



General Assembly

Distr.: General
28 May 2010

English only

Human Rights Council

Fourteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*

Addendum

Study on police oversight mechanisms**

Summary

Extrajudicial killings by the police are a pervasive problem around the world. One of the most important causes of continued police killings is impunity for past killings. As part of a system of accountability for addressing impunity, countries should consider creating external police oversight mechanisms, which can provide an important complement to internal police investigations, internal discipline, the criminal justice system, and legislative oversight. This report examines the obstacles to effective external oversight, and proposes guidelines for governments on the creation and operation of effective external mechanisms.

* Late submission.

** Owing to time constraints, the present report is circulated as received, in the language of submission only.

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I. Introduction

1. On 10 February 2010, video footage was broadcast showing police and army officers in Nigeria forcing a number of unarmed men to lie on the ground before shooting them in the back. One of the officers can be heard asking his colleague to shoot a man in the chest rather than head, so that he can take the victim's hat.¹ On 27 June 2007, Brazilian police swept through the *Complexo do Alemão* favela in Rio de Janeiro in a raid lasting eight hours and resulting in 19 deaths; many of the victims showed signs of having been extrajudicially executed, including gunshot entry wounds in the back of their bodies and point-blank shots.² A central component of the Special Rapporteur's mandate is the investigation of cases like these – alleged unlawful killings by police. Police killings take many forms, from the use of excessive force during otherwise lawful law enforcement operations, to those committed by specially formed police death squads carrying out clandestine illegal murders for profit or otherwise.

2. In his many country fact-finding investigations, the Special Rapporteur has observed the numerous factors that contribute to the commission of these killings. One of the most important is impunity for past police killings. Common measures aimed at curbing police killings, such as increased police training, will be insufficient if they are not implemented in conjunction with attempts to secure accountability. Impunity can result from poorly structured and ineffective police internal affairs mechanisms, non-existent forensic capacity, inadequate witness protection programs for those reporting abuse, inept criminal justice systems, and deficient commissions of inquiry. One crucial factor contributing to impunity that stands out from the Special Rapporteur's many investigations is the lack of any, or any effective, dedicated external civilian oversight of the police force.

3. 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.

4. Recently, increasing numbers of countries have created specialized external police oversight mechanisms to address the deficiencies inherent in purely internal investigations and discipline. While this is an important development, it is not enough that such agencies are created. In theory, they are set-up to reduce impunity where the existing system of accountability is inadequate. In practice, however, far too many external mechanisms are not given the investigatory powers, political support, human and financial resources, powers of recommendation and follow-up, and financial and operational independence from the executive and police necessary to truly be effective. Without these basic elements, an external agency will be little more than a paper tiger – set up as a buffer to civilian complaints, but with no real impact on police violence.

5. This report examines the key aspects of effective external police mechanisms, and the difficult issues that arise in attempting to design a successful agency. There is no one model of external oversight that is appropriate or necessary for all states. Instead, there is a

¹ See <http://english.aljazeera.net/news/africa/2010/02/2010298114949112.html>.

² A/HRC/11/2/Add.2.

range of options, from dedicated police ombudsmen, to police complaint bodies, national human rights commissions, and/or providing oversight powers to public prosecutors. Drawing upon the experience of the Special Rapporteur, as well as detailed studies on specific oversight mechanisms, the report provides general guidelines for the creation of an effective external agency.³

6. The Special Rapporteur is grateful to Sarah Knuckey and Anna de Courcy Wheeler for their excellent work in the preparation of this report. He is also grateful Lars Dabney, Ryan Ghiselli, and Alana Parker for additional research.

II. The persuasive problem of police killings and their causes

7. Extrajudicial executions and other grave human rights abuses by members of a state's police force have been an issue of concern in nearly all of the countries visited by the Special Rapporteur, including Nigeria⁴, Kenya⁵, Brazil⁶, Guatemala⁷, the Central African Republic⁸ and the Democratic Republic of the Congo.⁹ They have also been the basis of many communications to a wide range of Governments, including those of Australia,¹⁰ Armenia,¹¹ Bahrain,¹² Bangladesh,¹³ China¹⁴, Ethiopia,¹⁵ India,¹⁶ Maldives,¹⁷ Mozambique¹⁸, Myanmar,¹⁹ Nigeria²⁰, Pakistan,²¹ and Sri Lanka.²²

8. While not all killings by police are unlawful, the circumstances in which the police may use lethal force are strictly circumscribed by international human rights law. In short, the police may only intentionally use lethal force where it is necessary to protect life. The relevant law has been set out in detail in previous reports by the Special Rapporteur.²³

9. Unlawful police killings are not confined to countries in particular regions, with particular political systems or lower levels of prosperity. The most common forms of police killings occur due to excessive use of force in law enforcement operations, including during attempts to arrest suspected criminals,²⁴ crowd or riot control²⁵, and purported "shoot-outs"

³ Specific examples are taken from the Special Rapporteur's country fact-finding missions, and a detailed study carried out by the Special Rapporteur on the external police agencies in over 15 countries.

⁴ E/CN.4/2006/53/Add.4.

⁵ A/HRC/11/2/Add.6.

⁶ A/HRC/11/2/Add.2.

⁷ A/HRC/4/20/Add.2.

⁸ A/HRC/11/2/Add.3.

⁹ Report on the DRC, A/HRC/14/24/Add.3.

¹⁰ A/HRC/8/3/Add.1

¹¹ A/HRC/8/3/Add.1.

¹² A/HRC/8/3/Add.1

¹³ A/HRC/8/3/Add.1.

¹⁴ E/CN.4/2006/53/Add.1.

¹⁵ A/HRC/8/3/Add.1

¹⁶ A/HRC/8/3/Add.1

¹⁷ A/HRC/8/3/Add.1

¹⁸ A/HRC/11/2/Add.1.

¹⁹ A/HRC/8/3/Add.1

²⁰ A/HRC/4/20/Add.1.

²¹ E/CN.4/2006/53/Add.1.

²² E/CN.4/2006/53/Add.1.

²³ A/61/311, paras. 33-45; E/CN.4/2006/53, paras. 44-54.

²⁴ E/CN.4/2006/53/Add.4, paras. 42-44.

²⁵ A/HRC/11/2/Add.6, para. 72.

with alleged armed criminals (sometimes called “encounter killings”).²⁶ Some killings are motivated by personal monetary gain: the Special Rapporteur has reported on police killings occurring at police checkpoints, where attempts at extortion can escalate into extrajudicial executions.²⁷ Others occur in the context of poorly planned and unlawful policing policies and operations, for example, where police engage in heavily militarized operations without adequate safeguards or community support.²⁸ In some countries, police engage in “social cleansing”, intentionally killing suspected criminals or members of poor or marginalized communities.²⁹ In extreme cases, the police operate as part of a formal death squad or militia.³⁰ Killings also occur as a result of torture, or the denial of life-saving treatment while the victim is in police custody.³¹ Other killings by police occur outside the context of any purported official police activity, and result from off-duty police officers acting as vigilantes or hired killers.³²

10. The experience of the Special Rapporteur indicates that there are many factors in different contexts that can cause the police to unlawfully kill, rather than to arrest suspects and provide real security for citizens. Causes and enabling conditions can be historical, institutional or structural, legal, or political.

11. A lack of proper police training, particularly concerning weapons use, less than lethal measures, and training in human rights³³, can make police officers more likely to resort to the use of deadly force.³⁴ Killings can also result from the lack of appropriate weaponry or other equipment, especially in the riot or crowd control context.³⁵ Domestic legal frameworks for the use of force which are either overly permissive, legalising the use of lethal force in instances where it is not necessary to protect life or unclear regarding the line between necessary and excessive force, similarly may make police more likely to kill.³⁶ Poor pay for police can also lead to corruption and violent activity, including by providing an incentive for police to act as hired killers.³⁷

12. Democratic police forces emerging from periods of violence, instability or violent dictatorship can be especially prone to continued violent tactics and policies. In particular, countries with a history of militarized police force can have high levels of police violence. The presence of a military rather than civilian ethos within a police force contributes significantly to the number of human rights violations committed by that force. The militarisation of a police force can be due to, for example, the incorporation of former rebels or members of the military into the police force as part of a peace agreement; the inheritance of a militarised police force from a colonial power; or the use of the police in

²⁶ A/HRC/11/2/Add.1.

²⁷ A/HRC/11/2/Add.3.

²⁸ A/HRC/11/2/Add.2.

²⁹ A/HRC/4/20/Add.2.

³⁰ A/HRC/11/2/Add.6.

³¹ Amnesty International, *Killing at will: Extrajudicial executions and other unlawful killings in Nigeria* (December 2009), p. 12.

³² A/HRC/4/20/Add.2.

³³ In Lesotho, police reform included the reform of the police training program to include human rights training, as well as the creation of a civilian directorate of policing. Julie Berg, *Police Accountability in Southern African Commonwealth Countries* (2005), p. 16.

³⁴ Human Rights Watch, *Police Brutality in Urban Brazil* (April 1997); E/CN.4/2004/7/Add.3, p. 13; A/HRC/11/2/Add.2, pp. 6-9.

³⁵ Report on elections killings, A/HRC/14/24/Add.7.

³⁶ A/61/311, para. 33; E/CN.4/2006/53; A/HRC/11/2/Add.6, para. 12.

³⁷ A/HRC/11/2/Add.2, pp. 22-25.

quasi-military roles in countries where there is little security or respect for the rule of law.³⁸

13. High numbers of police killings are also often seen in countries with high crime rates, and especially where there are high levels of violent or street crime, and where there are organised or semi-organised violent gangs or militias. While police forces face many challenges in insecure environments, some governments and police forces fail to prepare appropriate crime-control strategies, and instead opt to use unlawful, short-term and heavy-handed tactics against alleged criminals. Killings can also be encouraged where there is high level political or public support for violent policing. Senior police officers or officials can contribute to the number of police killings by tacitly approving of or openly encouraging them.³⁹

14. In some contexts, institutionalised racism or ethnic discrimination can result in the use of more violence against certain groups by the police.⁴⁰ In others, individuals perceived to be members of a political, religious, or ethnic rival group may be intentionally targeted by the police.⁴¹ Politicised policing often results when members of the police force have strong allegiances to a particular political leader or party, and where command and control is not sufficiently independent.⁴²

15. Deaths can also result from the police failure to observe due diligence standards in the custodial setting: in certain cases, improper care or abuse during custody can lead to deaths for which police officers are responsible.⁴³

16. In the Special Rapporteur's many country fact-finding missions, he has observed that one of the most important causes of police killings worldwide is impunity – the failure to properly investigate, prosecute, convict and punish police responsible for extrajudicial executions or other human rights abuses. There are often many cumulative causes of impunity, and they are generally mutually reinforcing and extraordinarily difficult to break without addressing them together in a coordinated, system-wide reform approach. Impunity can often begin with the police perpetrators covering up the incident, often claiming that the killing was conducted lawfully (e.g. in self-defence) against a threatening criminal.⁴⁴ Weak or unobserved crimes scene and incident reporting procedures police can make it easy for police to make false claims.⁴⁵ Corrupted, under-resourced, or insufficiently independent police internal affairs office result in failures to appropriately investigate potential police wrong-doing.⁴⁶ A lack of independent forensic analysis offices can also contribute to

³⁸ In addition to feeding into diminished regard for the human rights of suspects and civilians, the militarisation of police forces can also pose a problem when attempting to establish some form of accountability through external oversight. Civilian oversight bodies are more likely to be strongly resisted by police forces with a militaristic tradition or culture. Andrew J. Goldsmith, "Police Accountability in Colombia", in Andrew J. Goldsmith and Colleen Lewis, *Civilian Oversight of Policing* (2000), p. 189. See also Niels Uildriks and Piet van Reenen, "Human Rights Violations by Police", *Human Rights Review* (January – March 2001).

³⁹ A/HRC/11/2/Add.6.

⁴⁰ Benjamin Bowling, Coretta Phillips, Alexandra Campbell and Maria Docking, *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work*, United Nations Research Institute for Social Development (May 2004).

⁴¹ Report on the DRC, A/HRC/14/24/Add.3.

⁴² *Ibid.*

⁴³ A/61/311, paras. 49-54.

⁴⁴ A/HRC/11/2/Add.2.

⁴⁵ A/HRC/11/2/Add.2, paras. 51-53; A/HRC/40/20/Add.2, paras. 47-48; E/CN.4/2006/53/Add.5, para. 56.

⁴⁶ E/CN.4/2006/53/Add.5, para. 57.

failures to investigate available physical evidence.⁴⁷ No existing, or weak external oversight or complaint mechanisms mean that there will be no check on internal mechanisms (discussed in detail below). Where prosecutors are in a position to prosecute police crimes, they may be too reliant on internal police investigations, or to under-resourced, susceptible to bias or threats, or lack sufficient legal power to successfully prosecute.⁴⁸ Police impunity can also result from corrupt or inept criminal justice systems.⁴⁹ Inadequate witness protection programs for those reporting and testifying against police abuse can contribute significantly to impunity for police killings.⁵⁰ Victims are often reluctant to report abuse directly to police for fear of reprisals, or because they do not believe that a serious investigation will result.⁵¹

III. The need for accountability and external civilian oversight

17. International human rights law requires that police killings are thoroughly investigated, and that the police responsible for unlawful actions are prosecuted and convicted.⁵² This is required both to: (a) fulfil the state's obligations to provide accountability in the individual case and justice for the victim and their family; (b) as well as to fulfil the state's due diligence obligations to prevent future violations: if violations are left unpunished, a culture of impunity forms, which in turn encourages further violations.⁵³

⁴⁷ A/HRC/11/2/Add.2, para. 54.

⁴⁸ E/CN.4/2006/53/Add.4, para. 96; E/CN.4/2006/53/Add.5, para 58.

⁴⁹ See, for example, Amnesty International, "Poverty and the Death Penalty in Nigeria" (21 October 2008); Human Rights Watch, *Systemic Injustice: Torture, "Disappearance" and Extrajudicial Execution in Mexico* (January 1999).

⁵⁰ A/63/313, paras. 12-47.

⁵¹ A/63/313.

⁵² Article 2 of the International Covenant on Civil and Political Rights protects the rights to life, which is also protected in Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 4(1) of the Inter-American Convention on Human Rights, and Article 2 of the African Charter on Human and Peoples' Rights. The duty to investigate is an inherent part of the right to life. Human Rights Committee General Comment 31 emphasises the need for states parties to the ICCPR to "exercise due diligence to prevent, punish, investigate and redress the harm caused" by violations of the right to life". In *Herrera Rubio v Colombia* the Human Rights Committee confirmed that this duty arises in relation to killings by both state agents and private actors. Judgment, 2 November 1987. Regional courts have similarly emphasised the duty to investigate as an essential part of state obligations relating to the right to life. See, for example, *McCann and Others v. The United Kingdom*, (Application no. 18984/91), Judgment, Strasbourg, 27 September 1995, para. 161: "[the right to life] requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force ... The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, and in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility"; and *Velásquez-Rodríguez v. Honduras*, Judgment, 29 July 1988, para. 176-177: "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to persons within its jurisdiction."

⁵³ The Inter-American Court of Human Rights noted this danger in the *Case of Myrna Mack-Chang v. Guatemala*: "In cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type

18. International law requires that investigations are effective, comprehensive and independent, as well as prompt and transparent. Specific standards of investigation have been developed in international documents, as well as regional human rights court jurisprudence. The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provide guidance regarding the investigation of extrajudicial executions where government officials such as police are involved. Principle 9 provides that:

- There shall be 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 in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

19. Principle 10 provides:

- The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

20. The Model Protocol for the Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the “Minnesota Protocol”) was drafted to supplement the UN Principles and also emphasises the need for thorough and impartial investigations; it also provides guidelines on how to conduct such investigations, including information on, for example, gathering evidence at the crime scene and the processing of evidence.

21. Regional human rights courts have repeatedly found that the general duty to investigate violations of the right to life, incorporates specific requirements that the investigations are both effective and independent. Failure to meet these standards will result in a violation of the right to life.⁵⁴

22. In order to be “effective”, the purpose of an investigation must be to secure the full implementation of the domestic laws that protect the right to life, and in those cases involving state agents or bodies, to ensure accountability for deaths for which they are responsible.⁵⁵ Investigations must be capable of leading to “a determination of whether

of facts to occur again, which is contrary to the duty to respect and ensure the right to life.” Judgment, 25 November 2003, para. 156.

⁵⁴ *Kelly v. The United Kingdom*, (Application no. 30054/96), Judgment, 4 August 2001; *Anguelova v. Bulgaria* (Application no. 38361/97), Judgment, 13 June 2002.

⁵⁵ *Finucane v. The United Kingdom*, (Application no. 29178/95), Judgment, 1 July 2003. The case concerned the death of Patrick Finucane who was killed by the Ulster Freedom Forces (UFF). A subsequent investigation undertaken by the Royal Ulster Constabulary (RUC) resulted in no convictions despite evidence indicating army, police, and RUC collusion with the UFF. The wife of Patrick Finucane appealed to the ECtHR, alleging that there had been no effective investigation, and the Court found a violation of Article 2 on this basis.

force was or was not justified in a particular set of circumstances”⁵⁶ and “the identification and punishment of those responsible,”⁵⁷ as well as being prompt and open to public scrutiny.⁵⁸ They must be “undertaken in a serious manner and not as a mere formality preordained to be ineffective.”⁵⁹ Investigators must take “the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eye-witness testimony and forensic evidence.”⁶⁰

23. In order to be “independent”, there must be “practical independence” and a “lack of hierarchical or institutional connection” between investigators and those implicated in abuses.⁶¹ Thus, there must be both independence in law and in fact.⁶² Investigators may not only or heavily rely on information provided by those implicated in abuses,⁶³ and the “investigation’s conclusions must be based on thorough, objective, and impartial analysis of all relevant elements.”⁶⁴

24. Police investigations and police internal affairs offices, together with the criminal justice system are essential parts of the system of accountability that a state must put in place to meet its obligations to effectively investigate. Police internal investigations and discipline are essential to foster an internal culture of accountability, discipline and respect for laws within the police force. It can also offer swift resolution for complainants, and offer expertise and resources at the investigatory stage.⁶⁵ In addition, officers may be more likely to cooperate with other police officers during internal investigations.⁶⁶

25. However, alone, these measures will often be insufficient to meet the state’s international obligations. Internal police disciplinary mechanisms can be inadequate, not

⁵⁶ *Kaya v. Turkey*, (Application no. 22729/93), Judgment, 9 February 1998; see also *Case of Juan Humberto Sánchez* Judgment, 7 June 2003, para. 184-186; and *Case of Bulacio v. Argentina*, Judgment, 18 September 2003, para. 110-112

⁵⁷ *Ögur v. Turkey* (Application no. 21594/93), Judgment, 20 May 1999, para.89.

⁵⁸ *Finucane v. The United Kingdom*, (Application no. 29178/95), Judgment, 1 July 2003: “a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts...For the same reasons, there must be a sufficient element of public scrutiny in the investigations or its results to secure accountability in practice as well as in theory.”

⁵⁹ *Velásquez-Rodríguez v. Honduras*, Judgment, 29 July 1988, para. 176-177.

⁶⁰ *Nachova and Others v. Bulgaria*, (Application nos. 43577/98 and 43579/98) Judgment, 6 July 2005, para. 113.

⁶¹ *Finucane v. The United Kingdom*, (Application no. 29178/95) Judgment, Strasbourg, 1 July 2003. It has found a breach of the right to life on the basis of these standards in *Ülkü Ekinci v Turkey*, (Application no. 27602/95) Judgment, 16 July 2002; *Aydın v Turkey*, (Application no. 57/1996/676/866) Judgment, 25 September 1997; *Buldan v Turkey*, (Application no. 28298/95) Judgment, 20 April 2004; *Ognyanova and Choban v Bulgaria*, (Application no. 46317/99) Judgment, 23 February 2006; and *Angelova v Bulgaria*, (Application no. 38361/97) Judgment, 13 June 2002.

⁶² *Güleç v. Turkey*, (Application no. 54/1997/838/1044), Judgment, 27 July 1998, para. 78-82; *Oğur v. Turkey*, (Application no. 21594/93) Judgment, 20 May 1999, para. 91-92; and *Ergi v. Turkey*, (Application no. 66/1997/850/1057) Judgment, 28 July 1998, para. 83-84. The court found in all three cases that the reliance of the public prosecutor on gendarmerie incident reports compromised the independence of the investigation.

⁶³ *Ergi v. Turkey*, (Application no. 66/1997/850/1057), Judgment, 28 July 1998, para. 84-85

⁶⁴ *Nachova and Others v. Bulgaria*, (Application nos. 43577/98 and 43579/98) Judgment, 6 July 2005, para. 113.

⁶⁵ Niels Uildriks and Piet van Reenen, “Human Rights Violations by Police”, *Human Rights Review* (January – March 2001), p. 75.

⁶⁶ Madeline L. England, *Security Sector Governance and Oversight: A Note on Current Practice*, (2009).

just because they might be poorly structured or under-resourced, but because by their nature they are susceptible to bias.⁶⁷ Where police are allowed to effectively police themselves, as in any system of purely internal accountability, there is a strong temptation to “look after one’s own”. Police internal review is vulnerable to bias in all countries, but especially where there is minimal respect for the rule of law, where senior officers fail to push the importance of accountability, and where corruption is rampant. In cases of alleged unlawful killings, purely internal complaint mechanisms may make it all too easy for police to cover up wrongdoing,⁶⁸ to claim that killings were lawful,⁶⁹ to fail to refer cases for criminal prosecution,⁷⁰ or to hand down only minor disciplinary measures for serious offences.⁷¹ Victims and marginalised groups also often have deep mistrust of internal police disciplinary processes, and so many incidents may go unreported for fear or retribution or simply non-action. Criminal justice systems can be overly reliant on police internal investigations,⁷² particularly where, as is often the case, prosecutors have insufficient powers to conduct their own primary investigations. Legislative oversight, while also important, can depend too heavily on the political climate and political will.

26. External civilian oversight of the police can, where set up appropriately, be an important complement to these other mechanisms, and can help fill the gaps in a country’s system of accountability by avoiding some of the inherent or likely inadequacies of other mechanisms. External civilian oversight mechanisms can take numerous forms, but broadly speaking can be divided into two categories: (a) agencies exclusively dedicated to police oversight (e.g. a police ombudsman, or a police complaints body, or a police oversight agency); or (b) those which oversee police activities as part of a broader mandate (e.g. general ombudsmen, usually established to investigate human rights violations or cases of

⁶⁷ Eduardo Diaz, “Police Oversight” in Joseph de Rivera (ed), *Handbook on Building Cultures of Peace* (2009), p. 288.

⁶⁸ See, for example, evidence that police in Brazil have engaged in false ‘rescues’ in order to deliberately destroy a crime-scene, intimidate witnesses and plant evidence in order to cover up their responsibility for a fatal shooting or other killing: see E/CN.4/2004/7/Add.3 para. 57; A/HRC/11/2/Add.2 para. 59; E/CN.4/2006/53/Add.2 para. 52. See also Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo* (December 2009), pp. 52-70.

⁶⁹ See, for example, the explanation given by Bangladesh’s Rapid Action Battalion (RAB) for the killings of numerous civilians. According to RAB, most of them were caught in “crossfire” shootings. Human Rights Watch, *Judge, Jury and Executioner: Torture and Extrajudicial Killings by Bangladesh’s Elite Security Force* (December 2006), pp. 26-49.

⁷⁰ See, for example, the failure to discipline or prosecute police killings in Jamaica: E/CN.4/2004/7/Add.2 para. 70-74; E/CN.4/2006/53/Add.2 para. 51. See also Amnesty International, *Jamaica, Killings and Violence by the Police: How Many More Victims?* (9 April 2001) pp. 67-68

⁷¹ Id.

⁷² A particularly illustrative case is that of *Nachova and Others v. Bulgaria*, where the court found that “the investigating authorities did not examine relevant matters such as the fact that the victims were known to be unarmed and represented no danger to anyone, still less whether it was appropriate to dispatch a team of heavily armed officers in pursuit of two men whose only offence was to be absent without leave. In short, there was no strict scrutiny of all the material circumstances ... A number of indispensable and obvious investigative steps were not taken ... Moreover the investigator and the prosecutors ignored highly relevant facts... and, without seeking any proper explanation, merely accepted [the accused’s] statements and terminated the investigation. The investigator and the prosecutors thus effectively shielded [the accused] from prosecution... [S]uch conduct on the part of the authorities ... is a matter of grave concern, as it casts serious doubts on the objectivity and impartiality of the investigators and prosecutors involved.

The Court reiterates in this connection that a prompt and effective response by the authorities in investigating the use of lethal force is essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.”

government maladministration; or national human rights commissions or institutions; in some countries, public prosecutors may have some police oversight powers). Where countries have established dedicated police complaints mechanisms, they have often been set up in response to protracted and serious police abuses or following periods of violence, as seen in Northern Ireland, South Africa, Trinidad and Tobago, and Guyana.⁷³

27. Independent mechanisms can be given a range of powers (discussed in detail in part IV). Depending on the country, they may be able to receive complaints about police abuse, investigate allegations of police abuse, refer cases for internal police discipline, refer cases to the public prosecutor, impose disciplinary measures, conduct broader studies on police conduct, and/or propose police service reforms to the police or the government.

28. As a complement to internal disciplinary mechanisms, external oversight can provide an important, independent check on purely internal accounts. In providing an alternative forum to which affected citizens may complain about police abuses, external oversight gives individuals access to justice that otherwise would often be unavailable to them. It can improve the relationship between the police and public, increasing community trust in the police force.⁷⁴ It can also provide the sort of independent and unbiased investigations into allegations that would otherwise be unlikely.⁷⁵ External mechanisms can also be important in exposing harmful police practices and in highlighting the shortcomings of internal regulation. Through this they can contribute to efforts aimed at the improvement of internal disciplinary measures, as well as influence broader reforms in police policy that encourage respect for human rights.⁷⁶ As explained by the Council of Europe Commissioner for Human Rights:⁷⁷

29. 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.

⁷³ Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* (2005).

⁷⁴ Gareth Newman, *Local Level Civilian Oversight of the Metropolitan Police Departments in South Africa*, (2004).

⁷⁵ Principle 11 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that where “established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons” Governments shall pursue investigations through other methods.

⁷⁶ Peter Finn, *Citizen Review of Police: approaches and implementation* (2001), p. xi.

⁷⁷ Council of Europe Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police* (12 March 2009). See also the European Code of Police Ethics, Article 59 which states: “The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control”. The commentary to Article 59 states that “...state control over the police must, in an open democratic society, be complemented by the means for the police to be answerable to the public, that is the citizens and their representatives. Police accountability vis-à-vis the public is a crucial condition for making co-operation between the police and the public a reality. There are several means of rendering the police accountable to the public. Accountability can be direct or channeled through bodies representing the public. Generally, openness and transparency of the police are, however, basic requirements for accountability/control to be effective”.

IV. Principles to guide police external oversight and obstacles to effective oversight

30. While states are not required to adopt any one particular model of external oversight, the Special Rapporteur's experience indicates that if oversight is to be effective, it should be created and should operate according to certain general principles. The most successful external mechanisms will have adequate powers to carry out comprehensive investigations of police abuses, will be sufficiently independent from the police and the government, will be adequately resourced, will operate transparently and report regularly, will have the support of the public and the government, and will involve civil society in its work. This section explores the varieties of oversight mechanisms in many different countries, examines the various obstacles to their effectiveness, and sets out what a mechanism needs to be most effective.

A. Powers

31. An external oversight mechanism should be provided sufficient powers to actually be able to effectively reduce impunity for police abuses. Without adequate mandated power, such mechanisms risk being used as mere a buffer against civilian concern and anger, rather than as effective agents for accountability.

32. At its most basic, an external mechanism is authorised to receive complaints about police abuses. This is generally seen as a necessary first step to overcome blocks in police internal affairs, and to provide witnesses and others an alternative avenue to which to direct complaints. It should be clear in the organisation's mandate that it can receive complaints from any relevant person, including witnesses, victim's family members, police themselves or other officials. It may be important in some contexts that police are either legally permitted or required to report serious matters (such as all deaths in police custody or due to police action).⁷⁸ For reporting requirements to be effective, there will normally need to be a penalty for officers who fail or delay to refer or report cases to the external agency.⁷⁹

⁷⁸ For example, the Northern Ireland Police Ombudsman, reformed following the 1998 Belfast Agreement and the Patten Report (a study on policing in Northern Ireland), can receive complaints, or other matters of inquiry, from the Secretary of State or the Chief Constable, or may come directly from a member of the public. The Ombudsman is a non-departmental public body intended to provide an independent, impartial police complaints system. In 2007 the Ombudsman recommended that police officers should be granted the specific power to bring the Ombudsman's attention to the suspected misbehaviour of other police officers: Police Ombudsman of Northern Ireland, *Developments in Police Complaints – 7 Years On; Overview of Trends and Patterns in Police Complaints, 2000 – 2007*. The Police (Northern Ireland) Act (2000) also created the Northern Ireland Policing Board, primarily charged with setting goals and policies the Police Service of Northern Ireland (PSNI). See Ellison, Graham, "A Blueprint for Democratic Policing Anywhere in the World?: Police Reform, Political Transition, and Conflict Resolution in Northern Ireland", *Police Quarterly* (2007); Human Rights Watch, *Northern Ireland: Human Rights and the Patten Report*, (September 1999).

In South Africa, police are required to report deaths in custody or police killings to the Independent Complaints Directorate.

⁷⁹ For example, external agency investigators in South Africa have stated that there needs to be specific legislation which makes delaying reporting a punishable offense, as this has been a serious issue: Independent Complaints Directorate, *An Investigation into Deaths as a Result of Police Action in Kwazulu-Natal, Eastern Cape and Gauteng* (South Africa, 2007).

33. The minimum action taken by an external organisation in response to complaints is to record and track them. Some oversight offices use this power to great effect: the São Paulo, Brazil ombudsman (*ouvidoria*)⁸⁰ has attempted to maximize the efficacy of its oversight by tracking homicides which indicate the involvement of death squads, and in turn using this to expose impunity for police killings.⁸¹ The strength of this should not depend on personality – the organisation’s mandate should require it to keep comprehensive records, and track specific abuses as appropriate in the country context. In many contexts – especially where citizen fear of the police is high, or where their knowledge or access to an oversight body is likely to be minimal – it will also be important that the organisation can monitor abuses on its own initiative and not only those specifically reported to it.

34. While recording is important, in that it provides a record of alleged abuses, bodies unable to take further action are often severely hampered. After receiving a complaint or otherwise being made aware of an alleged case of abuse, many organisations are empowered to seek information from police about the investigations they have undertaken on a particular case, or they may request that the police or police internal affairs investigate a particular complaint. This can provide an important additional level of scrutiny. However, without more, there may be little positive effect. Without their own independent investigatory powers, external oversight bodies are forced to rely upon police investigations, which can be inadequate or nonexistent as a result of police bias or corruption. The chairperson of the Police Complaint Agency in Trinidad and Tobago summed up this problem when explaining that “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.”⁸² In Kenya, the Police Oversight Board has no investigative powers – it is restricted to receiving and evaluating complaints.⁸³ In Sri Lanka, investigations are also delegated back to the police;⁸⁴ such

⁸⁰ Although Brazil has made significant progress in emerging from many years of military rule, large cities like Rio de Janeiro and São Paulo experience major threats to public security as a result of violent crime, much of it linked to drug trafficking. However, the police response also threatens security: over 11,000 police killings have been committed between 2003 and 2009. Such killings often occur in the context of militarized operations aimed at removing suspected criminal gangs from *favelas*. Police officers have also engaged in killings as part of illegal armed militias and death squads. See A/HRC/14/24/Add.4. Specialised police *ouvidorias* are relatively new in Brazil, and as of 2008 had been established in 14 states. They are not mandatory for states under federal law. In most states the *ouvidoria* is an executive agency or sub-agency hierarchically independent from the police. Its director (the Ombudsman or Ouvidor) is usually appointed by the governor, and its organization housed within the Secretariat of Public Security. Unlike other countries that have created external police oversight mechanisms, the *ouvidorias* have no independent power to investigate or determine sanctions: Jorge Zaverucha, “O papel da ouvidoria de polícia,” *Sociologias*, Vol. 10, No. 20 (2008), p. 2. Uniquely, Brazil’s public prosecutors (*Ministério Público*) also have extensive powers oversight of the police. See further Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo* (December 2009); Julita Lemgruber, *Civilian Oversight of the Police in Brazil: the case of the ombudsman’s offices* (2002); Hugo Frühling, “Recent Police Reform in Latin America”, in Niels Uldricks, *Policing Insecurity: Police Reform, Security and Human Rights in Latin America* (2009).

⁸¹ Human Rights Watch, *Lethal Force: Police violence and Public Security in Rio de Janeiro and São Paulo* (December 2009), pp. 106-7.

⁸² Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* (November 2005), p. 66.

⁸³ Kenya National Commission on Human Rights, “Kenya needs an independent and effective police oversight board” (12 September 2008). The Police Oversight board was established in September 2008 by the Minister of Internal Security in Gazette Notice No 8144 as part of a wider attempt to foster a culture of accountability within the police force. Currently the Kenyan Police forces fall

delegation significantly diminishes the ability of external oversight agencies to act as a check on police internal investigations, and can negatively impact upon public perceptions of the agency, especially where the oversight agency is also unable to supervise police internal investigations. Similar problems are evident with the state police ombudsmen in Brazil, Colombia and Mexico. An organisation may not even necessarily have the power to require the police to respond to their referrals or requests. In Brazil, police ombudsmen (“*ouvidorias*”) may request further police investigations if they find the first one inadequate, in which case, the internal affairs department usually formally accepts the request, but there is no guarantee that the further investigation will take place.⁸⁵

35. In addition to the basic power to seek further information from the police, many organisations are permitted to simply refer cases to the public prosecutor’s office. Brazil’s *ouvidorias* may elect to forward a complaint to the office of the prosecutor, although this can carry its own set of complications, such as an unreceptive or resistant prosecutor’s office, or the risk of antagonizing the police who may see this as by-stepping procedures.⁸⁶ Nevertheless, some *ouvidorias* have adopted the practice of forwarding the most severe cases to the prosecutor before its oversight process vis-à-vis the internal affairs division has run its course.⁸⁷ The Sao Paulo *ouvidoria* has developed a partnership with the State Prosecutor’s office, sending police reports of “resistance killings” (killings by police reported by them to have been lawful, such as those reported to have occurred as part of a shootout between police and criminal gangs), which it deems questionable, to the human rights aide of the Attorney General in order to bring suspicious cases to the attention of the Prosecutor.⁸⁸

36. Stronger organisations have the specific authority to initiate and conduct their *own* investigations into allegations of police abuse, although widely varying investigatory powers are provided in different countries. It is not enough to equip an external oversight agency with the general authority to conduct investigations of the police – it must be given sufficient and specific supporting investigatory powers to enable a full and effective investigation to be undertaken. A number of agencies are given the general power to “investigate” or “inquire”, or its mandate gives it “all the powers necessary to investigate”. General provisions are often not appropriate because they are open to widely different

under an overlapping rubric of three oversight mechanisms: the Police Oversight Board, the Public Complaints Standing Committee (PCSC), and the Kenya National Commission on Human Rights. The PCSC is an executive-controlled mechanism that can receive complaints against any public officers, including the police. The Kenyan National Commission on Human Rights (KNCHR) has a much broader mandate. Police misconduct is a priority on their agenda, but they are severely understaffed for the volume of complaints they receive, and members have also received serious threats for investigating the police. The KNCHR has also pushed for the establishment of a dedicated and effective police oversight body: KNCHR, Presentation to the Presidential Police Reforms Task Force (June 2009). See, generally: Commonwealth Human Rights Initiative, *The Police, The People, The Politics: Police Accountability in Kenya* (2006); Global Integrity Report, *Kenya: Integrity Scorecard Report—Sub-Category: National Ombudsman* (2008).

⁸⁴ Commonwealth Human Rights Initiative, *Police Reform: An Exchange of Experiences from South Asia*, Roundtable Report, (April 2007), p. 7.

⁸⁵ See Julita Lemgruber, “Civilian Oversight of the Police in Brazil: the case of the ombudsman’s offices” Center for Studies on Public Security and Citizenship/Candido Mendes University (2002).

⁸⁶ Fiona Macaulay, “Problems of police oversight in Brazil” (working paper), Centre for Brazilian Studies/University of Oxford (July 2002) p. 18.

⁸⁷ Ignacio Cano et al, *Guia de Referência para Ouvidorias de Polícia*, Special Secretary for Human Rights (Brazil, 2008), pp. 70 & 248.

⁸⁸ A/HRC/14/24/Add.4.

interpretations of the scope of permitted power, and the exercise of specific powers under a general authority may be contested.⁸⁹

37. Specific supporting powers include the power to subpoena documents, obtain search warrants, protect witnesses, and compel police cooperation. Without these powers, an agency's investigations will often be inadequate. The strongest mechanisms can be given quasi-police investigator or prosecutor powers. The South African Independent Complaints Directorate (ICD)⁹⁰ may review police investigations to ensure they have been conducted properly, but the ICD also frequently uses its mandate to do its own investigations.⁹¹ The ICD can conduct its own independent investigations into cases of police misconduct, either in response to the receipt of a complaint, referral by the Minister of Safety and Security or a provincial executive, or upon its own initiative. Investigation of misconduct and referrals are left to the discretion of the ICD, although, importantly, investigation is mandatory for deaths in custody or deaths resulting from police action. The power to independently investigate is important in helping prevent police officers from successfully covering up evidence of human rights abuses, and it allows the ICD to investigate abuses which may otherwise go unreported by an uncooperative police station. Section 50(4) of the Police Act (South Africa) requires all government organs to provide such assistance as may be reasonably required for the effectiveness of the ICD.⁹² Designated members of the ICD are authorised to exercise all the powers of police officers in terms of investigations (for example, they have the power to investigate crime scenes), to subpoena witnesses and evidence, the power to arrest, and powers of search and seizure.⁹³

38. Similarly, the Police Ombudsman of Northern Ireland has "all the powers and privileges of a constable", including evidence collection and forensic analysis, which have been exercised by the Ombudsman's office in investigations.⁹⁴ The Police Integrity Commission of New South Wales, Australia, equipped with the power to issue search

⁸⁹ In Brazil, for example, the public prosecutor is given the power to oversee the police. However, its power to investigate police has been challenged by the police, and weakened in practice as a result.

⁹⁰ The Independent Complaints Directorate was established in 1997 as an external oversight agency, during South Africa's transition from apartheid to democracy. It was created as a mechanism for investigating and deterring human rights abuses by the South African Police Services: South African Police Service Act (1995). The creation of the ICD was one part of a set of policing reforms which aimed to prevent human rights violations by the police and to improve police-community relations. See also the National Crime Prevention Strategy (1996) and the National Crime Combating Strategy (2000). See further David Bruce and Rachel Neild, *The Police We Want: A Handbook for Oversight of the Police in South Africa* (2005); David Bruce, Gareth Newham and Themba Masuku, *In Service of the People's Democracy: An Assessment of the South African Police Service* (2007).

⁹¹ Bronwen Manby, "The South African Independent Complaints Directorate" in Andrew Goldsmith and Colleen Lewis, *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (2000), p. 221.

⁹² South African Police Service Act 1995.

⁹³ South African Police Service Act 1995, s. 53 (3)(a).

⁹⁴ The Police (Northern Ireland) Act 1998, Article 56(3). See also the website of the Ombudsman (<http://www.policeombudsman.org/modules/infoPoliceOfficers/index.cfm/id/7>): "As well as identifying and interviewing witnesses, the Police Ombudsman's Office will also conduct or arrange any required forensic and medical examinations, and will consider the full range of investigative options including house-to-house enquiries, securing available CCTV footage, media appeals, computer analysis etc ... In order to conduct their duties, Police Ombudsman investigators have the powers of constable when conducting their enquiries. This means that, when required in connection with an investigation, and with lawful authority, they can search police premises and filing systems and seize documentation and other police material. They can also establish incident scenes and direct SOCO and forensic services at the scene. They have access to the full range of modern investigative tools and methods."

warrants, seize documents and other evidence, and request device warrants is reported to have contributed to “significant improvements ... in respect of the outlook and performance of police officers”.⁹⁵ In contrast, the Police Complaints Authority in Lesotho has been hampered by its lack of investigatory powers; the Authority has noted that its efficacy is limited by the Police Act which gives it no powers of search and seizure.⁹⁶ Without auxiliary powers, a mandate which empowers an external oversight agency to undertake investigations is often rendered meaningless.⁹⁷

39. Police cooperation with an external oversight agency is essential to its proper functioning – hostility and obstruction from a police force can significantly limit the ability of an oversight agency to properly investigate complaints. In Brazil, the police forces have been accused by the *ouvidorias* of obstructing investigations.⁹⁸ The Jamaican Police Public Complaints Authority’s investigations are hindered because it lacks the power to compel suspect police officers to cooperate by giving statements.⁹⁹ In Sri Lanka, police hostility translated into open threats and physical intimidation of the staff of the Human Rights Commission during a visit to a police station.¹⁰⁰

40. A number of countries have attempted to address this by compelling police cooperation by law. In Northern Ireland, the Chief Constable and the Policing Board are

⁹⁵ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Ten Year Review of the Police Oversight System in New South Wales*, Report No. 16/53 (November 2006), p. 67.

⁹⁶ African Policing Oversight Forum, *An Audit of Police Oversight in Africa*, African Minds (2008), p. 37.

⁹⁷ The power to undertake investigations will not be sufficient alone. Although the Jamaican Police Public Complaints Authority has the power to search premises and review documents, subject to obtaining a warrant, it has been reported that his power is rarely exercised: International Commission of Jurists, *Attacks on Justice – Jamaica* (2005).

⁹⁸ Julita Lemgruber, “Civilian Oversight of the Police in Brazil: the case of the ombudsman’s offices.” Center for Studies on Public Security and Citizenship/Candido Mendes University (2002), p. 16. “The relationship between the Ombudsman’s Offices and the Civil and Military Police is marked by tension and conflict. The Ombudsman’s Offices generally accuse the Internal Affairs Offices of stonewalling and glossing over investigations in order to safeguard the name of police institutions. The Internal Affairs Offices, in turn, accuse the Ombudsman’s Offices of referring complaints with no probable cause which they frequently claim are the result of attempts at revenge against police officers.”

⁹⁹ Susan Goffe, *Complaints Against the Police: The Jamaican Experience – An NGO Perspective*, Jamaicans for Justice (November 2003), p. 5. The Jamaican Constabulary Force (JCF) is the primary body responsible for policing in Jamaica. In a 2001 report, members of inner city communities described the police as a force to be feared, rather than serving a protective purpose. The IACHR has noted that a significant number of police killings occur in circumstances consistent with extrajudicial executions, and that victims are often unarmed young men or boys from inner city areas. The Police Public Complaints Authority was established in 1993 under the Police Public Complaints Act with a mandate to monitor and supervise investigations by the police into complaints concerning police killings and other serious injuries. It has the power to both review police investigations and to initiate its own investigations, and may submit reports to the Commissioner of Police and the Director of Public Prosecutions where investigation suggests that criminal proceedings may be pursued. It also monitors and reviews internal investigations to ensure they are undertaken effectively. See further Jamaicans for Justice, *Killing and Impunity - fatal police shootings and extrajudicial executions in Jamaica 2005-2007* (2008); International Commission of Jurists, *Attacks on Justice – Jamaica* (2005); Amnesty International, *Jamaica: ‘Let them Kill Each Other’: Public security in Jamaica’s Inner Cities* (April 2008); Carolyn Gomes, *Police Accountability in the Caribbean: Where Are the People?* (2007); Inter American Commission on Human Rights (IACHR), “IACHR issues preliminary observations on visit to Jamaica” (5 December 2008).

¹⁰⁰ Asia Human Rights Commission, *Human Rights Commission officers obstructed from carrying out their duties by the police*, Urgent Appeals-General (July 2004).

required by law to cooperate with the Police Ombudsman. Cases involving police “obstruction” or “perverting (or attempting to pervert) the course of justice” can be referred by the Police Ombudsman to the Public Prosecutor. The South African ICD can compel police to provide information necessary for the external investigation (failure to comply constitutes misconduct)¹⁰¹ and can compel the cooperation of police officers during the investigation.¹⁰² The El Salvadoran police oversight agency, the *Procuraduría para la Defensa de los Derechos Humanos* (PDDH), has the right to all police documentation relating to an allegation of misconduct. If the police fail to supply the necessary documentation, the PDDH may, by law, uphold the complaint on the assumption that the allegation is true.¹⁰³ However, both the South African and El Salvadoran agencies have nevertheless reported cooperation problems. The South African ICD has reported “numerous instances of hindrance and non-compliance” and non-cooperation with ICD information requests, on the part of the South African Police Force.¹⁰⁴ In El Salvador, the PDDH, faced a similar problem – the lack of police cooperation was cited by the ombudsman as one of the factors that hampered her ability to effectively investigate complaints regarding police behaviour.¹⁰⁵ Police non-compliance may need to be strictly enforced; and high-level political support for oversight can also encourage improved cooperation.

41. It can also be important to investigation effectiveness that the agency have the necessary power to provide or make available witness protection for complainants or other individuals cooperating with its investigations.¹⁰⁶

42. Important obstacles to external mechanism effectiveness often arise after it has completed its investigation. Many mechanisms have no real “teeth”, even where their investigations found strong evidence of police wrong-doing. The ability to fully investigate and report on incidents and complaints, even with complete independence, means little if the authority lacks the capacity to ensure that the police, prosecutors and/or executive act on the basis of their findings.¹⁰⁷ Currently, many civilian oversight mechanisms have weak

¹⁰¹ South African Police Service Act 1995, s. 53(6)(b).

¹⁰² South African Police Service Act 1995, s. 53(6)(b).

¹⁰³ Rachel Neild, “Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review of Police in Latin America” in Andrew Goldsmith and Colleen Lewis, *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (2000) p. 239.

¹⁰⁴ Neil Sammonds, *Need to Know: The Struggle for Democratic, Civilian Oversight of the Security Sector in Commonwealth Countries - A Study of the Accountability of the Military, Police and Intelligence Services in Commonwealth Countries, with a Focus on Sri Lanka, Nigeria, South Africa, Barbados and St Lucia and a Special Survey of the Role of Committees in 37 Commonwealth Parliaments* (2000) p. 19; Independent Complaints Directorate, *An Investigation into Deaths as a Result of Police Action in Kwazulu-Natal, Eastern Cape and Gauteng* (2007).

¹⁰⁵ Rachel Neild, “Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review in Latin America” in Andrew Goldsmith and Colleen Lewis (eds.), *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (2000) p. 240.

¹⁰⁶ See, for example, the South African Police Service Act, 1995, Chapter 10, Independent Complaints Directorate, Article 53(9): “The Minister may prescribe procedures regarding
(a) protecting the identity and integrity of complainants; and
(b) witness protection programmes.”

¹⁰⁷ The Police Public Complaints Authority (PPCA) in Jamaica, for example, lacks any power to investigate whether the police have followed up on its reports and recommendations, a factor consistently cited in discussions of the PPCA’s shortcomings. Goffe, Susan, *Watching the watchdogs: a Jamaican NGO.s experience with lobbying for police oversight and accountability*, presented at the Independent Complaints Directorate Conference for Policing Oversight and Accountability, January 26-29, 2004, Johannesburg, South Africa.

powers in this respect.¹⁰⁸ Brazilian *ouvidorias*' lack of binding authority to require that the police investigate a matter further significantly undermines their capacity to promote accountability.¹⁰⁹ In Zambia, the Police Public Complaints Authority is similarly constrained – though it may make recommendations to the Inspector-General of Police, these recommendations are non-binding.¹¹⁰ The Kenyan Police Oversight Board has no enforcement powers, and can only make non-binding recommendations to the Commissioner of Police.¹¹¹

43. At a minimum, a mechanism should be mandated to recommend disciplinary measures for a police perpetrator, and, where appropriate, recommend that the prosecutor initiate criminal proceedings. In South Africa, ICD investigations may lead to a recommendation to the public prosecutor for criminal prosecution, a referral to police internal affairs, or further inquiry. The Jamaican Police Public Complaints Authority has the power to both review police investigations and to initiate its own investigations, and may submit reports to the Commissioner of Police and the Director of Public Prosecutions where investigation suggests that criminal proceedings may be pursued. It does not have the authority to determine whether criminal charges or disciplinary action are pursued. Stronger mechanisms are able to enforce disciplinary recommendations. In Northern Ireland, the Chief Constable has a legal duty to comply with the recommendations given by the Ombudsman. The Ombudsman may also, where a criminal offence is suspected, refer the case directly to the Director of Public Prosecutions.¹¹² Similarly, in the Philippines, the decisions made by the People's Law Enforcement Board (PLEB) concerning the suspension of a police officer are binding on the police, and though they may be appealed to the appellate courts, they are rarely overturned.¹¹³

44. The ability to influence broader police policy can also be a powerful tool in a civilian oversight agency's efforts to promote accountability. An external agency can often be well-placed to propose reforms directed at having a long-term deterrent effect. Many external oversight agencies have a mandate which is limited to review and investigation of individual complaints. However, some have more general powers to suggest or assist in determining security police and law.

45. In South Africa, the ICD may make recommendations to address policing policies or procedures. Recommendations may, for example, ask that policies or training programs be

¹⁰⁸ Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* (2005) p. 67.

¹⁰⁹ Julita Lemgruber, "Civilian Oversight of the Police in Brazil: the case of the ombudsman's offices." Center for Studies on Public Security and Citizenship/Candido Mendes University (2002) p. 15.

¹¹⁰ African Policing Oversight Forum, *An Audit of Police Oversight in Africa*, African Minds (2008) p. 76.

¹¹¹ Kenya National Commission on Human Rights, "Kenya needs an independent and effective police oversight board", (12 September 2008).

¹¹² Mary Seneviratne, "Policing the police in the United Kingdom", *Policing and Society*, Vol 14, No 4 (2004), p. 340.

¹¹³ Department of the Interior and Local Government Act, Republic Act No. 6975, 1990, Section 43(e): "Decisions – The decision of the PLEB shall become final and executory: provided that a decision involving demotion or dismissal from the service may be appealed by either party with the regional appellate board within ten (10) days from receipt of the copy of the decision." The PLEB was created under Republic Act Nos. 6975 (1990) and 8551 (1998), the same acts that established and re-organized the Philippine National Police. It is a dedicated police-only agency which receives and processes complaints from the public. See Melchor C. de Guzman, "Citizen Review of the Police: The People's Law Enforcement Board (PLEB) of the Philippines, 1991-2000" *Journal of Ethnicity in Criminal Justice*, Vol. 2 No. 4 (2004); Changwon Pyo, *Background Report: Examining Police Oversight Mechanisms in Asia* (2008).

implemented to curb police misconduct.¹¹⁴ The reputation of the ICD is such that the National Commissioner can seldom simply ignore these recommendations.¹¹⁵ However, the ICD has complained that it lacks the requisite power to ensure that recommendations are implemented, since there are no means of enforcement; nor do the South African police have to respond to ICD recommendations.¹¹⁶ In Northern Ireland, the Policing Board has a critical role in determining police policy, contributing to the Annual Policing Plan and overseeing its implementation.¹¹⁷ In addition it possesses the authority to dismiss the head of police if they find their proposals for policy reform are not being effectively implemented.¹¹⁸ The effectiveness of the Board in reversing former trends of police impunity has been widely applauded.¹¹⁹ In São Paulo, Brazil the *ouvidoria* has made a number of policy recommendations that have been implemented by police, most notably, a recommendation to implement a “shoot to disable” rather than a “shoot to kill” policy, which may have contributed to a reduction in killings.¹²⁰ Such powers can help an external oversight mechanism contribute to tackling the root causes of impunity and extrajudicial executions by police, rather than restricting the body to the handling of individual complaints.

B. Resources

46. An external agency must be adequately resourced and funded. There should be sufficient resources to employ skilled investigators, and the agency should have the financial capacity to undertake serious investigations.¹²¹ Adequate resources are essential to allowing an agency to fulfil its mandate, and can impact upon the independence of the body which, if under-resourced, may be forced to rely on the police for investigative services.¹²²

47. In many countries where mechanisms for external oversight are created, the practical impact of such bodies is limited due to chronic under-resourcing. The Jamaican Police Public Complaints Authority has been beset by operational difficulties, and its inability to make a significant impact on the high number of police killings has been attributed by its chief to, in large part, a lack of funding.¹²³ Similarly, the Salvadoran police oversight

¹¹⁴ David Bruce, Kate Savage and Johan de Waal, “A Duty to Answer Questions? The Police, the Independent Complaints Directorate and the Right to Remain Silent”, *South African Journal on Human Rights* (2000).

¹¹⁵ J. Rauch and E. van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa* (2006); see also David Bruce, Gareth Newham and Themba Masuku, *In Service of the People’s Democracy: An Assessment of the South African Police Service* (2007); David Bruce, Kate Savage and Johan de Waal, “A Duty to Answer Questions? The Police, the Independent Complaints Directorate and the Right to Remain Silent”, *South African Journal on Human Rights* (2000).

¹¹⁶ Independent Complaints Directorate, *An Investigation into Deaths as a Result of Police Action in Kwazulu-Natal, Eastern Cape and Gauteng* (2007).

¹¹⁷ Northern Ireland Policing Board, *Roles and Responsibilities*, Northern Ireland Policing Board Website.

¹¹⁸ *Police (Northern Ireland) Act 2000 and 2003*.

¹¹⁹ Eduardo I. Diaz, “Police Oversight” in Joseph de Rivera (ed) *Handbook on Building Cultures of Peace*, (2008) p. 300.

¹²⁰ Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature*, Vera Institute of Justice (2002) p. 6.

¹²¹ Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* (2005) p. 67.

¹²² Tim Prenzler, “Civilian Oversight of Police: A Test of Capture Theory”, *British Journal of Criminology* Vol. 40 (2000) p. 659.

¹²³ Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* (2005) p. 67.

agency (the PDH) has been unable to fully investigate the large number of complaints it receives partly because of financial constraints.¹²⁴ In Nigeria, the Police Service Commission has the legislative potential to be a very effective civilian oversight institution, but it is far from realising its potential due, in part, to a lack of financial and other resources, which also exacerbate a lack of independence from the police and politicians.¹²⁵ Agencies in countries where civilian oversight has been considered successful overall, such as South Africa and Northern Ireland, tend to be more well-funded. Yet, even so, the South African Independent Complaints Directorate has stated that due to under-staffing, it has not always been able to manage the entire influx of complaints it receives.¹²⁶

48. Because of the role that external agencies can play in tackling impunity, they are a worthwhile investment of state resources. However, external review can be an expensive undertaking, particularly where oversight mechanisms operate completely independently of the police by employing professional investigators and conducting inquiries separate from internal police processes. In weighing up the costs and benefits, countries should also bear in mind not only the importance of the rights at stake, but that the financial cost of continued police violence is also high. For example, between 1995 and 1998, 1,489 civil claims were brought against the South African Police Service on the basis of excessive use of force, and the police service disbursed over 50 million Rand in settlement and remedies.¹²⁷ Where the funding of oversight mechanisms is difficult because of the country's limited financial resources (e.g. in the context of developing, post conflict, or fragile states) the international community can play an important supporting role.

49. One way in which limited resources can be used more efficiently by an agency is through selective oversight. Some agencies limit their work by dealing only with the most serious cases of police misconduct, such as extrajudicial executions, and otherwise act as a watchdog over internal reviews, conducting their own investigations only where internal review is deemed to have failed. The Independent Police Complaints Commission in the United Kingdom, for example, only investigates the most serious complaints and allegations of misconduct against the police, and automatically investigates death or serious injury. An agency may also be to divert certain types of complaint, such as those which do not involve the use of force, for mediation, which offers a more expeditious and less expensive means of dispute resolution.¹²⁸

50. Human resources have proved to be as important as financial resources in allowing oversight bodies to fulfil their mandates. Skilled investigators and support staff are essential if an agency is to provide effective oversight. Highly skilled and dedicated staff in the Kenya National Commission on Human Rights, for example, have been able to undertake detailed and effective investigations that exposed police killings and police death squads in Nairobi.¹²⁹ In contrast, the Salvadoran ombudsman has indicated that their investigations

¹²⁴ Rachel Neild, "Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review of Police in Latin America", in Andrew J Goldsmith and Colleen Lewis, *Civilian Oversight of Policing* (2000) p. 240.

¹²⁵ Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post Conflict Africa, A Review* (October 2006) p. 107.

¹²⁶ Bronwen Manby, "The South African Independent Complaints Directorate", in Andrew J Goldsmith and Colleen Lewis, *Civilian Oversight of Policing* (2000), p. 218.

¹²⁷ Julie Berg, *Police Accountability in Southern African Commonwealth Countries* (2005), p. 16.

¹²⁸ Emma Philips and Jennifer Trone, *Building Public Confidence in Police Through Civilian Oversight*, Vera Institute of Justice (September 2002), p. 5.

¹²⁹ A/HRC/11/2/Add.6; see also Kenyan National Commission on Human Rights (KNCHR), *The Cry of Blood: Report on Extrajudicial Killings and Disappearances* (September 2008) and KNCHR,

have been impeded by “the office’s shortage of qualified personnel and total lack of staff with expertise in policing.”¹³⁰ In the hiring of external oversight mechanisms staff, expertise and professionalism should be encouraged. However, in some countries – where, for example, the country is newly emerging from conflict – skilled investigators and managers may not be readily available. In such cases, a lack of civilian expertise can severely hamper the operation of an oversight agency. External oversight agencies can work to overcome this by providing professional education and training for staff. In South Africa, the ICD sought to address the lack of investigative skills among its staff through training, with help from the US Department of Justice International Criminal Investigation Training Assistance Program.¹³¹ Civil society members may also provide a pool of expertise for oversight agencies, either by providing training or as staffing candidates with experience of human rights investigation.¹³² While foreign aid targeted towards improving policing is usually directed at the police force itself (e.g. in providing technology, expertise and training, as seen in Colombia¹³³ and Haiti¹³⁴), the international community can also improve police accountability by extending assistance programs to external oversight agencies. International actors can play a much-needed role by providing training, experts or other external agency development assistance.

C. Independence

51. The independence of a civilian oversight mechanism is essential to its successful functioning. Without full operational and hierarchical independence from the police, an external mechanism is vulnerable to the same dangers of bias and corruption inherent in police internal investigations. Similarly, effectiveness also depends on the agency’s freedom from executive or political interference.

52. Independence from the police has a number of different aspects. To avoid the risk and appearance of potential bias, the membership of an external agency should not include any members of the police force. Where it is necessary in a particular context for a police investigator to be seconded to an external agency or otherwise provide investigation expertise, extra precautions should be taken to ensure that this does not undermine the agency’s independence or collapse the separation between external oversight and police internal affairs. The agency’s offices should also be physically separated from the police. Until August 2004, the Jamaican Police Public Complaints Authority was housed within a police department, which may have deterred complainants and hampered its ability to act independently.¹³⁵

Preliminary Report on Alleged Executions and Disappearance of Persons between June and October 2007 (November 2007).

¹³⁰ Rachel Neild, “Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review of Police in Latin America”, in Andrew J Goldsmith and Colleen Lewis, *Civilian Oversight of Policing* (2000) p. 240.

¹³¹ Bronwen Manby, “The South African Independent Complaints Directorate”, in Andrew J Goldsmith and Colleen Lewis, *Civilian Oversight of Policing*, Hart Publishing: Oxford, 2000, p 218.

¹³² See, for example, National Association for Civilian Oversight of Law Enforcement (NACOLE), *Professional Standards for Oversight Agencies* (February 2009) which sets out qualification standards for investigators, and lists civil society partners which can play a role in oversight training.

¹³³ Andrew Goldsmith, “Police Accountability Reform in Colombia: The Civilian Oversight Experiment” in Andrew Goldsmith and Colleen Lewis (eds), *Civilian Oversight of Policing* (2000) p. 168.

¹³⁴ Washington Office on Latin America and National Coalition for Haitian Rights, *Can Haiti’s Police Reforms be Sustained* (1998).

¹³⁵ International Commission of Jurists, *Attacks on Justice – Jamaica* (2005), p. 7.

53. Independence can be threatened at a deeper structural level where the agency has the same reporting lines as the police force (e.g. where both the police and the external agency report to the government's minister for security). An external agency would find it difficult in some countries to provide independent oversight in these circumstances, and especially where, for example, the minister and the chief of police jointly supported overly aggressive or militarized policy tactics and strategies. In South Africa, where the ICD reports to the Minister for Safety and Security (to which the police also report), debate has ensued about whether there is a conflict or potential for undue influence.¹³⁶ Parliamentary proposals to strengthen independence have included efforts to relocate the ICD under the Ministry of Justice and to hold the ICD directly accountable to parliament,¹³⁷ although none of these have yet taken effect. Where, in a particular country context, it is most appropriate for the police and the external agency to report to the same minister, independence can be encouraged by requiring that minister to table the agency's reports before, as relevant, the country's parliament, national assembly, or senate.

54. In order to provide effective oversight, an agency will generally need the powers (discussed above) to conduct its own independent investigations. Without the legal power to independently investigate, or without adequate resources and properly trained staff, an external agency's oversight can be vulnerable to police influence. In South Africa, for example, due to funding deficits, the ICD has been forced to rely upon the South African Police Services for forensic, medical and ballistic evidence and analysis, reducing its functional independence from the police.¹³⁸ In contrast, the Police Integrity Commission of New South Wales, Australia maintains strict functional independence in its investigations. Strong independence can have downsides, however. Increased independence from the police can lead to increased antagonism and less cooperation from them. Though highly independent oversight bodies tend to receive more complaints from witnesses than those with closer ties to the police, they also frequently have difficulty accessing police evidence or records. As Rachel Neild notes, "this prompts some experts to argue that civilian review officials must see themselves as being in a partnership with police."¹³⁹ While external mechanisms and the police should have the same general aims (e.g. providing security and accountability for citizens), and should operate with mutual respect, a close "partnership" approach would generally undermine a crucial objective of the external mechanism – to provide oversight and review of police conduct. In addition, as Neild states, if a "review body seeks to work intimately with the police, it can often jeopardize its credibility with the community".¹⁴⁰ To reduce the risk of police service capture of external agencies, where a government seeks to establish an effective external mechanism that is highly independent from the police, it is essential not only that it be adequately resourced in order to avoid undue reliance on police expertise, but also that it be given the power to compel police cooperation. A strong mechanism will have a mandate that explicitly refers to its independence from the police service.

¹³⁶ See e.g. David Bruce, Gareth Newham and Themba Masuku, *In Service of the People's Democracy: An Assessment of the South African Police Service* (2007), p. 51; Burger, Johan, *A Watchdog Without Teeth? The Independent Complaints Directorate*, SA Crime Quarterly No. 24, June 2008.

¹³⁷ Id.

¹³⁸ Independent Complaints Directorate, *Medium Term Expenditure Framework*; Bronwen Manby, "The South African Independent Complaints Directorate", in Andrew Goldsmith and Coleen Lewis (eds.) *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (2000), p. 213.

¹³⁹ Rachel Neild, *Themes and debates in public security reform: A manual for civil society, external controls* (July 2000), p.12.

¹⁴⁰ Id.

55. Political interference with the operation of civilian oversight mechanisms can severely hamper their ability to function. Political pressure is most often exercised through funding pressures or control over hiring and dismissal.

56. Agency members should be democratically appointed. Where agency members are appointed solely by a politician, the body is left open to accusations of being politically influenced and motivated. (An example is provided in Kenya, where the fact that the Internal Security Minister is the sole authority to hire or fire the members of the Police Oversight Board has resulted in significant criticism). One way of combating this can be to require cross-party consultation, or agreement, before appointments are made. In both Northern Ireland and South Africa, appointment of senior level members requires consultation with a number of bodies, including parliamentary committees. In Northern Ireland, The Ombudsman is appointed for a period of 7 years, on recommendation from the executive, in accordance with appointment guidelines set by the Commissioner for Public Appointments¹⁴¹, and with no possibility of re-appointment. The potential Ombudsman must go through a consultative vetting process involving independent assessors measuring merit, and must declare any political activities from the preceding five years. The Commissioner of Public Appointments may issue a public notice if adequate selection procedures have not been followed. In Brazil, the São Paulo *ouvidoria* has often been praised for its efforts, while the Rio de Janeiro *ouvidoria* has been criticised. Part of the difference may be attributed to different appointment procedures: the *ouvidoria* in São Paulo is selected from a shortlist of nominations provided by the State Council for the Defence of the Rights of the Human Person, which has 80% representation from civil society;¹⁴² but the *ouvidoria* in Rio de Janeiro is selected by the State Security Secretary, who also controls the police force, diminishing its independence. In Kenya, the Police Oversight Board has been established as a “semi-autonomous body answerable to the State through the Minister”. It therefore reports to the Minister of Internal Security rather than directly to Parliament. The Kenya National Commission for Human Rights has expressed concern that this severely compromises the operational independence of the Police Oversight Board from the executive.¹⁴³

57. Tenure of appointment is also important to ensure that members feel confident in asserting their independence and that they can be critical, where appropriate and necessary, of officials or government policy.

58. Independence also requires that individual members of the oversight body operate with independence from political or other inappropriate personal affiliation, and do not operate in a way that is biased, discriminatory or corrupt. Oversight agencies should also take steps to ensure that their staff do not become corrupt. In South Africa, the discovery of a corrupt investigator at the ICD led to his dismissal and criminal charges against him. These preventative actions and measures of redress can help to preserve the integrity of external oversight mechanisms.

59. Independence can be undermined where the agency is not set up by legislation or required by a country’s constitution. The Police Oversight Board in Kenya, for example, while being an important step towards accountability, suffers from an important flaw in this respect. It was established not by act of parliament or by constitutional amendment, but by

¹⁴¹ The Commissioner for Public Appointments, *Code of Practice for Ministerial Appointments to Public Bodies* (August 2005).

¹⁴² Police Ouvidoria of São Paulo website: <http://www.ouvidoria-policia.sp.gov.br/pages/Oque.htm>.

¹⁴³ KNCHR, “Kenya Needs an Independent and Effective Police Oversight Board” (12 September 2008).

gazette notice by the Minister for Internal Security.¹⁴⁴ The gazette notice can easily be repealed by the Minister merely by a similar notice in the gazette.

60. Financial independence from the executive is key to ensuring the overall independent functioning of an external oversight mechanism. For example, despite guarantees built into the appointment process and tenure of the São Paulo *ouvidoria*, the office still remains vulnerable to political influence as there are no budget guarantees, rendering the office completely financially dependent on the Ministry of Public Security. In Cameroon, where budget allocation is not under democratic control, the Human Rights Commission, which is mandated to investigate police misconduct and which is subject to close Presidential control, had its funding cut for two years following its criticism of government abuses.¹⁴⁵ Subsequently, it has avoided investigating and reporting cases of human rights violations by security agencies; instead focusing on human rights promotion activities. By contrast, in Uganda, the Human Rights Commission, which oversees police human rights violations within its broader mandate, is allocated its budget by Parliament. Its financial independence is guaranteed by the Constitution¹⁴⁶ and Parliament is required by law to ensure its resources are sufficient to promote its proper functioning.¹⁴⁷ To create a strong external agency, funding should be placed under parliamentary or democratic control (ie., the budget should be voted by the country's legislative organ), with inbuilt guarantees as to the minimum size of the annual budget, and the time at which it will be disbursed (rather than have such decisions left to the whim of the executive). In addition, subject to necessary auditing, the agency's "budget should be self administered without interference".¹⁴⁸

D. Transparency and reporting

61. Transparency and public reporting are of vital importance to the long-term success of an external civilian oversight agency.

62. Regular and comprehensive reporting serves both to help make the agency accountable to the public, and also can have a significant impact on the accountability of security forces for extrajudicial killings. Reporting requirements should be set out in the legislation setting up the external agency, so that performance is less tied to personality. Regular reports should be provided by the agency on its activities to its responsible minister or to the government's legislative organ, and also made publicly available. The agency should also maintain a website with easily accessible information for the public on the work of the agency, how to make complaints, and data on police abuses or other relevant studies. The *ouvidoria* of São Paulo has been especially successful in maintaining detailed, disaggregated annual data on police abuses, which has been helpful in providing more accurate information on police involvement in organized crime.¹⁴⁹ This information, in turn,

¹⁴⁴ Donald Kipkorir, "New Police Oversight Board is Not Founded on the Law," *The Nation* (12 September 2008).

¹⁴⁵ Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* (2005), p. 64.

¹⁴⁶ African Policing Civilian Oversight Forum, *An Audit of Police Oversight in Africa* (2008), p. 73.

¹⁴⁷ Swati Mehta, *Police Complaints Agencies in the Commonwealth*, Commonwealth Human Rights Initiative (December 2005), p. 6.

¹⁴⁸ Human Rights Watch, *Protectors or Pretenders? – Government Human Rights Commissions in Africa* (2001), p. 21.

¹⁴⁹ See Fiona Macaulay, "Problems of police oversight in Brazil" (working paper), Centre for Brazilian Studies/University of Oxford (July 2002), p. 15. Julita Lemgruber, "Civilian Oversight of the Police in Brazil: the case of the ombudsman's offices" Center for Studies on Public Security and

can facilitate policymaking and generate public demand for a more accountable police force.¹⁵⁰ In general, police violations should be as publicly reported as possible, taking into account the need for confidentiality and witness protection.

63. The agency should also ensure that it responds in a timely fashion to citizen complaints, and that it communicates investigation progress or outcomes to the relevant individuals. In Brazil, a survey of complainants found that 62% were not satisfied by the work of the ombudsman, a result which can be explained in part by the fact that 56% of those surveyed did not know the results of their complaint.¹⁵¹ Similar problems have arisen in the Philippines. The availability of information to the general public on the People's Law Enforcement Boards appears to be limited; and there is no provision in the constituting acts for publication of Board reports or conclusions in matters heard.¹⁵²

64. To promote transparency, information about the financing of the agency should be made widely available, in a form which is easily accessible to the public, with all expenses included in the budget.

E. Community and political support and civil society involvement

65. An external oversight mechanism will be more successful where it has community and political support, and where it involves civil society in its work.

66. In many countries emerging from long periods of instability, or where street or violent crime levels are high, politicians and the public may support a "tough approach to crime", including violent policing methods. This can be seen in the calls for an "iron fist" (*mano dura*) response to crime throughout much of Latin America.¹⁵³ A Latinobarómetro poll showed that 47% of interviewees in Guatemala supported the use of *mano dura*, while in Honduras 55% accepted the uses of extralegal actions by police to curb crime.¹⁵⁴ In Brazil the slogan "a good criminal is a dead criminal" has been used in political campaigns, reflecting the high level of support for violent police practices and the perception that support for human rights is synonymous with weak anti-crime efforts.¹⁵⁵ A continent-wide study of police oversight in Africa reported that police inability to stem high rates of crime

Citizenship/Candido Mendes University (2002), p. 16 (noting the lack of common standards for recording and analyzing data).

¹⁵⁰ Ignacio Cano, "Police Oversight in Brazil," p. 5: "The Ombudsman's Office publishes reports periodically and has served as an element to mobilize the debate and arouse public awareness on the matter." See also Fiona Macaulay, "Problems of police oversight in Brazil" (working paper), Centre for Brazilian Studies/University of Oxford (July 2002), p. 17.

¹⁵¹ Emma Phillips and Jennifer Trone, *Building Public Confidence in Police Through Civilian Oversight*, (September 2002), p. 8.

¹⁵² Department of the Interior and Local Government Act, Republic Act No. 6975, 1990, Section 43.

¹⁵³ In Venezuela, crime reached record levels in the 1990s, with violent crime rising by 65% between 1994 and 1999. In response, public demands for *mano dura* grew, leading to increased emphasis on discretionary police powers. See Mark Ungar, "Police Reform in Argentina: Public Security versus Human Rights" in Niels Uildricks, *Policing Insecurity: Police Reform, Security and Human Rights in Latin America* (2009), pp.172-3. In Guatemala, citizens increasingly demanded a tough approach to criminality in response to a rise in crime and violence, p. 80.

¹⁵⁴ Washington Office on Latin America, *Protect and Serve? The Status of Police Reform in Central America* (June 2009), p. 8.

¹⁵⁵ Samia Husain, "On the Long Road to Demilitarization and Professionalization of the Police in Brazil" in Niels Uildricks, *Policing Insecurity: Police Reform, Security and Human Rights in Latin America* (2009), p. 56 ("The slogan, "a good criminal is a dead criminal" has helped several politicians win election and has led to impunity for those who have killed street children, landless peasants, prisoners, and suspected criminals").

have led to similar calls for tougher policing tactics, and support for the ever-increasing number of armed vigilante groups.¹⁵⁶ In South Africa, in late 2008, the Deputy Safety and Security Minister urged police to adopt a “shoot-to-kill” policy with respect to suspected criminals,¹⁵⁷ an approach supported more recently by the country's police minister.¹⁵⁸

67. These views can lead to deep antagonism towards the work of police external oversight agencies. In South Africa, for example, a recommendation by the ICD that police officers recorded assaulting suspects be prosecuted met with hostility from the public.¹⁵⁹ The government, the agency, civil society and international actors will often need to take positive steps to promote human rights based policing. It is understandable that citizens threatened by daily violence and rising crime have demanded that their government take steps to increase security. However, human rights violations and abuse by the police against “suspected criminals” and others is not the answer. Citizens do not have to tolerate regular abuses of their rights in the name of security. Violent policing methods are not only unlawful, but also counter-productive. Innocent citizens inevitably get caught up in the police violence. During the Special Rapporteur's country missions, he has repeatedly met family members of innocent individuals killed by the police. Violent policing, in the long-term, deeply corrodes public trust and confidence in the police force, undermines the development of the criminal justice system, and is often accompanied by regular police corruption and extortion. Abusive policing methods do not guarantee human security – in democratic societies, effective policing is based on respect for human rights and cooperation with the public.¹⁶⁰ Democratic, human-rights based policing methods encourage greater co-operation between the public and the police, which can in turn assist police in their investigations.¹⁶¹ Officials should undertake to promote these views, and explain the role of external agencies in promoting accountability and security.

68. At a more straightforward level, the external agency will often need to conduct significant community outreach so that citizens are aware of its role. Where an agency is unknown or not trusted, complaints will be reported to the police or often not at all; at best this contributes to inefficiency in the accountability system, and at worst it potentially

¹⁵⁶ African Policing Civilian Oversight Forum, *An Audit of Police Oversight in Africa* (2008), p. 3.

¹⁵⁷ Reuters, “Shoot to kill, South African minister tells police” (10 April 2008) (“You must kill the bastards (criminals) if they threaten you or the community. You must not worry about the regulations,” said Deputy Safety and Security Minister Susan Shabangu. “I want no warning shots, you have one shot and it must be a kill shot... I want to assure the police station commissioners and policemen and women from these areas that they have permission to kill these criminals.”) See also Al-Jazeera English, “Outrage at shoot-to-kill call” (11 April 2008).

¹⁵⁸ David Smith, “South Africa considers shoot-to-kill policy ahead of world cup” *Guardian* (16 September 2009) (“Cele [the police commissioner] has called for a change in legislation that would allow police to open fire on suspects without having to worry about “what happens after that”.” The Police Minister was quoted as stating, “We are tired of waving nice documents like the constitution and the human rights charter in criminals’ faces ... We are going to meet these thugs head on, and if it means we kill when we shoot, then so be it.”).

¹⁵⁹ Bronwen Manby, “The South African Independent Complaints Directorate”, in Andrew J Goldsmith and Colleen Lewis (eds.) *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (2000), p. 211.

¹⁶⁰ Anthony Harriot, “Police Transformation and International Cooperation – The Jamaican Experience”, in Niels Uildricks, *Policing Insecurity: Police Reform, Security and Human Rights in Latin America* (2009), p. 114; Niels Uildricks, “Police Reform, Security and Human Rights in Latin America: An Introduction” in Niels Uildricks, *Policing Insecurity: Police Reform, Security and Human Rights in Latin America* (2009), p. 15.

¹⁶¹ Niels Uildricks, “Police Reform, Security and Human Rights in Latin America: An Introduction” in Niels Uildricks, *Policing Insecurity: Police Reform, Security and Human Rights in Latin America* (2009), p. 16.

enhances opportunities for police corruption and bias in the handling of the complaint.¹⁶² External oversight agencies should also ensure that they conduct outreach to and seek support from communities affected by police killings, in particular those which are marginalised. In Brazil, for example, several of the *ouvidoria* offices were found to be failing to reach out to poorer members of the community (who are especially affected by violent policing in *favelas*), and in India, complaints have been directed at the Human Rights Commissions for giving less attention to complaints individuals perceived to be of “lower caste”.¹⁶³ This undermines the work of oversight agencies and limits their success in providing accountability. External oversight mechanisms should work to ensure that minority groups, women and other sidelined communities are included in the work of the agency, and ensure their representation within agency staff.

69. Civilian oversight bodies should also strive to create an environment conducive to active civil society participation in their work, and in the broader aim of increasing police accountability. In Colombia, failure to engage with civil society and gain the support of human rights groups has been pointed to as one of the factors which contributed to the failure of the National Police Commissioner.¹⁶⁴ whose office was disbanded less than four years after it was created.¹⁶⁵ In contrast, in Peru, the government has involved civil society in oversight of the police in a relatively formal way, by forming agreements with NGOs to monitor the police, and other security agencies, as well as allocating ombudsmen to deal with complaints.¹⁶⁶ In São Paulo, campaigning by civil society and human rights groups played a key role in supporting the *ouvidora* and advocating greater accountability for police abuses.

70. Oversight bodies should consult with civil society on a regular basis, especially where civil society has greater community outreach or monitoring capacity than the agency itself. Civil society organisations are often well-placed to provide valuable expertise, training, research and input on reform policies. Especially where external agency resources are scarce, civil society can aid in outreach efforts, or bring abuse allegations to the attention of the agency. Greater civil society participation can also improve community support for an agency, by providing a bridge between the oversight body and the community it serves, particularly where the oversight mechanism is newly established and has yet to gain the trust of citizens. In order to maximise the potential input of civil society actors, external police oversight bodies should create mechanisms by which civil society suggestions and reforms can be heard and incorporated into policies and practice.

¹⁶² Neil Sammonds, *Need to Know: The Struggle for Democratic, Civilian Oversight of the Security Sector in Commonwealth Countries - A Study of the Accountability of the Military, Police and Intelligence Services in Commonwealth Countries, with a Focus on Sri Lanka, Nigeria, South Africa, Barbados and St Lucia and a Special Survey of the Role of Committees in 37 Commonwealth Parliaments* (2000), pp. 19-21.

¹⁶³ Emma Phillips and Jennifer Trone, *Building Public Confidence in Police Through Civilian Oversight*, (September 2002), p. 11.

¹⁶⁴ The National Police Commissioner was established in 1993 as part of wider police reform, and was intended to receive complaints, oversee internal police disciplinary statistics and compile statistics on police crimes. See Rachel Neild, *Themes and Debates in Public Security Reform: External Controls*, (August 2000), pp. 11-12.

¹⁶⁵ Rachel Neild, *Themes and Debates in Public Security Reform: External Controls* (August 2000), pp. 11-12.

¹⁶⁶ Emma Phillips and Jennifer Trone, *Building Public Confidence in Police Through Civilian Oversight* (September 2002), p. 11.

V. Conclusions and recommendations

71. International human rights law requires governments to provide accountability for unlawful killings and other human rights abuses committed by the police. Those responsible must be investigated, prosecuted, convicted and punished.

72. Accountability is provided by a system which generally includes police internal affairs, the criminal justice system, and legislative oversight. External civilian oversight is also important. It might include an external complaints body, a police or general ombudsman, a police oversight board or a national human rights commission, or a combination thereof.

73. Because of the inevitable bias inherent in internal police investigations and internal disciplinary mechanisms, all governments should consider creating an external police oversight agency.

74. The most successful external police oversight mechanisms will take account of the following general guidelines:

Powers

- The mechanism should be authorised by legislation to receive complaints from any person.
- 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.
- The agency should be required to record and track complaints and abuses and keep comprehensive records.
- The agency should be authorised to undertake investigations into complaints received.
- The agency should have the power to compel police cooperation with its investigations, and should have full investigatory powers, similar to those of a police investigator.
- The agency should have the power to refer cases for criminal prosecution to the public prosecutor and suggest disciplinary measures to the police department. A strong agency will be able to enforce proposed disciplinary measures.
- An agency should be able to provide or refer witnesses to witness protection where necessary.
- An agency should be able to propose general reform measures on policing to the police force and the government.

Resources

- The mechanism should be adequately resourced and funded, and be provided sufficient funds to allow it to carry out comprehensive investigations and hire skilled staff.

Independence

- The mechanism should have full operational and hierarchical independence from the police, and be free from executive or political influence.
- Police members of an external agency should generally be avoided.

- The agency should generally have different reporting lines than the police department.
- The agency should be constitutionally entrenched, or created through legislation (not executive order).
- The agency's members should be democratically appointed following consultation with or approval by the legislature, and have security of tenure.
- Financial independence should be secured by having the agency's budget approved by the legislature, with statutory guarantees for the size and disbursement timing of the annual budget.

Transparency and reporting

- The mechanism should be required to issue regular reports to the government and the public on its activities.
- It should maintain a website with easily accessible information.
- It should respond in a timely fashion to citizen complaints.
- It should maintain detailed data on police abuses. Civilian oversight mechanisms are uniquely placed to conduct statistical or general reviews of patterns in police killings, including their causes, and should do so.
- Its budget and expenses should be publicly reported.

Community and political support and civil society involvement

- The government should publicly support the work of the agency.
- Both the government and the agency should conduct community outreach to explain the agency's role and the importance of police accountability.
- The external mechanism should consult with and seek the support and involvement of civil society organisations in its work.

75. When establishment of an external agency is being considered, domestic civil society and international actors can assist by encouraging the government to create an agency in accordance with the above general guidelines.

76. The international community should encourage governments to create external police oversight mechanisms. Existing agencies can be supported where appropriate by providing funding, training, experts or other assistance. Donor governments and agencies sometimes prioritize support for police training and neglect police accountability. While human rights training is important in reducing police killings, it is insufficient on its own. External oversight agencies should not be neglected and should receive the political and financial support necessary to tackle impunity.