

Police Complaints Agencies in the Commonwealth

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Police, like any other corporate organisation and any ordinary citizen, is above all accountable to the law. Armed with the might of the State and empowered to use force against ordinary citizens, the police in its special role of performing a service for the good of citizens with the citizen's money is answerable not only for its wrongdoings but also for its performance. In the recent past, as society has sought to make this powerful institution obedient to law and efficient in performance of its mandate, there has been a proliferation of accountability mechanisms besides the traditional internal complaints and disciplinary system and courts.

Civilian Oversight/Review of the police is a relatively new trend and is still evolving in many jurisdictions. Special attention has been paid in creating such mechanisms and sustaining their work in post-conflict zones like South Africa and Northern Ireland, and in places (including England and Wales) where community or a section of it has lost faith in police and its investigations against their own brethren.

Why have a complaints agency? Since its inception, civilian review has given rise to a sharp debate between supporters of internal police review and advocates of civilian review. While the former argue that internal review would be swifter and more effective (because of the way police is structured in a strict hierarchical command structures), those advocating for civilian review argue that civilian review in some manner is essential in a democracy since police are ultimately responsible to the public and not police chiefs¹. The American Civil Liberties Union² notes that civilian review works in that it nearly always reduces impediments to bringing complaints, reduces public reluctance to complaints, and enhances public reporting of statistics on complaints. It argues that civilian review is important because:

- It establishes the principle of police accountability;
- It can be an important source of information about police misconduct;
- It can alert police administrators to the steps they should take to curb abuse; and
- The implementations of civilian review can help ensure that reforms are implemented.

Undoubtedly, internal management mechanisms – if well implemented – can be a powerful way of holding police organisations to account. But on their own, they are not enough, and even the best-managed systems never command the full confidence of the public. Recognising this reality, many countries have sought to balance internal accountability mechanisms with some system of external, non-police (civilian) oversight. With one system complementing and reinforcing the other, this approach creates a web of accountability in which it becomes increasingly difficult for police misconduct to take place without consequences. In creating avenues for public complaints to be pursued independently of the police, external accountability systems help to end impunity for corrupt and abusive elements within the police organisations.

FINN³ MAKES A CASE FOR CIVILIAN OVERSIGHT

Despite limitations to what an external civilian oversight body can achieve, it is important to recognize the range of potential benefits that can be realized for different stakeholders.

Police managers have recognized that civilian oversight can:

- Improve the image of the police and its relationship with the public;
- Improve the public's understanding of the nature of police work;
- Promote community policing;
- Improve the quality of a police agency's internal investigations;
- Reassure the public that the police agency investigates complaints thoroughly and fairly;
- Discourage misconduct amongst police officers, and;
- Improve a police agency's policies and procedures.

Elected officials have indicated that civilian oversight:

- Demonstrates their concern to their constituencies about police conduct; and
- Can assist in reducing civil claims against a police agency.

Members of the public have reported that civilian oversight has:

- Satisfied them that the police agency can be held accountable;
- Helped reassure them that appropriate discipline is being implemented for police misconduct;
- Discouraged police misconduct; and
- Improved their understanding of police work.

Form and Mandate: Some countries have established agencies dedicated solely to the investigation and oversight of complaints against the police. Others have given this responsibility to existing oversight bodies with a wider mandate, such as Ombudsmen or National Human Rights Institutions. In Mauritius, for example, whenever anyone complains about an act or omission of a police officer, the Chief of Police must forward the complaint to the Human Rights Commission, and inform it of any criminal or disciplinary proceedings taken or intended. The Commission can ask for more information and in case the police decide not to take any criminal or disciplinary proceedings, can itself enquire into the matter⁴.

The mandates of these institutions external to and independent of the police vary, and look at a range of different aspects of policing from individual complaints against a single policeman to examining corporate management and patterns of functioning and behaviour. Some agencies look at human rights violations, while some others are also mandated to look at police corruption. There are those that also deal with other aspects of police performance, and make recommendations for future change.

Coordination between multiple oversight agencies: Where multiple oversight agencies contribute to police accountability, a system of coordination and referrals carves out jurisdictions and protects against overlapping, duplication and contradictory recommendations. In South Africa, which has both a Human Rights

Commission and an independent police complaints agency, the Commission refers all complaints to the latter. New South Wales, Australia, has a system of classifying and managing complaints that allocates specific roles and responsibilities to the Police Integrity Commission, the Police Service and the Ombudsman. The state Police Service retains first responsibility for investigating most complaints "to foster high standards of professionalism and integrity, and to make it primarily responsible for its own discipline".⁵ The Ombudsman oversees these investigations and can ask the Commissioner of Police to review the outcome or can directly investigate the complaint. Meanwhile the Police Integrity Commission is mandated to address serious matters of corruption and misconduct, particularly if these are systemic. This may involve investigating cases on its own, or establishing joint inquiries with the police, or referring cases back for investigations – in such cases, it also monitors police investigations.

Sources of complaints: Complaints to oversight bodies can come through many channels: from the public, referred from the police establishment itself, or additionally as in South Africa, from the Minister in charge or even parliament. Complaints authorities may also initiate their own inquiries independently of any specific complaint being made. Elsewhere as in New South Wales, Australia, certain categories of crime such as deaths in custody and those involving racism within the police must be compulsorily referred to the civilian oversight body.

Requirements for a strong complaints agency: Much of how complaints authorities, ombudsman's offices and human rights commissions perform their functions once again relies on how truly separate from police and executive influence they are, and how autonomous and well embedded their status is in the country's legal architecture. It also depends upon the width and clarity of their mandate; the scope of their investigative powers; the composition of their leadership and competence of staff; the adequacy and sources of financing; and most especially their ability to compel obedience to their recommendations and the attention and clear support their reports and findings get at the hands of the government and police. Summing this up, the factors that determine success are the same: independence, adequate powers, sufficient resources and the authority to follow up on recommendations. Without these, civilian oversight bodies can end up beholden to the police or the executive but armed with them, they can be a powerful force for holding the police to account.

1. Independence:

The main purpose of setting up civilian oversight mechanisms is to assure the public that complaints against the police will be dealt with outside of any untoward executive influence or interference and in an unbiased manner. The independence of an oversight mechanism is determined by the extent to which it is at arms length from the executive and the police. Firm constitutional or statutory underpinning with jurisdiction, purpose and parameters clearly laid out, protect the body from political whim as in South Africa. In contrast, until very recently the existence of the **Human**

Rights Commission in Maldives was based on Presidential decree and wholly subject to executive control.

Independence and credibility are also furthered when the oversight body comprises leadership and staff drawn from outside government and police. The Independent Police Complaints Commission in England and Wales is staffed entirely by civilians (non-police officers).⁶ Elsewhere, the closed processes and narrow pool from which leaderships and staff are chosen has seriously eroded perceptions of impartiality. However, in countries where the skill pool is small, practical reality may require oversight bodies to use available police skills. For example, in 2003 in Sri Lanka, the Human Rights Commission found the allegations of torture of a minor to be false. When the case was reviewed by the Commission following international criticism, it was found that not only were the torture allegations well-founded but also that the Commission's investigator had been biased towards the police, and appeared to lack necessary training.⁷ In such cases, oversight agencies may second skilled police investigators. However, without civilian superiority in staffing, the perceived bias toward erstwhile networks and culture combined with the possibility of the investigator reverting back into the police establishment may, in the public mind, offset the benefits of any investigative skills police personnel bring.

2. Powers:

Strong investigative powers are a key success factor for oversight agencies. The most effective oversight bodies require not only powers to investigate independently but to call for evidence and compel police cooperation, make recommendations about individual cases as much as systemic improvements which will be acknowledged and acted upon. Apart from the power to compel the presence of witnesses including police as well as subpoena documents, the Police Integrity Commission of New South Wales, Australia, has the right to get search warrants, obtain listening device or telecommunications interception warrants and ensure witness protection.⁸

There nearly always exists a tension between the police establishment and an oversight mechanism but when tension turns to outright disobedience and disregard, it undermines accountability. For example several staff of the Sri Lankan Human Rights Commission were threatened and manhandled when they visited a police station to investigate complaints of torture.⁹

In a few countries, oversight agencies have no powers whatsoever to undertake investigations of their own but can only review police investigations into complaints. In Trinidad and Tobago, this has led to the Police Complaint Authority's chairperson to lament that public confidence in the authority is lacking because "Complainants ... view the role of the Authority merely as a 'post box', receiving complaints, forwarding them to the Police, receiving reports and forwarding them to the complainants".¹⁰

Experience indicates that nowhere do oversight agencies investigate *all* public complaints against the police. Most complaints agencies have a system for

categorising complaints and retain powers to investigate those that are either serious in nature (those involving deaths, torture, or racial bias) or involve public interest, while supervising the rest which are sent back to the police organisations for investigation. However, some agencies such as the Police Complaints Authorities in Jamaica and Guyana, the Police Complaints Authority in New Zealand and the National Police Commission in Sri Lanka delegate *all* cases of complaints investigation back into the police organisation. Whether done for practical reasons of shortage of staff or on the more philosophical rationale that the police must retain primary responsibility for acting to ensure their own internal systems work, total delegation can erode credibility. Where police is perceived as corrupt, brutal or biased, total delegation - especially when it is not accompanied by rigorous supervision of competence and progress - decreases the rationale for having an external civilian agency at all.

An Improved Approach To Public Complaints

Some countries that are committed to democratic policing practices continuously seek to improve their policing by ensuring increasing accountability at all levels. In England and Wales, the Independent Police Complaints Commission, which has investigative powers, recently replaced the earlier Police Complaints Authority, which did not have these powers and had suffered criticism for its apparent lack of effectiveness.

Established in 2004, the Commission has wide powers to oversee the functioning of the police and investigate complaints. Although the primary role of investigating wrongdoing remains with the police, the Commission can supervise or direct these investigations and approve the police's choice of investigator. The police have an obligation to refer all very serious cases to the Commission, which can either investigate a case itself, or control and direct the police's handling of it. The Commission has already carried out 29 independent investigations, and managed 120 other serious complaints against the police¹¹.

For those not satisfied with the outcome of the police's investigations, the Commission acts as an appellate mechanism. Police must comply with its findings on appeal matters, including taking disciplinary action if instructed. It has upheld more than 20% of appeals by the public about the way a complaint was dealt with by a local police force¹². The Commission also audits how the police handle complaints, can issue statutory guidance on this, and has already set new improved standards for the police on handling complaints.

Best practice across the Commonwealth indicates that apart from investigating individual complaints, oversight bodies need to be able to review patterns of police behaviour and the systemic functioning of internal discipline and complaints processing systems. Without these trend-monitoring and review powers, they may end up receiving repeated individual complaints about similar forms of police misconduct, without being able to identify and address their root causes.

In New South Wales, Australia, for instance, the Police Integrity Commission's 1997-8 Annual Report¹³ expressed concerns about how the Police Service was investigating category 1 complaints. This category includes cases that involve corruption, serious criminality or warrant dismissal, as well as those in which it is unlikely that there will be public confidence in an internal police investigation. The Police Integrity Commission investigates most such cases, but it can refer them back to the police for investigations. Based on a qualitative audit of 81 internal investigations, the Commission recommended in the Report that the Police Service change its existing complaints management system. As a result, the police organisation has set up Complaint Management Teams tasked with allocating resources for investigations and monitoring and evaluating the quality of investigations in every local area command (where the bulk of investigations are done). An internal Complaints Management Unit has also been set up to monitor and approve all Category 1 investigations prior to their finalisation and reporting to oversight agencies.

3. Resources

Oversight bodies even when they command a plethora of powers are constrained in their ability to hold the police to account without sufficient financial resources. In many Commonwealth countries, independent oversight bodies are subject to political pressure when they voice criticisms of the government and starving them of financial resources is an effective way of hobbling them. In Cameroon, for example, the Human Rights Commission's funding was dramatically reduced for two years after it criticised the government abuses in a confidential report on the state of emergency in the North-West Province in 1992. Similarly, in Zambia, the Human Rights Commission lost the government premises it was promised, after it commented on torture of coup detainees in 1996.¹⁴ Financial independence is ensured when budget is "voted by the legislative body, and not allocated by the executive, to emphasize its accountability to population. Once allocated, the commission's budget should be self-administered without interference, subject to usual auditing rules."¹⁵ In countries like Uganda, HRC is allocated resources by the parliament and the law mandates the parliament to ensure that adequate resources and facilities are made available to the Commission to function effectively.

Executive blanches at the costs of maintaining multiple agencies or even one. Nevertheless, the costs of a civilian oversight agency often amount to no more than a small fraction of the whole policing budget. Neighbouring South Asian countries like Sri Lanka have established a dedicated police complaints agency, and Pakistan is also promised to set these up soon through their recent Police Order 2002. Even small states like Lesotho in creating a specialist oversight agency to deal with police complaints have decided that the investment is well worth making when examined against the cascading benefits of better policing that can result. In many small states where resources do not permit the creation of a specialised agency, existing bodies like the office of the Ombudsman or National Human Rights Institutions with wider human rights or good governance mandates can play a valuable role in improving

overall police accountability. Experts argue¹⁶ that creating a specialist division within these multifaceted bodies, solely dedicated to dealing with the police, would be the most effective approach.

4. Following up on Recommendations

Experience across the Commonwealth has shown that even independent oversight agencies with sufficient resources and strong investigative powers would come to nought if the police and the governments routinely ignore the recommendations made by them. Yet there are very few civilian oversight mechanisms such as the Ugandan Human Rights Commission¹⁷ and the Independent Police Complaints Commission in England and Wales¹⁸ that can make binding decisions.

Even where external oversight agencies cannot make binding decisions, most impact is felt where the agencies have strong powers to monitor police implementation of recommendations and to call for explanations from Government when there is inaction in the face of recommended remedial steps or reforms. Sadly, most of the police complaints agencies in the Commonwealth lack effective powers to follow up their recommendations, with the result that the police may choose to disregard them. A similar situation prevails with most Ombudsmen and National Human Rights Institutions and public hopes of an effective forum are quickly lost.

In a few Commonwealth jurisdictions, however, the law requires the concerned Minister or police department to publicly respond to the recommendations of the external agency. This makes it more difficult for police and executive to ignore or delay acting on recommendations. In Canada, the Royal Canadian Mounted Police (RCMP) Commissioner is mandated to provide a response indicating what actions the police proposes to take on the recommendations of the Commission for Public Complaints Against the RCMP. In case the police reject the Commission's findings, their response must contain the reason(s) and must be sent both to the Commission and the Minister of Public Safety and Emergency Preparedness Canada. The Commission then responds to the police chief through a final report, which is also sent to the Minister. These communications sent to the concerned Minister along with the annual report of the Commission to the Parliament ensure that the differences between the police and the Commission are statutorily brought to the attention of the Parliament. Similar approach in New South Wales to seek a report about action taken has been successful in delivering results: of the 56 recommendations made prior to 2002-2003, over 90% were supported by the New South Wales Police and nearly half had been implemented.¹⁹ Where the police have failed to comply with its recommendations, the Commissioner of Police must provide reasons.²⁰

Where the government fails to abide by or inordinately delay implementation of the recommendations of independent oversight agencies, some Human Rights Commissions (such as those in Tanzania and India) are empowered to approach the courts to get their recommendations enforced.²¹

Conclusion

Commonwealth countries are increasingly aware that the presence of at least one external, independent civilian agency to ensure independent and unbiased investigations into allegations of police abuse and non-performance can send the message that the police *will* be held accountable for wrong doing. Civilian agencies that are solely dedicated to dealing with complaints against the police have been the most successful in holding the police to account because as single focus agencies they can develop expertise in policing issues and investigative techniques and with greater knowledge increase capacity to analyse patterns of police conduct and performance. In any case, however independent oversight is structured, political will and strong leadership of both the police and the independent bodies is essential for building a truly accountable and responsive policing system.

ENDNOTES

¹ Neild, R. (2000) *Themes and debates in public security reform: A manual for civil society, external controls*, Washington Office on Latin America, July 2000, http://www.wola.org/publications/pub_security_themesdebates_externalcontrols.pdf

² American Civil Liberties Union (1997) *Fighting Police Abuse: a Community Action Manual*. New York, USA: ACLU

³ Finn, P. (2001) *Citizen Review of Police: approaches and implementation*, US Department of Justice, Office of Justice Programme, National Institute of Justice: Washington D.C. Pp 6-12.

⁴ Section 4(6), *The Protection of Human Rights Act 1998* (Mauritius).

⁵ Justice Wood, J. (2004) "In the Wake of the Royal Commission into the New South Wales Police Service", paper presented at the 18th International Conference, *Keeping justice systems just and accountable: a principled approach in challenging times*, organised by the International Society for the Reform of Criminal Law in Montreal, Quebec, Canada 8-12 August 2004: http://www.lawlink.nsw.gov.au/sc%5Csc.nsf/pages/wood_080804 as on 5 May 2005.

⁶ In seeking to secure the confidence of the minority members of the public, the law establishing the Independent Police Complaints Commission provides that no person shall be "appointed as the chairman of the Commission, or as another member of the Commission, if ... he holds or has held office as a constable ... he is or has been a member of the National Criminal Intelligence Service or the National Crime Squad". *Police Reform Act 2002*, Section 9 (UK).

⁷ Asia Human Rights Commission, *Human Rights Commission of Sri Lanka decided to transfer the Kandy coordinator*, Update on Urgent Appeal 39-2003, UP-66-2004.

⁸ Section 51, *The Police Integrity Commission Act, 1996*, (New South Wales, Australia).

⁹ Asia Human Rights Commission (2004) *Human Rights Commission officers obstructed from carrying out their duties by the police*, Urgent Appeals-General, 2 July, UG-04-2004, <http://www.ahrchk.net/ua/mainfile.php/2004/724/> as on 25 May 2005.

¹⁰ Police Complaints Authority of Trinidad and Tobago (2003) "Chairman's Comments", *Seventh Report*, May 01, 2002—September 30: http://www.pca.gov.tt/pca/about/PCA_%20Annual_Report_2002-2003.pdf as on 26 May 2005.

¹¹ Independent Police Complaints Commission (2005) 'Complaints Body Supports Reform of Police Discipline', *Press Release* 17 March: http://www.ipcc.gov.uk/news/pr170305_policediscipline as on 17 April 2005.

¹² Independent Police Complaints Commission (2005) 'Complaints Body Supports Reform of Police Discipline', *Press Release* 17 March: http://www.ipcc.gov.uk/news/pr170305_policediscipline as on 17 April 2005.

¹³ Police Integrity Commission, Special Report to Parliament, *Project Dresden II: Second audit of the quality of internal investigations*, June 2003, pg. 3.

¹⁴ Human Rights Watch (2001) "Protectors or Pretenders?: Government Human Rights Commissions in Africa", *World Report 2001*: <http://www.hrw.org/reports/2001/africa/>

¹⁵ Human Rights Watch (2001), *Protectors or Pretenders? –Government Human Rights Commissions in Africa*, <http://www.hrw.org/reports/2001/africa/> as on 7th February 2005.

¹⁶ Justice Wood, J. (2004), 'In the Wake of the Royal Commission into the New South Wales Police Service', paper presented at the 18th International Conference, *Keeping justice systems just and accountable: a principled approach in challenging times*, organised by the International Society for the Reform of Criminal Law in Montreal, Quebec, Canada 8-12 August 2004, http://www.lawlink.nsw.gov.au/sc%5Csc.nsf/pages/wood_080804 as on 5th May 2005.

¹⁷ *The Uganda Human Rights Commission Act, 1997*

¹⁸ See the Independent Police Complaints Commissions website, http://www.ipcc.gov.uk/index/your_qus/qa_complaints.htm as on 10th March 2005

¹⁹ Police Integrity Commission (2003) 'Tracking the Commissions Recommendations', *Annual Report 2002-2003*, pp. 35.

²⁰ Section 78, *The Police Integrity Commission Act, 1996* (New South Wales, Australia).

²¹ Many NHRIs like the Mauritian Commission cannot approach the courts to get their recommendations implemented. As stated by Mr. Boolell (acting Parliamentary Counsel of Mauritius) before the UN Human Rights Committee considering the Mauritian Government's ICCPR report in March 2005 at its 83rd Session: <http://www.un.org/News/Press/docs/2005/hrct661.doc.htm> as on 26 April 2005.