

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

POLICE
OVERSIGHT
MECHANISMS

NOTE

POLICE OVERSIGHT MECHANISMS NOTE

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ABBREVIATIONS

UNCAT	UN Convention against Torture.
AG	Attorney General.
ICCPR	International Covenant on Civil and Political Rights.
IPCC	Independent Police Complaints Commission.
DIPCA	Danish Independent Police Complaints Authority.

CHAPTER 1

1 WHY SHOULD THE POLICE BE ACCOUNTABLE?

The police play a vital role in providing security and maintaining the rule of law. In order to do that, they are given a near monopoly to use force in times of peace. However, these powers also give them ample opportunity to violate human rights. Strong and uncontrolled power carries with it a risk of misuse in the form of e.g. police brutality, deaths in police custody, torture and ill-treatment, extrajudicial killings, enforced disappearances and excessive use of force, including in cases of demonstrations.

Therefore, it is crucial that the police is accountable to the society and the public.

Furthermore, a police service that is accountable and respects and protects human rights will be able to build constructive relations with the community and the public, and therefore is in a better position to prevent crimes and maintain law and order.

The police should be held accountable in all stages of their operations: before, during and after police operations. This note focuses particularly on police oversight mechanisms after the police operation has been carried out.

2 WHO SHOULD HOLD THE POLICE ACCOUNTABLE?

First and foremost, the police should hold themselves accountable. This can be accomplished in different ways, such as by evaluating operations, training, and establishing an internal police inspectorate overseeing police operation.

However, effective police accountability involves numerous other actors including:

- The relevant ministry – often the Ministry of Home Affairs;
- The prosecution service;
- The Judiciary;
- The Parliament or parliamentary committees;
- Municipal, district and provincial administration (for example mayor or city council);
- National human rights institution or ombudsman;
- Police complaints bodies – see section 3 below for more detail;
- Independent police oversight bodies – see section 4 below for more detail;
- Non-governmental organizations and civil society organizations;
- Academics;
- Media;
- Individual members of the public;
- International treaty bodies; *and*
- Specific bodies set up under peace agreements.

All of these actors play an important role in ensuring that police are accountable to the public and perform their duties in accordance with the law and with international human rights obligations.

3 THE ROLE AND FUNCTIONS OF A POLICE COMPLAINT BODY

This note focuses on the role and functions of police complaint bodies in overseeing police operations. A complaint mechanism is crucial to ensure a better and more accountable police force. In the absence of a complaint mechanism, an investigation is unlikely to be initiated; and if there is no investigation, the complainant will not be heard, his/her grievances will not be addressed, and the police will miss a potential learning opportunity that could have led to an improvement in services. Furthermore, the lack of a formal complaint may lead to impunity for the offender and thereby a culture of impunity and mistrust in the police in the longer term.

Hence, the aim of a complaint mechanism is to prevent impunity and enhance public confidence in the police.

The principal functions of a police complaints system are:

- To address the grievances of complainants and eventually to provide remedies and possibly compensation;
- To identify police misconduct, and where appropriate, provide evidence in support of criminal proceedings and/or disciplinary measures; *and*
- To learn from mistakes and avoid future police misconduct.

4 WHY ESTABLISH AN *INDEPENDENT* POLICE OVERSIGHT MECHANISM?

In most countries, members of the public can file a complaint over police misconduct directly with the police or with the public prosecutor or the prosecutor's/Attorney General's (AG) office, who often in turn has a close working relation with the police.

There are several reasons, however, for establishing an *independent* police complaint mechanism.

First, if the complaint concerns torture, the right to life, or inhumane and degrading treatment by the police there is a human rights obligation to ensure *independent*, impartial, and prompt investigation of the complaint. See, for example, Art. 13 and 14 in the UN Convention against Torture. For more detail, see section 5 below.

Furthermore, an individual who claims he has been exposed to excessive use of force by a local police officer or ill-treatment in the local police detention centre will often be unwilling to file a complaint directly with the police in fear of reprisal.

Finally, 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. Furthermore, if the complaints are dealt with by the police/AG's office there is a risk that the investigation – even if it is carried out in a completely independent and effective way – will be *perceived* not to be independent by the public.

In Denmark it has been widely debated whether complaints over police officers are dealt with in independent and effective way, and for this reason the Danish Parliament established an Independent Police Complaint Authority in 2012.

5 HOW SHOULD COMPLAINTS OVER THE POLICE BE ADDRESSED?

International human rights law requires that police killings and police ill-treatment are thoroughly investigated, and that the officers responsible for unlawful actions are prosecuted and convicted. If the complaint concerns the right to life, torture, or inhumane and degrading treatment by the police there is a human rights obligation to ensure independent, impartial and prompt investigation of the complaint. See, for example, Art. 13 and 14 in the UN Convention against Torture (UNCAT).

An investigation should be initiated by the complaint mechanism when it receives a complaint (see Article 13 in UNCAT), or on the complaint mechanism's own initiative when there are reasonable grounds to believe that an act of torture or arbitrary killing has occurred (see Article 12 in UNCAT). A similar procedural obligation can be found in articles 6 (right to life) and 7 (freedom from torture and inhumane and degrading treatment) in the International Covenant on Civil and Political Rights (ICCPR).

International law requires that the investigation is effective, comprehensive and independent, as well as prompt and transparent. The European Court of Human Rights has developed five key principles for the effective investigation of complaints against the police:

- *Independence*: There must be no institutional or hierarchical connections between the investigators and the police officer subject of the complaint, amounting to a real, practical independence;
- *Adequacy*: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- *Promptness*: the investigation should be conducted promptly and expeditiously in order to maintain confidence in the rule of law;
- *Public scrutiny*: procedures and decision-making should be open and transparent in order to ensure accountability; *and*,
- *Victim involvement*: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.¹

¹ See Council of Europe, Police Oversight Mechanisms in the Council of Europe Member States, February 2017, p. 5.

In addition, it is of outmost importance that the process is *fair to the individual police officer* accused of misbehaving. It can have very serious negative consequences – both disciplinary and criminal – for a police officer to be accused of violating international human rights obligations and domestic law. There is a potentially risk that police complaints mechanism can be misused by the public to harm individual police officers. Police officers have as any other individual the right to a fair process if they are being accused of misbehaving e.g. a right to be heard and defend themselves, a right to be represented by a lawyer, etc.

The European Court of Human Rights has in a large number of judgements discussed in more detail the human rights requirement to a police investigation. In the *Alder case* from 2011, concerning the death of Mr. Alder in police custody in the United Kingdom, the Court criticized the investigation because:

- It was carried out by a neighbouring police force rather than an independent body;
- Blood samples, officers' clothing and Mr Alder's clothing were all destroyed without being tested;
- Subsequent investigations were compromised by insufficient initial protection of potential evidence;
- The cause of Mr Alder's death was never definitively established;
- It was not established whether Mr Adler had been assaulted by any of the officers; *and*
- The (later established) Independent Police Complaints Commission (IPCC) concluded that despite flaws in the original investigation and findings of "quite obvious neglect of duty" and "unwitting racism" – no further action could be taken against the police.²

After this critique, the UK government took a number of initiatives to strengthen the independent police complains commission. They included:

- Legislative reform – creating a new police complaints system which compelled the police to refer all deaths or serious injuries following contact with the police to an IPCC;
- Powers for the IPCC to independently conduct its own investigations;
- All the powers of a police officer to be conferred on IPCC investigators in conducting an investigation;

² See the CoE, Police Oversight Mechanisms in the Council of Europe Member States, (2017), p. 7. The Judgment can be found here: [https://hudoc.echr.coe.int/eng#{"fulltext":\["42078/02"\],"languageisocode":\["ENG"\],"itemid":\["001-107510"\]}](https://hudoc.echr.coe.int/eng#{)

- Powers for the IPCC to openly publish the findings of their investigations;
- Revised police conduct regulations to cover the management of discipline cases against police officers; *and*
- Provision of guidance to police officers working in custody environments, including requirements to make risk assessments.

6 HOW TO ASSESS THE *INDEPENDENCE* AND *EFFECTIVENESS* OF A DOMESTIC POLICE COMPLAINTS MECHANISM?

The UN Special Rapporteur on extrajudicial, summary, and arbitrary executions Philip Alston undertook in 2011 a comprehensive study of police oversight mechanisms in various countries.

The Special Rapporteur examined the obstacles to an effective external oversight, and proposed guidelines for governments on the creation and operation of effective external mechanisms.³

Based on his comprehensive studies he identified key features of the most successful and human rights compliant independent police complaint mechanism.

These key figures can be very useful when assessing a domestic independent police complaint mechanism and whether the mechanism lives up to the best international standards.

The special Rapporteur identified the following key features as decisive for a well-functioning, independent and effective police complaint mechanism:

“Powers:

- The mechanism should be authorized by legislation to receive complaints from any person.
- The Police should be required by law to report to the external agency all deaths of individuals in police custody and deaths due to police action, and there should be penalties for non-reporting and delays in reporting.
- The agency should be required to record and track complaints and abuses and keep comprehensive records.
- The agency should be authorized 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.

³ The study of the Special rapporteur can be found here:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>

- 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 with 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.
- Making police staff members of an external agency should generally be avoided.
- The agency should generally have different reporting lines from those of the police department.
- The agency should be established constitutionally or created through legislation (not executive order).
- The agency's members should be democratically appointed following consultation with or approval by the legislature, and should have the 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 timing of the disbursement 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 organizations in its work."



SUMMARY

When assessing the set-up and performance of an independent police complaint mechanism a number of legal, institutional, organisational and financial factors have to be examined and assessed.

In addition, it is important to assess the concrete work and functioning of the complaint body. Examples of questions that can be used for this purpose are:

- How many complaints have been received?
 - How many investigations have been undertaken on the own initiative of the complaint body?
 - What is the outcome of these investigations – have police officers, including superior and senior officers, been criticized?
 - Have there been any criminal investigation and prosecution of police officials?
- 

7 THE DANISH INDEPENDENT COMPLAINTS AUTHORITY

This section provides a brief description of the Danish Independent Police Complaints Authority (DIPCA). The DIPCA handles investigation of criminal cases against police officers *and* considers and issues decisions on complaints over police misconduct. The Police Complaints Authority exercises its functions in complete independence of both police and prosecutors.⁴

The Independent Police Complaints Authority is an independent authority headed by the Police Complaints Council and the Chief Executive. The Police Complaints Council is the supreme governing body of the Authority and consists of a Chair, who must be a High Court judge, an attorney, a professor of law and two representatives of the general public.

The Chief Executive is in charge of the day-to-day operations of the Police Complaints Authority and of the staff comprising lawyers (11 in 2016), investigators (10 in 2016), and administrative staff (8 in 2016).

Individuals can make complaints to the Complaint Authority if they believe a police officer has acted in an illegal or improper way, e.g. if the police spoke rudely or acted inappropriately, were too rough when arresting a suspect, or abused their powers in other ways.

The DIPCA receives in average 1600 complaints over the police each year. In 2016, 33% of the complaints concerned the conduct of police officers (i.e., minor cases concerning rude language and etc.); 30% of the complaints alleged that the police officers had committed a criminal offence; 35% of the complaints concerned traffic offences committed by police officers; and 2% concerned death or serious injury of individuals in police custody.

⁴ Information about the Danish Police Complaint Authority can be found here: http://www.politiklagemyndigheden.dk/media/6447/1_korr_pm_pjece_uk.pdf

ANNEX 1. AN OVERVIEW OF INTERNATIONAL INSTRUMENTS RELEVANT TO POLICING

The full texts of these instruments are available from www.ohchr.org.

Binding treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto"
- International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Elimination of All Forms of Discrimination against Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of the Child
- Geneva Convention relative to the Treatment of Prisoners of War, 1949 (Third Geneva Convention)
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (Fourth Geneva Convention)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
- International Convention for the Protection of All Persons from Enforced Disappearance.

Declarations and principles:

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Code of Conduct for Law Enforcement Officials adopted by the General Assembly in its resolution 34/169 of 17 December 1979
- Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials adopted by the Economic and Social Council in its resolution 1989/61 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989
- International Code of Conduct for Public Officials adopted by the General Assembly in its resolution 51/59 of 12 December 1996
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
- The UN Standard Minimum Rules for the Treatment of Prisoners, see the revised UN Mandela Rules from 2016.

ANNEX 2. ADDITIONAL RESOURCES ON POLICE COMPLAINTS MECHANISMS

Council of Europe, Police Oversight Mechanisms in the Council of Europe Member States, 2017. Can be found here: <https://edoc.coe.int/en/international-law/7414-police-oversight-mechanisms-in-the-council-of-europe-member-states.html>

Council of Europe, Commissioner for Human Rights, Opinion of the commissioner for human rights concerning independent and effective determination of complaints against the police, 2009. Can be found here: <https://rm.coe.int/16806daa54>

UN, UNODC, Handbook on police accountability, oversight and integrity, 2011. Can be found here: https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf

UN, UN Special rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Study on police oversight mechanisms, 2010: Can be found here: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>

ICRC, To Serve and to Protect – Human rights and humanitarian law for police and security forces, 2017. Can be found here: <https://shop.icrc.org/servir-et-proteger-droit-des-droits-de-l-homme-et-droit-humanitaire-pour-les-forces-de-police-et-de-securite-2625.html>

Information about the Danish Police Complaint Authority can be found here: http://www.politiklagemyndigheden.dk/media/6447/1_korr_pm_pjece_uk.pdf

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