 30 June 2012, the Authority had only 22 complaints that were more than 12 months old. Of the 22, all involved circumstances that prevented progression within the 12-month period were beyond the Authority's control (e.g. they were awaiting court processes or police action).

A complaint can be made in other languages through a language line, which provides the complainant with an interpreter.

**8. Website Reference** (last consulted on 19th of January 2015):

<http://www.ipca.govt.nz>

## 8.6 Peru: Defensoría del Pueblo (Ombudsman)

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### 1. Legal Basis

Law no 26520/1995, Law no. 29882/2012 (on new structure).

### 2. Mandate

Broad mandate on human rights violations and public services in general.

### 3. Powers

Investigative powers (search and seizure powers) as well as powers to propose new legislation and ratify international human rights treaties.

Conclusions are not binding. The Ombudsman sends reports and recommendations to the respective authorities. These authorities in turn have a duty to cooperate with all investigations and reply to the recommendations within 30 days.

### 4. Structure

- a. Body's composition: Structure with a head office in Lima and 28 offices (plus 10 sub-structures).
- b. Appointment: A special National Congress commission is in charge of callings and makes a selection of 1 to 5 candidates. Ombudsman is elected by 2/3 votes of the National Congress (5 year mandate).
- c. Annual budget: Allocated by the National Congress.
- d. Resources: *Adjuntos* (senior officers under the Ombudsman) are selected for a period of 3 years through a public examination (clear selection procedure established by internal regulation).

### 5. Access to mechanism

- a. Who is able to lodge a complaint? Any person/NGO/special request from Congress to investigate a specific event.
- b. When is it allowed? Any time (no specific time given).
- c. Where?/How? Offices in the whole country and a toll-free number to lodge complaints.
- d. Possibility to appeal? Unclear. Legislation only explicitly denies the possibility to appeal if complaint is declared inadmissible (Art.20 – Admissibility).

### 6. To whom accountable:

Reports annually to the National Congress. The reports are published in the Official Gazette. Statistics on number of complaints are available, but no statistics on findings and recommendations were published.

### 7. Short analysis

Due to its numerous offices, the Defensoría del Pueblo is present in the whole country. It is known by the wide public and seems to have a good reputation among them.

Its structure and investigative powers are established by law. The legislation is also clear on the selection procedure of the Ombudsman and the senior team. The mandate and responsibilities are well described in the legal instrument, as well as the procedures established to lodge a complaint.

The mechanism has a very broad mandate, which is not specifically dedicated to law enforcement officials but to public bodies in general. The mandate does not cover all possible violations that could be perpetrated by police, but is limited to certain violations as for instance the treatment of prisoners,



victims of violence or prevention of corruption. This bears the risk that violations by police are not the mechanism's priority and handling these issues depends too much on political will. According to the 2013 annual report only 3,9% of the complaints were against the Peruvian National Police, which may either indicate that police abuses are not among the main problems for the Peruvian population, or that the Defensoría is not considered/known to be the appropriate and efficient venue for complaints against the police. A further problem of the mechanism is the lack of transparency with regards to its works, as there are no statistics on investigations, findings and results/impact available in the annual report.

**8. Website Reference** (last consulted on 19th of January 2015):

<http://www.defensoria.gob.pe/index.php>

## 8.7 South Africa: Independent Police Investigative Directorate (IPID)

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### 1. Legal Basis

Independent Police Investigative Directorate Act, 2011 (No. 1 of 2011).

### 2. Mandate

IPID's mandate is limited to serious cases such as death as a result of police action or in custody, discharge of an official firearm by a police officer, rape by a police officer, torture, assault. Own initiative investigations limited to corruption cases.

### 3. Powers

To carry out independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services or, where appropriate, to refer such investigation to the 5 National or Provincial Commissioner concerned.

Disciplinary recommendations are referred to National/Provincial Commissioner, Commissioner must initiate disciplinary proceedings within 30 days.

### 4. Structure

- a. Body's composition: The national office consists of: the Executive Director who controls the office; the Corporate Services Unit; the Investigation and Information Management Unit; the Legal Services Unit; and any other unit established, subject to the approval of the Minister and Parliament.
- b. Appointment: Executive Director appointed by the Minister of Police for a term of 5 years (renewable once); Parliamentary Committee must confirm or reject the nomination; Executive Director appoints members of the national office and the head of the provincial offices; provincial head is appointed at the level of Chief Director, on a permanent basis; provincial head appoints staff members of provincial offices.
- c. Annual budget: Allocated by the Parliament.
- d. Resources: 304 staff on average in 2012/2013.

### 5. Access to mechanism

- a. Who is able to lodge a complaint? Any person, either as a victim, witness or representative; non-governmental and community-based organisations.
- b. When is it allowed? Within 1 year of the incident, except for exceptional circumstances – no incidents that happened prior to its establishment in 1997.
- c. Where?/How? One national and provincial offices (9 offices, one in every province); complaint can be lodged in person, by telephone, per letter or e-mail to any IPID office.
- d. Possibility to appeal? Not foreseen.

### 6. To whom accountable

Annual report to the Minister of Police – Minister must share with the Parliament; the Executive Director must publish the annual report, financial statements and the audit report on those statements.

### 7. Short analysis

The Independent Police Investigate Directorate started operating in 2012, taking over from the previous Independent Complaints Directorate which had existed since 1997 – with a view to enhancing the

authority of the mechanism. The police is now obliged to refer cases that fall within the mandate of the Directorate within 24 hours, any police officer who fails to comply is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years (Art. 33(3) of the IPID Act). The workload increase of 37% in 2012/2013 as compared to the previous year might be a result of this newly introduced obligation. Another important positive point is that the police is obliged to provide their full cooperation to the Directorate, and that the Directorate's investigators have powers equal to peace officers and police officials. Finally, the police have an obligation to act upon, or at least react to, recommendations issued by the mechanism.

The new legislation also focussed the mandate on serious cases, such as death as a result of police action and criminal offences such as rape or torture. Complaints about for instance the failure to investigate or assist, or general police conduct, are no longer within the scope of the Directorate and are referred to the police. Further, own initiative investigations seem to be limited to corruption matters. The mandate seems to be limited to focussing on singular incidents in terms of retrospective oversight, but does not provide for oversight of police policies and procedures as such.

The mechanism seems easily accessible to citizens and having an office in every province of the country, it is geographically representative. The procedures and work of the Directorate are transparent, and the annual report, which must be published, is very detailed with regards to, among others things, the case load and finances. Furthermore, under the Promotion of Access to Information Act 2000, any person who wishes to have access to information held by the IPID can request access which is free of charge when the information concerns the requester personally, and a decision on whether or not to grant access has to be made within 30 days by the Information Officer.

**8. Website Reference** (last consulted on 19th of January 2015):

<http://www.ipid.gov.za>

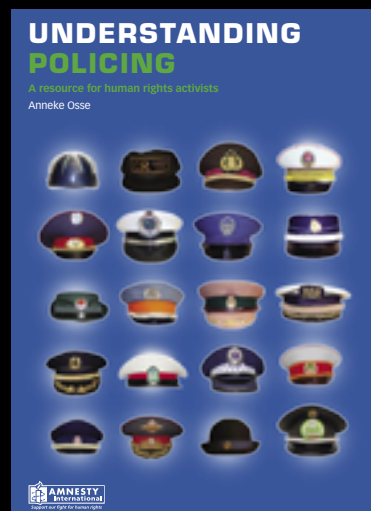
## The Police and Human Rights Programme of the Dutch section of Amnesty International

The area of policing and human rights presents a dynamic and constantly evolving field of study. The human rights discourse has in recent years broadened its attention to include not only the negative functions of the State and its agents as human rights violators but also the positive obligations of the State. This presents an opportunity for the police to be seen as human rights protectors. At the same time, the notion has developed that human rights are not only abused by State officials, including the police, but by non-State actors as well. Both police and human rights advocates are (should be) striving for societies characterized by security and safety. This insight has opened up the possibility of police and NGOs working together rather than opposing each other.

However, the idea of police and NGOs working together is fraught with difficulties. Police officers tend to have a different perspective from that of most human rights advocates. They sometimes use different language when speaking of the same issue and will reach different conclusions about cause and effect. Sometimes this is the obvious result of the different roles they have in society; sometimes they may be the result of stereotypic assumptions.

The Police and Human Rights Programme aims to enhance knowledge and understanding of the police & policing within the Amnesty International movement – and the wider human rights community - in order to become more effective when targeting the police or police related issues. We also offer training to human rights advocates on Police and Human Rights and facilitate strategy workshops.

For more information, please consult the website of the Police and Human Rights Programme: [www.amnesty.nl/policeandhumanrights](http://www.amnesty.nl/policeandhumanrights).



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