

INTERNATIONAL POLICE COMPLAINTS REFORM

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In the course of the last half-a-century, police complaints systems around the globe have been subjected to perpetual reform. In recent years human rights law and democratic policing discourse (Bayley 2006; Senior Police Advisor to the Organisation for Security and Co-operation in Europe (OSCE) Secretary General 2009; UNODC 2011) have been hugely influential, and a number of countries have created independent police complaints bodies (IPCBs) with powers to investigate the police.

This short paper examining international police complaints reform is broken down into three sections. The purposes of police complaints systems are briefly outlined in the first; the international reform trend is traced in the second; and, five principal types of mechanism for handling complaints are identified in the third.

I. Purposes of a police complaints system

Police complaints systems serve several purposes in the interests of a range of stakeholders, as well as the general public. Widely expressed concerns with the fitness for purpose of complaints procedures have significantly contributed to reform in the last half-a-century. Seven core purposes are presented here.

Accountability mechanism

In the OSCE *Guidebook on Democratic Policing* (Senior Police Advisor 2009), the existence of a citizen oversight body with responsibilities for handling complaints against the police is presented as a core accountability and transparency requirement. A standard statutory purpose, in jurisdictions where police complaints systems have been codified, is to hold law enforcement officials accountable in criminal and disciplinary proceedings on the basis of evidence obtained in the investigation of a complaint. In addition, where available, mediation procedures may provide opportunities for a complainant to receive an account, given by the officer complained against or his/her supervisory officer, for the conduct complained of.

Protect against a culture of impunity

An effective police complaints system offers fundamental protection against the development of a culture of impunity. The complaints system has always served as a means by which police, prosecutors and the courts identify acts, and omissions, of criminal behaviour, misconduct and below standard performance on the part of law enforcement officials. Cultures of impunity are liable to develop as a result of the failure of police managers, prosecutors and the courts to take appropriate action against an officer, on the one hand, or the reluctance of citizens to complain because of their lack of confidence in the complaints system, on the other hand.

Protect human rights

International human rights law requires that an individual has access to an effective remedy to an alleged violation of his or her human rights. A state is under a positive obligation to

protect the right to life and the prohibition of torture by conducting an effective investigation into an alleged violation of these two fundamental rights (see below).

Address grievance of the complainant

The right of an individual to challenge the lawfulness of alleged interferences with their human rights and the development of principles of effective investigation (Council of Europe Commissioner for Human Rights 2009), including the need for victim involvement and public scrutiny, have contributed to a growing awareness of the interests of complainants. If public trust and confidence in the complaints system is to be secured and maintained, grievances must be adequately and proportionately addressed in accordance with the nature of the complaint.

Facilitate and demonstrate responsiveness

International policing standards can be traced back to the UN (1979) *Code of conduct for law enforcement officials*. In the preamble to the *Code* it is explained that police responsiveness to the communities they serve sits alongside accountability and representativeness as core values. As police forces have been transformed into more public facing services, the substance, volume and handling of complaints have developed as a measure of public trust and confidence in the police. A positive police approach to public complaints, by which complainants are encouraged to come forward with their grievances, and their legitimate concerns are acknowledged, irrespective of whether or not substantiated, contributes significantly to good community relations.

Lesson learning

Practical policing is invariably associated with dispute resolution and is prone to error. Complaints are an important resource that may be researched and analysed so that lessons may be learned from past mistakes for the purpose of improving future performance. Complaints provide lesson learning opportunities at the individual officer and service level, which enhance the effectiveness of the complaints system as accountability and regulatory mechanisms.

Regulatory mechanism

Police complaints procedures serve as a regulatory mechanism, often in a network comprising a number of policing partners, which operates to ensure high standards of police performance (Smith 2009). Whereas accountability processes act retrospectively, sanctioning below standard behaviour for example, regulatory interventions are prospective, and serve to identify risks and prevent poor performance.

II. International reform trend

The unmistakable international trend in police complaints reform has been towards greater independence and the transfer of responsibilities to IPCBs (Goldsmith & Lewis 2000). In several jurisdictions IPCBs, which were limited to reviewing completed complaints investigations, have been replaced by bodies with investigation powers. An indication of the trend is given below in Table I.

Table I. International reform trend

Year	Jurisdiction	IPCB	Powers
1958	Philadelphia, USA	Police Advisory Board ¹	Review
1966	New York, USA	Civilian Complaint Review Board ²	Review
1977	England & Wales, UK	Police Complaints Board	Review
1981	Ontario, Canada	Toronto Police Complaints Commissioner	Review
1985	England & Wales, UK	Police Complaints Authority	Review
1986	Victoria, Australia	Police Complaints Authority	Review
	Hong Kong	Independent Police Complaints Council ³	Review
1989	Queensland, Australia	Criminal Justice Commission ⁴	Investigation
1990	Ontario, Canada	Police Complaints Commissioner Special Investigations Unit ⁵	Review Investigation
1991	Philippines	People's Law Enforcement Board ⁶	Investigation
1993	Belgium	Standing Police Monitoring Committee ⁷	Investigation
1993	New York, USA	Civilian Complaint Review Board ⁸	Investigation
1996	New South Wales, Aus	Police Integrity Commission ⁹	Investigation
	Sao Paulo, Brazil	Police Ombudsman ¹⁰	Review
1997	South Africa	Independent Complaints Directorate	Investigation
2000	Northern Ireland, UK	Police Ombudsman ¹¹	Investigation
2001	Queensland, Australia	Crime and Misconduct Commission ¹²	Investigation
2002	Zambia	Police Public Complaints Authority ¹³	Investigation
2004	England & Wales, UK	Independent Police Complaints Commission ¹⁴	Investigation
	Victoria, Australia	Office of Police Integrity	Investigation
	New Zealand	Independent Police Conduct Authority ¹⁵	Investigation
2007	Ireland	Garda Síochána Ombudsman Commission ¹⁶	Investigation
2008	Hungary	Independent Police Complaints Board ¹⁷	Review
2009	Ontario, Canada	Office of the Independent Police Review Director ¹⁸	Investigation
2010	Jamaica	Independent Commission of Investigations ¹⁹	Investigation
2011	Malaysia	Enforcement Agency Integrity Commission ²⁰	Investigation
2012	Denmark	Independent Police Complaints Authority ²¹	Investigation
	South Africa	Independent Police Investigative Directorate ²²	Investigation
2013	Scotland, UK	Police Investigation and Review Commissioner ²³	Investigation
	Victoria, Australia	Independent Broad-based Anti-Corruption Commission ²⁴	Investigation

¹ For archive of documents see <http://library.temple.edu/scrc/philadelphia-pa-police>.

² See below fn. 9.

³ <http://www.ipcc.gov.hk/en/home.html>. A Bill introduced in 1996 to place the Council on a statutory footing was withdrawn in 1997 and eventually enacted in 2008.

⁴ See below fn. 13.

⁵ <http://www.siu.on.ca/en/index.php>.

⁶ Website not located. See de Guzman 2008; Nalla & Mamayek 2013.

⁷ <http://www.comitep.be/EN/index.asp>.

⁸ <http://www.nyc.gov/html/ccrb/html/home/home.shtml>.

⁹ <http://www.pic.nsw.gov.au/>.

¹⁰ <http://www.ouvidoria-policia.sp.gov.br/>.

¹¹ <http://www.policeombudsman.org/>.

¹² <http://www.cmc.qld.gov.au/>.

¹³ Website not located, see www.homeaffairs.gov.zm/?q=polic_public_complaints_authority.

¹⁴ <http://www.ipcc.gov.uk/>.

¹⁵ <http://www.ipca.govt.nz/>.

¹⁶ <https://www.gardaombudsman.ie/>.

¹⁷ http://www.panasztestulet.hu/index.php?link=en_main.htm: established as the Independent Police Complaints Commission with powers to investigate.

¹⁸ <https://www.oiprd.on.ca/CMS/Home.aspx>.

¹⁹ <http://www.indecom.gov.jm/>.

²⁰ <http://www.eaic.gov.my/>.

²¹ <http://www.politiklagemyndigheden.dk/english>.

²² <http://www.ipid.gov.za/>.

²³ <http://pirc.scotland.gov.uk/>.

²⁴ www.ibac.vic.gov.au.

It is evident that the reform trend has not been global. After taking the initial step to create an IPCB, legislatures in English speaking jurisdictions in North America, the UK, Ireland, Australia and New Zealand, have found it necessary to introduce further reforms on several occasions. This trend has been slow to spread to states in Asia, Africa and South America. The number of statutory IPCBs with powers to investigate has steadily increased in the last decade or so and, at the time of writing (March 2015), international programmes run by, among others, the Council of Europe, European Union and United Nations, are currently promoting police complaints reform in a number of states, including Armenia, Azerbaijan (Smith 2013), Bahrain, Brazil, Georgia, Moldova, Palestine, Turkey and Ukraine.

Since the turn of the millennium, international human rights law (Smith 2010; 2015) has emerged as a significant driver of complaints reform in Europe and South America, including the Caribbean. The greatest impact has been in regard to the positive obligations the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) have imposed on states to conduct an effective investigation into alleged violations of the right to life²⁵ and the prohibition of torture.²⁶ Five principles of effective investigation – independence, adequacy, promptness, public scrutiny and victim involvement – have been developed in the case law of the European Convention on Human Rights (Council of Europe Commissioner for Human Rights 2009; see also the Inter-American Commission on Human Rights 2009; UN Special Rapporteur on extrajudicial, summary or arbitrary executions 2010a).

At the national level, it is possible to identify several common features of police complaints reform. Some are briefly mentioned here.

Cycles of scandal and reform

Police complaints reform in national jurisdictions tends to be characterised by iterative cycles of mounting public concern with existing procedures; government appointment of inquiries to review procedures and make recommendations for reform; introduction of new legislation to address identified concerns; and inception of new structures and procedures.

Complainants serve as the principal reform catalyst

The tendency of governments has been to neglect the interests of complainants and exclude them from the complaints and reform processes. Campaigns led by victims of police abuse, supported by civil society opposition to, and international criticism of, cultures of impunity, contribute significantly to public concern with the effectiveness of complaints and misconduct procedures throughout the reform cycle.

Police scepticism of non-police procedures

Police officers, organisations and representative bodies have been vehemently opposed to the introduction of IPCBs and non-police procedures. As police professionalism has developed, and para-military forces have become more public-facing services, complaints have become an important indicator of public trust and confidence in the police. With this

²⁵ See, for example, *Velasquez Rodriguez v Honduras*. Series C, No 4, Judgment of 29 July 1988 (1989) 28 ILM 291; *Gayle v Jamaica* (2005) IACHR, Report. No. 92/05, Case 12.4181; *Jordan v UK* (2001) 37 EHRR 5; *Nachova v Bulgaria* (2006) 42 EHRR 43; *Ramsahai v Netherlands* (2008) 46 EHRR 43.

²⁶ See, for example, *Aksoy v Turkey* (1997) 23 EHRR 553; *Stefan Iliev v Bulgaria* [2007] ECHR 53121/99.

trend police opposition has declined and some now welcome citizen oversight. However, scepticism of non-police involvement in internal affairs remains the norm.

Separation of complaints and misconduct processes

In response to increasing demands for greater independence in complaints systems, separate processes have been introduced and maintained for the purpose of handling allegations of misconduct that have been raised a) externally, normally in the form of a complaint by a member of the public and b) internally, following referral of an officer by his or her line manager for investigation to an internal affairs or professional standards department. Whereas police have been required to relinquish some of their responsibilities for the complaints process, the same is rarely the case with regard to discipline.

Historical cases problematic

There are several types of scenario where failure to address historical allegations of misconduct may undermine the credibility of a police complaints system. For example, in some jurisdictions amnesty laws that have protected officials suspected of abuse (see, for example, *Gomes Lund v Brazil*²⁷) have been held to be an obstacle to progress following regime change. Alternatively, policy reform may be delayed as a result of conflict about how to address the past (Hammarberg 2013). In the absence of the agreement of politicians to address the past, an IPCB may struggle to investigate an historical case associated with political conflict (Committee on the Administration of Justice 2011).

Public prosecutor problematic

Police officers and prosecutors work together as members of core criminal justice agencies. In jurisdictions where the police investigate crime and forward reports to the prosecuting agency, their close working relationship may contaminate the judgment of a prosecutor required to determine whether proceedings should be brought against a law enforcement official. Additional problems may arise in jurisdictions where responsibility for criminal investigations rests with a public prosecutor. The public prosecutor may object to the granting of criminal investigation powers to IPCB investigators on grounds that this would interfere with the principle of equality before the law and the expectation that all citizens, including police officers, will be subject to identical procedures. In these circumstances the 'quis custodiet ipsos custodes' conundrum translates as 'who investigates the investigators'.

Whatever the particular problems faced by an IPCB in their attempts to develop effective procedures in practice, it is certain that progress will have been, and continue to be, difficult and slow.

III. Types of police complaints mechanism

There has been much scholarly interest in police complaints modelling (Kerstetter 1985; Goldsmith 1988; Perez 1994; Prenzler & Ronken 2001). Five principal types of police complaints mechanism in operation around the world are identified here: internal police; Ministry for police; public prosecutor; ombudsman; citizen oversight (see, Smith 2010). As a consequence of developments in human rights law, briefly described above, complaints systems have been developed that comprise a separate mechanism to investigate cases of death and serious injury, on the one

²⁷ [2010] Inter-Am Court HR (ser C) No 219, judgment 24 November 2010.

hand, and less serious complaints, on the other: it is not uncommon for several mechanisms to operate in one jurisdiction.

Internal police

Universally, police services investigate allegations of misconduct internally in accordance with widely accepted standards of self-regulation. Internal police departments, variously named internal affairs, complaints and discipline or professional standards units, investigate allegations against officers and manage disciplinary proceedings. With one notable exception (the Police Service of Northern Ireland, see further below), procedures for handling public complaints are integral to the internal disciplinary process. Internal police mechanisms may be an effective means of expeditiously resolving complaints. However, police complaints systems that rely solely on an internal mechanism tend to be widely criticised as ineffective and non-compliant with human rights standards, and are associated with undemocratic and unaccountable policing methods that do not command public trust and confidence.

Ministry for police

In many jurisdictions, a separate section has been established to investigate police complaints in the government department that has responsibility for policing (sometimes with a general brief to tackle corruption in public services). Thus, some independence has been introduced to the complaints system, although the mechanism remains firmly within the hierarchy of responsibility for policing. Conflict between the same department's responsibilities for law enforcement and enforcing the law against police officers, combined with a tendency to rely on seconded police officers, means that this type of process has been subjected to similar criticisms as internal mechanisms.

Public prosecutor

The existence of a separate police prosecuting authority within the public prosecutor's office, which has powers to investigate criminal allegations against police officers and conduct prosecutions, is common in Scandinavian countries (for example, the Norwegian Bureau for the Investigation of Police Affairs²⁸). A rationale for this mechanism is that it offers protection against the risk to independence and impartiality posed by close working relations between police and prosecutors in standard criminal proceedings (see above). The special prosecuting authority only has jurisdiction over complaints alleging the commission of a criminal offence. If, following the preliminary investigation of a complaint, there is no evidence suggesting criminal liability the complaint is referred back to the police for determination. The scope and effectiveness of this type of mechanism has not escaped criticism and an IPCB was established in Denmark in 2012 (see Table I.: an independent commission also recommended creation of an IPCB in Norway (Smith 2010)).

Ombudsman

The Ombudsman is a respected international institution with responsibilities for handling complaints against public officials in many countries around the world. Ombudsmen rarely have investigative powers and often serve as intermediaries between complainants and investigators. They are widely considered inadequate to deal with complaints against the police, with whom they work closely on a large number of complaints. However, in the

²⁸ <http://www.spesialenheten.no/Mainpage/tabid/5240/language/en-GB/Default.aspx>.

absence of IPCBs or other non-police procedures, the Ombudsman gives individuals access to an important independent complaints mechanism.²⁹

Citizen oversight

At the heart of citizen oversight mechanisms, which are also known as independent, external and civilian oversight mechanisms, is the simple principle that police should be scrutinised by non-police. IPCBs, with different administrative structures, governance arrangements and powers, have been set up for this purpose. Structurally, IPCBs can be separated out into two types according to whether they are under the direction and control of a single individual, for example the Police Ombudsman for Northern Ireland, or a group of individuals co-ordinated by a chairperson, for example the Independent Police Complaints Commission for England and Wales. Whichever IPCB structure is adopted, and there are benefits of each, it is important that provision is made for the representativeness of the decision-making process. In regard to governance, it is important that the appointment, accountability and allocation of powers of the members of an IPCB are not influenced by the police or those within government that have responsibilities for policing.³⁰ Ideally, IPCBs should be constituted as non-departmental government bodies that report and answer to a parliamentary or legislative committee. A range of powers are available to IPCBs,³¹ and whether they have powers to review police investigations of complaints or conduct their own investigations distinguishes the two principal types. Early IPCBs established with review powers have been replaced in several jurisdictions by new statutory bodies provided with investigative powers. The Independent Police Complaints Council for Hong Kong and the Independent Police Complaints Board for Hungary currently stand apart as two IPCBs without powers to investigate. When established in 2008, investigative powers were available to the Hungary IPCB, then known as the Independent Police Complaints Commission. The Police Service for Northern Ireland appears to be the only service that does not handle public complaints and refers all complaints to the Office of the Police Ombudsman for Northern Ireland. The service does have a Professional Standards Department that investigates internally raised allegations and conducts misconduct and poor performance proceedings.

Despite the creation of IPCBs in several jurisdictions, criticism of the effectiveness of procedures has continued as a result of their inadequate resources and /or powers, and lack of will in the face of police scepticism. A professionalization reform agenda in England and Wales, which has already seen the creation of a College of Policing and introduction of elected Police and Crime Commissioners, is also focussing attention on matters relating to the regulation of police conduct. In a bold new move, a recent Independent Police Commission (2013), recommended that the Independent Police Complaints Commission should be replaced by an independent regulatory body with responsibilities for complaints and internally raised allegations of misconduct.

Conclusion

The introduction of IPCBs has not proved to be a panacea to the problems associated with regulating police behaviour, and complaints and misconduct continue to be a developing area of police policy. A recognizable international reform trend that commenced with the

²⁹ Although now a little dated, on the role of the Ombudsman in handling complaints against the police in European states see de Boer & Fernhout (2008).

³⁰ Bodies introduced in South Korea since 1990 (Nalla & Mamayek 2013) have not been identified as IPCBs in this paper because of the role played by the Korean National Police Agency in their formation and determination of responsibilities.

³¹ (Prenzler & Faulkner (2010) identify 11 core powers that are important to the effectiveness of an ideal counter-corruption body.

introduction of independent review mechanisms and, then, the creation of independent investigation mechanisms, now appears to be moving in the direction of incorporating regulatory principles and practices.

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