

Police accountability and policing oversight mechanisms in the Southern African Development Community

Cephas Lumina^{*}

The police enjoy unique and special powers in the furtherance of their duties. Depending on how these powers are used, they may either protect or violate human rights. Therefore the exercise of police power requires that it should be used responsibly. Over the years, however, the involvement of police and other law enforcement officials in systematic abuses of human rights and attendant police 'cover ups' in many countries have underscored the need for oversight of their actions. This article surveys the various mechanisms for policing oversight in countries within the Southern African Development Community.

^{*} Dr Cephas Lumina is a senior lecturer in the Faculty of Law (Howard College Campus), University of KwaZulu-Natal, Durban.

Introduction

The police are given unparalleled and special powers in the furtherance of their duties, including the power to detain and to use force. Depending on how these powers are used, they may either protect or violate human rights. Consequently, the exercise of police power requires that it should be used responsibly. In short, accountability is an inherent aspect of professional policing.

Over the years, however, the involvement of police and other law enforcement officials in systematic abuses of human rights and attendant police ‘cover-ups’ in many countries has underscored the need for oversight of their actions.¹ Significantly, such practices have raised questions about whether law enforcement agencies are capable of unsupervised self-regulation; whether the police can police themselves and deal effectively or appropriately with unethical conduct such as corruption or misuse of force.² In particular, concern has been raised about whether police can impartially investigate allegations of abuse of power involving one of their own.³

Although historically many countries have been content to allow the police to keep their own house in order, with limited external oversight administered by the courts and the government, public concern over questionable police practices has led to experimentation with and adoption of various methods of non-state (civilian) oversight and control.⁴ Civilian oversight is a method of police accountability that is premised on, *inter alia*, the inability or unwillingness of the police to police themselves in a manner acceptable to the public, and the latter’s belief that independent investigation of police conduct is fairer and more objective.⁵ As an external review mechanism, civilian oversight offers an independent forum where victims or witnesses of police abuse may file complaints or give evidence at hearings concerning the event complained about. It also offers an opportunity for citizens to influence broader policy concerning law enforcement.

This essay surveys the various mechanisms for policing oversight in countries within the Southern African Development Community (SADC) and offers some suggestions about oversight in the region based on a brief review of other global practice.

Policing oversight: A brief historical sketch

It is difficult to state with precision when the earliest attempts at policing oversight were made, but is fair to say that the question of holding police to account has preoccupied societies since ancient times. Thus, for instance, the Roman satirical poet Decimus Junius Juvenalis asked: “Who will guard the guardians?” Soon after his appointment as Home Secretary in Britain in 1822, Sir Robert Peel appointed a select committee to consider policing in London. The committee expressed the view that, “it is difficult to reconcile an effective system of policing with that perfect freedom of

action and exemption from interference which are the great privileges and blessings of society in this country”.⁶

These comments provide an indication of public concern about police accountability, yet they are not reflective of civilian oversight of policing as it is now known. Civilian oversight involves people external to the police assuming a role in holding the police to account for their actions.

Although civilian oversight of policing is now an established part of policing in many parts of the world, it does not have a long history in English-speaking countries. Traditionally, in many of these countries external oversight of the police has been administered by the courts and government. In the United States of America (USA), attempts at civilian oversight of the police began in the 1940s, but became firmly established only in the 1970s and after.⁷ Almost three-quarters of the police departments in the largest US cities have some form of civilian oversight. In Australia, Canada and the United Kingdom, civilian oversight of the police emerged in the 1970s and 1980s.⁸ In other countries, such as India and South Africa, efforts at incorporating civilian oversight mechanisms as part of police reforms started in the 1990s.⁹ There are now many varieties of civilian oversight around the world.

The functions of policing oversight

The general purpose of policing oversight is to ensure that police are accountable for the performance of their tasks. In this regard, civilian oversight mechanisms perform a variety of functions, including conducting independent investigations, reviewing policy, providing information to the public, community outreach, and creating early warning systems.¹⁰

Independent investigations

Many civilian oversight mechanisms conduct independent investigations of complaints into police conduct or provide some kind of input into such investigations.¹¹ The nature and ambit of these investigations vary: some oversight bodies have the power to hold hearings and to subpoena witnesses. The power of subpoena is particularly important as a full investigation into a complaint may only be possible where witnesses can be called upon to testify, sometimes under threat of legal sanction. An investigation may be hampered by a refusal to cooperate on the part of either the police officer or officers concerned¹² or a member of the public.

Review of policy

An important aspect of policing oversight is the ability of oversight bodies to scrutinise police policies and procedures, and to make recommendations in respect thereof.¹³ The purpose of this

process – called policy review – is to prevent the proliferation of public complaints in the future by identifying problems beforehand and recommending corrective action to improve policing and thus reduce complaints. This function has been referred to as the ‘learning’ function of policing oversight.¹⁴ Policy review also serves to provide a forum for public discussion of police practices and a formal mechanism for recommending policy changes.¹⁵

According to Human Rights Watch, in places where oversight agencies have pushed for specific reform and seen them implemented, public trust in both the oversight body and the police department has been enhanced.¹⁶

Public information

It is generally accepted that the lack of information about government tends to sow distrust and suspicion among citizens. In view of the historical secrecy of police departments,¹⁷ the provision of information to the public concerning the police and the complaints process is considered one of the most important functions of oversight mechanisms. This information itself serves as a kind of oversight and accountability. Oversight bodies are able to collect and disseminate information that would otherwise be unavailable to the public.

Community outreach

Community outreach by civilian oversight bodies involves speaking to community groups, informing the public about police complaints processes, and receiving information about community concerns. This is especially important among communities that have a high degree of distrust and fear of officialdom, including the police. Community outreach is a vitally important component of an effective civilian oversight mechanism.

Early warning systems

A recent development in policing oversight has been the creation of what are referred to as ‘early warning systems’. These are designed to identify police officers (‘problem-prone’ officers) who are the subject of large numbers of complaints. Research in the US indicates that “in virtually every police department a small percentage of officers receive a disproportionate share of all complaints”.¹⁸ An early warning system provides an ‘effective response’ to the problem of those members of the police organisation who seem to have a problem dealing with members of the public in a professional manner.

Corrective intervention usually takes the form of counselling or retraining by supervisory officers, changes of assignment, closer supervision, and meetings with superiors. Counselling is designed to be informal, non-punitive and separate from the normal disciplinary procedures.

It has been asserted that civilian oversight mechanisms can play a significant role by recommending the adoption of an early warning system where one is not already in place, and establishing and maintaining its own early warning system through its access to complaints data.

The issue of independence in policing oversight

One of the most controversial issues in policing oversight is the question of the independence of the oversight body. A key objective of civilian oversight is to ensure an independent review of complaints by citizens concerning police action. ‘Independence’ refers to independence from the internal police department procedures; it is designed to “enhance the credibility or legitimacy of the complaints process in the eyes of the community”.¹⁹

Whether or not a particular mechanism is in fact independent is a matter for debate. There is no formula for defining or measuring independence. Thus, a mechanism may be independent of the relevant police department in terms of its formal organisational structure, but community perceptions may be that it is not truly independent. The perceived independence of a civilian oversight mechanism may depend to a large extent on the personality of the person who holds the key office in it.²⁰

Policing oversight mechanisms in SADC: An overview

This section provides an overview of oversight mechanisms that are commonly used in SADC countries. It should be noted, however, that examples of similar mechanisms can be found all over the world, although the terminology employed may be different. Further, there are important variations among oversight mechanisms with respect to organisational structure, mission and function.²¹ Before surveying the policing oversight mechanisms utilised within the SADC region, however, it is useful to outline the legal basis for oversight.

The legal basis for policing oversight

There are a number of international and human rights standards that provide the legal basis for policing oversight in the SADC region. The most notable of these are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘the Convention against Torture’), and the African Charter on Human and Peoples’ Rights (‘the African Charter’). All of these instruments provide for a number of rights which are not only affected by the lawful exercise of police powers (including the rights to liberty and fair trial, the right to privacy, freedom of assembly, association and movement, the prohibition of arbitrary arrest

and detention, the prohibition on torture, and the right to life), but also effectively place limitations on the exercise of police powers. In addition, the ICCPR, the Convention against Torture and the African Charter all impose *legally* binding obligations on the states parties to take ‘effective’ legislative and other measures to give effect to the rights guaranteed therein.²² The Convention against Torture not only enjoins the states parties to take “effective legislative, administrative, judicial or other measures to prevent acts of torture” within their territories but also obliges them promptly and impartially to investigate all allegations of torture.²³ All of these provisions have implications for police accountability and arguably provide the international legal basis for policing oversight.

The international legal obligation to investigate allegations of torture and ill-treatment is firmly established in the jurisprudence of the various human rights supervisory mechanisms. For example, in *Assenov v Bulgaria*²⁴ and *Labita v Italy*²⁵ the European Court of Human Rights found violations of Article 3 of the European Convention of Human Rights (prohibition on torture) where allegations of torture had been made by the applicants, even though no physical evidence of torture had been produced, and the state had failed to investigate these. The court held that the prohibition on torture taken together with the general obligation of states in Article 1 of the convention to “secure to everyone within their jurisdiction the rights in the Convention” imposed an obligation on the states parties to investigate all allegations of torture or ill-treatment. In *Zeleya Blanco v Nicaragua*²⁶ the Human Rights Committee emphasised the state’s duty to investigate allegations of torture or ill-treatment.

It is notable that all SADC member states are parties to the ICCPR and the African Charter, both of which include the prohibition of torture and ill-treatment. With the exception of Angola and Tanzania, all SADC states have ratified the Convention against Torture. Consequently, they have assumed legal obligations not only to respect the rights protected under these instruments but also to investigate all allegations of torture and ill-treatment by the police within their territories. Conducting state oversight and facilitating non-state oversight of the police is one way in which these states can fulfil this international obligation.

Other international standards relevant to the policing function are the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990. The latter enjoins governments and law enforcement agencies to adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. Although these are not legally binding standards, member states of the United Nations (which all SADC states are) are expected to respect them.

At the sub-regional level, in 2001, the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) adopted a Code of Conduct for Police Officials which recognises that

“Ethical standards, in particular, human rights norms, are an important tool in the professionalisation of police forces/services everywhere and in SARPCCO member countries.”²⁷

The police organisations of most states are created by the national constitutions and are governed by specific police legislation. Some of this legislation is outdated, however, and cannot deal effectively with the challenges of policing in modern democracies.²⁸ Further, most legislation has been overtaken by constitutional and human rights developments, including the democratic requirement for transparency, accountability and respect for the rule of law.

Internal oversight mechanisms

Internal investigation

Many countries, including several within the SADC region, have internal police investigatory mechanisms in which the police themselves investigate complaints of wrongdoing by fellow police officers.²⁹ These mechanisms are generally provided for in terms of regulations governing the police and usually entail the receipt, investigation and disposal of complaints by sworn police officers assigned to a police department’s ‘internal affairs’ unit or office. In South Africa, for instance, the police service has various systems for monitoring standards and receiving complaints from the public, including a complaints investigation section and inspectorate in the Office of the National Police Commissioner.³⁰

In Malawi, any police officer who, *inter alia*, “offers or uses unwarranted personal violence to or ill-uses any person in his custody” is deemed to have committed a disciplinary offence. Such an offence may be investigated and the errant officer punished.³¹

A variation of an internal investigatory procedure is the ‘inquiry file’ utilised in a number of countries.³² In Zambia, for example, when a complaint is lodged concerning a wrongful death or torture, the commanding officer in charge of the police station concerned may open an ‘inquiry file’ on the incident involving officers under their command. They can also order disciplinary action if the situation so warrants. However, there is no mechanism to ensure that a commanding officer opens an inquiry. Should an inquiry file be opened and completed, it is transferred to the provincial commanding officer who then determines whether to formally charge the police officer or officers concerned with a criminal offence or offences. Ultimately, the Director of Public Prosecutions determines whether the police officer will be prosecuted.

It should be noted that internal investigatory mechanisms are generally considered less independent than other mechanisms. According to Amnesty International, such mechanisms in place in some SADC states are generally ineffective:

[T]hey fail to meet the needs of victims of human rights violations in ensuring the confidentiality of their complaints and providing security against reprisals. They do not inspire trust in the people they are meant to serve. They are not transparent and there is little public awareness of the procedures for making complaints.³³

In similar vein, after a study of internal affairs investigations in several cities in the USA, Human Rights Watch concluded that:

[I]nternal affairs units conducted substandard investigations, sustained few allegations of excessive force, and failed to identify, or deal appropriately with, problem officers against whom repeated complaints have been filed. In many cases, sloppy procedures and an apparent bias in favour of fellow officers combine to guarantee that even the most brutal police avoid punishment for serious violations until committing an abuse that is so flagrant, so unavoidably embarrassing, that it cannot be ignored.³⁴

It clear, therefore, that ineffectiveness of oversight mechanisms internal to the police is not a problem unique to SADC countries.

Police standing orders

In most SADC states, the head of the police service is empowered, subject to enabling legislation and in consultation with or subject to the direction of the minister concerned, to issue standing orders with respect to the discipline, regulation or orderly conduct of the police.³⁵ For example, Standing Order 251 of the South African Police Service (SAPS) requires a member of the service to report a shooting incident, that an investigation into the incident should take place and that a shooting incident report is compiled indicating whether the degree of force employed by the police officer is legal or not.

Other internal mechanisms

Other oversight mechanisms internal to the police include disciplinary procedures (commonly provided for under police regulations), counselling systems, and recruitment and training.

In Angola, police officers may be subjected to disciplinary action in terms either of the Disciplinary Regulations of 1996 or a person's rights under the law if they are alleged to have committed a breach of duty. Possible sanctions may include reprimand, imprisonment without trial or dismissal from the police force. In Malawi, the Police Bill of 2003 establishes a standing National Police Disciplinary Committee and other police disciplinary committees subordinate to it. The functions of the former include the reviewing of the decisions of the subordinate committees and the hearing

and determination of appeals against these decisions. In South Africa, the Police Services Discipline Regulations of 1996 provide for an internal disciplinary system and procedures through which incidents of police misconduct are to be handled.

Counselling of police officers through post-trauma debriefing systems is employed within SAPS. This is considered an oversight mechanism in that it may influence the manner in which police officers use force. For example, excessive use of force may result if a police officer is traumatised by a particular incident or incidents. This system enables some evaluation of the police officer concerned.

As an oversight mechanism, police recruitment and training affects the functioning and accountability of police services. Thus, ineffective or poor training or selection of unsuitable candidates may contribute to poor policing practices.

External oversight mechanisms

Public prosecutors

In some countries, police officers have been prosecuted by the office of the Director of Public Prosecutions for their involvement in violations of human rights. In Angola and Mozambique, the Procurator-General (prosecutor) plays a direct role in the complaints process against the police and is able to receive complaints of police abuse directly or through trial procedures. It is notable, however, that the effectiveness of the public prosecutor's office as an oversight mechanism is often limited by a lack of resources and political will to prosecute in some cases.

Commissions

In a number of SADC countries (including Mauritius, Tanzania, South Africa and Zambia) human rights commissions have been established with broad human rights mandates, including the handling of complaints alleging violations of human rights on the part of the police. For example, in Zambia, the Permanent Human Rights Commission established in 1996 has the power to investigate allegations of human rights violations (including torture) by the police.³⁶ The commission may investigate on its own initiative or on receipt of a complaint or allegations by individuals or groups, or others acting on their behalf. However, its findings lead only to recommendations which have no legal force, although the government and its agencies are expected to act on them.

In Mauritius, the National Human Rights Commission established in 2001 has power to oversee internal investigations into complaints against the police. Other powers include referring human

rights violations or criminal offences to the Director of Public Prosecutions and visiting places of detention, including police stations.

Ombudsman offices

The office of ombudsman also provides independent oversight of police in some countries.³⁷ The ombudsman (who may be an individual or group of persons) has the primary function of protecting the rights of individuals who claim to be victims of unjust acts on the part of the public administration. An ombudsman receives complaints from members of the public and investigates these when they are within its legal competence. Typically, it will act as an impartial mediator between the aggrieved individual and the public body concerned. In addition to acting on complaints received, an ombudsman may commence investigations on its own initiative.

It is notable, however, that in some countries, the ombudsman is rendered ineffective by the lack of resources or by national legislation limiting its role. For example, in Botswana, the Ombudsman Act of 1995 prohibits the ombudsman from investigating any state security-related action or investigating crimes. In similar vein, Section 9 of the Zimbabwean Ombudsman Act prohibits the ombudsman from investigating any action taken by the president or his personal staff.

Botswana, Namibia, South Africa (Public Protector), Zambia (Commission for Investigations), and Zimbabwe all have ombudsman offices.

Complaints bodies

A number of SADC states have established independent oversight and investigation bodies. In South Africa, the Independent Complaints Directorate (ICD) established in 1997 may launch investigations into serious incidents – notably deaths in custody or resulting from police action – on its own initiative, or upon receipt of a complaint arrest police officers suspected of offences, and refer cases for prosecution. Other less serious complaints are referred to the police for investigation subject to monitoring by the ICD. It is also under a statutory obligation to submit regular reports to be tabled in parliament. A number of shortcomings have been identified, however, including that its executive director is appointed by the Minister of Safety and Security, who is also responsible for the police, and the ICD is funded by the Ministry.

In Zambia, a Police Public Complaints Authority established in 1997 has handled more than 800 complaints against the police since its establishment. However, the authority is only allowed to make recommendations. In Malawi, the Police Bill of 2003 establishes an Independent Police Complaints Commission to receive and investigate complaints by members of the public against police officers and the police service in general. The commission will

also investigate deaths or injury as a result of police action, and death and injury occurring in police custody

Police service commissions

Although police service commissions are generally established to look after the welfare and conditions of service of police officers, arguably they can play an important oversight role. For example, in terms of Section 55(2) of the Zimbabwe Police Act of 1995, the Police Service Commission may, after consultation with the national police commissioner, carry out an inquiry or investigation into the practices of the police force. There is a provision, however, that no evidence, documents, records or information may be obtained without the consent of the commissioner if it relates solely to “the nature of the investigations or prosecution of a particular criminal offence”. This may impact negatively on the significance of the commission inquiry as an oversight mechanism.

Parliamentary committees

It is standard practice among the national parliamentary bodies within SADC and elsewhere to conduct business through, *inter alia*, permanent (standing) and ad hoc (select) committees. The main purpose of these parliamentary committees is to conduct inquiries into specified matters, which include receiving public submissions, hearing witnesses, sifting evidence, discussing matters and making recommendations. An important function of parliamentary committees is to scrutinise government activity including legislation, the conduct of public administration, and policy issues. They therefore can play a vital policing oversight role. Among others, the parliaments of Namibia, South Africa and Tanzania all have standing committees on matters relating to defence and/or security under the auspices of which the performance of the police services may be scrutinised. For example, in February 2005, the South African Parliament’s Safety and Security Portfolio Committee held a strategic planning workshop which identified the need to develop a standardised monitoring tool for visits of police stations to ensure more effective and coordinated oversight.

It is worth mentioning the role of the SADC Parliamentary Forum Project – an externally funded initiative – which seeks to enhance the capacity for effective parliamentary oversight within the SADC region.³⁸

Other policing oversight mechanisms in SADC

There are various other oversight mechanisms within the SADC states, including civil law suits, exclusion of evidence in criminal proceedings, inquests, media reports of events, and community policing forums.

Civil law suits are a common way of seeking police accountability. In many countries, individuals whose rights have been violated by the police can institute private legal actions against the police department or the state for compensation. The cost of private legal action is often prohibitive for many victims, however. This problem is compounded by the difficulty of obtaining, from the police, official evidence such as police station ‘occurrence books’ in which details of detained persons are recorded.³⁹

While victims of police abuse of power deserve compensation, civil remedies are generally inadequate as an oversight mechanism as they never address flawed police management, policies or patterns of abuse, nor do they hold the individual errant police officer financially responsible for the injury occasioned.⁴⁰

Another technique for ensuring police accountability is to be found in the rules regulating criminal procedure including arrest, detention, interrogation and the exclusion of improperly obtained evidence during criminal trials. By way of illustration, the South African Criminal Procedure Act 51 of 1977 stipulates the means of effecting arrest and procedures in obtaining search warrants, entering premises, and seizure or forfeiture of property connected with offences. Section 49 of the Act stipulates the degree of force to be used in effecting arrest. In some countries, such as Botswana, Malawi and Zambia, however, evidence (including involuntary confessions) is admissible as long as it is relevant.

In situations where a death is suspicious, an inquest can be held by a magistrate or other designated judicial official into the circumstances of a police killing at the request of the family of the deceased. Although such inquests can lead to the prosecution of police officers, this is not always the case. The purpose of an inquest is to establish whether a death was unlawful and, if so, to establish who was responsible. It is then up to the Director of Public Prosecutions to order the prosecution of those found to be responsible by the inquest.

Although they are not a formal oversight mechanism, media reports of police misconduct constitute an important supplement to oversight mechanisms such as investigations. In Zambia, for example, Amnesty International reported that many cases of police wrongdoing were brought to the attention of the Inspector-General of Police through media reports.⁴¹ The Inspector-General then initiated investigations and, where necessary, prosecutions of the officers found responsible.

Mention must also be made of the possibility of community policing playing an oversight role. Although generally established for a different purpose, community policing plays an oversight function, albeit a limited one.⁴² Community policing involves consultation between the police and local communities about police priorities. Community policing forums not only establish and maintain a partnership between the police and the local community but also promote communication and accountability of the police to the community.

In Malawi, the Police Bill of 2003 makes provision for community policing. In terms of Section 119 of the Bill, the police service must liaise with communities through community policing forums with a view, in part, to “improving transparency in the police service and accountability of the police to the community”.

An innovative mechanism proposed in the Malawian Police Bill is the ‘lay visitors’ scheme. The objective of this scheme is to enable members of the local community to observe, comment and report on the conditions under which persons are detained at police stations, and to observe the operation and practical implementation of international and national standards governing the welfare of persons in police detention, with a view to “ensuring observance by police officers of the human rights of the detained persons and securing greater public understanding and confidence in policing matters”.⁴³

Finally, it is widely acknowledged that non-governmental organisations play a crucial role in the promotion and protection of human rights. Though they operate subject to different mandates they can play a crucial oversight role through documentation of police abuses, advocacy for police reform and providing human rights training for police officers.⁴⁴ Their role in relation to police accountability varies and is usually undertaken in cooperation with national bodies such as human rights commissions or ombudsman offices.

In Malawi, for instance, the Centre for Human Rights and Rehabilitation has taken up cases of torture and other abuses of power with senior police officers and the Ombudsman. In South Africa, the KwaZulu-Natal Campaign against Torture (a coalition of NGOs) monitored police holding cells in 2002 partly with a view to reducing the opportunities for torture of suspects by the police officers holding them. In Zambia, the Inter-African Network for Human Rights and Development (AFRONET), the Catholic Commission for Justice and Peace, and the Legal Resources Foundation have all played crucial monitoring roles which included the documentation of incidents of police abuse of power.

At the regional level, the Human Rights Trust of Southern African (SAHRIT) based in Zimbabwe has conducted a number of training programmes for police in the region in cooperation with the SARPPCO.

It should be noted that many non-governmental organisations in the SADC region tend to be poorly funded and generally lack the capacity to monitor abuses, particularly in rural areas. This militates against their effectiveness as oversight mechanisms. It is submitted, however, that such organisations should endeavour to focus more on other types of civilian oversight which are proactive and not exclusively concerned with police misconduct and are arguably less costly. Thus, for instance, they could focus on exercising influence and control over broader policing policy such as the making of senior appointments and setting of policing priorities.

Other global oversight practice: Lessons for SADC states?

The oversight mechanisms overviewed here are not unique to countries within SADC. There are other models of civilian oversight mechanisms elsewhere in the world, however, which civilian oversight organisations in the region may wish to advocate. In the USA, for example, one model used is the ‘auditor’ approach.⁴⁵ Within this approach, individual citizen’s complaints are received, investigated and finalised by the police department. The auditor conducts regular audits or investigations of the operations of the police department’s internal complaints investigation procedures and issues periodic public reports in which they recommend policy changes. It is claimed that this process can serve to identify investigations that are flawed in some way (for example, if they are not thorough enough, or there is possible bias in the interview as evidenced by hostile questions to the complainant and leading questions to the police officer under investigation). Another positive aspect of auditor systems is that “they avoid the backlog problem experienced by many review boards with broad mandates to examine each complaint and conduct hearings”.⁴⁶

The auditor system has been criticised, however, on the grounds that auditors cannot assist an individual who wishes to institute a complaint but is apprehensive about approaching the police department concerned. Further, auditors do not generally conduct independent investigations or hold hearings. Consequently, their work must always be supplemented by other oversight mechanisms.

Another mechanism represents a form of ‘appellate review’ of complaints by members of the public in which individual citizen complaints are received, investigated and disposed of by the police department. If the complainant is not satisfied with the final decision by the head of the police department, he or she may appeal that decision to a civilian oversight mechanism.

As stated above, non-state (civilian) oversight involves people outside the police gaining access to internal police mechanisms in order to hold the police accountable for their actions and policies. In that there are some aspects of policing oversight that the police may be in a better position to handle than outside bodies, it is best that internal and external mechanisms be mutually supportive or complementary to each other. An example of such a blending of internal and external oversight mechanisms is the Office of Independent Review – a group of six civil rights lawyers established by the Los Angeles County Board with power to participate in and help direct the sheriff’s department’s internal investigations of complaints against its officers.⁴⁷ The group then recommends a way of addressing the problem and may also recommend disciplinary action where this is warranted. While it may be too early to assess the effectiveness of this model, it can be argued that policing oversight in the SADC region could learn some lessons here.

Most of the policing oversight mechanisms outlined above tend to be reactive; that is, they focus exclusively on police misconduct. In general, there are few examples of proactive approaches to policing oversight. Given the specific circumstances of civil society in the SADC region, including the dearth of resources, it may be worthwhile to adopt proactive approaches to policing oversight which focus on identifying and addressing the underlying systemic problems within police organisations in the region. The advocacy experience of many civil society groups, particularly human rights non-governmental organisations, places them in a good position to play a key proactive policing oversight role.

Conclusion

This essay has presented an overview of policing oversight mechanisms adopted around the world with a specific focus on those commonly employed in countries within the SADC region. It is important that in determining what policing oversight mechanisms ought to be used, and when, all possible alternatives of policing oversight should be considered and the most appropriate selected. Further, in view of the limitations of the various oversight mechanisms outlined above and the problem of lack of resources in the region, it is useful to fuse internal and external mechanisms so that they complement each other and arguably enhance the prospects for more effective policing oversight.

Any civilian oversight mechanism should place human rights at the centre of its activities. After all, policing oversight seeks to hold police accountable for the performance of their duties so as to prevent threats to, or violations of, the human rights of the citizens that police are sworn to protect and serve. In similar vein, the police ought to recognise the centrality of human rights in their policing function and to accept that police culture is not immutable and isolated from external influences. As Chris Patten, chairman of the Independent Commission on Policing for Northern Ireland (ICPNI), observed:

We see the upholding of fundamental human rights as the very purpose of policing and we propose that it should be instilled in all officers from the start – in the oath they take, in their training and in their codes of practice and in their performance appraisal system.⁴⁸

Notes

1 Internationally publicised examples include the brutalising of Haitian immigrant Abner Louima and the fatal shooting of African immigrant Amadou Diallo by the New York Police Department and the attempted cover-ups in the late 1990s, and the torture and ill-

treatment, by six white police officers using vicious dogs, of three black Mozambican illegal immigrants in South Africa. See Patt Morrison, *Déjà vu all over again*, *Los Angeles Times*, 27 August 1997; and Graham Rayman, Code of silence challenge, Louima's lawyers

- accuse NYPD, PBA, *Newsday*, 7 August 1998 (the police union was alleged to have conspired with certain police officers involved in brutalising a Haitian immigrant to frustrate an investigation). See also W K Rashbaum, After ex-officer's conviction, challenging the blue wall, *New York Times*, 5 May 2002 (a report concerning an attempted cover-up in a case where a New York City police officer who had been binge-drinking struck and killed a pregnant woman, her sister and her young son with his patrol car); and US Department of State, *Country reports on human rights practices for 2000: South Africa*, February 2001, <www.usemb.se/human/2000/africa/south_africa.html> (21 September 2005).
- 2 According to Human Rights Watch: "It is rare, indeed, for a police department, on its own initiative and without public pressure, to take steps to improve conduct and enhance accountability for officers who commit human rights violations. For this reason alone, citizen review is essential." See Human Rights Watch, *Shielded from justice: Police brutality and accountability in the United States*, 1998, <www.hrw.org/reports98/police/index.htm> (1 May 2005).
 - 3 For example, Amnesty International has reported that "internal police disciplinary or investigation units for the most part are not sufficiently responsive to complainants". See Amnesty International, *Policing to protect human rights*, Amnesty International Publications, London, 2002, pp 5–6. Advocates of police reform have accused police organisations of being "hopelessly insular, endlessly self-referential, and mistrustful of outsiders". See M Bobb, *Civilian oversight of the Police in the United States*, <www.parc.info/pubs/pdf/SLUmerrickpaper.pdf> (1 May 2005).
 - 4 The terms 'citizen oversight', 'civilian oversight', citizen review' and 'civilian review' are commonly used. Different kinds of oversight are referred to as 'procedures', 'mechanisms', 'systems', and 'agencies'. This paper uses the term 'civilian oversight mechanism'.
 - 5 For a discussion of the various arguments advanced in favour of civilian oversight see Samuel Walker, *Police accountability: The role of civilian oversight*, Wadsworth, Belmont, Calif, 2001 (effectiveness of civilian oversight); Douglas W Perez, *Common sense about police review*, Temple University Press, Philadelphia, 1994 (enhances public confidence); and Jones, Newburn and Smith, *Policing and the idea of democracy*, *British Journal of Criminology* 36(2), 1996, pp 182–198 (democratic significance of civilian oversight).
 - 6 Quoted in Colin R Cramphorn, Human rights and policing accountability, in *Policing and Human Rights*, <www.psni.police.uk/prm_5-3-6cramphorn.pdf#search='history%20of%20policing%20oversight'> (27 April 2005).
 - 7 See Walker, op cit; see also A Goldsmith and C Lewis (eds), *Civilian oversight of policing: governance, democracy and human rights*, Hart, Portland, 2000.
 - 8 See Colleen Lewis, *Complaints against the police: The politics of reform*, Hawkins Press, Annandale, 1999.
 - 9 See generally Goldsmith and Lewis, op cit.
 - 10 See Report on oversight mechanisms of APD, <www.cabq.gov/council/abqrpt9.html> (30 April 2005).
 - 11 S Walker & B W Kreisel, Varieties of citizen review, *American Journal of Police* XV(3), 1996, pp 65–88.
 - 12 Police are said to adhere to an organisational 'code of silence' – the idea that "an officer does not provide adverse information against a fellow officer". See Human Rights Watch, *Shielded from justice: Police brutality and accountability in the United States*, 1998, <www.hrw.org/reports98/police/index.htm> (1 May 2005).
 - 13 See Walker and Kreisel, op cit, pp 65–88. See also Human Rights Watch, *Shielded from justice*, op cit.
 - 14 Perez, op cit, pp 76–81.
 - 15 See Report on oversight mechanisms of APD, op cit.
 - 16 Human Rights Watch, *Shielded from justice*, op cit.
 - 17 See generally E Bittner, *The functions of the police in modern society*, Oelgeschlager, Gunn & Hain, New York, 1980.
 - 18 See Report on oversight mechanisms of APD, op cit. See also Human Rights Watch, *Shielded from justice*, op cit.
 - 19 Perez, op cit, pp 74–76.
 - 20 See Richard J Terrill, Alternative perceptions of independence in civilian oversight, *Journal of Political Science & Administration*, 1980, pp 77–83.
 - 21 Walker and Kreisel, op cit, pp 65–88.
 - 22 International Covenant on Civil and Political Rights 1966, Article 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 2(1); and African Charter on Human and Peoples' Rights 1981, Article 1.
 - 23 Article 13.
 - 24 Application No 90/1997/874/1086, Judgment of 28 October 1998.
 - 25 Application No 26772/95, Judgment of 6 April 2000.
 - 26 Communication No 328/1988, Views of 20 July 1994.
 - 27 Preamble to the Code of Conduct for Police Officials, Southern African Regional Police Chiefs Cooperation Organisation, August 2001.
 - 28 Thus, for instance, the Special Law Commission appointed in 1999 to review the Malawi Police Act

recognised that the Act, which was enacted during the colonial era in 1946, was obsolete. The commission concluded that “the Act is ill-equipped to enable the police to effectively discharge the policing function in a democratic society”. See Malawi Law Commission, Report of the Law Commission on the Review of the Police Act, Law Commission Report No 9, July 2003, p 7.

29 For example, Lesotho (Police Complaints and Discipline Office); Mauritius (Complaints Investigation Bureau); Namibia (Police Inspectorate and Regional Complaints & Discipline Units); and South Africa (Complaints Investigation Section and Inspectorate in the Office of the National Commissioner).

30 For an analysis of the South African Police Service’s internal disciplinary system see G Newham, *Transformation and the internal disciplinary system of the South African Police Service*, Occasional Paper, CSVR, November 2000, <www.csvr.org.za/papers/papn.whm6.htm>

31 Police Act, Cap 13:10, Section 39.

32 These include Angola, Botswana, Mozambique (‘police command inquiry’), and Zambia (‘inquiry file’).

33 Amnesty International, Policing to protect human rights, op cit, p 52.

34 Human Rights Watch, Shielded from justice, op cit.

35 See, for example, Zimbabwe Police Act of 1995, Section 9; Malawi Police Bill of 2003, Section 8(1).

36 Human Rights Commission Act 39 of 1996.

37 The powers and functions of the ombudsman are usually set out in legislation, for example the

Commission for Investigations Act (Zambia); Public Protector Act (South Africa); and Ombudsman Act (Zimbabwe).

38 See <www.parlcent.ca/africa/southernafrica_e.php> (19 September 2005).

39 See Amnesty International, Zambia: Applying the law fairly or fatally? Police violation of human rights in Zambia, <<http://web.amnesty.org/library/Index/ENGAFR63001199?open&of=ENG-2F3>> (30 April 2005).

40 Human Rights Watch, Shielded from justice, op cit.

41 See Amnesty International, Zambia, op cit.

42 In South Africa, community policing was introduced in 1993 with a primary function of facilitating civilian oversight of police. However, research shows that while community policing forums have made an important contribution to building relationships between the community and the police, they have “neglected their key oversight role”.

43 See Malawi Law Commission, op cit, p 88.

44 For example, the Kenyan Human Rights Commission, a non-governmental organisation with a broad mandate has been documenting complaints against the police, running public campaigns to promote police reform and educating officers on human rights.

45 Human Rights Watch, Shielded from justice, op cit.

46 Ibid.

47 See E Phillips & J Trone, *Building public confidence in police through civilian oversight*, Vera Institute of Justice, September 2002, p 4.

48 Quoted in Cramphorn, op cit, pp 5–6.