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# OVERSIGHT MECHANISMS OF THE POLICE:

an overview of current tendencies





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# Oversight Mechanisms of the Police

An Overview of Current Tendencies

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## **1. Introduction**

Providing effective and legitimate security to its population is the most basic function of a government, with the police being the central institution tasked with this function. Police agencies are the most visible institutions of the criminal justice system and are empowered to enforce what the law defines as right and wrong behaviour (Hough et al., 2010). To accomplish these objectives, the police are granted with the power to employ force during times of peace. Enforcing power and law inherently and inevitably involves discretion and decision making. Any democratic government has the duty to provide security that is effective, transparent, and accountable to its citizens. As such, first and foremost, police institutions need to be able to reduce insecurity while bolstering its own accountability (Millen & Stephens, 2011).

Due to current changes in society that include technological advances and rapid urbanization processes, policing practices have changed over recent years. Some of these changes include a growth in coercive police powers, the deployment of new policing technologies, the development of highly trained and heavily armed combat units and the blurring of the traditional distinction between civil policing and security (Walsh & Conway, 2011). However, these powers also give the police ample opportunity to violate human rights and abuse their authority and government resources. In a democratic society, the use of police powers, which may be frequently invasive, not only leads to tensions between the police and citizens, but also puts their rights and freedoms in peril if such powers are not controlled. This type of abuse can lead to police brutality, fatalities while in detention, torture and other cruel treatment, extrajudicial executions, forced disappearances, and the excessive use of force, notably during protests. Therefore, it is essential that the police force is accountable to government agencies and to the public. The European Code of Police Ethics (2001) establishes that "The police shall be accountable to the state, the citizens, and their representatives." Accountability is important because it influences the decision-making process of police officers and influences policy design and implementation (Cronin & Reicher, 2009). Moreover, understanding police functioning is not only relevant because they oversee the protection of citizens but because the police comprise a central part of the government. As such, conclusions about how just and law-abiding the police is can be generalized to other government agencies (Beetham, 1991), which makes it central to the study of governance.

### **1.1. What is an Oversight Mechanism?**

Accountability refers to the framework for legal and financial reporting, organizational structure, strategy, and other practices that make it possible for any organization to be held accountable for their actions. It is how citizens enforce the social contract and maintain government power within limits. For this study, accountability is defined as a system of



internal and external checks and balances aimed at ensuring that the police carry out their duties properly and are held responsible if they fail to do so (UNODC, 2011).

In the latter half of the 20th century, the tradition of oversight mechanisms increased in reaction to many commissions of inquiry and exposés of police officer misbehaviour, corruption, and criminal activity (Prenzler & Ronken, 2001; Smith, 2009). Police accountability functions in two levels, the first, refers to holding the police agencies accountable for the services they deliver (e.g., such as crime control and maintaining order in society) the second refers to holding individual police officers accountable for how they treat citizens (e.g., use of brutal or deadly force and discriminatory behaviour) (Hope, 2020). These types of mechanisms are meant to uphold police integrity, deter all types of misconducts, including but not limited to cases of corruption, and restore or create public confidence between the police and the public.

The methods or procedures that deal with instances of police misbehaviour are referred to as the police oversight model. Police misconduct cases may be handled internally or by an outside body or institution. Oversight bodies have been created with differing models and powers, and there are diverse police accountability mechanisms across the globe (Varaine & Roché, 2023). These agencies and institutions carry a range of mandates and deal with many different areas of policing, such as human rights violations, police corruption, corporate management, and complaints against individual officers. In broad terms, police is monitored and held accountable on the achievement of three different goals, i) its effectiveness (level of performance in accordance to their mandates), ii) its efficiency (the resources expended and the capability of reaching those mandates), and iii) its integrity (how the police upkeeps laws and rules, respects human rights, avoids corruption, among others) (African Policing Civilian Oversight Forum, 2008). This research focuses on oversight models that tackle the latter objective. Different actors that represent various groups are required for an effective police accountability system. There are many layers to contemporary democracies, including the legislature, the judiciary, civil society actors, and independent oversight bodies such as national human rights institutions.

There is limited empirical research on the effectiveness of police oversight models (Mugari, 2021). While many western high-income democracies have several mechanisms for oversight of the police that include an active citizen role, it is not clear to what extent these oversight mechanisms exist and are effective in new or emerging democracies (Nalla & Mamayek, 2013) and requires further research. As such, the aim of this research is to critically review the current policing oversight bodies and mechanisms that are used around the world with a preliminary focus on low- and middle-income countries and the global south.

This research is based on systematic review methodology with a high-level overview of secondary research. It provides an exhaustive summary of mechanisms related to a particular research topic (i.e., oversight mechanisms of the police) and carefully identifies, chooses, and

evaluates all relevant evidence. Systematic reviews formulate research questions that are broad or narrow in scope, and in this case, identify and synthesize mechanisms that directly relate to the systematic review question. Such reviews may be published as a research outcome and are relevant since they produce a broad map of the evidence that may be used for applications beyond the author's originally intended purpose.

This report is organized in the following way, first, it presents a brief overview of the creation of oversight police models. The section is followed by presenting internal and external oversight bodies and examples of mechanisms used from countries around the world. The report is followed by a discussion section with its main findings and recommendations, and conclusions.

## 2. Literature Review

Few topics in police governance have generated more initiatives, analysis, and debate in recent decades than the handling of citizen complaints against the police (Walsh & Conway, 2011). The history of police accountability dates to the latter part of the twentieth century, during which several commissions of inquiry were set up to tackle police misbehaviour, corruption, and criminal activity, such as: the Knapp Commission (1972) and Mollen Commission (1994) in the United States and the Scarman Report (1981) in the United Kingdom (Mugari, 2023). In particular, since the introduction of the Police Complaints Board for England and Wales in 1977, non-police oversight bodies have been set up in European countries such as Belgium, France, Hungary, and Ireland (Porter, 2013). In recent years the trend of implementing police oversight models has expanded substantially, for example, in the US, nearly 80% of all law enforcement agencies have some form of citizen oversight mechanism in place (Walker, 2005) and in the top 20 democracies in the world over 60% of them have police oversight mechanisms that include civilians (Nalla & Mamayek, 2013).

Throughout time, different authors have argued for and against different models of police accountability and typologies (Finn, 2001). For example, three agencies of police supervision were recognized by Attard and Olson (2013): investigative agencies, auditing or monitoring agencies, and review boards and commissions. In turn, Stone, and Ward (2000) identified the following three levels of police accountability: internal or departmental control, government control and social control. Prenzler and Ronken (2001) argued against what is referred to as the 'internal affairs model' which involves traditional mechanisms such as accountability to the law and elected officials and proposed two external tools of accountability. First, the 'civilian review' model that involves independent auditing of internal investigations and disciplinary decisions, and the 'civilian control' model entails genuinely independent investigation and adjudication. However, in broad terms accountability systems can be mapped in two blocks, internal and external accountability systems. Internal accountability systems (also known as internal affairs model) exist when the police department is responsible for receiving complaints alleging misconduct of police officers and procedures. Despite several criticisms of this model, such as lack of objectivity, it has been implemented by most police organizations. In this model, police managers are in full control of handling complaints and audits, and the norm was to handle investigations internally.

The trend to 'external review', which alludes to outsourcing reviews of police complaints, increased in the early 1990s particularly in the US and Europe. Since then, external accountability systems, mainly guided by the judiciary and independent bodies, were created to carry out impartial investigations. Regarding specifically civil oversight mechanism, the first entity was recognized in 1948. However, the concept of civilian oversight of law enforcement dates to 1931, when the National Commission on Law Observance and Enforcement issued a report suggesting that "every locality" should have an agency to which citizens could report police abuse (Fairley, 2020). Both the Council of Europe's 2001 recommendations (i.e., the

‘European Code of Police Ethics’) and the High Commissioner for Human Rights in 2009 indicated that these independent oversight models are a desirable standard.

There are very few empirical studies that have researched the quality, capacity, and impact of oversight mechanisms. A recent systematic literature review on police accountability mechanisms found that the number of empirical studies was very low. Further, in these publications, the amount of methodological information is very limited (Feys, Verhage and Boels, 2018). Another study of 20 countries, found a deep heterogeneity across countries and divided the mechanism between specialised (that focuses only on police, have limited formal independence and more abundant resources) and non-specialised (that focuses on all the public administrations, have strong formal independence and limited resources) agencies (Varaine and Roché, 2023). Furthermore, all studies are based on a secondary analysis of published information. Others have stated that external police oversight is spreading but that we do not know whether such a system is in fact efficient (FC Harris, 2013). As such, there is an urgent need to evaluate accountability programs, and study police accountability more frequently, particularly in an evidence-based manner.

### **3. Results**

This section offers an overview of the main police oversight models used around the world and explains the ways in which internal and external control contribute to police accountability. Brief examples of what has or has not worked in different countries are presented. According to a recent report of the Council of Europe, for a police oversight system to be effective there are several pillars that need to be in place, these are: internal oversight, executive control (policy control, financial control and horizontal oversight by government agencies), parliamentary oversight (members of parliament, parliamentary commissions of enquiry), judicial oversight, independent bodies such as national human rights institutions; and, civil society oversight (Byrne & Priestley, 2017). The different processes and institutions complement each other, and there may be some overlap regarding their objectives and purposes. This section presents the results of the review of the most common oversight mechanisms of the police.

#### **3.1. Internal Control within the Police**

Internal control mechanisms provide an essential tool for police management to deliver an efficient, disciplined, and effective police service, and is considered the first level of control in any police accountability system. Under this model, the police department is responsible for receiving complaints of alleged misconduct of police officers, practices, and procedures. Internal accountability is associated with characteristics such as organizational responsibility, supervision, performance evaluations, codes of conduct and the disciplinary system (Guittet, Vavoula, Tsoukala, & Baylis, 2022).

It has become a fairly common practice that police departments establish internal affairs units to conduct investigations into police misconduct. These units are usually staffed by supervisory or senior level personnel, whose task involves conducting investigations of wrongdoings by fellow police officers. The main functions of these bodies are to i) address the grievances of complainants, ii) identify police misconduct, and where appropriate, provide evidence in support of criminal proceedings and disciplinary measures and iii) adapt and avoid future police misconduct cases (Kessing, 2018). These types of departments have several strengths, for example, they can provide quick resolution for complainants and provide resources and experience throughout the investigative phase of the process. Additionally, during internal investigations, police officers could be more willing to assist other law enforcement personnel and talk with their peers (England, 2009). Examples of such units exist in several countries, to mention one, in Greece, the Police Department of Internal Affairs<sup>1</sup> conducts internal investigation and is the body in charge of ensuring the integrity and professionalism of the Greek Police. Other jurisdictions have more complex internal controls, for example, Hong Kong has a two-tier system to deal with police misconduct claims. The first

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<sup>1</sup> For more information, see: <https://cutt.ly/OwRvzKya>.



step is an internal police unit known as the Complaints Against Police Office (CAPO)<sup>2</sup> and acts as the complainants' main point of contact. The unit oversees complaints about police behaviour or any practice that the police have implemented. The second stage involves the Independent Police Complaints Council<sup>3</sup>, a statutory entity entrusted with overseeing CAPO investigations and assessing their conclusions but without direct investigative authority.

Three key points must be in place for successful internal control mechanisms. First, a clear set of professional and integrity standards. Indeed, integrity in public administration is crucial. The literature confirms the importance of integrity rules in public administration and offers useful guidance for these types of reforms. The benchmark publication in this area is the OECD's Guidelines for Managing Conflict of Interest in the Public Service (OECD, 2003). Specifically, to provide clear guidance on the exercise of policing duties and powers, police institutions must develop comprehensive professional standards which are known as codes of conduct. Codes of conduct, however, are usually not enough and must be complemented with a code of ethics<sup>4</sup>. These codes usually set out the integrity standards for the police and help give guidance to police officers facing ethical dilemmas and contribute to a better identification, analysis, and resolution of such ethical problems. These codes are integrated into all the processes of the police force, including recruitment, training, and promotion processes.

Second, the internal control should be based on continuous supervision and monitoring. Internal accountability is not only a procedure or policy that is performed at a certain point in time but a continually operating, integrated system at all levels within an organization (Haron, Jeyaraman, & Chye, 2010). Main goals of continuous supervision and monitoring are to check that police procedures adhere to the law, and integrity standards as well as spot unethical or illegal behaviour daily. Effective supervision and monitoring can be achieved through a range of procedures that include record keeping and reporting processes, internal audit instruments, procedures for tracking the use of firearms, among others. Thirdly, internal reporting and disciplinary tools need to be in place. Effective accountability requires a proper complaints system that is easily accessible to the public. Further, the system must be able to examine complaints, suggest disciplinary measures, and send cases for criminal prosecution in a swift manner.

However, this type of oversight presents substantial tensions and challenges that include low levels of independence and impartiality, timeliness of the process, and transparency (Guittet, Vavoula, Tsoukala, & Baylis, 2022). For example, in Kenya, the Internal Security Minister is the only one with the power to appoint or dismiss members of the Police Oversight Board, which creates serious conflicts of interest (Alston, 2010). Because of its nature, internal mechanisms are susceptible to bias (Diaz, 2009). In any system of purely internal accountability, there is a

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<sup>2</sup> For more information, see: <https://cutt.ly/9wRvz8wN>.

<sup>3</sup> For more information, see: <https://cutt.ly/8wRvvrM2>.

<sup>4</sup> The European Code of Police Ethics (2010) is recognized and promoted as a model code internationally.

strong temptation to 'look after one's own' and protect other police officers, what is commonly known as 'capture theory'<sup>5</sup>. For example, the Knapp Commission in New York City that was established to fight police corruption, showed the failure of internal procedures due to the chronic inability of police officers to investigate their colleagues (Prenzler, 2000). Several authors have emphasized the incapacity of police officers to impartially investigate their peers, as such, police departments have frequently been accused of not treating complaints against police officers with the same rigour as in regular criminal investigations. Importantly, within the police organisation itself there can be tensions between the views of police management on what is necessary, and those of police personnel on what is fair.

Because of the nature of the model, effective internal control mechanisms are hard to implement in societies where corruption is widespread or where there are low levels of respect for the rule of law. For example, in several countries of Latin America, the police force is considered to be highly corrupt. According to Ungar (2013, p. 1,195): "In much of Latin America, police chiefs tend to block efforts that expose internal problems. In the middle ranks, police station commissioners have limited authority over basic tasks, such as personnel assignments, and little or no power to tackle the corruption endemic in their ranks. And at the lowest level, officers receive little or no anti-corruption training during their training as cadets in a pedagogical system that fails to incorporate those values and norms. New officers find themselves cowed into complicity with corrupt colleagues, with little recourse beyond internal affairs offices designed (not very effectively) for civilian complaints, with few if any channels for internal whistleblowing." More specifically, in countries such as Brazil, there is evidence that the police have destroyed crime scenes, intimidated witnesses, and fabricated evidence to hide their involvement in homicides (Force, 2009).

Under corrupt organization, internal models need to be backed by substantial resources and political will to succeed in their goals. In short, policing scholars have argued that internal mechanisms whereby only the police can investigate the police are flawed, incomplete, and as such, have little credibility with either complainants or the public. In consequence, other tools have been created to control the police, in particular external control mechanisms.

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<sup>5</sup> Capture theory explains the poor performance in regulation mechanisms because of techniques by which the group being regulated subverts the objectivity and co-opts the regulator. The regulator prioritizes the special interest of a group or institution over the general interests of the public.

## **3.2. External Control of the Police**

Many jurisdictions have created external police oversight mechanisms to address problems of police misconduct and the deficiencies inherent to purely internal control systems (Prenzler, 2000). Without an external oversight mechanism, police are essentially left to control and rule themselves. In those cases, victims are often reluctant to even report abuses directly to the police for fear of reprisals, or simply because they do not believe a serious investigation will be carried out. Further, in extreme cases such as intentional unlawful killings, purely internal complaint and investigation avenues make it far too simple for the police to cover up wrongdoings, to assert that killings were legal, to refuse referring cases for criminal prosecution, or to impose minimal disciplinary measures for serious offenses (Alston, 2010).

### **3.2.1. Executive Oversight**

The police are hierarchically a part of the executive, in consequence, the executive has direct capacity to modify police actions. The executive, in most cases through the Ministry of Interior, has the power to establish security principles and policies, as well as senior staff selection, reporting systems, determining the overarching policies for recruitment, performance indicators, promotions and training, and budget management. Due to the confidential and sensitive nature of security activities, ministers with direct access to the president should be tasked with the oversight of police institutions. However, although the executive has direct power over the police, it generally does not carry a function of 'oversight' as understood in this research (as is the case with other external actors in the accountability system). It may, however, scrutinize the police through inspectorates, which in general are tasked with assessing police compliance with the law and codes of conduct (Murdoch & Roche, 2013). As such, instead of looking into specific instances of misconduct, most inspectorates instead concentrate on finding systemic problems and failures. In consequence of these investigations, the executive may opt to introduce new policies, strategies and improve police accountability to address these problems.

The executive can also instrument other types of oversight bodies. In Slovenia, for example, the Ministry of Interior has the oversight mechanism of the police through the Police Internal Investigations Division<sup>6</sup>. This division oversees the guidelines of police and security policy, as well as monitors police performance, with an emphasis on protecting human rights and fundamental freedoms. To mention another example, in Austria, the Federal Bureau of Anti-corruption<sup>7</sup> is an independent agency that addresses police misconduct and abuses. This agency reports to the Federal Ministry of the Interior and its main tasks are the verification of complaints, probable causes for their penal relevance, and anti-corruption cases.

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<sup>6</sup> For more information, see: <https://cutt.ly/1wRvvg71>.

<sup>7</sup> For more information, see: <https://cutt.ly/owRvxxsM>.

### **3.2.2. Judicial Oversight**

The judiciary's primary responsibilities regarding the security sector are to determine whether its acts are compliant with the constitution and laws and if they violate human rights. The courts rule over all criminal cases, and it also presides over cases in which police personnel have broken the law. Judiciary institutions include criminal investigation and prosecution services, civil and criminal courts. Judicial oversight into policing matters have emerged in recent years as another primary instrument of police accountability and is considered to be effective. For example, in Zimbabwe, the court is an effective institution of police accountability, using mainly the following mechanism i) deciding on the propriety of police actions, ii) presiding over criminal cases in which police officers are implicated and iii) presiding over civil suits against the police (Mugari & Olutola, 2017). Unlike other oversight mechanisms, the inquiries of the judiciary do not offer immediate remedies for police abuse and corruption, they are simply tools for gathering information. These inquiries can contribute substantially to the wider goals of transparency and accountability.

Authors have argued that police accountability systems are not complete without a judicial oversight (Biswas, 2012), which has the legal authority to exert ex-ante, continuing, and ex-post supervision and monitoring over the police. The ex-ante (or accountability before the act) refers to judicial authorization such as reviewing the legality, necessity, and proportionality of investigative methods that keep police inquiries within the bounds of the law and norms. For example, a warrant clause requires that the police demonstrate to a neutral magistrate that it has probable cause before it conducts a search. Further, warrants promote information flow between different branches of the government, and between the government and the public which increases transparency (Bloch-Wehba, 2021). Continuing or ongoing oversight refers to prosecutors directly conducting or supervising criminal investigations. In these situations, the prosecutors have a responsibility to examine the legality of police actions over the course of an inquiry and keep an eye on how the police personnel are abiding by human rights law. Ex-post supervisions happen when police activity constitutes or is suspected to constitute a violation of the criminal code. In such circumstances, the judiciary can investigate, prosecute, judge, and sentence the police officers involved. Additionally, it can play a role in providing routes to victims of police misconduct, mostly through civil proceedings. Ireland is well known for having some of the strictest rules and standards towards the police from the judiciary. For example, if any evidence is obtained in breach of the constitutional rights of a suspect, the evidence is automatically excluded at a trial, unless there are extraordinary excusing circumstances justifying its admission (Daly, 2011). In contraposition, for example, in England, the common law allows for the admission of all evidence, no matter how it was obtained. It is worth mentioning that although the general rule is that any relevant evidence is admissible

regardless of how it was obtained, section 76 of Police and Criminal Evidence Act<sup>8</sup> of 1984 highlights that the way confessions are gained can affect the admissibility of the evidence.

Judicial inquiries bring their own challenges and limitations. Firstly, there is a limit to police powers that are subject to ex-ante judicial control, governments normally only oversee police activities that are thought to be the most invasive, such as electronic surveillance. Further, the secret nature of specific police undercover work is typically not placed under ex-ante judicial control. This type of operatives and strategies are coordinated within the police agency and respond to judicial authorities only after the fact happened. Moreover, in many criminal justice systems, the prosecution and the police cooperate closely making it difficult for prosecutors to investigate the offences of police officers whom they have worked with, or to effectively scrutinize police compliance with human rights during an investigation. As a final point, judges may be hesitant to reject law enforcement's investigation methods, especially for sensitive cases such as those related with terrorism or organized crime. These are only some examples of how the relationship between these agencies limit the ability of the judiciary to effectively oversee the police. Countries have attempted to reduce these challenges by, for example, assigning specialized prosecutors for investigating offences by the police.

It is important to note that according to the literature, even the most successful courts are unable to effectively supervise police abuses or human rights breaches. First, monitoring is expensive, and courts seldom have the funds to supervise the implementation of their rulings. Instead, to carry out court orders, the executive branch and its agencies are frequently used by courts. Second, it is unlikely that all citizens have equal access to the legal system, therefore, many abuses can escape the eye of the judiciary (Hu & Conrad, 2020).

### **3.2.3. Parliamentary Oversight**

Oversight is one of the main functions of parliaments, in addition to representation, law making and control over the budgeting process. Further, an effective monitoring of checks and balances of the executive by the parliament is an indicator of good governance (Luciak, 2016). The parliament oversees all the public security sector that includes the armed forces, the police, gendarmeries, intelligence services, border guards, customs and immigration authorities, prisons, probation services, among others. The basic principles of parliamentary oversight are legality, accountability, transparency, participation, and responsiveness to the citizens. In turn, the key actors within the parliamentary system that contribute to oversight are parliamentarians, political parties, parliamentary committees, parliamentary ombuds institutions, and parliamentary research services.

Similar to judiciary, parliamentary oversight takes place in three stages, ex-ante, ongoing and ex-post oversight. At a first stage, the ex-ante parliamentary oversight responsibilities include

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<sup>8</sup> For more information see the Police and Criminal Evidence Act 1984, available at: <https://cutt.ly/SwRvxWVD>.



developing or amending legislation that regulates the behaviour of security forces and control its expenditures. This is perhaps the most important tool of parliamentary oversight, the capacity to establish a legal framework on policing that is in line with international laws and human rights standards (DCAF, 2008). In addition, the parliament has other ex-ante tools that include hearings, budget oversight approval, and in some countries, parliaments approve appointments of the most senior law enforcement positions. As a way of example, in Belgium, the Court of Audit<sup>9</sup> provides external review of the police budget and reports to the parliament. In Indonesia and the Philippines parliamentary committees conduct field visits that are utilized to bring attention to an issue, gather information, review the situation on the ground, gather evidence, and possibly expose corruption or ineffective policy (Aguja & Hans Born, 2017).

Ongoing oversight refers to parliamentary committees mandated to oversee the police. These committees are the core actors for parliaments' oversight role and vary in types (e.g., standing committees and commissions of inquiry), size, and rules on membership and leadership. Parliamentary oversight committees typically perform the oversight functions and report to the full parliament. A broad distinction can be made between countries like Argentina, Australia, South Africa, and the United States where legislators themselves oversee security and intelligence matters through a committee, from countries like Belgium and the Netherlands where a committee is established outside the parliament (whose members are not legislators) but report to the parliament. The House of Representatives of Thailand, for example, has a committee that focuses especially on the police. The activities of these committees include requesting reports by the police, holding parliamentary hearings, summoning members of the executive and law enforcement agencies to testify, launching parliamentary investigations and conducting inspections of police facilities. In Poland, for example, the parliament sets the legislative framework to regulate the security sector and determine policy principles, it also establishes its budget and supervises its implementation. The Polish parliament also has its own committees that exercise control over specific functions, such as the country's territorial and civil defence (DCAF, 2008). Finally, some parliaments have ex-post oversight by establishing, for example, an ad hoc parliamentary inquiry commissions, often after a police scandal caused a significant reaction from the public (Caparini & Marenin, 2004).

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<sup>9</sup> For more information, see: <https://cutt.ly/HwRvxPoM>.

*Table 1: Examples of the Parliamentary Function in Police Oversight*

<b>Parliament Function</b>	<b>Example of Activities</b>
Legislative Function	<ul style="list-style-type: none"><li>- Reviewing the legal framework of the police.</li><li>- Enacting and amending laws relevant to the police, including police service law.</li></ul>
Budget Control Function	<ul style="list-style-type: none"><li>- Approving, rejecting, or amending the budget of the police service.</li><li>- Scrutinising the effectiveness of the police.</li><li>- Analysing if the police is properly funded.</li><li>- Reviewing audit reports on the expenditures of the police.</li></ul>
Oversight Function	<ul style="list-style-type: none"><li>- Scrutinising top appointments within the police.</li><li>- Reviewing the rules of engagement of the police.</li><li>- Conducting special parliamentary inquiries.</li></ul>

*Source: own elaboration based on Aguja and Hans Born (2017).*

In many countries, parliaments have established independent offices, commonly called ombudsmen or public defenders, national human rights institutions, anti-corruption and financial audit bodies, and data-protection commissioners (Aguja & Hans Born, 2017). These bodies act on the parliaments' behalf and investigate complaints concerning actions of the public administration. However, the mandate of these parliamentary oversight bodies varies considerably. For example, Sweden has a Parliamentary Ombudsman<sup>10</sup> that deals with complaints against the police and ensures compliance with the law, and that public sector institutions do not infringe basic rights of the citizens. There are four parliamentary Ombudsmen that are appointed directly by the Riksdag and are completely independent in their decision making, and report only to the Riksdag. Similarly, the South African National Assembly has a permanent committee called the Portfolio Committee on Police<sup>11</sup> that is tasked with effectively using legislative, budgetary, and monitoring powers to oversee the police. The Netherlands, in turn, has the Parliamentary Bureau of Research<sup>12</sup> that supports budget control through analysing and assessing police budgets and the Court of Audit<sup>13</sup> that verifies the police accounts and reports to the parliament.

Except for specific bodies, parliamentary oversight has important limitations. In many cases, the members of the parliament do not have the necessary expertise to understand police

<sup>10</sup> For more information, see: <https://cutt.ly/hwRvxJhj>.

<sup>11</sup> For more information, see: <https://cutt.ly/SwRvxVr7>.

<sup>12</sup> For more information, see: <https://cutt.ly/awRvx3DP>.

<sup>13</sup> For more information, see: <https://cutt.ly/1wRvctM4>.

functioning, new investigative methods, or new forms of crime. In other cases, such as in Indonesia, the parliament lacks the power to summon witnesses, especially top-ranking government executives. Additionally, parliamentarians are susceptible to abuse their position and power to gain favours from the police.

### **3.2.4. Independent Oversight Bodies**

International normative instruments have underlined the necessity for an efficient and impartial agency to oversee police misconduct. Independent oversight institutions are critical components of the accountability landscape in modern democracies. Scholars have established several benefits of independent oversight bodies to society, for example, discouraging police misconduct, ensuring an accessible complaint process, delivering fair and thorough investigations, enhancing transparency, and improving public trust (Hope, 2020; Guittet, Vavoula, Tsoukala, & Baylis, 2022).

Independent bodies, firstly, emerged in countries where the police have seriously abused its powers, such as Northern Ireland, South Africa, or Brazil. In Northern Ireland, the Police Ombudsman for Northern Ireland<sup>14</sup> was created to deal with complaints from Loyalist and Republican communities. Importantly, the institution is free from any police, governmental or sectional community interest. These institutions may have a broad or narrow mandate, for example, Human Rights Commissions usually deal with wide range of issues such as discrimination, freedom of speech and assembly, fair trial as well as police related arrest and detention issues. In turn, ombudsmen take petitions and complaints from members of public, investigate, and resolve matters in dispute (Pyo & General, 2008). A relevant case is the MacPherson Report in the UK in the late 1990s that showed institutional racism in the London Metropolitan Police, leading to significant changes in training, crime-scene investigation, and officers' supervision (Holdaway, 2003). Today these institutions are common, for example, in 2022, 25 European countries out of 27 member states have an independent police oversight body.

The range of activities of these institutions is ample, they may range from receiving complaints of police abuse, imposing disciplinary measures, researching broader studies on police conduct, and proposing police service reforms to the government. This type of organization can help support internal accountability mechanisms and improve the relationship between the police and the public as well as building community trust with the police force. For example, in Bulgaria, the National Ombudsman<sup>15</sup> oversees dealing with complaints of maladministration against the police, and in any action that violates the rights and freedoms of citizens. Any public institution is obligated to provide the ombudsmen with all the information it should require carrying out their work. The ombudsman is a supreme independent constitutional body elected by the parliament for a period of five years. The

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<sup>14</sup> For more information, see: <https://cutt.ly/MwRvcd3y>.

<sup>15</sup> For more information, see: <https://cutt.ly/hwRvclsA>.

Netherlands, for example, has the National Ombudsman<sup>16</sup> which is appointed by the Dutch House of representatives and its existence is constitutionally guaranteed since 1999. The ombudsman is an independent public authority that handles complaints against all administrative agencies including the police and other parts of the criminal justice system. A different type of model within this category is for example, the Police and Community Safety Partnerships of Northern Ireland<sup>17</sup>. This body is made of political members (councillors), independent members appointed by the Northern Ireland Policing Board and representatives of other bodies that include the Police Service of Northern Ireland, Northern Ireland Housing Executive, Probation Board for Northern Ireland, Youth Justice Agency of Northern Ireland, Health and Social Care Trusts, Education Authority, and Northern Ireland Fire and Rescue Service. The body is tasked with several duties such as engaging with local communities on issues of concern in relation to policing and community safety, monitoring the performance of the police and enhancing cooperation between the public and the police.

These types of institutions have been successful, for example, the ombudsmen of São Paulo, tracked down homicides that indicated the involvement of death squads, and used this information to expose impunity of police killings (Human Rights Watch, 2009). According to the European Court of Human Rights (2009) there are five key principles necessary so that independent bodies can carry out an effective investigation of complaints, these are: independence of investigators, capacity to gather adequate evidence that the investigation is conducted promptly after the incident, and that it allows for public scrutiny and victim involvement in the investigative process. However, since there is a significant variation on the type of bodies, duties, resources, and capabilities that these institutions have, there is very limited evidence that indicates how efficient and effective these bodies are.

### **3.2.5. Oversight by Civil Society**

Looking across the broad array of civil society models and systems there are important differences. Civil society is a broad concept that encompasses all the organizations and associations that exist outside of the government (including political parties) and the market and where collective actions by citizens develop around shared interests and values (Carothers & Barndt, 1999). Civilian oversight of the police champions the principles of accountability, transparency, as well as independence from the police and for these reasons, are considered as central parts of accountability. While civilian oversight for police accountability is commonly found in police agencies in Western and in high income countries, this concept is fairly new to many emerging democracies and countries progressing from conflict (Hope, 2020).

External civilian oversight is an essential counterpart to other accountability mechanisms. However, their oversight functions are more indirect than the mechanisms previously

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<sup>16</sup> For more information, see: <https://cutt.ly/BwRvcvAT>.

<sup>17</sup> For more information, see: <https://cutt.ly/iwRvcETu>.

mentioned, since they do not have a formal mandate to investigate police actions which is also its main weakness. Thus, despite civilian oversight’s increasing prevalence, its success is often the subject of debate. Another challenge commonly cited is the sustainability and transparency of these agencies (Fairley, 2020).

Civilian oversight can investigate, monitor, advise, review, and audit the police (see Table 2). For example, in some countries parliamentary committees invite NGOs specialized on policing for their expert input and can influence how policies are designed and implemented (Mugari, 2018). Further, civil society can monitor the police through open sources and collect information on police practices and complaints and share the information with the wider public through blogs, conferences, and advocacy campaigns.

*Table 2: Examples of Models and Activities*

<b>Model</b>	<b>Example of Activities</b>
Investigation	<ul style="list-style-type: none"> <li>- Directly receives complaints from the public about police misconduct.</li> <li>- Conducts independent investigations of complaints against police officers.</li> </ul>
Review	<ul style="list-style-type: none"> <li>- Reviews reports and records of completed police investigations.</li> <li>- Makes recommendations to the police regarding findings on investigations.</li> </ul>
Appeals	<ul style="list-style-type: none"> <li>- Complainants and accused officers not satisfied with outcomes can appeal.</li> <li>- Appeals body may comprise both civilian(s) and police.</li> </ul>
Auditor/Monitor	<ul style="list-style-type: none"> <li>- Conducts systematic reviews of police policies, practices or training and recommends reforms.</li> <li>- Promotes broad organizational change by making recommendations for improvement.</li> </ul>

*Source: own elaboration based on Hope (2020).*

An example of such institution is the Organized Crime and Corruption Reporting Project (OCCRP)<sup>18</sup>, which is a platform that carries out transnational investigative reports to expose organized crime and corruption worldwide. Another example is the Police Review Board<sup>19</sup> in Anaheim, California. The Board is comprised of volunteers and is involved in the department’s

<sup>18</sup> For more information, see: <https://cutt.ly/wwRvcDYP>.

<sup>19</sup> For more information, see: <https://cutt.ly/zwRvcCXd>.



review of any major incident. Furthermore, it reviews current and proposed police department policies, and reports statistics on officer-involved shootings, uses of force, and complaints. Surveys have shown that support for civilian oversight of police continues to grow (Harris, 2005; Fairley, 2020). However, some limitations of these types of mechanisms may exist, centrally, an insufficient support from the political leadership, lack of authority to directly discipline the police, inadequate access to documents and information and the limited access to resources (Hope, 2020).

#### 4. Discussion

According to the UN Code of conduct for Law Enforcement Officials (1979) every law enforcement agency should be accountable to the community. Different countries have different systems in place for monitoring the executive branch and its numerous agencies. While some nations have given supervision authority to already-existing organizations, other countries have created external bodies with the specific purpose of looking into and supervising complaints made against the police like ombudsmen or national human rights institutions.

There are advantages and disadvantages to both internal and external police accountability mechanisms. External oversight mechanisms are probably seen as having greater credibility and legitimacy by the public, but they have a lower chance of uncovering widespread police misconduct or corruption without the support of the police administration and other government authorities. Further, in general terms they lack the necessary investigative capabilities especially when forced to function within an exclusive police culture (UNODC, 2011). It may be added to the potential adverse effects of external independent machinery on police morale and the reduction in the capacity of police management to assert their authority. In turn, internal mechanisms often lack the support of the public since it is a general belief that the police, particularly police managers, will protect their own. These mechanisms are only as effective as the commitment of police managers and high-ranking officers to tackle misconduct and corruption. Moreover, police authorities are often reluctant to expose large-scale misconduct cases because of its overall effect on the image of the entire force.

It is important to mention that a combination of the above-mentioned institutions also exist, as is the case in Armenia, where the Human Rights Defender<sup>20</sup> is competent to deal with complaints against the police. The Human Rights Defender is an official institution that protects human rights and fundamental freedoms violated by government institutions. This institution may bring cases before the court and recommend authorities to bring criminal or disciplinary cases against police officers. The country has another institution, the Special Investigation Service, that is an independent body that operates as Armenia's anti-corruption agency (including corruption within the police) and answers to the Prime Minister. The Philippines, in turn, has four kinds of police oversight mechanisms: Human Rights Commission<sup>21</sup>, the Presidential Anti-corruption Agency<sup>22</sup>, Ombudsman<sup>23</sup> and Specialized Police Complaints Organization<sup>24</sup>. Similarly, Hong Kong has several complaint and control bodies in place, specifically the Complaints Against Police Office (CAPO)<sup>25</sup> (which is a unit

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<sup>20</sup> For more information, see: <https://cutt.ly/mwRvc4A9>.

<sup>21</sup> For more information, see: <https://cutt.ly/gwRvvsqT>.

<sup>22</sup> For more information, see: <https://cutt.ly/swRvvzQM>.

<sup>23</sup> For more information, see: <https://cutt.ly/HwRvvW9q>.

<sup>24</sup> For more information, see: <https://cutt.ly/QwRvvPZJ>.

<sup>25</sup> For more information, see: <https://cutt.ly/ywRvvH8e>.

internal to the police), the Independent Police Complaints Council<sup>26</sup> (which is appointed by the chief executive to monitor CAPO), a Human Rights Commission<sup>27</sup>, an independent Commission Against Corruption<sup>28</sup> and an Ombudsman<sup>29</sup> (Pyo & General, 2008).

#### **4.1. Key Elements of an Effective Police Accountability System**

The literature has shown that no matter what type of mechanism, or combination of mechanisms, are in place, a certain criterion must be met for them to be effective. This section provides a brief overview of the most important principles that guide effective oversight models.

As a first requirement, an oversight mechanism should be provided with sufficient powers to be able to effectively reduce impunity for police abuses. Without independent investigatory powers, oversight bodies are forced to rely upon police investigations or police data, which can be inadequate because of police bias or corruption. Hungary has in place the Commissioner of Fundamental Rights<sup>30</sup>, which is a type of ombudsman that is responsible for the protection of fundamental rights and deals with complaints against the police. The institution can propose modifications to the relevant authority; however, the commissioner does not have the power to bring legally binding decisions, nor can he initiate proceedings in individual cases decreasing substantially its control capacity. Significant investigatory powers will also help increase police cooperation, which is essential for proper oversight functioning. Obstruction from a police force can considerably limit the ability of an oversight agency to properly investigate complaints, making this point more crucial.

Secondly, the effectiveness of the oversight mechanism is contingent on its independence. This characteristic is broadly recognized as a core principle and an essential element of effective oversight. The same risks of prejudice and corruption inherent in police internal investigations exist for an external mechanism unless they have complete operational and hierarchical independence from the police. Similarly, the effectiveness of these institutions depends on its freedom from the executive or from political interference. Further, in order to be considered independent, each member of the oversight board must be free from any improper political or personal affiliations and refrain from acting in a prejudiced, unfair, or corrupt manner. Following the principle of independence, in 2008, France established the Defender of Rights<sup>31</sup> which is the single authority competent to deal with complaints against the police. The Defender of Rights is an independent administrative authority enshrined in the 2008 Constitution and further established by the Organic and Ordinary Laws of 2011.

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<sup>26</sup> For more information, see: <https://cutt.ly/6wRvVcNcE>.

<sup>27</sup> For more information, see: <https://cutt.ly/AwRvV2YW>.

<sup>28</sup> For more information, see: <https://cutt.ly/3wRvV6y9>.

<sup>29</sup> For more information, see: <https://cutt.ly/kwRvVbung>.

<sup>30</sup> For more information, see: <https://cutt.ly/pwRvVbfz5>.

<sup>31</sup> For more information, see: <https://cutt.ly/uwRvVbcVt>.

Importantly, and a third central point, any oversight body must be adequately resourced and funded. Adequate resources are essential for allowing an institution to fulfil its mandate; however, the reality is that countries have limited resources both economic and human, that impacts the capacity of oversight. There should be sufficient resources to employ skilled investigators, and the agency should have the financial capacity to undertake investigations, which in many cases are costly. For example, in South Africa, due to funding deficits, the Independent Complaints Directorate has been forced to rely upon the South African Police Services for evidence and analysis, reducing its independence from the police and its capability to effectively report on the police (Alston, 2010). To avoid this issue, some jurisdictions have established a budgetary floor relative to the police department's budget. The Civilian Office of Police Accountability<sup>32</sup> in Chicago is a case in point. The budget floor of this institution is one percent of the Chicago Police Department's budget.

Related to the above point, adequate expertise is a key problem that affects public institutions in general, and oversight mechanisms in particular, in low- and middle-income countries. There is limited availability of capable human resources with sufficient administrative and technical experience to manage oversight programmes. Indeed, weak institutional capacity is linked to weak selection, training, and preparation processes of personnel (UNDP, 2011). For example, most countries in the Latin American region lack formal professional civil service preparation and experience a high proportion of political appointments among public officials (Grindle, 2010). Further, in many countries of that region, political leaders and parties use the public administration to build clientelist networks for electoral purposes (OECD, 2019). These types of clientelist bureaucracies end up having little capacity to exercise an active role in decision making and have low levels of independence (Echebarría & Cortázar, 2007). To solve this issue, research has shown that higher wages and job stability can have positive effects on public-sector hiring and attract more able applicants (Dal Bó, Finan & Rossi, 2013). Evidence also shows that improvements in wages and job stability can also change corrupt behaviour through civil service reforms, meritocracy-based recruitment, and human resources supervision (Evans & Rauch, 2000; Charron, Dahlström, Fazekas, & Lapuente, 2017). Fundamentally, a merit-based civil service recruitment system has the potential to help address these issues by increasing the know-how and capabilities of public servants, while at the same time decreasing clientelism, nepotism and possibilities of corruption (Dahlström, Lapuente & Teorell, 2012).

In addition to the above-mentioned characteristics, it is relevant that oversight models are accessible and transparent. These agencies need to be known to the public and be accessible to victims of police abuse. For example, Houston's Independent Police Oversight Board<sup>33</sup> has been criticized for its lack of transparency. Citizens have no means of knowing whether the Board ever disagreed with the police department in a disciplinary action since the Board is

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<sup>32</sup> For more information, see: <https://cutt.ly/vwRvbEK2>.

<sup>33</sup> For more information, see: <https://cutt.ly/3wRvbSGX>.

not permitted to publicize its conclusions. The same is true for the Oklahoma City Police Citizen's Advisory Board<sup>34</sup>, since the agenda, minutes and reports are unpublished, and members are not permitted to talk about their work (Fairley, 2020). For transparency to exist, at the most basic level, there is the need of availability, quality, and timeliness of information and data. Without data, policymakers cannot adequately design, implement, monitor, or evaluate effective policies. Although the quality of information varies among countries, in broad terms, crime statistics are inconsistent, insufficient, not timely and unavailable to the public in low- and middle-income countries. In particular, this relates to data about service performance and expenditure of the judiciary and the police (Di Tella, Edwards & Schargrodsky, 2010; Dammert, 2019). Without good data, it is difficult to understand the multiple factors associated with police functioning. Real-time data collection empowers government officials to spot problems in time and anticipate issues, and then make any necessary adjustments to public institutions. In the absence of good quality and timely data, policymaking can instead become reliant on intuition, past-experience, and other biases, all of which have been shown to have significant drawbacks and hamper institutional functioning (Esty & Rushing, 2007).

The literature shows that transparency and corruption are related. Corruption is another significant problem that hinders the impact of oversight mechanisms; however, corruption not only affects the police but the public sector in general. Recent research has shown that some specific policies are successful at reducing corruption, such as improving transparency by increasing access to information and open government policies, using technologies and e-government reforms, increasing integrity norms within public institutions and adequate civil servant salaries (IDB, 2020). Theoretical studies suggest that higher levels of transparency are necessary for lower levels of corruption (Cordis & Warren, 2014; Peisakhin, 2012; Peisakhin & Pinto, 2010). These theoretical arguments specify that officials who work in transparent governments realize that their actions are subject and accountable to public overview, therefore, they have little option but to behave according to the norms. Further, open government methods promote a culture of transparency, accountability, and access to information in the fight against and prevention of corruption (OECD, 2018). For example, a study from Alessandro et al. (2019) found that access to information increases trust in government, which in turn improves legitimacy. However, the association between transparency and corruption is unlikely to be simple, with some researchers contesting the link between the two (Escaleras, Lin & Register, 2010; Adam & Fazekas, 2018; Parra, Muñoz-Herrera & Palacio, 2019). Nevertheless, overall, the empirical literature favours the view that increased transparency is beneficial (Lindstedt & Naurin, 2010).

As a final point, understanding the context where these mechanisms need to be implemented and work is paramount. All police sector programs must be created to function in a context that varies due to the political systems, the legal frameworks, and the impact of various

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<sup>34</sup> For more information, see: <https://cutt.ly/XwRvbHPG>.



actors. As such, it is essential to understand that operational environments and interactions among actors occur in specific contexts, given the inherently political character of any government. For example, the effectiveness of legislative oversight can be extremely constrained in some countries, particularly in political systems with strict party discipline or where the legislative role has traditionally been marginalized relative to a very centralized executive (Enlgand, 2023). As such, adapting police oversight mechanisms to specific contexts and frameworks, and consequently understanding possible limitations and strengths of those contexts, will likely increase the effectiveness of these tools.

## **5. Conclusions**

At the heart of government functioning is the provision of security, thus, the police are a central part of any government. The police force is in charge of maintaining law and order, administering justice properly and safely, while ensuring that everyone's fundamental rights are respected and maintained. Safeguarding such an environment is only possible if government institutions respect the basic precepts of democracy and the rule of law, which include effective oversight over the police. As such, a different system of checks and balances that help avoid and control police abuse of authority is a fundamental part of a democratic systems. Such checks may be carried out by either internal or external controls mechanisms.

The topic of police accountability has grown in importance over the past decades. Many countries have reformed their public sector to meet the public demand for more transparent and accountable police. According to the World Bank (2002) effective institutions are those that can provide a high-quality public service and that have a high degree of independence from political influence. To ensure good governance, understanding the way to improve accountability in the public sector in general, and in the police sector in particular, is essential. This report has shown the main oversight mechanism used around the world, with several examples that appear to be successful. The research shows that an effective internal accountability system has a clear set of professional and integrity standards, a continuous supervising and monitoring system, internal reporting and disciplinary tools and political support from high-ranking police officers. In turn, effective external accountability mechanisms need to be independent from other government institutions, retain political neutrality, have sufficient investigative powers and human and economic resources, and need to be accessible and transparent to the public. Additionally, where needed, police forces should undergo a carefully planned reform process where police officers are professionally trained in accordance with the highest standards of democracy and human rights.

This report has also shown that there is little empirical research on the oversight mechanisms of the police and its effectiveness, particularly in low- and middle-income countries. Therefore, academics, civil society, and practitioners should gather efforts to understand why and how, and under which contexts certain oversight mechanisms work or fail. What this research has shown is that accountability of multiple structures at multiple levels of control,

seem to be the most effective way to oversee the police. No single accountability structure is sufficient; rather, several structures at the internal, governmental, and societal levels are all necessary to improve police functioning.

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