



WOLA ■ WASHINGTON OFFICE ON LATIN AMERICA

THEMES AND DEBATES IN PUBLIC SECURITY REFORM

A manual for civil society

Internal Controls and Disciplinary Units

Rachel Neild

Themes and Debates in Public Security Reform

Introduction to the Series

The Washington Office on Latin America (WOLA) has monitored police abuse and U.S. and international police assistance since our founding in 1974. Peace processes and political transitions set the stage for efforts to reform public security functions, demilitarize internal security, professionalize police forces and increase democratic accountability for security policies. In El Salvador, Haiti and Guatemala, large-scale reform processes have been undertaken and have received significant support from the United States and the international community. More than any other region, Central America and Haiti have been a testing ground for international assistance for post-conflict security reforms.

As WOLA monitored the evolution of police reform in the region, we became convinced that the long-term consolidation of the police as a professional, effective, and apolitical institution depends on developing greater citizen involvement in and support for public security reforms. Reform processes are taking place in the context of dramatic increases in crime and face constant resistance and challenges from authoritarian sectors. Without a strong domestic constituency for police reform, these processes may founder. To support civil society organizations in the region seeking to engage with issues of citizen security, WOLA launched the “Advocacy Training Program for Police and Judicial Reform” in Central America in 1996 with support from PRODECA.

Themes and Debates in Public Security Reform aims to make the issues of public security reform more accessible to civil society organizations. This series examines selected key aspects of police reform, drawing on lessons from Central America, the United States, and the world. Each section frames the debates on the issues, provides examples of how issues have emerged and been resolved in different contexts, and offers examples of civil society advocacy for police reform. *Themes and Debates* also explores how key actors have affected police reform in various countries, including the role of international donors, national decision-making structures, and civil society. The series includes:

1. Police Recruitment
2. Police Training
- 3. Internal Controls and Disciplinary Units**
4. External Controls
5. Community Policing
6. Criminal Investigations
7. International Police Assistance

“Internal Controls and Disciplinary Units” was written by WOLA Senior Associate Rachel Neild and edited by Executive Director George Vickers. Thanks to WOLA staff William Spencer, Geoff Thale, Kelly Josh, Hugh Byrne and Rachel Garst for their insights and comments. Special thanks to Professor David Bayley for reading drafts of this report, WOLA intern Stacie Jonas for her research assistance, intern Nick Vaccaro for assisting with proofreading, and Program Assistant Laurie Freeman for editing, proofreading, and producing the series.

WOLA gratefully acknowledges the generous support of both PRODECA and the Ford Foundation, whose funding made this project possible.



INTERNAL CONTROLS AND DISCIPLINARY UNITS

Internal affairs departments -- the police of the police -- offer an important line of defense against corruption and abuse in a police force and provide a key measure of police authorities' will to hold their personnel accountable for abuse and other misconduct or inappropriate behavior. This section focuses on the specialized investigative functions within the police force that follow up on complaints of police wrongdoing.

Historically, in the United States, it was quite common for a police force not to have any specialized internal discipline unit. The McCone Commission, created following the violent police response to 1960s riots in Los Angeles, called on the force to create an internal review mechanism. (Similar recommendations also followed riots in other U.S. cities.) Previously, most police departments in the United States had dealt with complaints of police abuse informally, with local commanders attempting to pacify citizens and investigate the allegations as their time permitted. Today, most large police departments in the United States have an administrative disciplinary mechanism, typically an Inspector General, Internal Affairs Unit, or Office of Professional Responsibility.

Historically, Latin American police, like the military, have enjoyed impunity for human rights abuses and other misconduct. The Inter-American Commission on Human Rights (CIDH) recently noted that today the police are the greatest violators of human rights in the region and continue to enjoy impunity. Most of the nine cases heard at the CIDH's May 1998 meeting involved police brutality that went unpunished in Argentina, Mexico, Trinidad and Tobago, the Bahamas, Chile and Peru. Many police forces still have no internal control units. In Chile, for example, the larger *carabineros* police force has no such unit, but investigates disciplinary matters through the chain of command. Criminal acts committed in the line of duty or in the barracks come under the jurisdiction of military courts. By contrast, Chile's smaller *policía de investigaciones* (judicial police) recently created an internal affairs bureau, and criminal acts are tried in civil courts. In this context, it is notable that police reform processes in Central America have created internal controls that have investigated and punished police crimes. While internal control units in both El Salvador and Haiti continue to suffer from a variety of weaknesses, they have provided an important indicator of the political will of police and government leaders to confront impunity during reform processes.

There are a number of different internal control systems and different purposes they can serve. Internal controls regulate and guide the daily activities of the institution; they confront individual acts of wrongdoing; and they can assist in analyzing and changing the regulatory and management systems and practices of the police to refine their capabilities and improve their

performance, both in their effectiveness and ethics. Here we will examine the regulation and establishment of these offices; their roles and powers; their leadership; the complaints process; factors that strengthen or weaken their effectiveness in ending police abuse and impunity; and their relationship to other forms of control of the police.

1. Disciplinary Regulations

The mandate, structure and powers of internal disciplinary mechanisms are generally set out in police laws and disciplinary regulations. Other guidelines can also be set out in ethics codes and in manuals of operational procedures. Police conduct is also governed by national and international law, including international human rights treaties, United Nations codes, national constitutions, rulings of the Supreme Court and other jurisprudence.

Most Latin American nations have signed basic international human rights treaties which forbid torture, extrajudicial executions and many other crimes, and require that state authorities provide and respect due process guarantees. Under Article 9 of the International Covenant on Civil and Political Rights, governments must provide victims of police abuse the opportunity to seek a sufficient remedy through official channels. Different national constitutions include protections of rights, some in great detail. For example, the Haitian Constitution of 1987 regulates when arrests can be made. The United States' Constitution and Bill of Rights have been repeatedly interpreted by the courts with respect to police behavior as with the Supreme Court's 1966 ruling that police must read all suspects their rights at the time of arrest, still known as Miranda rights after the case. (*Miranda v. Arizona*, 384 U.S. 436)

In **El Salvador**, Chapter IV of the National Civilian Police (PNC) Law, the Code of Conduct, is an almost literal adaptation of the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms for Law Enforcement Officials. (FESPAD 1997)

Police laws provide varying levels of detail in their protection of rights. In the United States, there is tremendous variance in police regulations. Some departments have no specific disciplinary code, and those that do exist range from very general to highly detailed. In many Latin American countries -- Chile is one example -- these codes are secret and citizens and civil society groups have no way of knowing what standards of behavior are required of the police and what rules govern such critical issues as police use of force. Thus there is no way of knowing whether these standards adhere to international human rights norms or other legal protections of basic rights. Democratic policing practices should make all regulations and codes governing police behavior and practice available to the public.

Police regulations are not abstract documents, but can have a major impact on police behavior, including such sensitive issues as use of force.

In the **United States**, until recently most police forces followed a regulation known as the “fleeing felon,” which allowed police to shoot and kill a person fleeing from a felony charge if the arrest was lawful and the person might otherwise escape. Research found that police were far more likely to shoot blacks than whites. Despite recommendations for change in the early 1960s, it was not until 1972 that a New York City police commissioner adopted a policy of use of force only as a last resort against persons believed to pose a threat of immediate serious injury. Research on police shootings after the reform found that the number of civilians shot by police dropped dramatically without adversely affecting the crime rate, the safety of officers, or the arrest rate. In fact, the research found that shootings of police also declined, as suspects were less likely to use force against police when they knew that they would not be shot. This was one reason that encouraged police authorities throughout the United States to adopt similar regulations. (Chevigny 1995: 134-5)

2. Centralized versus Decentralized Discipline

Disciplinary regulations should be clear and precise in their definition of misconduct and establishment of appropriate disciplinary processes for distinct types of offense. Most police regulations distinguish minor infractions, (rudeness, late for duty, etc.) which can and generally should be dealt with through managerial procedures by supervisors, from serious misconduct (injury, torture, murder, etc.) which require attention from a centralized disciplinary unit. There are clear problems with having all disciplinary issues dealt with centrally: it risks overwhelming disciplinary units with minor issues; can result in excessively slow resolution of all cases; and may undermine the authority of local supervisors or enable them to evade responsibilities.

In **Haiti**, poorly trained and inexperienced local commanders sent most disciplinary issues, including very minor issues, to the Inspector General’s (IG) office in Port-au-Prince. Local commanders’ reluctance to discipline their agents placed a tremendous burden on the limited resources of the IG’s office. In 1997, the National Superior Police Council (CSPN, comprised of the Prime Minister, Minister of Justice, Minister of Interior, Director General, Inspector General) issued a decree making it a punishable offense for a supervisor to refuse to administer discipline in his unit. (Neild 1998)

There are also valid concerns about the dangers of too much decentralization of discipline, stemming from fears that local commanders are likely to abuse their powers if given too much discretion in disciplinary matters.

In **Haiti**, local police investigations are often inadequate and local police supervisors have tended to justify police behavior rather than investigate complaints. In the case of one beating, the police investigation found the police defendants not guilty despite the fact that judicial authorities sentenced the accused in the same case to pay a fine or spend several days in prison. In other cases, local police commanders have taken disciplinary

measures beyond their authority and without informing the IG's office, in an effort to calm local feelings. (WOLA, HRW, and NCHR 1997)

Distinctions between lesser and serious misconduct must be made with great care and examined to assure that "lesser infractions" are not so broadly or vaguely defined that any offense but the most serious can be treated outside the formal disciplinary process. For example, if a police agent fails to investigate a case properly because of racial or political prejudice, there is a danger that this could be interpreted as poor performance instead of illegal discrimination.

In **El Salvador**, in addition to the Code of Conduct in the Police Law, the PNC has a disciplinary code that has been revised several times already. The first code classified misconduct only by issue, not by the seriousness of the misconduct, and allowed a significant degree of discretion in interpretation, which resulted in local supervisors sending almost all cases, no matter how minor, to the Disciplinary Investigation Unit (UID). This produced a large backlog; serious cases went unprocessed and dangerously undisciplined agents and officers remained on the job without sanctions. The problem was eased by two rounds of reform, which decentralized the disciplinary process for minor infractions. In addition to classification by issue, the revised regulations classified misconduct into three categories of offenses -- lesser, serious, and very serious. In June 1995, a second revision followed the example of the police law and classified all misconduct by its seriousness, reducing the discretion and increasing disciplinary actions by line supervisors. These reforms freed the UID to deal with more serious cases and the backlog gradually eased. In the meantime, however, the slowness of disciplinary action helped foster a culture of impunity within the new force. (FESPAD 1997)

Basic police academy training should include extensive and thorough teaching of disciplinary codes and processes, as well as training in human rights and use of force issues. While training alone cannot change behavior unless it is reinforced through other areas of police administration, it is important to make sure that all police personnel know the regulations thoroughly and cannot plead ignorance in their defense. Most U.S. police departments provide, and many require, ongoing training sessions for agents and officers throughout their careers.

Government authorities and police commanders can improve police knowledge of regulations and demonstrate their commitment to ethical behavior by providing additional training on specific disciplinary issues to both officers and agents and through wide distribution of specific key regulations. In Haiti, the Aristide government took steps to confront growing public concern over police misconduct by printing copies of the legal guidelines on use of force to be distributed to all members of the Haitian National Police (HNP). Such practices should never substitute for investigations and discipline of abusive police, but can be used to send an important message to police personnel.

3. Mandates and Powers of Internal Control Units

Every police force has administrative mechanisms that assure compliance with the code. In some forces discipline is exerted through the chain of command by immediate supervisors and other senior officers (as with the Chilean *carabineros*). However, every police reform process in Central America and Haiti has included the creation of specialized internal disciplinary mechanisms including Inspectors General, disciplinary units, control units and offices of professional responsibility.

In **El Salvador**, the PNC includes several mechanisms for internal regulation: under the Director General is the UID, which investigates complaints against police; the Disciplinary Tribunal, which passes sentence; the Appeals Tribunal; and the Control Unit, which evaluates police procedures, organization, and general discipline. This entire system comes under the control of an Inspector General who is under the Ministry of Public Security. Complaints against police can also be presented to and investigated by the Human Rights Ombudsman. The model was designed to create external oversight of the internal disciplinary process. In practice, this system has had problems in coordination and communication of information between the different elements, and in the duplication of tasks as the UC (and IG) have undertaken individual investigations which ought to be the domain of the UID. (WOLA and HI 1996)

In **Haiti**, the Inspector General's office is directly under the Director General, which functions as both an advisory and investigatory body at the disposition of the Director General and the Minister of Justice. In addition to investigating complaints, the IG also conducts periodic institutional audits and prepares reports on the management and administration of the police. The IG reports simultaneously to the Director General and the Minister of Justice. The IG is a member of the CSPN, as is the Director General, the Ministers of Justice and the Interior, and the Prime Minister. (WOLA 1996; WOLA, HRW, and NCHR 1997)

4. Creating Internal Controls During Police Reform Processes

Internal disciplinary mechanisms should be set up and made operational at the very beginning of a police reform process. In both El Salvador and Haiti, the new and inexperienced police committed abuses soon after their first deployment into the field. The willingness and ability of police leadership to investigate and discipline these offenses was a key indicator that, despite police abuse, the reform process was a serious effort to create a professional and accountable force.

In **Haiti**, when the new police committed abuses in the early months after their deployment, the Inspector General's investigations and punishment of the responsible police sent a clear message to police personnel and to the Haitian populace that this new police force would not enjoy impunity as had all previous Haitian security forces. The IG's actions clearly demonstrated that the rules of the game had changed, that Haitian

political and police leaders were serious about police reform. These investigations helped to uphold credibility and legitimacy of the new police in the eyes of a population which, based on all their previous experience, would have been quick to decry the new police as the same as the old.

In **El Salvador**, by contrast, internal disciplinary mechanisms mandated by the police law were not established until months after the PNC began to function, and then failed to comply with their mandates. For its first year in the field, the PNC functioned without a Disciplinary Unit. There were also delays in establishing an effective and independent Inspector General's office. The Inspector General should have been among the first appointments made in the realm of public security. Instead, the PNC functioned without an IG until October 1994, which permitted serious, largely avoidable disciplinary problems to take root in the PNC. It also sent a message that the Inspector General's office was not a priority and maybe not even necessary. When it was finally created, the UID and the Control Unit had both been functioning alone for so long that it was hard to establish the hierarchy of oversight by the IG envisioned by the legal structure of the system. Decisive leadership would have been required to overcome these difficulties. (WOLA and HI 1996)

The early establishment of functioning internal controls is all the more important for police reform processes where a large number of personnel are retained from the former police or military are retrained and deployed in the new police. In these cases, there is a clearly increased risk that old and abusive practices will continue. It is doubly important, if the reform process is to be at all credible, that police leadership clearly demonstrate that abuse will not be tolerated by developing the mechanisms to confront abuse.

5. Leadership Appointments

Political will and good leadership are key to the effective functioning of internal controls. The appointment process for Inspectors General and heads of disciplinary units is key. Appointments must be credible and generate confidence in the disciplinary system. Appointment processes should be transparent and include some level of external oversight. In Haiti, the Director General of the HNP appoints the IG with the approval of the Superior Council of the National Police.

In **Haiti**, the IG's Office first started operations in June 1995 under the direction of attorney Luc Eucher Joseph. In November 1995, the justice minister fired Joseph, reportedly because he had initiated investigations into illegal searches and arrests conducted by police at the order of Ministry of Justice officials. Joseph's replacement, Pierre André Paul, set back the work of the IG's office. In March 1996, HNP Director General Pierre Denizé reappointed Joseph to the position of Inspector General, applauding his earlier performance. When Joseph resumed his post, he found some 120 uninvestigated complaints on file. Following his reappointment, Joseph has been active

investigating and punishing serious police abuse and corruption. (WOLA, HRW, and NCHR 1997)

In Haiti, the relative performance of the IG has been a function of the political will of senior police and governmental authorities with no oversight external to the police and government. By contrast, El Salvador provides an interesting model in which the Human Rights Ombudswoman's office has veto power over the appointment of the IG made by the Minister of Public Security.

El Salvador's first IG was dismissed for failing to perform his job effectively and, according to some reports, a drunken shooting spree. Minister Barrera nominated as a replacement an attorney with whom he had long-standing personal and professional ties. Human Rights Ombudswoman Victoria de Avilés, required by law to review any nominee for Inspector General, rejected that appointment on the grounds that the nominee was too close to the Minister and would not show sufficient independence. In late August 1995, he finally offered another nomination, Dr. Víctor Valle. At the same time, the Minister convinced President Calderón Sol to issue a decree that allowed the Minister of Public Security to unilaterally name an Adjunct Inspector General, defining the Adjunct IG's job in such a way that he would control all information and contact with the PNC, reducing the IG to a figurehead. After successfully insisting that Minister Barrera retract the changes he had introduced, the Human Rights Ombudswoman approved the selection of Valle, who began work in October 1995. (WOLA and HI 1996)

6. The Investigative Process and its Potential Problems

This section goes through the steps in an investigative process, noting the problems that have arisen in different contexts and offering criteria for improved performance. The focus is on how to improve the disciplinary process to guarantee the rights of the complainant. It is important that the police under investigation are also treated fairly. The disciplinary process must enjoy credibility within the police force as well as externally or it will damage police morale and increase the temptation for police to resist or impede investigations.

6.1 Intake

Not surprisingly, in countries where security forces recently killed and maimed thousands, victims of police abuse are often afraid of making complaints. Complaints systems must make it easy for citizens to bring complaints against police. At the same time, it is noteworthy that in both El Salvador and Haiti, following the police reforms a large number of complaints (reportedly up to half of all complaints in Haiti) come from within the ranks of the police themselves. This is commendable, and police authorities should make sure that officers do not suffer retaliation but are commended for reporting abuse.

- Any police station or authority should accept complaints. The police intake system should be easily accessible.

In **Haiti**, the IG has no local or regional offices. Most Haitians cannot afford to travel to the IG's office in Port-au-Prince. Even Port-au-Prince residents find the IG's office hard to reach as it is in a remote residential area that is not served by public transport. (WOLA, HRW, and NCHR 1997)

- Alternative external mechanisms must be created for presenting complaints against the police locally. Judicial authorities and other suitable bodies independent of the police, such as ombudsman's offices. (External controls are examined in the next section of this issue packet.) When external complaints mechanisms exist, there must be formal channels to transmit the complaint they receive in a rapid and complete fashion to the internal police disciplinary process.

In **Haiti**, complaints against the police can be made to judicial authorities or to any police station at the local, regional or national level, in addition to directly to the Inspector General's office. However, any citizens fear reprisals if they bring their complaints to local or even departmental authorities. (WOLA, HRW, and NCHR 1997)

In **El Salvador**, the Human Rights Ombudsman receives more complaints of police abuse than any other intake point, yet there is no formal mechanism to inform police authorities and information is often provided very slowly. (FESPAD 1997)

- Intake processes should be clear and precise, and intake officers should be required to accept all complaints, including anonymous complaints, at any time of day and any day of the week. Most U.S. departments require that complaints be taken by a superior officer or the supervisor, and three-fourths of U.S. police departments now accept anonymous complaints by mail or phone. There should be no requirements such as notarizing the complaint, requiring all complaints to be made in person, or taking complaints only at police headquarters. When the receiving police agent or officer has discretion, personal considerations will enter into decisions about which complaints to accept. A study in England and Wales found clear discrimination by police in failing to sustain a far greater percentage of cases from people with "discrediting characteristics" such as social class, whether they were arrested at the time of the incident, evidence of mental illness or alcohol or drug abuse. (Police Foundation, 1993) Poor and marginalized communities are most at risk of police abuse.

In the **United States**, the report of the Christopher Commission appointed in the aftermath of the 1991 Los Angeles riots found that hundreds and maybe thousands of complaints had been written off the Los Angeles Police Department's books without good reason. Police would force complainants to wait for hours alone in the police stations to

file their complaints. They would characterize force complaints as minor, avoiding the review process altogether and generally used the informal intake process to quash the complaint altogether. (Chevigny 1995)

- Complaints processes should provide guarantees for the security for the complainant against any potential threats or reprisals. The police must also make clear that they will punish any effort to intimidate or retaliate against complainants. In many police departments in the United States, failure to cooperate with a disciplinary investigation is a punishable offense.

Studies in the United States have found that police verbally abused individuals attempting to lodge complaints, demanded their driver's licence number in order to run criminal checks on them, and threatened them with arrest. Another police tactic encountered in many countries is to press a charge against a person who has made a complaint. The complainant is then portrayed as anti-police and the complaint is less likely to be upheld, or the police offer a deal in which the charge is dropped if the complaint is dropped. (Police Foundation 1993; O'Rawe and Moore 1997) In Haiti, human rights monitors are concerned that police have bribed or coerced complainants into reaching "out of court" settlements in several cases.

- Processes for receiving complaints should include mandatory record keeping and tracking systems to provide some protection against police efforts to dismiss or cover up complaints. Any process by which complaints are screened in order to evaluate which merit a full investigation must be open to scrutiny to assure that dismissals are valid. Most U.S. police departments do screen complaints prior to initiating an investigation, largely because a large number of complaints against police are in fact groundless. If a case is rejected, the complainant must be notified of the decision and the reason for it, and should have the right to appeal.

In **Boston**, as in many other U.S. police departments, every complaint must be assigned a number in a sequence of numbers. All cases are sent to the internal affairs bureau, which checks that the sequence of case numbers is unbroken. The complainant is also given a copy of their complaint, which has the number on it, and must be informed of the decision about the case.¹

In **Haiti**, the IG is required by the police organic law to provide the complainant with a document attesting to receipt of the complaint and, once the investigation is completed, must provide a report simultaneously to both the Director General of Police and the Minister of Justice. The police law also requires police to inform the IG's office within twelve hours of any complaint of human rights abuse in which a civilian or a police agent has been killed or gravely wounded. (WOLA, HRW, and NCHR 1997)

6.2 Investigation

Disciplinary units must be adequately staffed with a reasonable number of investigators who are appropriately trained. Investigators will need logistical resources, particularly transportation to reach the scene of inquiry rapidly. In internal inquiries as in criminal investigations, the longer the delay in investigating, the harder it is reliably to establish the facts of a case. Particularly in cases of human rights abuse, it is also important for the local community to see that the police are committed to internal discipline in any cases of abuse if police-community relations are not to deteriorate.

In **Haiti**, IG by law is to have six general inspectors under the chief Inspector General. They are to be selected from among police at the rank of division commander. Limited resources were a major problem for the IG at first, but Haitian authorities and U.S. police assistance helped him to reach a full complement of six senior investigators as mandated by the police law, with support staff and improved logistical support. International advisors from the United States and the United Nations mission continue to provide the IG's staff training and technical assistance. (WOLA, HRW, and NCHR 1997)

- Investigations should generally be carried out by an investigator with equal or superior rank to the officer or agent under investigation.

In **Honduras**, where all the internal affairs investigators are relatively low-ranking, misconduct by senior officers is rarely investigated or punished.²

- Investigators must be able to compel police to testify and impose disciplinary consequences if they fail to cooperate.

In **Haiti**, the IG noted that the major impediments to investigations are the reluctance of witnesses to police abuse to testify for fear of being identified and facing reprisals and the “code of silence” between police who refuse to testify against their colleagues. (WOLA, HRW, and NCHR 1997)

In **Oakland, California**, as in many U.S. police disciplinary processes, any refusal to cooperate with investigations results in disciplinary action. (Kravetz, 1998: 186)

- The standard of evidence required to sustain a complaint must take into account the difficulty of investigating complaints against police as well as the rights of the police under investigation. Studies of investigations of complaints against police have found that a major factor determining whether a complaint is upheld or not is the existence of corroborating evidence, most usually an independent witness. This presents a serious problem as, in many cases of complaints against police, the only witnesses are the complainant and the police agent/officer. Witnesses are frequently associated with the complainant or implicated in the

incident that gave rise to the complaint. Critics argue that lower standards of evidence than those required in criminal courts should be used in internal investigations. The standard of evidence must be balanced against the rights of the police. If police feel victimized, they are more likely to resist and obstruct investigations.

In **Britain**, conviction in a disciplinary investigation requires the same standard of proof as criminal case: “beyond a reasonable doubt.” This results in the dismissal of a large number of cases because of insufficient or conflicting evidence. Critics propose that the lower, civil court standard of proof be adopted: “on the balance of probability” (in the U.S. civil court the judgement is based on “the preponderance of the evidence”). (Liberty 1997)

- Disciplinary process should take place within a reasonable time period. Long delays in disciplinary investigations lead civilians to doubt their credibility and police to resent the lengthy period of uncertainty about the outcome and its potential impact on their lives. Many internal disciplinary units have set time limits for investigations.

In **El Salvador**, the head of the UID states that the investigation should be completed within 90 days, a time limit that may be written into law in the proposed reforms for the disciplinary codes. Current estimates are that the investigative process generally takes 38 to 50 days, while the disciplinary tribunal generally takes about 10 days. Lengthy proceedings present a serious problem in El Salvador as the accused is often suspended from duty without salary and has to seek other sources of income when investigations last for months. (FESPAD 1997)

6.3 Sentencing and punishment

Typically, the IG does not impose the discipline but provides the findings of the investigation and, in some cases, makes recommendations. In El Salvador, the UID sends its report to the Disciplinary Tribunal, which decides the sentence and informs the chief of police of its decision. The sentence must be carried out immediately by the supervisor. In Haiti, the IG sends his report and a recommendation for a sentence simultaneously to the Director General and the Minister of Justice. They make the final decision on the sentence, generally accepting the IG’s recommendation. In many cases in the United States, the investigator makes a recommendation as to whether the complaint is sustained or not, the supervisor recommends the appropriate discipline and sends a report to the chief.

- There must be strict and clear requirements that police investigators immediately pass any police abuse that constitutes a criminal act to the courts.

In **El Salvador**, any complaint against the police that could constitute a criminal act is, in theory, to be passed to the criminal investigations division (DIC) which must report its

findings both to the courts and to the UID in order for both legal and internal proceedings to take place. (FESPAD 1997)

In **Haiti**, the IG sends all cases that it has determined to be a crime to the courts with all the information gathered during the investigation. Between 1994 and 1998, the IG sent over 60 police to be tried by criminal courts. (WOLA and NCHR 1998)

6.4 Appeal

Most disciplinary systems have an appeal mechanism for the police agent/officer. In the United States, appeals are often conducted through the chain of command or the civil service commission (a separate body which sets standards for government employment). Generally, few police appeal as the initial discipline imposed is typically light, but studies also indicate that appeals usually reduce the discipline imposed. In the United States, complaints of excessive force are the least likely to be sustained, but when sustained, they receive the harshest punishments as well as training and counseling.

In **El Salvador**, there is a special appeals tribunal. As in many U.S. departments, appeals to the tribunal and review by the police chief tend to reduce the sentence or absolve the agent/officer altogether. (FESPAD 1997)

The only appeal mechanism typically available to the complainant in the United States is through the civilian review board, if one exists locally.

6.5 Reparations

Police or appropriate governmental authorities should also have the resources to provide reparations to victims of police abuse in cases where complaints are sustained. Article 2 of the International Covenant on Civil and Political Rights provides an enforceable right to compensation for any person suffering an unlawful arrest or detention. In Haiti, many victims of police abuse complained that they received no compensation for their medical costs and time lost from work due to the abuse. In the United States and Britain, victims of police abuse seek reparation through suits in civil courts.

6.6 Early warning system

Many U.S. police departments have instituted early warning systems that generate an automatic report to the chief of police when more than a set number of complaints are received against a member of the force, even if those complaints are not sustained by the internal investigation. The information used includes the number and outcome of citizen complaints alleging any abusive behavior or unwarranted use of force. While many complaints are groundless, the accumulation of a large number of complaints would tend to indicate problems with the individual's style of policing. Records also include the number of times a police

agent/officer is assaulted or resisted in the course of making arrests; the number of injuries sustained by the officer or citizen in confrontations between the two; and the number of times an agent/officer uses his firearms (most U.S. police departments require all police to file a paper every time they shoot their weapon).

- Information received through complaints processes must be kept in personnel files and provided to police authorities and other oversight bodies. This is important to assure that disciplinary issues are incorporated into personnel decisions, such as promotions or assignments, and that full data is available for broader analyses of institutional trends and problems (see part 8 below).
- Consideration of a police agent/officer for promotion or re-assignment must take personnel records -- including all disciplinary issues -- into consideration, and reward police with positive records. An extreme example of the wrong personnel policy is found in Rio de Janeiro, Brazil, where police have a policy of rewarding officers for “courageous acts” which typically involve shootings. Clearly, if an officer has a limited number of minor complaints that have not been sustained, these should not impede his advancement, otherwise police will be vulnerable to revenge efforts. The criteria for promotions should be clearly delineated and all police should be fully informed about them.

6.7 Leadership

The quality of internal investigations, like the overall ethos of a police force, depends, to a large, even overwhelming degree, on the leadership of the chief. The chief sets the example and is ultimately responsible for the behavior of all the police under his command.

In **New York City**, following an incident of torture in 1985, the police chief warned all commanders that they would not be promoted if he received too many complaints of brutality about their subordinates and he fired the entire chain of command from the police headquarters to the offending precinct. (Chevigny 1995)

Messages can be less sensational, such as placing the disciplinary unit directly under the police chief and giving it significant resources. In Oakland, California, police were rotated through two-year assignments to the internal affairs unit, which were a “fast track” toward promotion.

- The chief should receive reports on the conclusion of all investigations. If police authorities fail to discipline individuals implicated in cases passed on by external channels, this may be an important indicator of a failure of internal discipline and potentially larger problems in police practices.

6. 8 Information campaigns

Particularly during police reform processes, public information campaigns will be needed on how to make a complaint of police wrongdoing. Public reports by Inspectors General, press briefings and media coverage of investigations and discipline of police abuse, while unpopular within the police, will help to build awareness of and confidence in internal police controls. In general, better relations between the police and the communities are vital to any effort to make police more accountable to the public. Improved community relations and understanding of accountability mechanisms should also encourage public complaints and feedback on the performance of the force.

7. Transparency

There is a strong tendency toward secrecy in most professional organizations that fear that their credibility will be threatened rather than strengthened if they make internal disciplinary processes transparent to the public. Reporting is often limited to high-profile cases that cannot be kept secret and where doing justice visibly is necessary to avoid serious damage to organizational credibility.

In the **United States**, most police forces keep their internal review processes secret for several reasons. Secrecy protects the police from the financial risk of civil suits. Police argue that secrecy can help police to learn and develop positive behavior patterns. Finally, police management want to maintain discipline as their province and defend themselves from external attack. (Perez and Muir 1995)

While they reflect deep-rooted institutional concerns, these arguments are profoundly flawed. A professional civilian police force provides a public service and must be accountable to the public. It is not enough for police to say that they are doing the right thing -- they must be seen to be doing the right thing.

There are a variety of costs associated with secrecy. During reform processes, even in situations where police are not seeking impunity for wrongdoing, secrecy sends a message of a lack of political will to establish an accountable force that is at the service of the public. This increases public mistrust of the police, which will hamper overall police-community relations and thus negatively affect many aspects of daily law enforcement. It will also increase pressures to establish or increase the powers of external oversight mechanisms. Finally, it makes it extremely difficult to study and analyze police practices.

Another less visible cost of secrecy is that it creates tremendous difficulties of studying and analyzing police abuse to determine its causes which may range from repressive policies directly ordered by governmental or police authorities, abusive and violent individuals, police practices which permit excessive use of force, inadequately training, poor leadership, and so on. Effectively

A Campaign for Police Transparency in Haiti

During 1996, the Inspector General issued a series of press releases with detailed information about cases of abuse and his actions in response. Some press releases included the names of the police agent or officer under investigation or sanctioned, the nature, time and place of the abuse, and the status of the investigation or nature of sanction. However, in 1997, the IG only released statistical breakdowns of his activities -- the number of cases received and investigated, and the numbers of police suspended and fired.

The detailed press releases had provoked angry reactions within the HNP. Police agents accused the IG of making unfair or ungrounded decisions and made threats against him and his staff. Police were particularly opposed to naming individuals, asserting that this put them at risk (while as many as 75 police have been killed over the last four years, no evidence links any of these incidents to being named as subjects of disciplinary investigation). Both the IG and Director General favored naming police who were fired for misconduct.

WOLA and other human rights organizations protested to Haitian police and governmental authorities and to international donors of police assistance that this change in reporting was a serious error. Statistics alone provide no means for independent verification of whether the cases are in fact being investigated, which types of crime are being investigated, the quality of the investigation, and the proportionality of the punishment. In late 1997 the Superior Council of the HNP changed police regulations requiring that the IG make monthly, public reports on his activities. The reports are to describe the allegations, the nature of the crime or human rights abuse alleged, the name and rank of the police officer, and the status of the investigation or prosecution. This decision is a positive indicator of

confronting problems of police abuse will often require both the punishment of individuals responsible for particular abuses and the correction of institutional weaknesses or negative police practices. The former requires that both police and judicial authorities are willing to investigate and punish abuse, while the latter may require a wide range of responses from remedial training to reform of regulations to adopting new models of policing such as those described in the United States and other countries as community policing or problem-oriented policing.

In the **United States**, following the beating of Rodney King, the Attorney General asked the National Institute of Justice (NIJ, the research arm of the U.S. Department of Justice) to study police violence. The habits and policies of national data collection had made it next to impossible for anyone to carry it out. While the Bureau of Justice Statistics (BJS) has collected superb data on crime, sentencing and corrections, it has virtually nothing on human rights, civil rights, or police misconduct. The lack of data has prevented the national government from coming to grips with local police abuse or devising programs about it. (Chevigny 1995)

8. Removing “Bad Apples” Versus Ending Bad Practice

Many internal affairs units deal only with individual acts of abuse after the fact. They often do not collect or break down this data to identify patterns of abuse and problems in management, administration or operational practices which may be contributing to those problems. Such analysis is necessary to devise broader institutional reforms and remedies to prevent abuse, such as increasing training and oversight in specific areas. In too many cases, it appears that information on investigations of complaints is not even incorporated systematically into personnel files and used in decisions such as assignments and promotions and other key areas where a police force can affect self-interested behavior of individual police and demonstrate an institutional commitment to ethical comportment, thus shaping “institutional culture.”

Much human rights casework focuses on individual acts of abuse and seeks accountability in those cases against the officers responsible. Human rights analyses also document systematic abuses against political and ethnic sectors, but often have little way of knowing which specific aspects of police leadership, regulations, practice and culture are the most problematic contributors to abuse and therefore should be key foci in any reform effort. Greater police transparency is a vital prerequisite for civil society groups and outsiders to develop more nuanced analysis and make broader recommendations for reform rather than simply calling for investigations and trials of individual abusive officers. Police have long since learned the response to such calls, which is to blame problems on a “few bad apples in the barrel” and assert that removing the apples prevents the barrel as a whole from rotting -- an approach which seeks to avoid any broader institutional scrutiny and reform effort.

Any serious police reform effort must be accompanied by greater police transparency and debate about police practices and policies. It is particularly important during major police reform processes to have some mechanism that can monitor developments in police practice and encourage positive aspects while responding quickly to bad practices before they imbue the force. In Central America and Haiti, this role has largely been played by the international community, in particular United Nations missions and their police and human rights monitoring components.

In **Haiti**, the human rights mission and CivPol played vital roles in feeding back such information to international donors and Haitian police and government authorities in Port-au-Prince, who responded by adding remedial training courses and rapidly developing specialized units within the police to deal with crowd control and gangs.

In **El Salvador**, the Control Unit (UC) was created to examine institutional practices and procedures and make recommendations for change. The IG also has the power to investigate any aspect of police practice. Several problems have emerged: First, the Salvadoran structure of multiple internal control bodies has failed to centralize information and analytical capabilities. Second, police laws and regulations do not sufficiently distinguish the responsibilities of the UC, UID and the IG, leading to duplication of activities. The UC can receive complaints and has investigated these itself rather than passing them to the UID as it should. Similarity of mandate between the UC and IG has led to dispersion of information and increased bureaucracy. (WOLA and HI 1996)

In **Haiti**, the IG is responsible for carrying out “administrative audits” as well as investigating complaints of specific police abuses. Police authorities view these audits as a key management tool to improve mid-level police leadership (which has been very poor), and further reduce ongoing human rights abuses. These audits evaluate the operations of all police locales, including the academy, with on-site inspections to see if all police codes, rules and regulation are complied with and that police property and budgets are used appropriately. Visits made to several stations have resulted in sanctions. The IG analyzes the development and efficiency of the police, prepares reports and makes recommendations for improvements to the Director General and the Minister of Justice. The Director General argues that with audits, “we will have fewer cases treated after the fact. If we have inspections, it will be a disincentive [to abuse].” Given that there appears to be a more or less consistent level of human rights abuses despite the Inspector General’s investigations and sanctioning of criminal police, further means must be sought to stem abuse and improve the quality of policing. Improved leadership should reduce abuse and deal with lesser disciplinary issues at the local level instead of referring all issues to the IG in Port-au-Prince, reducing his burden. However, given that the IG’s office has been overwhelmed by the task of investigating complaints, a clear concern is that initiating institutional audits might detract from the investigations of complaints, at least in the short term. This would counter the impact of institutional audits by sending a message of tolerance for abuse. Haitian police leaders said that they were increasing the IG's staff to cope with the added burden. (WOLA and NCHR 1998: 19)

9. Are Internal Controls Alone Effective or Adequate?

Police argue that if they are to become increasingly professionalized, they should maintain total control of disciplinary functions. Essential to the concept of a “profession” is that professionals impose their own standards and discipline. Senior police officers argue that the transfer in many U.S. police jurisdictions of authority over promotion, pay awards, and disciplinary sanctions to civil service commissions, courts and police unions lessens the authority of police supervisors and their corresponding ability to discipline their personnel. (Ironically, these bodies were created during reform efforts in the United States that sought to professionalize and depoliticize the police.) This removes an essential tool for attaining the desired behavior from rank and file police personnel. While these are self-serving arguments,

they are correct in indicating that the authority of police commanders can and does vary considerably and this impacts police behavior. (Bayley 1982; Chevigny 1995)

U.S. experts note that there are at least three reasons to prefer internal discipline over external controls. First, internal investigations can be better informed than external ones. A determined police can hide almost anything it wants from outside inspection, certainly sufficiently so as to make outside inspection haphazard. Second, internal investigation can be more thorough and extensive. It can focus on the whole gamut of police activities, not simply on the more dramatic and visible aberrations. Third, internal investigations can be more varied, subtle and discriminating than external ones, using informal as well as formal mechanisms to change behavior. A police force that is willing to make its behavior conform to community standards is more likely to be effective than an unwilling police force required to conform under threat of external supervision. (Bayley 1996)

However, political will to assure that the police are ethical and accountable may be limited or may not exist at all. Few police reform processes in Latin America are as broad as those conducted in El Salvador and Haiti. After centuries of guaranteed impunity, there is good reason to fear that Latin American police will not instate thorough and effective internal discipline but will revert to long-standing institutional practices. Latin America also has a track record of failed police reform efforts. Even in cases where there is a good-faith effort to hold police accountable internally, this may not win public confidence without the added guarantee provided by external controls. Internal review processes may work well for high-profile issues, but not for abuse that is seen as less important.

In **Haiti**, while high-profile cases such as killings and serious crimes by police are investigated and sanctioned quite efficiently, the IG has not confronted serious ongoing beatings by police. Neglecting police beatings on the grounds that they are relatively less important sends a message of tolerance for abuse that may be contributing to its stubborn persistence in the force today. In at least one case, the failure to investigate and take action against an abusive officer had deadly consequences when a policeman who had been involved in repeated beatings was not punished but transferred to a new post where he provoked a fight with a crowd and shot and killed a man and, with other local police agents, wounded four others. Avoiding the beatings issue is also likely to exacerbate arrogant attitudes already displayed by many police agents and officers and reinforce a belief held both in the Haitian police and broader population that gang members and criminals deserve what they get. (WOLA and NCHR 1998)

In many cases in the United States, and certainly in much of Latin America, internal review is ineffectual, dysfunctional, and sometimes non-existent. (The U.S. situation is extensively documented in Human Rights Watch's 1998 report on police brutality in the United States, *Shielded From Justice*.) This leads to demands for alternative, and more transparent, control mechanisms.

In the **United States**, there are vociferous public demands for civilian review of the police because of a widespread perception that many police supervisors do not really believe that the excessive or unnecessary use of force -- within some ill-defined bounds -- is wrong. The recent commission reports from Los Angeles and New York support that perception. Minority groups have pushed especially hard for civilian review because they do not see effective control over racist action by police. All the sources for the

demand for civilian review betray a public mistrust of police administration, which is in turn a reflection of the estrangement of the police from the urban populations among whom they work, a problem that has persisted in U.S. cities for generations. (Chevigny 1995)

Latin America's long history of oppressive and discriminatory practices toward poor and marginalized populations by militarized and politicized police forces, combined with the impunity these institutions have enjoyed, naturally inclines proponents of police reforms to consider some additional external police control mechanisms.

Police reform processes, particularly profound reforms that create largely or entirely new institutions, endow the new force with significant credibility and legitimacy simply by the fact that they are perceived to be, or hoped to be, very different from their predecessor security forces. Given the long history of abuse by security forces in Latin America, such credibility is fragile. It will rapidly be destroyed if the new police are repeatedly abusive and if control mechanisms, especially internal mechanisms, are perceived as failing to confront, punish, and prevent the recurrence of such abuse. Government and police authorities must actively seek to confront and correct police abuse, and they must be clearly seen to be doing so by the public or they will rapidly lose their credibility, the most valuable asset the reform process has given them.

ENDNOTES

1. Interview with Boston police, April 27-28, 1998. During delegation organized by WOLA for police, government, and civil society organizations from El Salvador.
 2. Interview with Honduran jurist, Washington, DC, March 23, 1998.
-

BIBLIOGRAPHY

Bayley, David. (1995). "Getting Serious about Police Brutality," in *Accountability for Criminal Justice*, ed. Stenning, Philip C. Toronto, Canada: University of Toronto Press.

——— (1982). *Patterns of Policing: A Comparative International Analysis*. New Brunswick, New Jersey, USA: Rutgers University Press.

Chevigny, Paul. (1995). *The Edge of the Knife: Police Violence in the Americas*. New York, USA: The New Press.

FESPAD. (1997). *Mecanismos oficiales de control sobre la Policía Nacional Civil*. El Salvador: Fundación de Estudios para la Aplicación del Derecho.

Kravetz, Katherine. (1998). "Vigilando a la policía. El control de la policía en los Estados Unidos" in *Control Democrático en el Mantenimiento de la Seguridad Interior*, ed. Frühling, Hugo. Santiago, Chile: Ediciones Segundo Centenario.

Liberty. (1997). Submission by Liberty to the Home Affairs Office Inquiry into police disciplinary and complaints procedures, London, UK. Mimeo.

Neild, Rachel. (1996). *Police Reform in Haiti: The Challenge of Demilitarizing Public Order and Establishing the Rule of Law*. Ottawa, Canada: Fondation canadienne pour les Amériques (FOCAL).

——— (1998). "La Reforma Policial en Haiti; Un Triunfo Sobre la Historia," *Pena y Estado -- Policía y Estado Democrática*. Año 3, No. 3. Buenos Aires, Argentina: Instituto de Estudios Penales.

O'Rawe, May and Moore, Linda. (1997). *Human Rights on Duty*. Belfast, Northern Ireland: Committee for the Administration of Justice.

Perez, Douglas W. and Muir, William K. (1995). "Administrative Review of Alleged Police Brutality" in *And Justice for All: Understanding and Controlling Police Abuse of Force*, ed. Geller, William and Toch, Hans. Washington, DC, USA: Police Executive Research Forum.

Police Foundation. (1993). *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences*. Washington, DC, USA: Police Foundation.

WOLA. (1996). *The Haitian National Police*. Mimeo, Washington DC, USA: WOLA.

WOLA and Hemisphere Initiatives (HI). (1996). *Protectors or Perpetrators? The Institutional Crisis of the Salvadoran Civilian Police*. Washington DC, USA: WOLA.

WOLA, Human Rights Watch/Americas (HRW) and the National Coalition for Haitian Rights (NCHR). (1997). *The Human Rights Record of the Haitian National Police*, New York and Washington DC, USA: WOLA, HRW, and NCHR.

WOLA and the National Coalition for Haitian Rights (NCHR). (1998). *Can Haiti's Police Reforms Be Sustained?* Washington DC, USA: WOLA and NCHR.
