

MONITORING LAW ENFORCEMENT

A GUIDE FOR OMBUDS INSTITUTIONS

Nazli Yildirim Schierkolk



Materials for Georgia



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Monitoring Law Enforcement Agencies: A Guide for Ombuds Institutions

Nazli Yildirim Schierkolk

Materials for Georgia

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. The Centre develops and promotes norms and standards, conducts tailored policy research, identifies good practices and recommendations to promote democratic security sector governance, and provides in-country support and practical assistance programmes.

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Monitoring Products for NHRIs Series

National human rights institutions (NHRI)—also known as ombuds institutions—have a crucial role to play in monitoring the security sector and holding the security sector accountable for its practices. NHRIs are also well placed to interact with other stakeholders to help facilitate broader security sector oversight and can ensure the development and maintenance of human rights-observant security policies and practices.

DCAF programming with NHRIs in Ukraine and Georgia focuses on a variety of human rights and security sector governance challenges and the need for guidance materials on monitoring law enforcement and state security services has been noted for some time.

This Series of Monitoring Products is designed to facilitate the work of National Human Rights (Ombuds) Institutions on monitoring the security sector. The series provides guidance on relevant best practices and may also be used for relevant capacity development trainings.

DCAF has also developed a number of products to assist Ombuds institutions on both broad and highly specific oversight and policy challenges, particularly in terms of gender equality and human rights monitoring within the armed forces. For more information please see: <http://www.dcaf.ch/ombuds-institutions>

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Introduction

Project background

This guide was produced as part of a project initiated by the Geneva Centre for the Democratic Control of Armed Forces (DCAF). The objective of the project is to develop knowledge products on monitoring law enforcement and security services, to be used in training activities for the Office of the Public Defender of Georgia (PDO).

The content of this study may also serve as a basis for training other ombuds institutions in similar contexts.

A note on terminology

Ombuds institutions

An ombuds institution is defined as ‘an office established by constitution or statute, headed by an independent high-level public official who receives complaints about human rights violations and maladministration against government agencies, officials, employees or who acts on his/her own initiative’¹ on the basis of information received from a wide range of sources. An ombuds institution has powers to, inter alia, monitor policies and practices, investigate

¹ The Parliamentary Ombudsman of Malta, *Frequently Asked Questions*, (2014), available from: <http://www.ombudsman.org.mt/how-can-one-define-the-ombudsman-institution/>

complaints, and make recommendations to relevant authorities, as well as to propose new laws or amendments to existing legislation. In some countries, ombuds institutions may have other titles such as 'public defender' or 'protector of citizens'. This guide will use the term 'ombuds institutions', except for examples of national best practices, where the full title of the institution is provided.

Oversight

The term oversight is frequently used in this study, and it is important that it is clearly defined. Oversight is a comprehensive term that refers to several processes including: ex-ante scrutiny, on-going monitoring, and ex-post review, as well as evaluation and investigation. Oversight of the security services is undertaken by a number of external actors, including the judiciary, parliament, National Human Rights Institutions (NHRI), ombuds institutions, National Preventive Mechanisms (NPM), audit institutions, specialised oversight bodies, media and NGOs. Oversight is different from control in the sense that the latter implies the power to direct policies and activities and thus is typically associated with the executive branch of government.²

² Hans Born and Geisler Mesevage, 'Introducing Intelligence Oversight' in Born and Wills (ed.) *Overseeing Intelligence Services: A Toolkit*, (DCAF: 2012), p. 6, available from: http://www.dcaf.ch/sites/default/files/publications/documents/Born_Wills_Intelligence_oversight_TK_EN_0.pdf

Law enforcement officials

The term ‘law enforcement officials’, as referred to in this study, includes ‘all officers of the law, whether appointed or elected, who exercise police powers, particularly the powers of arrest or detention’.³ Throughout this study the terms law enforcement officials and police officials will often be used interchangeably.

Monitoring law enforcement agencies—the need for external oversight

Law enforcement agencies are typically tasked with maintaining law and order, preventing and combating crime, and protecting and respecting the fundamental rights and freedoms of individuals.⁴ In doing so, they are entrusted with a wide range of powers that require the highest degree of professionalism and integrity. However, the abuse of those powers—such as unlawful use of force, arbitrary detention or ill-treatment—lead to grave human rights violations, and should therefore be effectively investigated.

Whereas in many countries police inspectorate bodies and other forms of executive and internal control structures are in place, they

³ *UN Code of Conduct for Law Enforcement Officials*, (1979), Art. 1, available from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

⁴ Senior Police Advisor to the OSCE Secretary General, *Guidebook on Democratic Policing*, International Police Standards, (Vienna: 2008) p. 9, available from: <http://www.osce.org/spmu/23804?download=true>

are usually not sufficient to ensure accountability for human rights violations by the police. In this regard, the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions stated: ‘where police are allowed to effectively police themselves, as in any system of purely internal accountability, there is a strong temptation to look after one’s own’.⁵ Investigations by the Special Rapporteur have found that one crucial factor contributes to impunity: a lack of effective and dedicated external civilian oversight of the police.⁶ Therefore, an external police oversight mechanism is an indispensable part of a strong accountability system. In addition to combatting impunity more effectively, such mechanisms enhance public confidence in the police as they have greater impartiality in the eyes of the public.⁷

External oversight mechanisms can take many forms such as parliamentary committees, ad-hoc investigation commissions, national human rights commissions, as well as ombuds institutions with a general mandate or with an exclusive mandate to oversee law enforcement agencies. In the past two decades, many European countries have established independent police oversight bodies.⁸

⁵ Human Rights Council, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston’, *Study on Police Oversight Mechanisms*, (hereinafter, *Study on Police Oversight Mechanisms*), A/HRC/14/24/Add.8, para 25, available from: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>

⁶ Ibid. para 2.

⁷ OSCE, *Guidebook on Democratic Policing*, p. 2; para 88.

⁸ Examples include: Northern Ireland Police Ombudsman, Scottish Police Investigations and Review Commissioner, Hungarian Independent Police

This guide explores the role of ombuds institutions in overseeing law enforcement agencies by referring to best practices adopted by general ombuds institutions and specialised oversight bodies.

The structure and content of the guide

This guide consists of three chapters:

Chapter 1—International and European Standards on Monitoring Law Enforcement Agencies presents an overview of relevant conventions as well as non-binding instruments that provide the basis for police oversight.

Chapter 2—Key Features for Effective Oversight of Law Enforcement addresses the essential elements of ombuds institutions needed to oversee law enforcement agencies; namely, independence, resources, mandates, powers, transparency and outreach; and provides examples of best practices by oversight bodies.

Chapter 3—The Role of Ombuds Institutions in Monitoring Law Enforcement: Best Practices focuses on the role and functions of ombuds institutions and provides an overview of international and European best practices in the following areas:

- Handling complaints;

Complaints Board, Independent Police Complaints Authority in Denmark, and Committee P in Belgium. For more information and links, please see the ‘Key Reference Material’ section of Chapter 2 of this study.

- Monitoring policies and practices of law enforcement (particularly concerning the use of force and treatment of groups at risk of vulnerability); and
- Conducting preventive detention monitoring.

In each chapter, the substantive content is followed by a section on its relevance for Georgia, and concludes with a section in which key reference material on the subject matter is listed.

Chapter 1: International and European Standards on Overseeing Law Enforcement

Ombuds institutions' mandate, powers, and working methods are usually stipulated in national laws. While national laws must be in line with international conventions and treaties that the State is a party to, soft-law instruments provide human rights standards and practical guidance for effectively implementing such treaties and conventions.

At the international level, there is no single instrument that deals exclusively with the oversight of law enforcement agencies. However, a number of legally binding and soft-law instruments stipulate the fundamental human rights law enforcement agencies should protect and promote, and outline the role of independent oversight agencies. This chapter provides an overview of international and European standards on overseeing law enforcement agencies.

1. International Standards

International Covenant on Civil and Political Rights

One of the main objectives of oversight is to ensure that state institutions and their agents act in accordance with the law and do not unlawfully infringe upon human rights. The **International Covenant on Civil and Political Rights (ICCPR)**, a legally binding instrument adopted in 1966, sets out the fundamental rights that law enforcement agencies shall respect, protect and fulfil. The rights that

are stipulated in the ICCPR and most relevant in the context of police oversight are the right to life (Art. 6), the right to non-discrimination (Art. 2), the right to liberty and security of person (Art. 9), freedom from torture or cruel, inhuman or degrading treatment or punishment (Art. 7), the right to peaceful assembly (Art. 21), and the right to an effective remedy (Art. 2).⁹

A key notion of an accountability system is the right to an effective remedy. In this regard, the Covenant stipulates the obligation of the State to investigate human rights violations, as well as to safeguard that right.

International Covenant on Civil and Political Rights, Article 2

Each State Party to this Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have **an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity**; (b) ...shall have his right thereto determined by **competent judicial, administrative or legislative authorities, or by any other competent authority** provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

⁹ *International Covenant on Civil and Political Rights*, (1976), UNGA RES 2200A(XXI), available from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

This Article obliges states to establish mechanisms to safeguard and promote the right to an effective remedy. The reference to ‘any other competent authority’ can be interpreted to include ombuds institutions.

Over the past decades, international soft-law instruments have increasingly emphasised the need for independent oversight of state agencies in order to effectively protect human rights.

Paris Principles

The **Principles relating to the Status of National Institutions (The Paris Principles)** is a leading normative instrument setting out the essential principles for the status and functioning of national institutions for the protection and promotion of human rights, which also apply to many ombuds institutions.

According to **the Paris Principles**, such institutions should:¹⁰

- Be vested with a broad mandate;
- Be responsible to submit upon request or on the institution’s own initiative, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights in relation to legislative, administrative, judicial provisions, or any situation of violation of human rights;
- Have the mandate to draw the attention of the Government to situations in any part of the country where human rights

¹⁰ *The Paris Principles*, Principles 1-3.

are violated and to submit to the Government proposals for initiatives to end such situations and, where necessary, express an opinion on the positions and reactions of the Government;

- Freely consider any questions falling within their competence, hear any person and obtain any information necessary to make an assessment of situations falling within their competence and publicise its opinions and recommendations.

The last point provides a basis for ombuds institutions' power of access to information. This power is essential for the effective investigation of complaints against law enforcement officials.

Tshwane Principles

Another instrument focusing on access to information is **The Global Principles on National Security and the Right to Information (The Tshwane Principles)**. The **Tshwane Principles** were developed in consultation with more than 500 experts from seventy countries, and have been endorsed by the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament.¹¹ The Principles place particular focus on the independent oversight bodies' access to information, as stipulated in the following articles:

¹¹ PACE, Parliamentary Assembly of the Council of Europe Resolution 1954, (2013), 2 October 2013; European Parliament, *Report on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs*, A7-0139/2014, 21 February (2014).

- 33 a) ‘Independent oversight bodies should have adequate legal powers in order to be able to access and interpret any relevant information that they deem necessary to fulfil their mandates.
 - (i) At a minimum, these powers should include the right to question current and former members of the executive branch and employees and contractors of public authorities, request and inspect relevant records, and inspect physical locations and facilities.
- 33 (c) [...] Independent oversight bodies should have access to the necessary financial, technological, and human resources to enable them to identify, access, and analyze information that is relevant to the effective performance of their functions.’¹²

It is important to note that merely giving independent oversight bodies’ access to information may not be sufficient for the realisation of this power. As stated in Tshwane Principle 33 (c), for effective oversight, such bodies should be supplied with the necessary financial, technological, and human resources to enable them to identify, access, and analyse information.

While neither the Paris Principles, nor the Tshwane principles, have a legally binding effect, they provide a solid framework, as well as

¹² *The Tshwane Principles*, Principle 33 (a) and (c), available from: <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>

guidance for independent oversight institutions. The powers of ombuds institutions will be further elaborated in Chapters 2 and 3 of this study.

Whereas the Paris and Tshwane Principles are of a general nature, **the Code of Conduct for Law Enforcement Officials**, adopted unanimously by the United Nations General Assembly in 1979, is a specialised instrument on law enforcement; and the Code explicitly refers to ‘ombudsman’ and its role in overseeing the police.

The Code of Conduct for Law Enforcement Officials, preamble

‘...the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency’.

Later in 1989, the **UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials** elaborated further on the role of such external mechanisms and stressed the need for **complaints handling**, by stating that: *‘Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials. Particular provisions shall be made for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known*

to the public [emphasis added]’.¹³ The Complaints-handling functions of ombuds institutions are explained in further detail in Chapter 3.

2. European Standards

At the European level, the **European Convention on Human Rights (ECHR)** is the most comprehensive legally binding instrument stipulating fundamental human rights and relevant state obligations to protect them. The articles of ECHR are interpreted by the European Court of Human Rights, whose rulings are legally binding on the States that are party to the Convention. In this context, the Court’s jurisprudence has played a key role in the establishment of standards for the independent oversight of law enforcement agencies. Article 13 of the Convention provides for the right to remedy.

European Convention on Human Rights, Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an **effective remedy before a national authority** notwithstanding that the violation has been committed by persons acting in an official capacity.

While the Convention does not explicitly stipulate the State duty to investigate human rights violations, the European Court of Human Rights have ruled in several instances the need for effective

¹³ *UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials*, (1989) Art. B.4.

investigations into deaths and other human rights violations caused by law enforcement officials.¹⁴

In this regard, the Court has developed five principles for the effective investigation of complaints against the law enforcement:¹⁵

- **Independence:** there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
- **Adequacy:** the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- **Promptness:** the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
- **Public scrutiny:** procedures and decision-making should be open and transparent in order to ensure accountability; and
- **Victim involvement:** the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

¹⁴ See *McCann v. the United Kingdom*, (1996); *Aksoy v. Turkey*, (1997); *Mentes v. Turkey*, (1997); and *Jordan v. the United Kingdom*, (2003).

¹⁵ Council of Europe, *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police*, Comm DH, (2009), 4, p. 3, available from:

<https://rm.coe.int/16806daa54>

These principles, in particular ‘independence’ and ‘public scrutiny’, point to the need for an ombuds institution or an independent police complaints body with the necessary mandate and powers, to ensure an effective investigation.

European Code of Police Ethics

Adopted by the Council of Europe in 2001,¹⁶ the European Code of Police Ethics is regarded as an elaborate and exemplary code incorporating important standards on police accountability. While the Code does not refer explicitly to ombuds institutions, certain articles of the code refer to the key functions of ombuds institutions, i.e. exercising external, civilian control and handling of complaints against the police.

European Code of Police Ethics

13. The police, when performing police duties in civil society, shall be under the **responsibility of civilian authorities**.

16. Police personnel, at all levels, shall be **personally responsible and accountable** for their own actions or omissions or for orders to subordinates.

59. They shall be subject to **efficient external control**.

61. Public authorities shall ensure **effective and impartial procedures for complaints** against the police.

¹⁶ Council of Europe, REc(2001)10, available from:
<https://rm.coe.int/16805e297e>

While the UN Code of Conduct for Law Enforcement Officials and the European Code of Police Ethics are comprehensive and address policing as a whole, there are several specialised instruments which establish standards for particular aspects of law enforcement oversight. These thematic instruments will be explained in Chapter 3 of this guide.

International and European Standards on Monitoring Law Enforcement Agencies—Relevance to Georgia

This chapter provided an overview of international and European standards for ombuds institutions with regard to the oversight of law enforcement agencies. Georgia has ratified all above-mentioned legally binding conventions, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

With the ratification of the European Convention on Human Rights, Georgia came under the jurisdiction of the European Court of Human Rights. Since then, the Court has dealt with several cases on Georgia concerning the deprivation of life, ineffective investigation, and inhuman and degrading treatment; and in twenty-eight cases convicted Georgia for violating the respective articles of the Convention.¹

The Office of the Public Defender (PDO) has a mandate to investigate complaints against the police, and refers cases to the

Office of the Public Prosecutor if a suspected criminal offence has taken place. Based on a review of complaints received, the PDO can also make recommendations and proposals to relevant ministries and authorities.

A good understanding of international and European standards on the monitoring of law enforcement would enable the PDO to make solid recommendations based on human rights standards and best practices, strengthens its advocacy role and in the long term, enhances its capacity to oversee law enforcement agencies.

Recently, there have been initiatives to amend the law on the PDO.² The normative instruments listed in this chapter, in particular the Tshwane Principles, provide concrete guidance on the essential powers and competences of independent oversight agencies. In this respect, a good understanding of the standards stipulated in The Tshwane Principles would strengthen the argumentation of the PDO and relevant stakeholders in the process of amending the relevant laws.

Sources:

(1) See: Graham Smith, 'The Interface between Human Rights and Police complaints in Europe', p. 9, in Chapter 8, Tim Prenzler and Garth den Heyer (eds). (2015). *Civilian Oversight of Police: Advancing Accountability in Law Enforcement*, (Boca Raton, Florida: CRC Press), available from:

<https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:241449&datastreamId=FULL-TEXT.PDF>)

(2) For more information, see:

<https://www.coe.int/en/web/tbilisi/programme-news-improving->

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on-the-draft-amendments-to-the-organic-law-of-georgia-on-the-
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georgia? 101 INSTANCE RPwSFLWJl6GX viewMode=view/](#)

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<https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>
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<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>
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http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf

Chapter 2: Key Features for Effective Oversight of Law Enforcement Agencies

Over the last decades the international community has increasingly called for external and independent mechanisms to effectively monitor law enforcement. While the Paris Principles provide general standards for national human rights institutions, much has been written on the specific factors determining the success and effectiveness of external oversight mechanisms.

In 2009, the Council of Europe Commissioner for Human Rights published an ‘Opinion Concerning Independent and Effective Determination of Complaints Against the Police’ which refers to a specialised institution, such as an independent police complaints body, as the most ideal institutional set-up to monitor law enforcement agencies. The document lists **‘independence’, ‘mandate’ ‘powers’, ‘resources’, ‘transparency’ and ‘community outreach’** as key factors determining the success of such an institution.¹⁷

Thereafter, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the UN Office on Drugs and Crime; European Partners Against Corruption (EPAC); Amnesty International and many

¹⁷ Council of Europe, *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police*, (2009), p. 8-9.

other organisations have echoed those key features in reports and publications on police oversight.¹⁸

While a detailed analysis of each feature is beyond the scale of this study, this chapter provides an overview of what those six features entail for ombuds institutions together with examples of best practices.

1. Independence

Independence is a pivotal feature of effective law enforcement oversight. It has three constituent parts, namely institutional, operational and financial independence.

Institutional independence

First, institutional independence entails freedom from executive or political interference. To this end, ombuds institutions should be established through legislation, and not by ministerial decrees or executive orders. This ensures that their powers cannot be restricted

¹⁸ See: Human Rights Council, *Study on Police Oversight Mechanisms*, (2010); UNODC, *Handbook on Police Accountability, Oversight and Integrity*, Chapters 3 and 4, (New York: 2011); EPAC, *Police Oversight Principles*, (Vienna: 2012); and Amnesty International, *Police Oversight*, Police and Human Rights Programme, Short Paper Series, No. 2, (2015). Also see: Monica Den Boer and Roel Fernhout *et.al.* *Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies*, (2008).

or disbanded at the whim of the executive. A clear and strong legal basis also helps the institution resist pressure.

Second, institutional independence requires that ombuds institutions have different reporting lines to law enforcement agencies. Whereas law enforcement agencies usually operate under the Ministry of Interior, best practice suggests that ombuds institutions report directly to the country's parliament. Ombuds institutions in most EU Countries are directly accountable to their respective parliament.¹⁹ For instance, in Belgium, the Standing Police Monitoring Committee (Committee P), a specialised oversight body, reports directly to the Belgian Chamber of Representatives.²⁰ Similarly, the Scottish Police Investigations and Review Commissioner submit annual reports to the Scottish Parliament.²¹ A less common and optimal practice is one in which the ombuds institution reports to a ministry not responsible for law enforcement agencies. This is the case in the Northern Ireland, where the Police Ombudsman reports to the Department of

¹⁹ European Union Agency for Fundamental Rights, *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU - Mapping Member States' legal frameworks*, (Luxembourg: 2015), p. 70, available from: http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-surveillance-intelligence-services_en.pdf

²⁰ Committee P, *Frequently Asked Questions*, available from: <http://www.comitep.be/EN/index.asp?ID=FAQ>

²¹ Scottish Police Investigations and Review Commissioner, *Annual Report 2015-2016*, available from: <http://www.gov.scot/Publications/2016/11/9881/0>

Justice, which then submits the report to the Northern Ireland Assembly.²²

Third, the appointment and removal process, as well as the security of tenure, are important measures of institutional independence. Members of the ombuds institutions should be appointed through a cross-party consultation, instead of a direct appointment by the executive. In several countries including Belgium, Mexico, New Zealand and Hungary, the parliament appoints the head of the institution and/or members of the governing board.²³ Further, the appointment process should be transparent and merit-based, and clearly indicate the tenure term.²⁴ While there is no international consensus on the length of the term, EPAC recommends that it should not be more than 12 years.²⁵ There should also be clear procedures for the removal of the ombudsperson, and a narrowly defined set of criteria stipulating the circumstances under which removal can happen. Best practice suggests that the removal process should be undertaken by the parliament.²⁶ In this respect, it is appropriate to consider a qualified majority. By way of example, in

²² Northern Ireland Police Ombudsman, *Annual Report 2016*, available from: <https://www.policeombudsman.org/PONI/files/5a/5a675012-265f-47e3-adf5-f3c1e8e171b7.pdf>

²³ Amnesty International, *Police Oversight*, p. 23.

²⁴ Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), paras. 56-58.

²⁵ EPAC, *Police Oversight Principles*, principle 2.2.5.

²⁶ Benjamin Buckland and Will McDermott, *Ombuds Institutions for the Armed Forces: A Handbook* (DCAF: 2012), p. 44, available from: http://www.dcaf.ch/sites/default/files/publications/documents/OMBUDSHbook_FINAL_ONLINE.pdf

Finland the Ombudsman may only be removed from office ‘for extremely weighty reasons’, and only after Parliament has received the opinion of the Constitutional Law Committee and the decision is supported by at least two thirds of the votes cast.²⁷

Finally, the composition of an ombuds institution plays an important role in ensuring institutional independence. Appointing law enforcement officials to such institutions should generally be avoided. Where specific expertise on law enforcement is needed, ombuds institutions should ensure that the employment of former or seconded law enforcement officials does not conflict with the institution’s operational independence.²⁸ In England and Wales, there is a strict rule concerning the employment of law enforcement officials in oversight bodies. Commissioners of the Independent Police Complaints Commission cannot have worked in the police.²⁹

Financial independence

Financial independence means that an ombuds institution obtains and manages its funds independently from any of the institutions it oversees; furthermore, that such funds are sufficient for the institution to fulfil its mandate.³⁰ Financial independence is best

²⁷ The Constitution of Finland, 11 June, 1999 (731/1999), entry into force 1 March, 2000, Section 38.

²⁸ EPAC, *Police Oversight Principles*, principle 2.2.7.

²⁹ UNODC, *Handbook on Police Accountability, Oversight and Integrity*, p. 61.

³⁰ Marten Oosting, ‘Protecting the Integrity and Independence of the Ombudsman Institution: the Global Perspective,’ in *The International Ombudsman Yearbook*, ed. the International Ombudsman Institute (Alphen

achieved when independent oversight mechanisms propose their budgetary requirements, and parliaments allocate funding on this basis.³¹ According to UN guidance, another good practice is to place the funding of an ombuds institution under parliamentary control ‘with inbuilt guarantees as to the minimum size of the annual budget, and the time at which it will be disbursed rather than have such decisions left to the whim of the executive’.³² New Zealand, Peru and Uganda comply with this good practice. In Uganda, for instance, the Parliament is required by law to ensure that the budget of the Human Rights Commission is sufficient to allow for its proper functioning.³³

Operational independence

Operational independence of ombuds institutions refers to the ability to perform their functions without interference from other authorities. This entails:³⁴

aan den Rijn: Kluwer Law International, 2001), p. 19.

³¹ Human Rights Council, *Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight* (hereinafter, *UN Compilation of Good Practices*), A/HRC/14/46 para 14.

³² Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), para 60.

³³ Ibid. In this instance, the example of Uganda can be justified in the context of exemplifying the proliferation of an international norm.

³⁴ For more details on operational independence, see: Benjamin Buckland and Will McDermott, *Ombuds Institutions for the Armed Forces: A Handbook*, (DCAF: 2012), p. 47-50.

- ***Deciding on priorities and matters to be pursued:*** Given the limited resources of ombuds institutions and the wide-ranging human rights implications of police work, ombuds institutions need to prioritise the oversight of certain issue areas over others. Therefore it is important that they have the ability to decide on the subjects that they wish to prioritise, as well as the freedom to choose the matters that they wish to further pursue. For example, as part of its National Preventive Mechanism mandate, each year the Danish Ombudsman decides on a priority theme for monitoring detention facilities. In 2015, the priority issue was the placement of inmates in ‘security cells’ in prisons. In a thematic report dedicated to this issue, the Ombudsman explained why this particular issue has been selected as a priority theme, and provided a detailed account of its monitoring activities, investigations, and respective findings and recommendations.³⁵
- ***Freedom to establish own working modalities:*** Ombuds institutions should have the freedom to establish their own procedures for handling complaints, conducting investigations, and interviewing persons—as long as such procedures are in line with the mandate and powers conferred to the institution.
- ***Power to compel law enforcement cooperation:*** In order to effectively investigate a complaint, ombuds institutions

³⁵ Danish Parliamentary Ombudsman, *Thematic Report*, (2015) available from: https://en.ombudsmanden.dk/publikationer/thematic_reports/placement_in_security_cells/

should be able to access facilities, inspect the documents of security services, and/or hear from involved persons. While most national ombuds institutions do not have law enforcement-type investigative powers, a best practice is to be able to compel law enforcement cooperation by law so that ombuds institutions are not dependent on the willingness of the police to cooperate in their investigations.

Best Practice: Finnish Parliamentary Ombudsman

According to the Parliamentary Ombudsman Act (197/2002), the Ombudsman has the right to executive assistance free of charge from the authorities as he or she deems necessary. More specifically, the Ombudsman may order that a police inquiry, as referred to in the Police Act (493/1995), or a pre-trial investigation, as referred to in the Pre-trial Investigations Act (449/1987), be carried out in order to clarify a matter under investigation by the Ombudsman.

(Source: Parliamentary Ombudsman Act, Section 8:
<https://www.oikeusasiamies.fi/en/parliamentary-ombudsman-act>)

The power to compel police involvement is usually granted to specialised oversight bodies (such as the Dutch CTIVD, or Belgian Committee I). In this regard, the Finnish Parliamentary Ombudsman is an exceptional example.

2. Mandate

The mandate of an ombuds institution can be considered as one of the most important features in determining the effectiveness of oversight of law enforcement agencies. Without the necessary legal mandate, ombuds institutions risk remaining an institution only on paper; used primarily to buffer the concerns of the public or international community.³⁶

The mandate of an ombuds institution should be appropriate to the unique circumstances of a country and the resources available. Some ombuds institutions have a **general mandate**, which covers oversight of human rights violations in all institutions of state administration, including law enforcement agencies. Examples include the National Ombudsman in Austria, the Netherlands and Sweden, and the Defender of Rights in France, amongst others. Other countries chose to establish ombuds institutions with a **specialised mandate** or a specialised oversight body to monitor law enforcement agencies. Belgium's Committee P, England and Wales' Independent Police Complaints Commission, Ireland's Garda Ombudsman, Northern Ireland's Police Ombudsman, New Zealand's Independent Police Conduct Authority and South Africa's Independent Police Investigative Directorate are among the most notable examples.

While the choice between general versus specialised mandate depends on many factors—such as the overall state of law

³⁶ Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), para 4.

enforcement in the country; the human rights record of the police services in question, and the resources available to the ombuds institution—a comparative study of general and specialised police oversight mechanisms in Europe found that institutions with a specialised mandate receive more complaints from the public as compared to those with a general mandate.³⁷ A higher number of complaints could be due to the fact that members of the public have a better understanding of the authority and powers of a specialised institution, and believe that in comparison to a general ombudsman, their complaint would be handled in a more expedient manner.³⁸ However, it should be noted that the total number of complaints received is not a sufficient indicator of effectiveness, since many abuses happen to individuals belonging to at-risk groups, who are themselves least likely to submit complaints. Therefore, further research is needed to verify the findings of the aforementioned study.

Institutions with a specialised mandate to oversee law enforcement can be further categorised into two groups: those with a **narrow mandate**; that deal only with the most serious human rights violations (e.g., death, serious injury, torture), versus those with a **broader mandate**, that deal with all issues and complaints against the police, including allegations of minor misconduct, breaches of

³⁷ Monica Den Boer and Fernhout *et.al.* *Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies*, (2008), p. 31, available from:

<https://research.vu.nl/en/publications/policing-the-police-police-oversight-mechanisms-in-europe-towards>

³⁸ Ibid.

ethical codes, and so forth. Whereas England and Wales' Independent Police Complaints Commission and the Australian Police Integrity Commission are considered as institutions with a narrow mandate, the Danish Independent Police Complaints Authority and Northern Irish Police Ombudsman have a broad mandate, accepting complaints concerning both disciplinary misconduct and criminal offences committed by law enforcement officials. On the other hand, in Ontario, Canada, the Office of the Independent Police Review Director (OIPRD) has a broad mandate, except for the most serious offences committed by law enforcement officials. It handles complaints about and oversees the conduct of police officers, and the policies and services of police departments.³⁹ Incidents involving the police that result in death, serious injury, or concern allegations of sexual assault are investigated by the Special Investigations Unit (SIU), a civilian law enforcement agency independent of the police which reports directly to the Ministry of the Attorney General.⁴⁰

The choice between narrow and broad mandates is not one that is solely determined by resources, but in case of limited financial and human resources, independent oversight institutions should focus exclusively on cases of death, serious injury and torture.

³⁹ For more information on the OIPRD, see:

<http://www.oiprd.on.ca/EN/AboutUs/Pages/AboutUs.aspx>

⁴⁰ For more information on the SIU, see: <https://www.siu.on.ca/en/unit.php>

3. Powers

Access to information

An ombuds institution should be provided with sufficient powers to effectively exercise its mandate. Full and unhindered access to information is an essential power in this regard. Access to information by oversight bodies is emphasised in The Paris Principles, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, as well as The Global Principles on National Security and the Right to Information (Tshwane Principles).⁴¹ To this end, the Tshwane Principles state that 'information' to which oversight bodies should have access includes, but is not limited to:

- all records, technologies, and systems in the possession of security sector authorities, regardless of form or medium, or whether or not they were created by that authority;
- physical locations, objects, and facilities; and

⁴¹ *The Paris Principles*, 'Methods of Operation', available from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>; *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Principle 10, available from: <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>; and *The Tshwane Principles*, available from: <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>

- information held by persons whose overseers deem to be relevant for their oversight functions.⁴²

Access to classified information

Certain aspects of police work may involve handling classified information, especially in the context of cooperating or sharing information with security services. While such classified information is not publically available, access to it is essential for independent oversight mechanisms to effectively investigate complaints.

A widely endorsed practice is to give the ombuds institutions full and unhindered access to all information, regardless of its level of classification. However, in order to obtain such access, they are typically required to have security clearance. An exception to this rule is the Serbian Protector of Citizens, who does not need to be vetted.⁴³

The power to access classified information comes with the duty to ensure that the information accessed by ombuds institutions is not unlawfully disclosed and used solely for the purposes of oversight.

⁴² *The Tshwane Principles*, Principle 32, 'Unrestricted Access to Information Necessary for Fulfilment of Mandate,' available from:

<https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>

⁴³ Aidan Wills and Benjamin Buckland, *Access to Information by Intelligence and Security Service Oversight Bodies*, (DCAF/OSF: 2012), p. 42, available from: <https://www.dcaf.ch/access-information-intelligence-and-security-service-oversight-bodies>

This duty is often enshrined in the laws regulating the activities of ombuds institutions. Ideally, the law should require independent oversight bodies to implement *all necessary measures* to protect the information they accessed.⁴⁴ Best practice suggests that the protective measures should be equivalent to those used by security services and law enforcement agencies. An emerging trend in this regard is to establish codes of conduct for ombuds institution staff.

Best Practices: Police Investigations and Review Commissioner, Scotland, Police Ombudsman, Northern Ireland

In 2014, the office of the Scottish Police Investigations and Review Commissioner published a Code of Conduct for its employees. The Code includes detailed provisions on access to and the handling of confidential information, as well as consequences for divulging information and any other unauthorised use. The Code of Conduct is reviewed periodically so it may adapt to any changes in domestic laws or new technological developments. The most recent version can be accessed at: <https://pirc.scot/media/4366/code-of-conduct-for-employees.pdf>

In 2017, the Police Ombudsman for Northern Ireland developed a Code of Ethics for its staff, which has a dedicated section on privacy and the handling of confidential information: <https://policeombudsman.org/PONI/files/4e/4e945199-fa39-4327-a0d9-9ca425f3aa4c.pdf>

⁴⁴ *The Tshwane Principles*, Principle 35.

When ombuds institutions disclose information obtained in the frame of their investigations, they should pay the utmost attention to the 'do-no-harm' principle towards the victims and affected persons. In this respect, the Tshwane Principles state that:

'The names and other personal data of victims, their relatives and witnesses may be withheld from disclosure to the general public to the extent necessary to prevent further harm to them, if the persons concerned or, in the case of deceased persons, their family members, expressly and voluntarily request withholding, or withholding is otherwise manifestly consistent with the persons own wishes or the particular needs of vulnerable groups. These caveats, however, should not preclude publication of aggregate or otherwise anonymous data.'⁴⁵

Despite laws entrusting ombuds institutions with the power to access classified information, in practice obstructions may exist. Most often, the executive attempts to obstruct ombuds institutions' access to classified information by claiming that the disclose of highly sensitive information to such external bodies risks information being leaked or lost, which could have catastrophic consequences for national security. In such cases, it is worth pointing out that there are no examples of ombuds institutions leaking classified information. On the contrary, leaks that are considered to be 'damaging' to national security have almost always been from within the executive. One

⁴⁵ *The Tshwane Principles*, Principle 10 (6).

safeguard against such obstructions is to impose some form of sanction in the law for non-compliance with access to information requests.

Best Practice: Swedish Parliamentary Ombudsman

The **Swedish Parliamentary Ombudsman** is entitled to issue penalties up to SEK 10'000 for non-compliance with their request for information:

‘When the Ombudsmen, in accordance with the stipulations of the Instrument of Government, request information and statements in cases other than those in which it has been decided to institute a preliminary inquiry, they may do so on penalty of fine not exceeding SEK 10,000. The Ombudsmen may impose such a penalty, if incurred.’

(Source: The Act with Instructions for the Parliamentary Ombudsmen, para 21, <https://www.jo.se/en/About-JO/Legal-basis/Instructions/>)

Interview and subpoena persons

An investigation cannot be based solely on written material. In order to establish sound findings and develop relevant recommendations, ombuds institutions should be entrusted with the power to interview any person deemed to possess information relevant to the fulfilment of ombuds institution’s mandate. This is a widely applied practice

among ombuds institutions in Europe.⁴⁶ When required, such powers should be employed with the full cooperation of law enforcement agencies.⁴⁷ A further step is to establish a power to subpoena persons to provide evidence in court on any matter of importance to an investigation, which is the case for the Danish Ombudsman.⁴⁸ However, it should be noted that the power to subpoena should be best viewed as ‘an option of last resort, only to be used in the event that an agency or the executive fails to cooperate with an investigation’.⁴⁹

Access to information is a relatively complex legal issue. A comprehensive analysis of legal standards pertaining to access to information is beyond the scope of this study. Further information on international standards, as well as challenges encountered by independent oversight institutions regarding access to information can be found in the DCAF–OSF publication entitled ‘Access to Information by Intelligence and Security Service Oversight Bodies’.⁵⁰

⁴⁶ See, for example, Finnish Parliamentary Ombudsman Act, Section. 9, available from: <https://www.oikeusasiamies.fi/en/parliamentary-ombudsman-act>; Slovenian Human Rights Ombudsman, Art. 36, available from: <http://www.varuh-rs.si/legal-framework/constitution-laws/human-rights-ombudsman-act/?L=6>.

⁴⁷ *The Tshwane Principles*, Principle 33 (a).

⁴⁸ Danish Ombudsman Act, Art. 19 (3), available from: <https://en.ombudsmanden.dk/loven/>

⁴⁹ Aidan Wills and Mathias Vermeulen, *Parliamentary Oversight of Security and Intelligence Agencies in the European Union*, (2011), p. 137.

⁵⁰ Aidan Wills and Benjamin Buckland, *Access to Information by Intelligence and Security Service Oversight Bodies*, (DCAF/OSF: 2012), available from: http://www.dcaf.ch/sites/default/files/publications/documents/Access_info rmation oversight bodies draft.02.12.pdf

Launching own-motion investigations

Another essential power of ombuds institutions is the ability to launch **own-motion investigations** without any complaints or referrals from law enforcement agencies.⁵¹ Such investigations could be prompted by the ombudsman's perception of public concern, or as a direct result of their own research on a given issue.⁵² By way of example, the Irish Garda Ombudsman has the power to initiate investigations in the interest of the public without the need for a complaint.⁵³ Similarly, Northern Ireland's Police Ombudsman and the Czech Ombudsman have the authority to initiate own-motion investigations.⁵⁴ In contrast, all procedures of the People's Law Enforcement Board in Philippines must begin with a complaint, which does not reflect international standards and best practices.⁵⁵ Own-motion investigations are usually of a thematic nature and enable ombuds institutions to identify systemic problems and shortcomings, rather than focus on the wrongdoings of an individual official.

To facilitate own-motion investigations, some ombuds institutions establish dedicated investigative teams within their offices. For

⁵¹ Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), para 36.

⁵² Northern Ireland Assembly, *Own-motion investigations by Ombudsmen*, Briefing Paper, (n.d), available from: <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2015/ofmdfm/8015.pdf>

⁵³ The Irish Garda Ombudsman, *About GSOC*, available from: <http://www.gardaombudsman.ie/about/about.html>

⁵⁴ Amnesty International, *Police Oversight*, p. 15.

⁵⁵ Rule IV, Section 1.

instance, the Ombudsman of Ontario has established a Special Ombudsman Response Team (SORT), while the Western Australian Ombudsman has an Administrative Improvement Team to conduct ‘own-initiative’ investigations. Own-motion investigations can be expansive and therefore require high levels of human and financial resources. For this reason, ombuds institutions may consider developing certain criteria to select which areas to investigate. By way of example, the Western Australian Ombudsman applies the following criteria:

- The number of complaints received by the Ombudsman;
- The likely public interest in the identified issue of concern;
- The number of people likely to be affected;
- Whether other reviews of the issue have been completed recently or are in progress;
- The potential for the investigation to improve administration across the public sector; and
- Whether investigation of the chosen topic is the best and most efficient use of resources.⁵⁶

There are several examples of ombuds institutions and specialised oversight bodies that launched own-initiative investigations into law enforcement agencies, including the:

- Finnish Parliamentary Ombudsman’s investigation on the impact of language skills of police officers in the processing

⁵⁶ Ombudsman of Western Australia, *Undertaking Own Motion Investigations*, available from, http://www.ombudsman.wa.gov.au/Improving_Admin/AI_Investigations.htm

of asylum investigations;⁵⁷

- Investigation of the Victorian Ombudsman in Australia concerning the police department's handling of freedom of information requests;⁵⁸
- Ontario Ombudsman's investigation into de-escalation policies of the police;⁵⁹ and
- Canadian Office of the Independent Police Review Director's systemic review on Police Interactions with People in Crisis and Use of Force.⁶⁰

Specific powers of ombuds institutions in relation to investigations of complaints are discussed in Chapter 3.

⁵⁷ For more information, see: https://www.oikeusasiamies.fi/en_GB/-/what-kind-of-language-skills-should-be-required-of-police-officers-

⁵⁸ Victorian Government Solicitor's Office, *FOI – Ombudsman's Own Motion Investigation*, Lunchtime Seminar Series, (July 2006), available from: <http://www.vgso.vic.gov.au/sites/default/files/publications/FOI%20-%20Ombudsman%27s%20Own%20Motion%20Investigation.pdf>

⁵⁹ Paul Dube, *A Matter of Life and Death: Investigation into the direction provided by the Ministry of Community Safety and Correctional Services to Ontario's police services for de-escalation of conflict situations*, Ombudsman of Ontario, (2016), available from: <https://www.ombudsman.on.ca/Investigations/SORT-Investigations/Completed/Ontario-direction-to-police-on-de-escalation.aspx>

⁶⁰ Gerry McNeilly, *Police Interactions with Police in Crisis and Use of Force*, OIPRD Systemic Review Interim Report, Office of the Independent Police Review Director (OIPRD), (2017), available from: http://www.oiprd.on.ca/EN/PDFs/OIPRD_Police_Interactions_with_People_in_Crisis_and_Use_of_Force_EN.pdf?pdf=%22ReleasePeopleInCrisis%22

4. Resources

Ombuds institutions should be well resourced in order to operate effectively. However, in practice many ombuds institutions are under resourced, both in terms of financial and human resources. When operating under such conditions, ombuds institutions need to choose their strategic priorities carefully in order to be effective. In their monitoring activities and investigations they may choose to prioritise only the issues relating to death/serious injury resulting from police use of force and/or allegations of torture and other cruel, inhuman, degrading treatment or punishment.

Investigating police misconduct usually requires multidisciplinary expertise, which may not always be available to general-mandate ombuds institutions. Staff members of ombuds institutions are most often lawyers. However, for overseeing law enforcement agencies, in particular with respect to investigating allegations of ill-treatment, expertise in other fields (e.g., doctors, criminologists, IT experts, psychologists) is essential. Ombuds institutions should therefore strive for a multi-disciplinary staff profile. Even with such a range of experts, ombuds institutions may require additional expertise for an individual investigation. In such cases, ombuds institutions should be entrusted with the power to hire or appoint experts on a short-term basis.⁶¹

⁶¹ Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), para 46-50.

Best Practice: Swedish Parliamentary Ombudsman

The Chief Parliamentary Ombudsman is allowed to appoint experts and referees to the extent needed and insofar as funds are available.

(Source: The Act with Instructions for the Parliamentary Ombudsmen, Art. 13. available from: <https://www.jo.se/en/About-JO/Legal-basis/Instructions/>)

It is best practice to clearly stipulate such a power in law, instead of ombuds institutions having to request the hiring of experts in an ad-hoc fashion.

Lastly, investing in staff should not be neglected. Cooperation with international actors or local civil society organisations is useful for providing professional education and training to ombuds institution staff.

5. Transparency

Transparency has a twofold function in improving the effectiveness of ombuds institutions. First, ombuds institutions should ensure that they are transparent towards complainants; and inform the complainant of the progress and result of the investigation. This approach is also in line with the ‘victim involvement’ principle

emphasised by the ECtHR.⁶² Informing the complainant should not only be an occasional practice—instead it should be enshrined in the law regulating the duties and responsibilities of the ombuds institution. The law on the Irish Garda Ombudsman represents best practice in this respect.

Best Practice: Garda Ombudsman, Ireland

Art. 91 of the Garda Ombudsman Act establishes the proceedings to be followed by the Ombudsman in case of complaints concerning death of or serious injury to a person. Art. 103 (1) (a)(i) *obliges* the Ombudsman to keep the complainant informed of progress and result of investigation.

(Source:

<http://www.irishstatutebook.ie/eli/2005/act/20/section/103/enacted/en/html>)

Second, ombuds institutions should be transparent towards the general public. They should share reports of their investigations with the public, as well as other thematic reports, annual reports and financial statements, through their website and other means.

⁶² See Chapter 1, European Standards section of this study.

Best Practice: Independent Police Complaints Commission (IPCC), England and Wales

Following the IPCCs investigations, the institution concerned should respond to the IPCC's recommendations in fifty-six working days and explain what actions have been taken, as well as which recommendations have not been implemented and why. The IPCC does not only publish reports of investigations and respective recommendations, but also the responses of the agency or institution investigated.

Publishing the responses of institutions would exert a certain degree of pressure on the institutions to provide a comprehensive response, and justify in detail why certain IPCC recommendations were not implemented.

(Source: <https://www.ipcc.gov.uk/recommendations>)

Best Practice: Public Defender's Office, Georgia

The PDO not only publishes its annual reports online, but also organises a yearly conference, whereby the Annual Activity Report is presented to the representatives of the Parliament, governmental agencies, international organisations and non-governmental organisations. This multi-stakeholder platform enhances the PDO's transparency, and allows for dialogue on the activities and achievements of the PDO, as well as challenges encountered.

(Source: Public Defenders Office (PDO), 'Activity Report 2016', (2017), available from: <http://www.ombudsman.ge/en/news/public-defenders-activity-report-2016.page>)

6. Outreach and Accessibility

Without awareness among, and the trust of the public in ombuds institutions, their work would have little effect. The public should be aware of how the ombuds institution functions and how it can be accessed. Publishing information on their website is a passive form of such outreach.

Additionally, ombuds institutions should organise awareness-raising campaigns, meetings with local communities, and should actively cooperate with national and local media. Ombuds institutions increasingly use social media platforms to reach out to young audiences and inform the public. The Ombudsman in Ontario, Canada, the Netherlands and Ireland represent best practice in this regard.

Best Practice: Ontario Ombudsman, Canada

The office of the Ontario Ombudsman in Canada actively uses Twitter, and posts the activities organised or attended by the Ombudsman, as well as reports and results of investigations, and

surveys to collect feedback from the public. At the end of each year, the Ombudsman ask ‘followers’ to select the ‘Top 10 stories’ of the year, which consist of the Ombudsman’s investigations or advocacy campaigns that resulted in a policy change. This is an effective way of interacting with members of the public and promoting the work and accomplishments of the Ombudsman.

(Source: <http://www.theioi.org/ioi-news/current-news/ontario-ombudsman-s-top-10-stories-of-2013>)

Best Practices: Dutch National Ombudsman and the Office of the Ombudsman in Ireland

The Dutch National Ombudsman actively uses social media, in particular WhatsApp and YouTube. The office of the Ombudsman produced a video entitled ‘A Day in the Life of a National Ombudsman’ which shows an average working day of the Ombudsman, including meetings with her staff, briefings by the investigation team, media interviews and so forth. The use of such audio-visual tools and diverse media platforms would be useful when reaching out to new audiences, especially youth.

The video can be accessed at:

<https://www.youtube.com/watch?v=v8iEsw1BZmM&feature=youtu.be>

The Office of the Ombudsman in Ireland produced short videos explaining who the Ombudsman is, what the functions of the office are, how they can help complainants and affected persons, and

how they can be reached. The video is also produced in Gaelic and sign language, and has been viewed by thousands on YouTube. The videos can be accessed at:

<https://www.youtube.com/watch?v=Ae7SEZdyCy8>

For similar best practices and further guidance, see the Social Media Guide for Ombuds Institutions for the Armed Forces, published by DCAF: <http://www.dcaf.ch/Publications/Social-Media-Guide-for-Ombuds-Institutions-for-the-Armed-Forces>

Another essential aspect of outreach is to engage with groups that are at higher risk of abuse; such as women, migrants, ethnic and religious minorities, persons with disabilities and persons deprived of liberty. Among these groups, some may not be aware of their rights, nor have the necessary resources to seek remedy. It is therefore important that ombuds institutions pay particular attention to the non-discrimination principle in their accessibility policies and practices. In this context, the following constitute best practice:⁶³

- Publishing necessary information in an uncomplicated manner and in several languages, particularly those spoken by minority communities;
- Providing different means of access to the ombuds institution (e.g., online, telephone, mail or physical access to their offices) to take into account the special needs of at-risk

⁶³ Megan Bastick, *Integrating Gender into Oversight of the Security Sector by Ombuds Institutions & National Human Rights Institutions* (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014), p. 27.

groups, including, detainees, children, and persons with disabilities;

- Setting flexible visiting hours and establishing a play space for children accompanying complainants;
- Guaranteeing the availability of female and male interviewers, in case a complainant would like to be interviewed by someone of the same sex;
- Ensuring that offices in rural areas, as well as in cities, are easily accessible on foot or by public transportation; and
- Posting information sheets in police stations with details on fundamental safeguards as well as contact details of the ombuds institution.

The Council of Europe provides further guidelines on enhancing accessibility in this regard.⁶⁴ Human rights and ombuds institutions in Germany, Scotland and Northern Ireland embody related best practices.

⁶⁴ Council of Europe, *Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints Against the Police*, p. 9.

Best Practices: Scottish Public Service Ombudsman and Northern Ireland Police Ombudsman

The Scottish Public Service Ombudsman accepts enquiries and complaints in all languages, and provides telephone interpretation support. The office of the Ombudsman also provides reasonable accommodation for persons with disabilities, including Braille and a loop induction system.

(Source: <http://www.spsso.org.uk/accessibility>)

The Northern Irish Police Ombudsman embodies best practice by offering complaint forms in eight different languages, including those most spoken by migrants in the country.

(Source: <https://policeombudsman.org/Complaints/English>)

Best Practice: German Institute for Human Rights

The German Institute for Human Rights, Germany's independent national human rights institution, has a separate section on its website, where it provides text and information in simplified German, addressing those who are not fluent in the language.

(Source: <http://www.institut-fuer-menschenrechte.de/leichtesprache/>)

This chapter provided an overview of six key features required for an effective oversight system. However, there are several other factors that contribute to effectiveness, such as the ability to prioritise and plan strategically; ensuring that groups at risk of vulnerability are covered by the ombuds institutions' work; making effective recommendations, and following-up on those previously made. These factors are further elaborated in the next chapter, particularly in the context of detention monitoring.

Key Features for Effective Oversight—Relevance to Georgia

This chapter has focused on the key features of ombuds institutions required for effective oversight of law enforcement agencies; namely independence, resources, mandate and powers, transparency and outreach. The relevant standards and best practices provided in this chapter are intended to serve as a useful reference for the PDO for comparison and self-assessment.

Independence: This section analysed independence on three levels: institutional, operational and financial. The law on the Public Defender of Georgia has clear stipulations establishing institutional independence. The PDO is hierarchically independent from the executive and the security services it oversees; and is accountable to parliament. The appointment of the public defender is made by parliament via a cross-party nomination process (Art. 6). The Public Defender enjoys personal immunity and may not be prosecuted for opinions and views expressed in the exercise of his/her duties (Art. 5). The criteria for termination

are listed in the law, and the decision requires a parliamentary majority. All of these stipulations embody best practice with respect to institutional independence.

As regards operational independence, the PDO is able to determine its structure, organisation, and areas of activity, rules of operation and other issues (Art. 26). Furthermore, the PDO is empowered to independently decide on which matters to further pursue and launch own-motion investigations (Arts. 14 and 17). However, it lacks the power to compel law enforcement cooperation in its investigations, which is a significant restraint on its operational independence. If the PDO's powers are revised in the future, the Finnish Ombudsman's power to compel law enforcement in their investigations can serve as a reference.

The funding of the PDO is provided through the State budget, which is adopted by the Parliament. According to the 2016 activity report of the PDO, grants received from foreign donors amounted to nearly half of its budget. While foreign grants are crucial for the PDO's capacity development and project implementation in the short term, it is important not to rely on external funding and ensure a sustainable budget for the institution in the long term.

Mandate and powers: The PDO has a wide mandate, which also includes overseeing the police. In terms of powers, the PDO faces certain challenges. Even though the law provides the Public Defender with the power to access any information regardless of its level of classification, in practice executive authorities sometimes disregard this obligation, and do not provide the PDO with the necessary information. This was the case in January 2017,

when the Ministry of Justice did not respond to the Public Defender's request for information on MoJ officials. If such a practice is replicated by law enforcement agencies, it would pose a serious risk to the effectiveness of PDO oversight.

(Source: Public Defender Office of Georgia, 'Information Bulletin on Public Defender of Georgia,' No. 2, (February 2017), p. 2, available from:

<http://www.ombudsman.ge/uploads/other/4/4312.pdf>)

Furthermore, as aforementioned, the PDO does not have the power to compel law enforcement cooperation in their investigations. According to the PDO, the investigating authorities, especially the office of the Prosecutor, are uncooperative and unresponsive to the requests and recommendations of the PDO.

(Source: Public Defender Office of Georgia, 'The Report of the Public Defender of Georgia: On the Situation of Protection of Human Rights and Freedoms in Georgia', Short Version, (2015), p. 66, available from:

<http://www.ombudsman.ge/uploads/other/3/3652.pdf>)

The lack of law-enforcement type investigatory powers, combined with the uncooperative attitude of the prosecutorial authorities, poses a fundamental challenge to the PDO in overseeing the police. To this end, the international community, as well as the PDO, have been calling for the establishment of a separate independent investigation mechanism to investigate cases of misconduct by law enforcement officials.

Transparency: The PDO represents best practice in terms of transparency towards the public. All reports, including investigation, thematic and annual reports are published on its website. In addition, the annual report, which includes details on staff policies, budget and expenditure, is presented in a conference to the relevant stakeholders.

The PDO recently initiated a further best practice by publishing the authorities' responses to its recommendations. This should not only improve the PDO's transparency record, but also put pressure on the authorities to respond to the PDO's recommendations in an elaborate and timely manner.

As regards transparency towards victims, the PDO does not seem to have a standardised procedure for involving victims in the investigation process. In this respect, the PDO could benefit from the example of Irish Garda Ombudsman's law.

Outreach and accessibility: The PDO is very active in terms of raising awareness on certain issues through public conferences and debates, and campaigns. This includes a campaign to monitor cases of femicide and respective police responses, as well as a project on strengthening complaints procedures in detention facilities.

As for accessibility, the PDO embraces the best practice of operating a multi-lingual website, as well as social media profiles. However, the PDO should also ensure that its regional offices are also able to provide services in minority languages. Moreover,

reasonable accommodation should be provided to complainants with disabilities. In this regard, examples from Germany, Scotland and Northern Ireland constitute best practice, and can act as a reference point for the PDO.

Key reference material:

- Amnesty International Dutch Section. 'Police Oversight', Police and Human Rights Programme, Short Paper Series, No. 2, (January 2015), available from: https://www.amnesty.nl/content/uploads/2017/01/ainl_police_oversight.pdf?x79902
- Council of Europe. 'Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police', (March 2009), available from: <https://wcd.coe.int/ViewDoc.jsp?id=1417857>
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- European Union Agency for Fundamental Rights, 'Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU - Mapping Member States' legal frameworks', (Luxembourg: 2015), available from:

http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-surveillance-intelligence-services_en.pdf

- Monica Den Boer and Fernhout *et.al.* 'Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies', (2008), available from: <https://research.vu.nl/en/publications/policing-the-police-police-oversight-mechanisms-in-europe-towards>
- United Nation Human Rights Commission. 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston', A/HRC/14/24/Add.8, (2010), available from: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>
- UNODC. 'Handbook on Police Accountability, Oversight and Integrity', (New York: 2011), available from: http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf
 - *(Note: Both the Amnesty International and the UNODC publications have checklists for effective external oversight mechanisms).*

The list of institutions referred to, and links to their websites:

- Garda Ombudsman (Ireland), available from: <http://www.gardaombudsman.ie/about/about.html>
- Police Ombudsman (Northern Ireland), available from: <https://www.policeombudsman.org>

- Independent Police Complaints Commission (England and Wales), available from: <https://www.ipcc.gov.uk>
- Committee P (Belgium), available from: <http://www.comitep.be/EN/index.asp>
- Parliamentary Ombudsman of Finland, available from: <http://www.oikeusasiamies.fi/Resource.phx/ea/english/index.htm>
- Office of the Independent Police Review Director (OIPRD) (Ontario Canada), available from: www.oiprd.on.ca/
- Police Investigations and Review Commissioner, (Scotland), available from: <https://pir.scot/>
- Parliamentary Ombudsman of Sweden, available from: <https://www.jo.se/en/About-JO/The-Ombudsmen/>
- Ontario Ombudsman (Canada), available from: <http://www.ombudsman.on.ca/>
- National Ombudsman (Netherlands), available from: <https://www.nationaleombudsman.nl/international>
- German Institute for Human Rights, available from: <http://www.institut-fuer-menschenrechte.de>

Chapter 3: The Role of Ombuds Institutions in Monitoring Law Enforcement—Best Practices

The previous chapter outlined the essential factors needed for an effective oversight system, with a focus on the different mandates of ombuds institutions. As with mandates, the role and functions of ombuds institutions in monitoring law enforcement differ from country to country. Nevertheless, the most common functions of ombuds institutions in overseeing the law enforcement can be categorised as follows:

1. Handling complaints against the law enforcement agencies and officials;
2. Monitoring law enforcement policies and practices in specific areas (e.g., the use of force, stop and search, and treatment of groups at risk of vulnerability); and
3. Monitoring detention conditions and practices.

This chapter outlines international standards and best practices regarding the above-mentioned three key roles of ombuds institutions in monitoring law enforcement.

1. Handling Complaints

One of the core functions of ombuds institutions is to handle complaints against state authorities, including law enforcement agencies and officials. However, there is great variance as to the specific powers of ombuds institutions in handling these complaints.

Investigate complaints: International and European best practices in effective police oversight strongly suggest that ombuds institutions (or specialised agencies mandated to oversee the police) should be entrusted with law enforcement-type investigative powers and should be permitted to initiate and conduct their own investigations into complaints against law enforcement.⁶⁵ As with any other power, ombuds institutions are entrusted with varying degrees of investigative powers. The Police Ombudsman of Northern Ireland is considered the gold standard in this regard, because the Ombudsman investigates all complaints against the police; and has full investigatory powers.

Best Practice: Northern Ireland Police Ombudsman

The Police Ombudsman has its own team of specialist investigators entrusted with a broad range of powers including:

- Identifying and interviewing witnesses;
- Conducting or arranging any required forensic or medical examinations;
- House to house enquires, and securing CCTV footage;
- Searching police premises and filing systems; and
- Seizing documentation and other police material, and

⁶⁵ See: Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), para 36; UNODC, *Handbook on Police Accountability, Oversight and Integrity*, Chapters 3 and 4, (New York: 2011); EPAC, *Police Oversight Principles*, (Vienna: 2012); Amnesty International, *Police Oversight*, (2015). Also see: Monica Den Boer and Fernhout *et.al.*, *Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies*, (2008).

arresting police officers in exceptional cases.

The office of the Ombudsman is well resourced, and has access to the most advanced technology and methods for investigating complaints, such as computer reconstructions, DNA analysis and so forth.

(Source: Office of the Police Ombudsman for Northern Ireland, *The Police complaints System in Northern Ireland*, (n.d), available from: <https://www.policeombudsman.org/PONI/files/f2/f27a5142-0c57-4d30-af26-ea963dfa43a7.PDF>)

Other ombuds institutions and specialised oversight bodies in Europe have varying degrees of investigative mandates. The Independent Police Complaints Commission (IPCC) does not investigate all types of complaints that are referred to the Commission. Certain cases must be referred to the IPCC, including complaints or allegations involving death and serious injury, serious assault, sexual offences, corruption, and certain other types of criminal offences involving a police official. Taking into account the seriousness of the case and the public interest in investigating it, the IPCC decides on the method of investigation. This can range from a ‘supervised investigation’, which is carried out by the police who then report the findings to the IPCC, to an ‘independent investigation’, which is carried out entirely by IPCC staff.⁶⁶ Other institutions with full or quasi law enforcement-type investigative powers in Europe include the Garda Ombudsman

⁶⁶ For more information, see: <https://www.ipcc.gov.uk/page/referral>

in Ireland, the Police Investigations and Review Commissioner in Scotland; and the Independent Police Complaints Authority in Denmark.

In Australia, the New South Wales' Ombudsman investigates certain areas of policing such as allegations of serious misconduct during police investigations. The Australian Government is taking the additional step of establishing an even more specialised institution (the Law Enforcement Conduct Commission), which would take over the Ombudsman's police oversight competences.⁶⁷ New Zealand's Independent Police Conduct Authority has investigative powers, but it is only authorised to investigate incidents of death or serious bodily harm caused by the actions of law enforcement officials.⁶⁸

Malaysia embodies best practice in the external investigation of police complaints. The recently established Enforcement Agency Integrity Commission receives and investigates any complaints of misconduct. The Commission has broad investigative powers, and is authorised to fine persons who refuse to provide evidence and information.⁶⁹

In Africa, the South African IPID is authorised to exercise all

⁶⁷ See: <https://www.lecc.nsw.gov.au/>

⁶⁸ For more information, see: <http://www.ipca.govt.nz/Site/about/Role-and-powers.aspx>

⁶⁹ *Enforcement Agency Integrity Commission Bill*, (2009), Art. 31, para (f), available from: http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=1990

investigative police powers (including the power to investigate crime scenes), to subpoena witnesses and evidence; to arrest persons, search and seize property.⁷⁰

As can be seen from the above-mentioned examples, oversight bodies with investigative powers are not only a European phenomenon. More countries around the world entrust their oversight bodies with law enforcement-type investigative powers.

A detailed explanation of the steps involved in investigating police misconduct is beyond the scope of this section, not the least because it differs in each country and institution. However, the European Partners Against Corruption (EPAC) published comprehensive guidance on complaints handling and investigations for external oversight mechanisms.⁷¹

Nevertheless, it is important to note that having law enforcement-type powers is not the only method to ensure the effectiveness of ombuds institutions. Several ombuds institutions currently in existence do not have law enforcement-type investigatory powers, but still effectively oversee the police. Such an example includes the Sao Paulo Ombudsman in Brazil, whose close scrutiny of police killings, and active information and awareness-raising on the topic has led to public debate and policy change on the issue of shoot to

⁷⁰ *South African Police Service Act*, (1995), s. 53 (3)(a).

⁷¹ EPAC, *Police Oversight Principles*, (Vienna, 2012); Amnesty International, *Police Oversight*, (2015).

kill policies.⁷²

Compel police cooperation: Regardless of whether ombuds institutions or specialised oversight bodies have law enforcement type investigatory powers or not, it is important that police services are required by law to cooperate with them. The terms of cooperation should not be left to the whim of a chief constable, but rather should be stipulated by law.

An essential element of such cooperation is the law enforcement's obligation to report incidents that fall under the mandate of the ombuds institution. As stated by the UN Special Rapporteur, 'Police should be required by law to report all deaths in police custody or due to police action to the external agency, and there should be penalties for delayed or non-reporting.'⁷³ New Zealand's Independent Police Conduct Authority embodies best practice in this regard.⁷⁴

Best Practice: New Zealand, Independent Police Conduct Authority

Under the Independent Police Conduct Authority Act 1988, when the Authority receives a complaint about police it is required to notify the police.

⁷² Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), paras 33 and 62.

⁷³ Ibid. para 74.

⁷⁴ Independent Police Conduct Authority (IPCA), 'Role and Powers', (1988), available from: <http://www.ipca.govt.nz/Site/about/Role-and-powers.aspx>

Likewise, when the police receive complaints, they are required to notify the authority within five working days. They are also required to notify the Authority of any incident in which police staff, acting in the execution of their duty, cause or appear to have caused death or serious bodily harm.

A further best practice is the Finnish Ombudsman's power to compel police cooperation, which is referred to in Chapter 1 of this guide.

When ombuds institutions lack law enforcement-type investigative powers, police services should be obliged to provide adequate information on the investigations they carry out. Ombuds institutions should receive all information and documents necessary for their own investigation, have access to all places and should be able to compel the cooperation of law enforcement officials. This is the case in Northern Ireland, South Africa and El Salvador, among others.⁷⁵ The People's Law Enforcement Board in Philippines can order law enforcement agencies to preventively suspend the officer who is the subject of a complaint.⁷⁶

⁷⁵ Human Rights Council, *Study on Police Oversight Mechanisms*, (2010), para 40.

⁷⁶ *Revised Rules Of Procedure In The Hearing And Adjudication Of Citizen's Complaints Against Uniformed Members Of The Philippine National Police (Pnp) Before The People's Law Enforcement Board (PLEB)*, section 13, available from:

<https://anarnalawoffice.wordpress.com/2011/09/24/2002revrulespleb/>

Referral: Since ombuds institutions are not judicial mechanisms, the findings of their investigation are not legally binding. The standard practice is that when an ombuds institution's investigation concludes that there was a **criminal offence**, the institution should refer the case to the public prosecutor. In this context, cooperation of the prosecuting authority is essential. By way of example, in South Africa, when the Independent Police Investigative Department (IPID) refers the case to a prosecutor, the prosecutor must notify the IPID of his/her intentions to prosecute the case.⁷⁷ In Denmark, if the Independent Police Complaints Authority is not satisfied with the decision of the regional prosecutor, it is entitled to apply to a higher prosecutor.⁷⁸

In some countries, ombuds institutions have more powers related to **disciplinary offences** as compared to criminal offences. For example, if an investigation by the Police Ombudsman in Northern Ireland concludes that an officer committed a disciplinary offence, the Ombudsman recommends initiating disciplinary proceedings. If this recommendation is not taken on board by the Chief Constable, the Police Ombudsman can insist that a disciplinary tribunal is held.⁷⁹ Although this does not ensure enforcement of the Ombudsman's recommendations, it is an additional power in the follow-up process.

⁷⁷ Amnesty International, *Police Oversight*, p. 20.

⁷⁸ Independent Police Complaints Authority, 'Do you want to complain about the police?', available from

<http://www.politiklagemyndigheden.dk/english/how-to-make-a-complaint>

⁷⁹ Office of the Police Ombudsman for Northern Ireland, *The Police*

Complaints System in Northern Ireland, (nd), available from:

<https://www.policeombudsman.org/PONI/files/f2/f27a5142-0c57-4d30-af26-ea963dfa43a7.PDF>

Recommendations: When the investigation of a case is complete, ombuds institutions issue recommendations to the relevant police force, in order to prevent a similar issue reoccurring. While the recommendations are not legally binding, it is best practice to provide certain safeguards to the ombuds institutions for following up on their recommendations.

For instance, in the Czech Republic, authorities are obliged to inform the Ombudsman within thirty days after corrective measures have been taken. If the authority fails to do so, or if the measures were found insufficient, the Ombudsman has the power to inform a superior authority of the Government.⁸⁰

Similarly, in England and Wales, authorities have a legal duty to respond to the recommendation(s) of the Independent Police Complaints Commission. Whereas the authorities are not legally obliged to carry out the recommendation(s), they are required to specify which action they have taken, or plan to take; or why they have not taken, or do not plan to take, any action. They must provide responses within fifty-six days (unless there are valid reasons not to).⁸¹

2. Monitoring Law Enforcement Policies and Practices

The previous section addressed various powers and practices with regards to handling complaints. While investigating individual cases is essential, it does not necessarily allow for the identification of

⁸⁰ Amnesty International, *Police Oversight*, p. 20.

⁸¹ See: <https://www.ipcc.gov.uk/recommendations>

systemic problems leading to human rights violations. Therefore, in addition to investigating complaints, ombuds institutions should look at systemic and thematic issues, through regular monitoring of policies and practices of law enforcement agencies, as well as own-motion investigations and public inquiries.

Ombuds institutions may monitor a wide range of policies and practices of law enforcement. However, typically ombuds institutions monitor policies in the following areas, since they are most likely to cause human rights violations if not carried out in line with international standards:

- Use of force and firearms (in the context of arrest, detention and riot control);
- Stop and search policies (which carries a high risk of discrimination and bias-based profiling if not implemented in line with human rights standards);
- Treatment of-/interaction with groups at risk of vulnerability (e.g., children, persons with disabilities, migrants, and women);
- Protection of privacy (e.g., the use of body cameras, maintenance of CCTV recordings, finger prints, interception of telecommunications, and use of personal data in the context of investigations); and
- Treatment of detainees and conditions in police detention facilities.

Of these policy areas, this chapter will focus on monitoring the use of force and the treatment of groups at risk of vulnerability, with a

particular focus on monitoring police responses to violence against women. The subsequent chapter will focus on detention monitoring.

2.1. Monitoring the use of force

Use of force is one of the most challenging functions of law enforcement as it often takes place in highly stressful and dangerous situations, which require difficult and instantaneous judgements by law enforcement officials. Although in certain cases the misuse of force might be solely due to an individual wrongdoing by an officer, more often than not incidents related to the use of force require a more in-depth and systemic review of policies and practices of law enforcement.

International standards on the use of force emphasise the need for and the importance of independent oversight. **The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** gained universal recognition and is considered to be a core instrument setting standards for human rights compliant law enforcement.⁸² Principle 22 emphasises the effective review of incidents involving death or serious injury by **independent** authorities.

⁸² Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Governments and law enforcement agencies shall ensure that an **effective review process** is available and that **independent administrative or prosecutorial authorities** are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

In line with this principle, the majority of specialised police oversight bodies have a mandate to review death and serious injury resulting from the use of force or firearms by law enforcement officials.

Similarly, the United Nations **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions** stipulate that there should be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary execution,⁸³ and stress the independence of investigators at all stages of investigation, including access to documents, summoning witnesses, as well as conducting autopsies.

Misconduct related to use of force could result from shortcomings in officer training and certification, planning and tactics, choice of

⁸³ Principle 9, available from:

<http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>

equipment, riot control and arrest procedures, as well as reporting and debriefing processes. It is imperative that ombuds institutions oversee respective policies and practices to identify systemic problems, and recommend measures to prevent arbitrary, excessive, and unlawful use of force in the future.

There are several best practices in which oversight by ombuds institutions or specialised oversight bodies has led to actual policy changes concerning the use of force, or initiated and contributed to informed public debate on law enforcement policies. This sub-section will provide an overview of key processes and policies affecting the use of force, and how such institutions can exert effective oversight.

i. Training and certification

Comprehensive and periodic training, as well as clear rules on the certification of law enforcement officials are essential for preventing misconduct in the use of force.

Comprehensive training: The scope of use of force training should be much broader than mastering the technicalities of using firearms or less-lethal weapons. In contexts where riot police are known to use excessive and unnecessary force, such training should aim first and foremost at avoiding and minimising the use of force to the greatest extent possible. To this end, training programmes should include knowledge of crowd behaviour, negotiation skills, methods for de-escalation, and alternative techniques to the use of force, as well as managing personal stress, and teaching methods to identify signs of stress in their colleagues (e.g., changes in the physical and mental

state of colleagues) in order to learn how to appropriately intervene where necessary. These skills are not only relevant to riot control, but are also transferable to high-risk and challenging arrest situations.⁸⁴

The Dutch police have incorporated such training modules into their curriculum. In 2012, the Dutch Police Academy introduced '**mental resilience training**' for all law enforcement officials that aimed to improve the ability of officials to react in a rational and controlled manner, even in stressful and dangerous situations.⁸⁵

One way in which ombuds institutions can exert ex-ante oversight is to review the training curricula of law enforcement agencies, in particular guidelines on the use of force during riots and demonstrations; and recommend training modules on avoiding or minimising the use of force.

⁸⁴ UNODC & OHCHR, Resource Book on the Use of Force and Firearms in Law Enforcement, Criminal Justice Handbook Series, (2017), p. 55-57. Also see: Amnesty International, Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials', (2015), p. 174-177.

⁸⁵ Ibid. (Amnesty International), p. 176. Also see: International Victimology Institute Tilburg (INTERVICT), *Evaluation training Mental Strength A plan, process, and an effect evaluation of the training mental strength for police officers*, (full text only available in Dutch), (2014), available from: <https://english.wodc.nl/onderzoeksdatabase/training-mentale-kracht.aspx>

Best Practice: Ontario Ombudsman, Canada

In the wake of a police shooting, the Ombudsman initiated a ‘case assessment’ to examine the directions and guidelines provided by the Ministry of Community Safety and Correctional Services to Ontario’s police services for de-escalating situations that could potentially result in the use of force. The case assessment was conducted independently from the investigation into the police shooting.

(Source: <http://www.theioi.org/ioi-news/current-news/ontario-ombudsman-assesses-police-de-escalation-guidelines>)

About two years after this assessment, the Ombudsman launched a comprehensive review of the basic police-training course in Ontario, and found that there was no definition of ‘de-escalation’, and that the focus of training was on how to use weapons rather than finding alternatives to the use of force. The Ombudsman called upon the Ministry to update regulations, guidelines and trainings to require all officers to use de-escalation techniques in all situations of conflict before considering force, wherever tactical and safety considerations permit.

(Source: <http://www.theioi.org/ioi-news/current-news/ontario-ombudsman-urges-province-to-ensure-police-are-trained-in-de-escalation>)

Periodic training: The emphasis on ‘periodic training and testing of officials’ is enshrined in the Basic Principles on the Use of Force and Firearms, which is a universally accepted set of standards in this field.⁸⁶

International best practice suggests that training on the use of firearms and other weapons should be repeated at least once a year. Germany and Brazil are examples of this practice. In the North Rhine Westphalia region of Germany, for any weapon, police officers must undergo certification-training exercises **once per year**. Failure to do so leads to the **automatic expiration** of the **authorisation** to carry such a weapon.⁸⁷ Similarly, in Brazil, training on the use of firearms and less lethal weapons must be repeated **at least once per year**.⁸⁸ If such refresher training does not exist in their countries, ombuds institutions may consider making recommendations which call for regulatory changes that make periodic training compulsory.

⁸⁶ See Principle 19: ‘States must ensure that their law enforcement officials are **periodically trained in and tested** on the lawful use of force, and on the use of the weapons with which they are equipped’.

⁸⁷ North Rhine-Westphalia, *Handbook on Operational Training*, (2014), p. 26. Also see: Amnesty International, ‘Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’, (2015), p. 178, available from: <https://www.amnestyusa.org/reports/use-of-force-guidelines-for-implementation-of-the-un-basic-principles-on-the-use-of-force-and-firearms-by-law-enforcement-officials/>

⁸⁸ Amnesty International, ‘Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’, (2015), p. 178. Also see: Brazil, Interministerial Ordinance No. 4.226 of 31 December 2010, Art. 18.

Best Practice: Independent Policing Oversight Authority, Kenya

Kenya's Independent Policing Oversight Authority have reviewed police responses to the attacks of armed groups and identified numerous shortcomings. The authority has issued several binding recommendations to the National Police Service, one of which was to introduce annual refresher firearms training.

(Source: Amnesty International Dutch Section. 'Police Oversight', Police and Human Rights Programme, Short Paper Series, No. 2, (January 2015), p. 15, available from:

https://www.amnesty.nl/content/uploads/2017/01/ainl_police_oversight.pdf?x79902)

It is important to note that oversight by the ombuds institutions should not be limited to the regularity and comprehensiveness of use of force training. Depending on the complaints they receive or cases they come across, they may review other aspects of use of force trainings and issue more specific or technical recommendations.

Best Practice: Police Ombudsman, Northern Ireland

The Police Service of Northern Ireland has updated its firearms training following a Police Ombudsman investigation into an incident during which a female police officer accidentally shot herself in the leg while placing her gun into its holster. During its investigations, the Northern Ireland Police Ombudsman reviewed

personal safety measures in firearms trainings and recommended relevant procedural amendments.

(Source: <https://www.policeombudsman.org/Media-Releases/2016/PSNI-updates-training-after-officer-shoots-herself>)

In another instance, the Police Ombudsman issued recommendations, including improved training to cover the effects of ricochet and cross-fire, a proposal welcomed by the Chief Constable of the Police Service.

(Source: <https://www.policeombudsman.org/Media-Releases/2000-2010/2004/A-Change-Of-Culture-Within-PSNI-Police-Ombudsman>)

Certification: Clear, formal and standardised rules on how law enforcement officials are tested and certified to carry and use firearms and other less lethal weapons is another essential factor in preventing misconduct.

Ombuds institutions should be able to review certification and authorisation processes, and monitor the scope of tests, criteria for assessment and other relevant procedures for certification. The European Court of Human Rights established a causal link between improper assessment procedures for weapon authorisation and lethal incidents.⁸⁹

⁸⁹ *Gorovenky and Bugara v. Ukraine*, Judgment on applications 36146/05 and 42418/05, para 35.

ECtHR Ruling on *Gorovenky and Bugara v. Ukraine*

In 1999, an off-duty law enforcement official got into an altercation with his acquaintances, after which he shot and killed them using a gun issued to him by a law enforcement agency in Ukraine. While the crime was committed in his private capacity, the European Court of Human Rights ruled that the law enforcement official defendant D.'s '...superiors had failed to appropriately assess his personality and, despite previous troubling incidents involving D., had allowed him to carry a weapon, which had led to the incident in question'.

(Source: EctHR, Case of Gorovenky and Bugara v. Ukraine, 36146/05, available from: <http://hudoc.echr.coe.int/eng?i=001-108572>)

ii. Planning for operations

Law enforcement command officials have an obligation to plan operations carefully and take all possible measures to avoid a situation where force, and possibly lethal force, may need to be used. International best practice in this regard is to develop specific regulations and detailed operational guidance on how and by which means force can be used. These should be accessible to the public.⁹⁰

⁹⁰ Joint report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and or association and the Special Rapporteur on

Ombuds institutions should review regulations and guidelines for operations with a view to identify gaps, and recommend safeguards to prevent arbitrary and excessive use of force. Northern Ireland's Policy Directive on Public Order and the Use of Force stipulates that the Police Ombudsman should also consider the planning phase of an operation in their investigations.⁹¹

Best Practice: Northern Ireland, Policy Directive on Public Order and the Use of Force

[...](4)Role of the Ombudsman[...](e): 'The scope of the investigation [...] will not only include the circumstances of any injury to, or death of any person, but also the circumstances leading up to the event and all the surrounding issues such as the **management of the incident and planning of the operation.**

Police officers responsible for the planning and control of operations, where the use of force is a possibility, shall so far as possible plan and control them to minimize recourse to force, in particular, potentially lethal force. Consideration shall be given during the planning of an operation to the need for medical assistance to be available.

extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 67d.

⁹¹ Policy Directive PD 07/07 on Public Order and the Use of Force, (2007). Also see: Amnesty International, *Guidelines on the Use of Force*, p. 70.

When planning for high risk operations such as the capture of a terrorist suspect, law enforcement agencies may resort to a ‘shoot to kill’ policy. Such actions have no place in human rights-compliant policing, and should be abandoned. As stated by the United Nations Special Rapporteur, ‘the rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat.’⁹² Legal and regulatory safeguards against shoot to kill policies exist in many countries.⁹³ However in Brazil, where they were lacking, the Ombudsman’s office contributed to the abolishment of the shoot-to-kill policy.⁹⁴

Best Practice: Ombudsman’s Office, Sao Paulo, Brazil

In São Paulo, Brazil, the *ouvidoria* has published a number of policy recommendations that have been implemented by police, including a recommendation to establish a ‘shoot to disable’ rather than a ‘shoot to kill’ policy, which is considered as contributing to a reduction in police killings.

⁹² *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* E/CN.4/2006/53, para. 45.

⁹³ For instance, in the Czech Republic, Portugal, South Africa, and Peru, amongst others. For more details, see: Amnesty International, *Guidelines on the Use of Force*, p. 116.

⁹⁴ Human Rights Council, *Study on the Police Oversight Mechanisms*, (2010), para 47.

iii. Management of public assemblies

The right to peaceful assembly is protected under Article 21 of the International Covenant on Civil and Political Rights, as well as in other international and regional human rights instruments.⁹⁵ Law enforcement agencies have a positive obligation to facilitate lawful assemblies and protect the rights of individuals attending assemblies. The use of force in unlawful public assemblies is stipulated under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in Principles 13 and 14:

- 13: In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.
- 14: In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.

However, more often than not, serious human rights violations occur during lawful assemblies when law enforcement officers use arbitrary and excessive force, unlawfully arrest and detain protesters (including the use of targeted arrests and pre-emptive detentions), use dangerous crowd control techniques such as kitting; and

⁹⁵ Including the Universal Declaration of Human Rights, Convention of the Rights of the Child, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, European Convention on Human Rights.

escalate tensions and disperse crowds without reasonable justifications. There are several ECtHR rulings concerning the excessive use of force by law enforcement officials during public assemblies. *Iribarren Pinillos v. Spain* is one of the landmark cases where the Court established the violation of Article 3 (prohibition of torture and ill treatment) in relation to the actions of criminal justice institutions in Spain.

ECtHR Ruling: *Iribarren Pinillos v. Spain*

Iribarren Pinillos sustained several injuries during clashes with the Spanish security forces in 1991. During a mass protest, demonstrators, including Pinillos, built barricades and lit fires and the police fired smoke and tear-gas grenades over several hours in order to control the protests. Pinillos was seriously injured by a smoke grenade fired at very short range by the police: he momentarily stopped breathing, his face was partially burned, and he was partially paralysed.

The Court observed that the applicant could not be required to bear the results of being hit by the smoke-bomb alone, and that Spanish courts failed to properly investigate the case and to establish whether its use was necessary and proportionate in the circumstances. The Court ruled that the failure to conduct an effective investigation into the incident constituted a violation of the prohibition of torture and inhuman or degrading treatment (Article 3 of the Convention the European Convention of Human Rights).

(Sources: [https://hudoc.echr.coe.int/eng#{\"fulltext\":\[\"Iribarren Pinillos\"\],\"respondent\":\[\"ESP\"\]}\"](https://hudoc.echr.coe.int/eng#{\) and, <https://www.ucl.ac.uk/human-rights/research/ucl-hrr/docs/hrreviewissue2/issue2> p. 304)

Ombuds institutions have an important role in monitoring legislative and policy frameworks on policing demonstrations and scrutinising the practices of law enforcement agencies. In this respect, ombuds institutions should review:

- National laws on managing public assemblies and demonstrations, especially with regard to their compatibility with international human rights law and standards;
- Internal protocols of the police to ascertain if sufficiently clear guidance exists on when and under what circumstances law enforcement officials can use force, firearms, stop and search persons before, during or after protests; arrest or detain persons in connection with protests;⁹⁶
- Guidelines for circumstances that warrant the dispersal of an assembly and who has the authority to issue such an order;⁹⁷

⁹⁶ OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, (2010), para. 161, available from: <https://www.osce.org/odihr/73405?download=true>

⁹⁷ Ibid. para 165.

- Operational plans outlining health and safety measures, contingency plans, interagency coordination, and command and decision making; and
- Training curriculum for law enforcement officials on the policing of protests. Such training should include:⁹⁸
 - International human rights standards related to the use of force and command and control procedures;
 - Conflict management, negotiation and mediation techniques; and
 - Treatment of at-risk persons or those in vulnerable situations.

Investigations conducted by ombuds institutions may be ex-post, or launched upon an individual complaint concerning a single demonstration.⁹⁹ However, there are also examples whereby ombuds institutions conducted more comprehensive, systemic monitoring of the policing of public assemblies.

⁹⁸ Ibid. para 147-149.

⁹⁹ For examples of individual investigations, see: Finnish Parliamentary Ombudsman: <https://www.oikeusasiamies.fi/en/press-releases>; Hungarian Commissioner for Fundamental Rights: <http://www.theioi.org/ioi-news/current-news/police-infringes-right-to-peaceful-assembly>; Portland's Independent Police Review Division: http://www.oregonlive.com/portland/index.ssf/2017/01/complaints_about_police_tactic.html; and Police Complaints Board of Washington D.C.: https://www.washingtonpost.com/local/public-safety/dc-police-review-panel-questions-use-of-crowd-control-devices-during-inauguration-demonstrations/2017/02/27/d338aecc-fd10-11e6-8ebe-6e0dbe4f2bca_story.html?utm_term=.ed7aeb4868ae

Best Practice: Human Rights Defender, Armenia

Having observed numerous incidents of misconduct and excessive use of force by the police, the office of the Human Rights Defender decided to review the Armenian Law on Freedom of Assembly. In its review, the office found that the existing law did not sufficiently stipulate the duty to protect peaceful assembly, nor provide for the facilitation by the police of the holding of assemblies or the protection of those participating in them.

Following the Human Rights Defender's review, a joint working group was established with the participation of the senior management of the Armenian police. The working group discussed the development of guarantees so that organisers of demonstrations will not be held liable either for the failure to perform their responsibilities if they made reasonable efforts to do so; or for actions of individual participants or agent provocateurs.

While the efforts of the Human Rights Defender constitute best practice, Armenia continues to struggle with human rights compliant management of public protests. It received multiple recommendations during the UPR review in 2015, for example.

See:

<http://humanrightshouse.org/noop/page.php?p=Articles/21812.html&print=1&d=nygibztjnwtyyjp>

(Source: <http://www.loc.gov/law/foreign-news/article/armenia-ombudsman-challenges-the-law-on-demonstrations/>)

Best Practice: Parliamentary Commissioner, Ukraine

The Maidan protests began in Ukraine in November 2013 and continued until May 2014. In this period, there were several large-scale public protests, which attracted heavy-handed responses from law enforcement agencies. During the clashes, more than 106 people died from 18-20 February in Kyiv, while clashes in Odessa left forty-two people dead, with hundreds more injured in both incidents.

The Parliamentary Commissioner (Ombudsperson) launched a comprehensive monitoring programme from the beginning of the events. The monitoring activities included operational reviews of all reports concerning human rights violations, in particular on-site visits and visits to places of deprivation of liberty and medical facilities, facilitation of the search for missing persons, mediation between protestors and law enforcement bodies, dissemination of information about international standards in the field of the right to peaceful assembly and use of force and special means used by law enforcement bodies in relation to protesters.

As a result of its monitoring activities, the office of the Parliamentary Commissioner identified a number of systemic issues and published a set of recommendations to the Ukrainian authorities, including:

- Adopt a law on freedom of peaceful assembly which will provide clear rules for all participants of peaceful assemblies and an exhaustive list of grounds for

intervention into the exercise of the right to peaceful assembly;

- Amend the Law of Ukraine 'On Militia' in order to provide for the introduction of personal markings for police officers serving in official uniform as well as to establish clear rules concerning the use of special means;
- Ensure an effective investigation into the use of force by police officers, as well as special means and firearms, with due regard to the case-law of the European Court of Human Rights; and
- Provide for mandatory annual tests on human rights in the system of professional training for police officers.

The monitoring activities of the Parliamentary Commissioner compliment the efforts of the international community in advocating for enhanced accountability and capacity building for policing protests in Ukraine.

(Source: <http://www.theioi.org/ioi-news/current-news/ombudsman-reports-on-human-rights-violations-during-recent-events>)

A detailed overview of international human rights standards on policing public assemblies is beyond the scope of this guide. Relevant resources are provided in the list 'Key Reference Material' at the end of this section.

iv. Arrests

Arresting suspects or offenders is a core policing power granted to law enforcement officials. The main obligations of law enforcement officials making an arrest, and the fundamental rights of the arrested persons, are outlined in Article 9 of the International Covenant on Civil and Political Rights. Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment, adopted by the United Nations General Assembly, provides detailed human rights standards concerning arrests.¹⁰⁰ Despite the clear international legal and normative framework, arrests continue to be an area of policing in which the risk of ill-treatment is high, especially when police resort to excessive force.

Ombuds institutions typically launch investigations into incidents involving arrests upon individual complaints alleging human rights violations. However, if ombuds institutions suspect widespread/systemic issues concerning the arrest practices of the police, they may launch an own-motion review. In doing so, ombuds institutions should pay attention to the following:

- ***Internal police guidelines and protocols on making arrests:***
Such documents should be in line with the aforementioned international standards and emphasise the principle of gradual escalation of force (starting with use of empty-hand control, arm and wristlocks, and if not sufficient, to less lethal methods such as batons and pepper sprays, with the use

¹⁰⁰ See: <http://www.un.org/documents/ga/res/43/a43r173.htm>

firearms only as a last resort and in the most exceptional cases).¹⁰¹

- **Training:** Law enforcement officials should receive specialised training on human rights-compliant arrest procedures, managing those resistant to arrest, tackling violent offenders during high risk arrest situations, and appropriate self-defence techniques.¹⁰²
- **Arrest records:** Proper recording of information on arrests would assist ombuds institutions in identifying systemic issues. Arrest records should be as comprehensive as possible and, as a minimum, include the following information:¹⁰³
 - Personal data on arrestee;
 - Arresting officer and information on other involved officers;
 - Reason for arrest;
 - Date, time and place of arrest;
 - Date and time of transfer to place of custody;
 - Custodial officer receiving the arrestee;
 - Information on the place of custody;
 - The state of the arrested persons' health;
 - Details of interrogation; and

¹⁰¹ For more information, see: The National Institute of Justice, 'The Use of Force Continuum', (2009), available from: <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx>

¹⁰² OHCHR, *Human Rights and Law Enforcement, A Trainer's Guide on Human Rights for the Police* (New York & Geneva: 2002), p. 71-72, available from: <http://www.ohchr.org/Documents/Publications/training5Add2en.pdf>

¹⁰³ Ibid. p. 76.

- Time and details of judicial appearance.

Best Practice: Independent Police Complaints Commission, England and Wales

On the grounds that no complete picture exists of how police use force in England and Wales, the IPCC launched a comprehensive systemic review in 2016. In doing so, it consulted (i) public complaints recorded by the police, (ii) cases that the IPCC had been involved with in the past five years and (iii) research into the perceptions and experiences of members of the public, police personnel, and other stakeholders. Following an analysis of more than 350 cases, the IPCC published a report outlining its main findings and recommendations.

Since almost 75 per cent of cases involving the use of force were in the context of an arrest, a large section of the report is dedicated to this issue. The IPCC paid particular attention to analysing arrests where the police used force on children, persons with mental disabilities and persons from ethnic minorities. The review revealed striking findings such as that persons with mental disabilities were more likely to have firearms and tasers used against them during arrests; and that almost half (48 per cent) of children exposed to the use of force were from minority backgrounds (p. ix).

Based on the analysis and findings, the IPCC put forth specific recommendations such as:

- The development of national standards on recording the

use of force during arrests;

- The revision of Authorised Professional Practice and guidance to take into account the needs of vulnerable people during arrests;
- The development of training for law enforcement officials on unconscious bias; and
- Amendments to risk assessment processes to give consideration to the needs of vulnerable people (p. 73-75).

As a follow-up measure, the IPCC asked all forces to set out how they plan to respond to the findings of the study and recommendations directed at them, and invited the Police and Crime Commissioners (PCCs) to follow up on their force's progress.

The full report can be accessed at:

https://www.ipcc.gov.uk/sites/default/files/Documents/IPCC_Use_Of_Force_Report.pdf

v. Use of less lethal force

In situations where the use of force may be needed, law enforcement officials should continuously assess the risks and threats, and should not immediately resort to lethal means of force. To this end, officials are usually equipped with a range of less lethal equipment such as batons, riot control agents (teargas) and conducted energy devices (tasers), among others. However, when not used appropriately, less

lethal equipment and weapons can cause serious injury or death. Associated risks depend on the type of weapon, the context of its use, and the vulnerabilities of the victim or victims.¹⁰⁴

In addition to investigating individual complaints regarding the misuse of less lethal weapons, ombuds institutions may see the need to launch a more systemic review of policies and practices of law enforcement agencies with respect to the use of less lethal weapons and equipment. Ombuds institutions have an important role in this regard, particularly in identifying patterns of misuse, reviewing respective regulations and guidelines, and recommending a change of policies if needed.

Currently there is no international legal instrument dealing exclusively with less lethal weapons. However, restrictions on the use of force derive from the Convention against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), as well as in the BPUFF, the UN Code of Conduct for Law Enforcement Officials (CCLEO) and the UN Standard Minimum Rules for the Treatment of Prisoners (SMRs). Such treaties and standards play a key role in setting out universal guidelines for the use of weapons and restraints by police and correctional officers.¹⁰⁵ For instance, as a general rule,

¹⁰⁴ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, paras 103-104, available from:
<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>

¹⁰⁵ Amnesty International, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, (2015) p. 4.

the standards expressed in the Basic Principles on Use of Force and Firearms by Law Enforcement Officials are equally applicable to the use of less lethal force, such as batons, teargas, rubber bullets or water cannons.¹⁰⁶

This section will review the standards for selected less lethal weapons and equipment, and explain how ombuds institutions can use them in their monitoring activities.

Hand-held kinetic impact striking weapons (batons)

Batons are one of the most frequently used equipment of law enforcement officials. They can either be static or expandable, the latter of which is opened by being swung forcefully. If misused, batons can result in life threatening injuries.

When ombuds institutions monitor the use of batons, they should check whether the law enforcement agency in question complies with the following standards and practices:

- Spiked batons are designed to inflict severe physical pain and injury and have no legitimate law enforcement purpose. There should be an absolute ban on their use.¹⁰⁷

¹⁰⁶ OSCE and Council of Europe's Commission for Democracy through Law (Venice Commission), *Guidelines on Freedom of Peaceful Assembly*, para. 177.

¹⁰⁷ Amnesty International, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, p. 15.

- Law enforcement officials should be trained to use restraint; and to assess if raising a baton causes the desired effect without actually hitting the person.
- Law enforcement officials should never target the head or body parts near vital organs, and should always aim for the legs, arms and other soft tissue areas.¹⁰⁸

Best Practice: Victoria Ombudsman, Australia

In 2000, Melbourne hosted the World Economic forum, which was met by a number of large demonstrations, protesting against corporate globalisation. In response, police used violent force (mostly batons), rather than arrests to break up the blockade set up by the protesters. The ombudsman received tens of complaints concerning excessive use of force, and launched an investigation focusing particularly on the use of batons by the police. The investigation looked at the overall strategy of the police to manage the protest, orders by supervisors and individual acts of police officers. The ombudsman established that the police strategy was appropriate, and the excessive use of force was a result of individual transgressions rather than flaws in the police planning and orders.

The full report can be accessed at:

¹⁰⁸ UNODC & OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, Criminal Justice Handbook Series, (2017), p. 81, available from: <http://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>

Riot control agents

Riot control agents (also referred to as teargas) are one of the most commonly used tools deployed by the police during demonstrations, as well as to control violent situations occurring during arrests. The legitimate use of teargas and other riot control agents, according to the Chemicals Weapon Convention and international human rights law, is based on two assumptions: first, the riot control agent must not cause any long-term harm to the targets¹⁰⁹; and second, it is imperative that the riot control agent is used responsibly and appropriately in accordance with the international standards as expressed in the Basic Principles on Use of Force and Firearms by Law Enforcement Officials. However, when riot control agents are not used appropriately, they may cause serious injury and long lasting health effects.¹¹⁰

When ombuds institutions monitor and investigate the use of riot control agents, they should pay attention to the following standards:

¹⁰⁹ Chemical Weapons Convention, Article II(7), available from:

https://www.opcw.org/fileadmin/OPCW/CWC/CWC_en.pdf

¹¹⁰ Umit Unuvar, Am J Forensic Med Pathol, *Demonstration Control Agents: Evaluation of 64 cases after massive use in Istanbul*, (June 2013), available from:

http://www.academia.edu/3542524/Demonstration_Control_Agents_Evaluation_of_64_Cases_After_Massive_Use_in_Istanbul.

- There should be mechanisms to control the amount and concentration of riot control agents in teargas canisters. The use of riot control agents should always be documented, including their type, amount, duration of the use and the reasons for their deployment.¹¹¹
- Law enforcement officials should bear in mind that groups such as children, the elderly, asthmatics, and those with pre-existing heart or respiratory diseases, are at a higher risk of permanent injury and possible death following exposure to even lower than recommended doses of teargas.¹¹²
- Law enforcement officials should be informed that persons who are extremely agitated, mentally ill, or under the influence of drugs or alcohol may be less reactive to riot control agents, and as a consequence they may be exposed to riot control agents longer than is considered safe.¹¹³
- Riot control agents should not be used against persons who are restrained or confined in an area where they are unable to escape the chemical.¹¹⁴
- Law enforcement officials should never fire riot control agents from hand held launchers directly towards a person.

¹¹¹ UNODC & OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, (2017), p. 88.

¹¹² Ibid. p. 86.

¹¹³ Sadik Toprak. *Riot Control Agents: Improve Knowledge to Improve Safety*, SIPRI, (December 2011), available from: <http://www.sipri.org/media/newsletter/essay/december11>

¹¹⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2015, para 38, available from: <https://rm.coe.int/16806cd1ed>

Many have died or been seriously injured from the impact of a riot control agent container.¹¹⁵

Best Practice: Independent Police Complaints Commission, England and Wales

The IPCC launched an investigation following an incident in which an excessive amount of CS spray was used against a man showing symptoms of possible drug or alcohol abuse. The police officials thought the man was under the influence of drugs and alcohol and deployed CS spray several times.

The IPCC investigation found that the officials in question were not sufficiently trained on certain medical conditions to identify associated symptoms and differentiate them from disobedient behaviour; and that there was no clear audit trail showing which CS canisters were issued to which official, a significant obstacle for ensuring effective accountability.

After this investigation, the police force ordered a review of booking procedures for CS sprays. The full report can be accessed at:

https://www.ipcc.gov.uk/sites/default/files/Documents/case5_bu

¹¹⁵ European Court of Human Rights, *Abdullah Yaşa and Others v. Turkey*, application no. 44827/08, para 48:

‘In the Court’s view, firing a tear-gas grenade along a direct, flat trajectory by means of a launcher cannot be regarded as an appropriate police action as it could potentially cause serious, or indeed fatal injuries, whereas a high-angle shot would generally constitute the appropriate approach, since it prevents people from being injured or killed in the event of an impact.’

Conducted energy devices (Tasers)

Tasers are one of the most controversial less-lethal equipment sometimes used by police forces, since their use carries with it a high risk of abuse, and can even amount to torture if it is used unlawfully, disproportionately or unnecessarily.¹¹⁶ Therefore, the international community, including, inter alia, the UN Committee Against Torture (CAT), Amnesty International and the European Committee for the Prevention of Torture (CPT), has been developing standards to provide guidance for human rights-compliant usage of tasers.

In their investigations and other monitoring activities, ombuds institutions should check whether law enforcement agencies comply with the following standards:

Training and instructions:

- Law enforcement agencies should provide comprehensive and continuous training on the use of tasers. Only Law Enforcement Officers (LEOs) who have proven to have good judgement and to be resistant to stress should be trained and authorised to use conducted energy devices.¹¹⁷

¹¹⁶ Committee Against Torture, *Concluding observations on the combined fourth periodic report of Portugal*, (5-23 November 2007), para 14.

¹¹⁷ European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT), *CPT Standards*, CPT/Inf/E,

- Standardised and clear instructions on the circumstances in which tasers are allowed to be used should be in place.

Authorisation and deployment:

- As with any weapon deployment, the use of conducted energy devices should be subject to a technical authorisation procedure, which ensures that the number, duration and intensity of the electrical discharges are limited to a safe level.¹¹⁸
- Only devices with a cut-off point that prevents prolonged discharge should be used. Conducted energy devices should also be equipped with built-in laser aiming and video recording systems, making safer aiming possible and allowing for the circumstances surrounding their use to be recorded.¹¹⁹
- Tasers should be discharged exclusively in extremely limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.¹²⁰

(2002), 1 – Rev. 2015 English, p. 110, available from:

<https://rm.coe.int/16806cd1ed>

¹¹⁸ Ibid.

¹¹⁹ European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT), *CPT Standards*, p. 110.

¹²⁰ Committee Against Torture, *Concluding observations on the combined fourth periodic report of Portugal*, para 14; *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands*, (6-31 May 2013), para 27, available from:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fNLD%2fCO%2f5-6&Lang=en

Reporting and oversight:

- It should be ensured that every use of conducted energy devices is documented in detail, just as with the use of firearms.
- Conducted energy devices should be equipped (for instance with a memory chip) such as they may be used for recording information and checking on the use of the weapon (including the exact time of use; the number, duration and intensity of electrical discharges; and so forth). The information stored on these chips should be systematically reviewed by the competent authorities at appropriate intervals (a maximum recommended interval would be every three months).¹²¹

The aforementioned contains only a selection of the most relevant standards for ombuds institutions to monitor law enforcement. Resources with further standards and guidance are listed in the 'Key Reference Materials' section.

There are a number of European best practices in overseeing the use of tasers. The French Code on Internal Security stipulates that 'all conducted energy devices are equipped with a control system that records any use of the device. In addition, each use of these electric shock devices must be reported to the civilian authorities. All instances of use of the device must also be evaluated with a view to

¹²¹ European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT), *CPT Standards*, p. 110.

improving the training in the use of this weapon where necessary.’¹²² Such a legal regulation gives ombuds institutions the ability to record and maintain data on taser use, which can provide important patterns for analysis.

There are several independent oversight agencies conducting targeted oversight on the use of tasers by police. The IPCC of England and Wales and the Australian Crime and Conduct Commission are among the many examples.

Best Practice: Independent Police Complaints Commission, England and Wales

The Independent Police Complaints Commission (IPCC) regularly publishes bulletins on selected areas of policing to disseminate lessons learned from investigations. Each bulletin is made up of a series of short anonymised case studies. They include questions aimed at policy makers/managers or police officers/staff and are designed to help ensure that the police service implements lessons learned from any given case.

In 2014, IPCC published a bulletin dedicated entirely to tasers, which can be accessed at:

https://www.ipcc.gov.uk/sites/default/files/Documents/learning-the-lessons/21/LearningtheLessons_Bulletin21_July2014.PDF

¹²² Code on Internal Security, 2012 (Art. R. 511-12 (1) letter d). Also see: Amnesty International, *Guidelines on the Use of Force*, p. 144.

Best Practice: Queensland Crime and Corruption Commission, Australia

In Australia, following a lethal incident caused by a taser in 2009, the Crime and Corruption Commission initiated a joint investigation with the Police Service and published a series of recommendations. Since then, the Commission regularly monitors the implementation of those recommendations, and publishes periodical reports to provide updates on the situation.

The original report on tasers and respective recommendations; as well as regular update reports can be accessed at:

<http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/police-and-the-cmc>

vi. Post-incident reporting

Formalised, clear and standardised post-incident reporting procedures are essential not only for the law enforcement agencies themselves, but also for ombuds institutions. Ombuds institutions that investigate complaints on the use of force rely heavily on post-incident reports, so it is important that they are as detailed and accurate as possible.

Internal guidelines should oblige LEOs to record the details of the incident immediately after the use of force or firearms, regardless of whether such use resulted in death or injury to people or damage to property. This mandatory reporting process should also include the

use of less-lethal equipment.¹²³ As a minimum, the report should include the following information:

- The date, time and place of the incident;
- The name(s) of the law enforcement official(s) involved; and
- The circumstances of discharge of the firearm/equipment.¹²⁴

Best Practice: College of Policing, United Kingdom

The Authorised Professional Practice developed by the College of Policing in the United Kingdom has one of the most well-developed and detailed post-incident procedures. In addition to reporting requirements, the procedures provide detailed information on roles and responsibilities when liaising with the Independent Police Complaints Commission (e.g., initial contact, formal case referral and information sharing during independent investigations).

The procedures can be accessed at:

<https://www.app.college.police.uk/app-content/armed-policing/post-deployment/#purpose-of-an-article-2-investigation>

¹²³ Amnesty International, *Guidelines on the Use of Force*, p. 128. Also see: United Kingdom, College of Policing, *Post-deployment*, (2013), available from: <https://www.app.college.police.uk/app-content/armed-policing/post-deployment/>

¹²⁴ For an example of such a report, see: <https://www.idfpr.com/renewals/apply/forms/f1350de.pdf>

vii. Data collection and analysis

The way in which police collect and analyse data can be very useful for ombuds institutions which conduct proactive monitoring of use of force policies. When recording incidents, law enforcement agencies should collect and record data disaggregated by sex, gender, ethnicity and any other protected characteristic; with due respect given to personal data protection principles. Such disaggregated data would serve as an early warning system for the senior management of the police as well as for ombuds institutions, alerting them to unusual or problematic patterns.¹²⁵

Handling Complaints and Overseeing the Use of Force— Relevance to Georgia

According to statistics provided by the PDO, almost all complaints against the police involved allegations of unlawful and excessive use of force, in particular during arrest and pre-trial detention.

(Source: Public Defender Office of Georgia, ‘The Report of the Public Defender of Georgia: On the Situation of Protection of Human Rights and Freedoms in Georgia’, Short Version, (2015), p. 63, available from:

¹²⁵ Independent Police Complaints Commission (IPCC), Police use of force: evidence from complaints, investigations and public perceptions, (2016), p. iv, available from: https://www.ipcc.gov.uk/sites/default/files/Documents/IPCC_Use_Of_Force_Report.pdf

<http://www.ombudsman.ge/uploads/other/3/3652.pdf>)

The PDO does not have law enforcement-type investigative powers (e.g., search and seizure, collect and analyse evidence, and arrest) and therefore relies on the police for investigating complaints about the police. Annual reports of the PDO consider this issue as the main challenge to its effectiveness. PDO's statistics from 2015 reveal that most of their recommendations concerning the police and correctional services were either not fulfilled, or no response was provided.

(Source: Public Defender Office of Georgia, 'The Report of the Public Defender of Georgia: On the Situation of Protection of Human Rights and Freedoms in Georgia', Short Version, (2015), p. 15-45; 60-62, available from: <http://www.ombudsman.ge/uploads/other/3/3652.pdf>)

Furthermore, their referral to the public prosecutor only leads to prosecution in rare cases. Against this backdrop, the PDO, local civil society and the international community have been calling for the establishment of an independent body to investigate complaints against law enforcement officials. As of December 2017, no such mechanism had been established.

However, as part of its broad mandate to 'advise the government on steps that shall be taken to protect and respect human rights, analyse the compliance on national laws, policies and practice with international standards, and provide relevant recommendations and suggestions for their improvement', the PDO can undertake

proactive and systemic monitoring of the use of force. In this regard, the standards and examples of international and European best practices in training, certification, operational planning, riot control, arrest, use of less lethal force and post-incident reporting concerning the use of force are intended to serve as a useful reference for the PDO.

Key reference material:

Complaints handling:

- Human Rights Council, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston', *Study on Police Oversight Mechanisms*, A/HRC/14/24/Add.8, (2010); available from:
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>

Use of force:

- UNODC & OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, Criminal Justice Handbook Series (2017), available from
<http://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>

Management of public assemblies:

- Joint report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and/or association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, (2016), available from: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx
- OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly: Second Edition, (2010), available from: <http://www.osce.org/odihr/73405>
- The United Nations recently launched the website www.freeassembly.net, a web-based legal research tool billed as the world's most user-friendly compilation of legal arguments on assembly and associational rights. The website also includes all relevant UN reports on the topic, country profiles, reports and news on freedom of assembly and relevant factsheets. It will assist lawyers, activists and judges involved in freedom of peaceful assembly and freedom of association (FOAA) cases to uphold the exercise of these rights.

Use of less lethal force:

- Amnesty International, 'Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials', (2015), available from: <https://www.amnestyusa.org/reports/use-of->

[force-guidelines-for-implementation-of-the-un-basic-principles-on-the-use-of-force-and-firearms-by-law-enforcement-officials/](#)

- Amnesty International and Omega Research Foundation, 'The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment' (London: 2015), available from: http://www.amnestyusa.org/sites/default/files/human_rights_impact_less_lethal_weapons_doha_paper.pdf
- Sadik Toprak. 'Riot Control Agents: Improve Knowledge to Improve Safety', SIPRI, Stockholm, (2011), available from: <http://www.sipri.org/media/newsletter/essay/december11>

2.2. Monitoring police treatment of groups at risk of vulnerability

Police come into contact with a number of at-risk groups, such as children, persons with disabilities, migrants, and women.¹²⁶ In the frame of their obligation to protect those groups and individuals, law enforcement agencies should familiarise their officers with the particular needs of, and challenges encountered by these groups; and adopt policies and procedures to ensure they are treated with dignity and protected from violence and other forms of ill-treatment.

This section provides a brief overview of why and how some of these groups may be more vulnerable than others, and what ombuds

¹²⁶ There are other groups at risk of vulnerability, such as LGBTI, persons with HIV, ethnic and religious minorities; however, this study focuses on the selected four vulnerable groups.

institutions should pay attention to when they monitor police interaction with these groups. The primary focus of the section will be on women, and particularly the role of ombuds institutions in monitoring police responses to gender-based violence.

Children

Children may be at risk of vulnerability for a number of reasons, including, inter alia:

- Due to their age and maturity, they may not always understand what constitutes violence, harassment, exploitation and abuse.
- Children often do not have an adequate awareness of their rights and methods of recourse when and if these are violated.
- Criminal justice processes and procedures are usually too complicated for children. Without sufficient safeguards and assistance they are more vulnerable to threats and manipulation, which may lead to false confessions or other violations of the right to a due process and fair trial.¹²⁷
- In particular, children are at a high risk of physical, verbal or psychological violence by the police, specifically after apprehension and before they are placed in detention.¹²⁸

¹²⁷ Convention on the Rights of the Child, *General Comment No: 10* CRC/C/GC/10, para 57, available from

<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

¹²⁸ Human Rights Council, *Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children*

At the international level, the main legal instrument setting out the rights of children is the Convention on the Rights of Children (CRC) and its protocols. In addition, there are several normative instruments that provide detailed guidance for human rights compliant treatment of child victims, offenders and witnesses. These include:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).¹²⁹
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).¹³⁰
- Guidelines for Action on Children in the Criminal Justice System.¹³¹
- Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.¹³²
- Guidance Note of the Secretary-General: UN Approach to Justice for Children.¹³³

on prevention of and responses to violence against children within the juvenile justice system, A/HRC/21/25, paras 5, 21; 29, available from: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-25_en.pdf

¹²⁹ A/Res/40/33, 29 November 1985, available from:

<http://www.un.org/documents/ga/res/40/a40r033.htm>

¹³⁰ A/Res/45/113, 14 December 1990, available from:

http://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf

¹³¹ A/Res/1997/30, 21 July 1997, available from:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>

¹³² ECOSOC Resolution 2005/20, 22 July 2005, available from:

<http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

- United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice.¹³⁴

If ombuds institutions decide to monitor police treatment of children, they should, at a minimum, pay attention to the following standards and practices:¹³⁵

- The national legal framework on the rights of children should be in line with CRC and its optional protocols. Furthermore, the internal policies of law enforcement agencies should comply with the aforementioned standards and guidelines.
- Law enforcement agencies should have dedicated units with professionally trained personnel to deal with child victims, witnesses and offenders. For example, the unit should be able to conduct interviews in a child-sensitive manner.
- Detention of children should be used as a measure of last resort. Instead, alternatives to detention should be encouraged. When detention is necessary, special measures should be implemented to protect children (e.g., separation from adults, frequent contact with family, rehabilitative environment, specialised and trained staff, and so forth).

¹³³ UN Guidance material (2008), available from: http://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf

¹³⁴ E/CN.15/2014/L.12/Rev.1, 12-14 May 2014, available from: http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_23/Draft_Resolutions/E-CN15-2014-L12-Rev1/E-CN15-2014-L12-Rev1_E.pdf

¹³⁵ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, (2002), p. 121-122.

- Law enforcement agencies should establish child-sensitive procedures for complaints and communications, in which child detainees can directly address the director of the institution, or judicial authorities and social agencies.
- There should be clear, standardised interagency referral mechanisms between law enforcement and juvenile-justice, child-protection, medical and social agencies.

It should be noted that standards on police treatment of children are not limited to those listed above. The UN Committee on the Rights of the Child ‘General Comment on Children’s Rights in Juvenile Justice’¹³⁶ provides a comprehensive overview of the required standards and practices to effectively safeguard the rights of children.

There are several examples of ombuds institutions or independent oversight agencies conducting proactive monitoring of the treatment of children by police. The review by New Zealand’s IPCA is one example.

Best Practice: Independent Police Conduct Authority, (IPCA) New Zealand

In 2012, after discovering that child and youth detention were steadily rising, the IPCA decided to conduct a thematic review of police treatment of juvenile detainees. The review identified a

¹³⁶ Convention on the Rights of the Child, *General Comment No: 10* CRC/C/GC/10.

number of problems and violations including excessive use of force, children being treated as adults, discriminatory treatment and so forth. To address these, the IPCA put forth twenty-four recommendations, which included:

- Designing joint trainings for police and social workers to enhance cooperation;
- Maintaining more detailed custody records outlining reasons for arrest;
- Reviewing procedures to minimise transportation of juvenile detainees between detention facilities; and
- Development of protocols for monitoring children and youth detention.

The full report of IPCA's review can be accessed at:

<http://www.ipca.govt.nz/Site/media/2012/2012-October-23-Joint-Thematic-Review.aspx>

Persons with disabilities

Persons with disabilities are more likely to be victimised than other members of society.¹³⁷ There are several factors that heighten their vulnerability, including, inter alia:

¹³⁷ Karen Hughes *et.al.*, *Prevalence and Risk of Violence against Adults with Disabilities a systematic review and meta-analysis of observational studies*, World Health Organisation (2012), p. 2, available from: http://www.who.int/disabilities/publications/violence_children_lancet.pdf?ua=1

- Persons with disabilities often lack full access to justice due to the lack of legal counselling services and information on crime reporting procedures.¹³⁸
- Under certain national jurisdictions, persons with disabilities are deprived of their legal capacities through the appointment of legal guardians who make legally binding decisions on their behalf.¹³⁹ Violence against persons with disabilities can go unreported due to the neglect of such legal guardians, lack of care or for other reasons.
- Crimes against persons with disabilities are often committed by people whom they know and trust, and whom they are dependent on for their survival and wellbeing.¹⁴⁰ In those cases, persons with disabilities may not report crimes for fear of being institutionalised or losing care.¹⁴¹
- Persons with psychosocial or intellectual impairments may be regarded by police officials as not competent enough to provide a credible report or serve as a credible witness in court.¹⁴²

¹³⁸ UN OHCHR, *Thematic Study on the Issue of Violence Against Women and Girls and Disability*, p. 6.

¹³⁹ Ibid.

¹⁴⁰ Barry Portman, Shirley Paceley, and Teresa Tudor, *Effective Law Enforcement Response to People with Disabilities*, The Police Chief 81, (2014), p. 48, available from: <http://www.policechiefmagazine.org/effective-law-enforcement-response-to-people-with-disabilities/>

¹⁴¹ UN OHCHR, *Thematic Study on the Issue of Violence Against Women and Girls and Disability*, p. 6.

¹⁴² Ibid. p. 14; Save the Children, *Out from the Shadows: Sexual Violence against Children with Disabilities*, (2011), p. 6, available from:

- The police can mistake certain behaviours of persons with disabilities for acts of non-compliance or those committed under influence of drugs or alcohol; which may trigger heavy-handed police responses.
- Persons with disabilities may have additional medical needs, which may put them at increased risk during detention.

The primary specialised legal instrument stipulating the fundamental rights of persons with disabilities at the international level is the Convention on the Rights of Persons with Disabilities.¹⁴³ Beyond this legal instrument, the UN developed several guidance documents which provide standards for the protection of persons with disabilities within the criminal justice system. These documents are provided in the list ‘Key Reference Material’ at the end of this section.

If and when ombuds institutions decide to monitor police treatment of and response to persons with disabilities, they should, at a minimum, check whether the law enforcement agency complies with the following standards:

- Law enforcement officials should be trained on:¹⁴⁴

<http://www.ohchr.org/Documents/HRBodies/CEDAW/HarmfulPractices/HaIndicapInternationalandSavetheChildren.pdf>

¹⁴³ UN Treaty Series, Vol. 2515, No: 44910, available from:

<https://treaties.un.org/doc/publication/unts/volume%202515/v2515.pdf>

¹⁴⁴ *Convention on the Rights of Persons with Disabilities*, Art. 13(2). Also see: Indiana Protection and Advocacy Services, *Tips for Law Enforcement and Corrections Personnel* (Indiana: 2008), p. 9, available from: [http://www.in.gov/ipas/files/Tips for Law Enforcement and Corrections Personnal.pdf](http://www.in.gov/ipas/files/Tips_for_Law_Enforcement_and_Corrections_Personnal.pdf)

- different types of physical and mental disabilities and impairments, and their visible symptoms, in order to differentiate them from disobedient behaviour;
 - the most common types of violence, exploitation and abuse encountered by persons with disabilities;
 - specific methods to de-escalate and control persons with disabilities who act violently during arrest; and
 - specialised procedures to interview victims, offenders and witnesses with disabilities to ensure their full participation in the investigation.
- Law enforcement agencies should develop a policy for identifying and investigating allegations or incidents of disability-related hate crimes.
 - There should be protocols on confidentiality and safety for victims with disabilities, especially where there is a potential for retaliation by a support person.¹⁴⁵
 - Police stations should be equipped to provide reasonable accommodation to persons with disabilities, including wheelchair access, Braille, and sign language interpretation when necessary.
 - Police detention centres should be designed to provide full access for persons with disabilities to facilities and services; and be equipped to provide for their additional needs.¹⁴⁶

¹⁴⁵ Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, US DoJ, Office for Victims of Crime, (n.d), available from: https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm

¹⁴⁶ *Convention on the Rights of Persons with Disabilities*, Art. 14(2).

Among ombuds institutions, conducting a proactive review of police treatment of persons with disabilities is not so common. More often, ombuds institutions launch investigations upon individual complaints, but make recommendations that concern law enforcement agencies at large. This was the case in one of IPCC's investigations, as detailed below.

Best Practice: Independent Police Complaints Commission, England and Wales, UK

The IPCC launched an investigation into Sussex Police's treatment of an eleven year old girl with a severe developmental disorder on five occasions from 2 February to 2 March, 2012. The disorder in question can cause challenging behaviour, leading to the potential of self-harm or harm to others. The girl in question was arrested several times for minor offences and was detained overnight in police cells. Although her disorder was not fully diagnosed at the time, the mother warned the police officers that the girl was believed to be suffering from an autism related disorder.

An IPCC investigation found that despite the warning, the police did not take special measures such as ensuring that an appropriate adult was present in custody to support the child; and used excessive force on the child, including handcuffs, leg restraints and spit hoods; without recording any rationale. Following the investigation, the IPCC recommended that:

- Officers should receive additional training on mental

health, with a focus on considering adjustments in the use of force on persons with mental impairments.

- Officers should be trained on the role of an appropriate adult for children with disabilities (parent, guardian, and caregiver), and there should be clear guidelines on when and how to contact an adult.
- Procedures on documenting the use of force in custody should be strengthened.

The Sussex Police accepted the recommendations and made changes to its training curriculum and internal procedures.

The full report of the investigation can be accessed at:

<https://www.ipcc.gov.uk/news/ipcc-recommends-sussex-police-makes-improvements-after-11-year-old-disabled-girl-held-cells>

Migrants

By definition, an international migrant is a person who is living in a country other than that in which he or she was born. Not all migrants can be considered as vulnerable. However, migrants in an ‘irregular situation’; those ‘who, owing to undocumented entry or the expiry of his or her visa, lack[s] legal status in a transit or host country’,¹⁴⁷ are particularly vulnerable in their interactions with the police. The factors that contribute to their vulnerability include, inter alia:

¹⁴⁷ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Art. 5.

- While they are often subjected to various forms of human rights violations, they may choose not to report crimes out of fear of being apprehended and deported, losing their job, or due to a number of other reasons.
- They may not understand or speak the language of the host country, and thus may not be able to defend themselves, or effectively communicate their needs.
- They may not be familiar with the laws of the host country and their fundamental human rights.
- In some countries, due to the stigma attached to migrants (for example, linking them to terrorism and other crimes) they may be subjected to violence, harassment and other types of hate crimes. This stigma can also lead to bias-based profiling by police officials where migrants are disproportionately targeted by law enforcement agencies.

The most specialised legally binding instrument stipulating the rights of migrants is the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.¹⁴⁸ However, both international and European agencies have developed specific standards for law enforcement agencies concerning the treatment of migrants, which are listed in the 'Key Reference Material' section.

¹⁴⁸ UN Treaty Series, Vol. 2220, No: 39481, available from: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

When ombuds institutions monitor police treatment towards migrants, they should check whether or not the law enforcement agency in question complies with the following standards:

- Law enforcement officials, especially those deployed at borders should be sufficiently equipped and trained to conduct human rights-based policing at borders, including rescue and interception, screening and interviewing, referral, removal and return.¹⁴⁹
- Migrants in an irregular situation seeking medical assistance should not be apprehended at or next to medical facilities.¹⁵⁰
- Law enforcement agencies should have in place policies to ensure that detention is used as an absolute last resort for irregular migrants, and encourage non-custodial measures.¹⁵¹
- While it is unreasonable to expect the immediate availability of interpretation in all situations where irregular migrants are arrested, law enforcement agencies should consider preparing standard notification forms, containing information on available remedies in the languages that are

¹⁴⁹ For more details, see OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, (2014), available from: http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

¹⁵⁰ European Union Agency for Fundamental Rights, *Apprehension of Migrants in an Irregular Situation – Fundamental Rights Considerations*, (2013), available from: https://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf

¹⁵¹ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guideline 8.1.

most frequently used or understood by irregular migrants in the State.¹⁵²

- Law enforcement officials should be familiarised with the multiple forms of discrimination faced by the elderly, children, women, LGBTI migrants, and migrants with disabilities.¹⁵³
- There should be a system of regular and unannounced visits to scrutinise police officials deployed at borders and detention facilities.¹⁵⁴
- Law enforcement agencies should develop reader friendly and easily accessible information sheets and/or brochures on the human rights of migrants and how they can access law enforcement when they are witness to or victims of a crime.

In the wake of the Syrian migrant crisis, many ombuds institutions launched own-motion reviews of the treatment of migrants. The French Defender of Rights is one of them.

Best Practice: The Defender of Rights (Le Défenseur des Droits), France

After having received numerous complaints from migrants, the Defender of Rights conducted a series of monitoring visits to the Calais camps. A significant part of the report was dedicated to the treatment of migrants by the police.

¹⁵² See: Human Rights Committee, *A.v. Australia*, U.N. Doc.

CCPR/C/59/D/560/1993 Communication no: 560/1993, p. 28.

¹⁵³ OHCHR, *Recommended Principles and Guidelines*, p. 8.

¹⁵⁴ *Ibid*, Guideline 8.19.

In the frame of the monitoring, the defender conducted in-depth interviews with migrants, reviewed their evidence (videos and other reports), interviewed doctors and international assistance providers, and held meetings with senior police management.

The Defender reported a number of violations; including disproportionate use of force on children; inappropriate use of teargas which may be dangerous; harassment of migrants through unjustified stop and search practices; and deliberate neglect of intervening in cases where migrants are subject to violence.

The Defender's recommendations to the National Police include:

- Stopping unnecessary search and frisking at places where basic needs are provided such as meal queues at the Calais camp;
- Reviewing internal procedures on evictions of migrants, and training officers accordingly to ensure that due process is respected;
- Providing officers with refresher trainings on the lawful use of teargas, especially in the context of unrest in migrant camps; and
- Equip all police and gendarmerie in the camp with body cameras to enhance their accountability.

The full report can be accessed at: <http://www.theioi.org/ioi-news/current-news/migrants-and-fundamental-rights>

Women

While not all women should be considered as de facto vulnerable, in certain situations they may be at higher risk of vulnerability compared to other members of society. It is estimated that 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives. However, some national studies suggest that up to 70 per cent of women have experienced physical and/or sexual violence from an intimate partner in their lifetime.¹⁵⁵ The factors that increase their vulnerability include the following:

- Women who are victims of crime, especially gender-based violence, may not be able to report it to the police due to fear of revenge from the offender or being stigmatised;
- Law enforcement officials may have biased judgement towards women victims due to gender stereotypes, which may prevent them from responding effectively.
- If not sensitised towards the particular needs of women, law enforcement officials may cause secondary victimisation.
- Women offenders are disproportionately likely to have been victims of domestic or sexual abuse. Throughout the criminal justice process, they are at risk of further abuse, violence and

¹⁵⁵ World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013). *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*, p. 2. For individual country information, see: *The World's Women 2015, Trends and Statistics*, Chapter 6, 'Violence against Women', United Nations Department of Economic and Social Affairs, (2015).

humiliation from police, prison officers and fellow prisoners.¹⁵⁶

The primary instrument protecting the rights of women at the international level is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). At the European level, the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence is the most authoritative and specialised instrument. In addition to these Conventions, there are several normative instruments which provide standards on the treatment of women in the criminal justice system, including the:

- Declaration on the Elimination of Violence against Women.¹⁵⁷
- Beijing Declaration and Platform for Action.¹⁵⁸
- United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (The Bangkok Rules).¹⁵⁹

¹⁵⁶ Penal Reform International, *Women in the Criminal Justice System – The Issue*, (n.d), available from: <https://www.penalreform.org/priorities/women-in-the-criminal-justice-system/issue/>

¹⁵⁷ A/RES/48/104, available from: <http://www.un.org/documents/ga/res/48/a48r104.htm>

¹⁵⁸ *The Beijing Declaration and Platform for Action*, adopted in September 1995 by the Fourth World Conference on Women, and other UN Women documents, available from: <http://www.un.org/womenwatch/daw/beijing/platform/>

¹⁵⁹ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) (A/Res/65/229), (2010), available from: <http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/>

While in the context of policing, various issues concerning women's human rights exist, this section will focus on violence against women, and the role of ombuds institutions in monitoring the response of police to it.

Violence against women

The Beijing Declaration defines the term 'violence against women' as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'.¹⁶⁰ Forms of violence against women include but are not limited to the following:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.¹⁶¹

¹⁶⁰ *Beijing Declaration*, para 113.

¹⁶¹ *Ibid.*

Role of law enforcement

Police often provide the first official response to a domestic violence incident and thus have an important role in ensuring the immediate safety of the victim and facilitating access to other services such as medical assistance, victim support, or shelters.¹⁶²

It is therefore crucial that law enforcement agencies are appropriately resourced and trained to provide immediate response, and capable of effectively investigating the case in question and taking all necessary measures to protect the victim. The importance of this police duty is emphasised by the landmark ruling of the European Court of Human Rights:¹⁶³

ECtHR Ruling: *Kontrovà v. Slovakia*

On 2 November 2002, the applicant filed a criminal complaint against her husband for assaulting and beating her with an electric cable. Accompanied by her husband, she later tried to withdraw her criminal complaint. She consequently modified the complaint such that her husband's alleged actions were treated as a minor offence which warranted no further action. A month later her husband shot and killed their daughter and son. The applicant alleged that the police, aware of her husband's abusive and

¹⁶² Crime and Misconduct Commission, *Policing Domestic Violence in Queensland*, (2005), p. 1.

¹⁶³ *Kontrovà v. Slovakia* (application no. 7510/04), available from: https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/kontrova%20v.%20slovakia_en.asp

threatening behaviour, had failed to take appropriate action to protect her children's lives.

The Court held that there had been a violation of the right to life concerning the authorities' failure to protect the lives of the applicant's children. It observed that the situation in the applicant's family had been known to the local police in light of the criminal complaint of November 2002 and the emergency phone calls of December 2002. In response, under the applicable law, the police had been obliged to: register the applicant's criminal complaint; immediately launch a criminal investigation and criminal proceedings against the applicant's husband; keep a proper record of the emergency calls and advise those on the next shift of the situation; and, take action concerning the allegation that the applicant's husband had a shotgun and had threatened to use it.

However, one of the officers involved even assisted the applicant and her husband in modifying her criminal complaint of November 2002 so that it could be treated as a minor offence calling for no further action. In conclusion, as the domestic courts had established and the Slovakian Government had acknowledged, the police had failed in its obligations and the direct consequence of those failures had been the death of the applicant's children.

The full report can be accessed at:

https://www.coe.int/t/dg2/equality/domesticviolencecampaign/re-sources/kontrova%20v.%20slovakia_en.asp

A similar decision was adopted by the CEDAW Committee, on the case X. and Y. v. Georgia (N° 24/2009)¹⁶⁴ in which the victim and her daughter endured physical and sexual violence for several years. Despite several complaints lodged to the police, no criminal charges were brought against the husband. In this case, the CEDAW Committee recognised that the State had failed to act with due diligence, including to investigate and punish human rights violations, which constituted a violation of Article 2 b) c) d) e) f) in conjunction with Articles 1 and 5 a) of the Convention and GR 19, and recommended adequate financial compensation to the victims. It also recommended: i) adequate support to victims of domestic violence including shelters and psychological support; ii) awareness raising campaigns; iii) ratification of the Istanbul convention; and iv) mandatory training for judges, lawyers, and prosecutors.

Role of ombuds institutions in monitoring police response to domestic and gender based violence

Ombuds institutions have a key role in monitoring the effectiveness of law enforcement responses to violence against women. While the CEDAW does not explicitly refer to violence against women and overseeing the response of the police to it, the Committee on the Elimination of All Forms of Discrimination against Women interprets the implementation of Convention articles, and puts forth relevant recommendations for State parties. Some recommendations of the

¹⁶⁴ CEDAW/C/61/D/24/2009.

Committee are of relevance to the role of ombuds institutions; such as the:¹⁶⁵

- Compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with cases of gender-based violence;
- Provision of effective complaints procedures and remedies, including compensation; and
- Gender-sensitive training of judicial and law enforcement officers and other public officials.

In 1995, the Beijing Declaration and Platform of Action identified specific actions for Governments to prevent and respond to violence against women and girls. One of the recommended actions was to periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasising the prevention of violence and the prosecution of offenders; and to ensure the protection of women subjected to violence, as well as access to just and effective remedies. The periodic review and analysis of legislation on preventing violence against women is also of relevance to ombuds institutions.¹⁶⁶

In 2013, the Commission on the Status of Women adopted the 'Agreed Conclusions on the elimination and prevention of all forms of violence against women and girls'. The conclusions called on States

¹⁶⁵ CEDAW, Recommendation 19, available from: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

¹⁶⁶ *Beijing Declaration and Platform of Action*, para 124 (d), available from: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

to: ‘Develop national monitoring and evaluation mechanisms to assess policies and programmes, including preventive and response strategies to address violence against women and girls in both public and private spheres’.¹⁶⁷ In this context, ombuds institutions can be part of such national monitoring mechanisms to assess the preventive and reactive strategies used to address violence against women.

At the European level, the Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence, adopted in 2011, emphasises similar points to the CEDAW recommendations, and calls for state parties to cooperate with national human rights institutions in conducting awareness raising campaigns on identifying and preventing violence against women.¹⁶⁸ In this context, the following presents some of the ways in which ombuds institutions oversee police responses to violence against women together with relevant best practices.

1: Review and monitor the implementation of legal and regulatory frameworks on preventing and investigating gender-based violence

Without a comprehensive legal framework, strategic documents and plans to implement the laws, the police cannot be expected to

¹⁶⁷ *Agreed Conclusions on the elimination and prevention of all forms of violence against women and girls*, p. 7, para k, available from: http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/27

¹⁶⁸ Istanbul Convention, Art. 13, available from: <http://www.coe.int/en/web/istanbul-convention/text-of-the-convention>

operate effectively. When reviewing respective legislation, ombuds institutions should pay attention to how domestic and gender-based violence are defined; the procedures for reporting a case; the duties and responsibilities of the police; interagency coordination mechanisms, and measures for victim protection, amongst others. Such a review would enable ombuds institutions to identify gaps in legislation that may hinder police response. The United Nations' Handbook for Legislation on Violence Against Women is a useful source for drafting, reviewing and monitoring the implementation of legislation on violence against women.¹⁶⁹ Ombuds institutions in Spain and Georgia have conducted such reviews.

Best Practices: Ombudsman, Spain and PDO, Georgia

Spain: The Spanish Ombudsman's Office monitors the *Organic Act on Integrated Protection Measures against Gender Violence (2004)*, concerning all incidents and failures resulting from its enforcement by various public authorities, State security forces, and criminal justice actors. The Office publishes the information collected and encourages relevant authorities to prevent future incidents and failures.

(Source: OSCE/ODIHR, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, (Warsaw, 2012), p. 25, available from:

¹⁶⁹ United Nations, *Handbook for Legislation on Violence Against Women*, (New York: 2010), available from: <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20Legislation%20on%20violence%20against%20women.pdf>

<http://www.osce.org/odihr/97756?download=true>)

Georgia: The PDO oversees the implementation of components of Georgia's Action Plan on Domestic Violence and Protection of the Victims of Domestic Violence, including activities aimed at enhancing legal redress for victims of domestic violence. In 2011 and 2012, the PDO reviewed over 100 cases of domestic violence to assess the accessibility of protection measures for the victims.

(Source: Megan Bastick. 'Integrating Gender into Oversight of the Security Sector by Ombuds Institutions & National Human Rights Institutions' (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014), p. 21)

2: Monitor police responses to gender-based violence by assessing organisational capacities of the law enforcement

One of the most effective ways to monitor police responses to gender-based violence is to assess the operational policies and capacities of police services in responding to and investigating complaints. This would entail, inter alia, reviewing standard operational practices in providing first response to victims, guidelines for investigating gender-based violence, training curricula on the subject matter, and procedures for interagency referral mechanisms. The South African Independent Complaints Directorate (formerly the Independent Police Investigative Directorate) conducted such a review over a period of thirteen years.

Best Practice: Independent Complaints Directorate, South Africa

Between 1999 and 2012, South Africa's Independent Complaints Directorate (ICD) oversaw the South African Police Service's compliance with its obligations under the Domestic Violence Act. The ICD submitted a report to parliament on police compliance with the Domestic Violence Act.

Furthermore, the ICD conducted inspections and interviews at police stations using standardised monitoring tools for evaluating stations' compliance with the Domestic Violence Act. They checked:

- The procedures for record keeping;
- Whether the facility was victim-friendly and equipped to deal with matters of domestic violence, including whether it had copies of the Domestic Violence Act and a list of service providers for victims; and
- Availability of female staff on each shift.

(Source: Megan Bastick. 'Integrating Gender into Oversight of the Security Sector by Ombuds Institutions & National Human Rights Institutions' (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014), p. 34)

3: Conduct own-initiative studies

To accompany the aforementioned monitoring activities, ombuds institutions could launch studies to gain deeper insights into a particular aspect of police response to domestic and gender-based

violence and publish a report with recommendations. Such an initiative would also contribute to an informed public debate, and raise awareness on issues of concern.

Best Practice: Crime and Misconduct Commission, Australia

In 2003, Australia amended its legislation on combatting domestic violence by broadening the categories encompassed by the law, to include intimate personal and informal care relationships. Subsequently, the Crime and Misconduct Commission launched a comprehensive study to assess the capacities of the police service to deal with the broader scope and the potential challenges for the police. In doing so, the Commission conducted surveys and interviews with police officers across the state, as well as consultations with victim support organisations and interviews with victims. The study revealed shortcomings in the system and listed recommendations for improvements.

The report can be accessed at:

<http://www.ccc.qld.gov.au/research-and-publications/publications/police/policing-domestic-violence-in-queensland-meeting-the-challenges.pdf>

Monitoring Law Enforcement Treatment of Vulnerable Groups—Relevance to Georgia

This section provided an overview of standards and best practices concerning police treatment of vulnerable groups. Considering that the PDO has a specific department on the Protection of the Rights of Persons with Disabilities, and a centre on the rights of children; the section provided standards on the treatment of persons with disabilities and children by the police. However, particular focus was placed on the violence against women, and the role of ombuds institutions in ensuring effective police responses to violence against women.

Despite the Government's efforts to bring the relevant legislation in line with international standards (e.g., revisions to the Criminal Code in 2012, and the 2014 amendment to the Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence) violence against women continues to be a widespread phenomenon in Georgia. While the international community welcomed the legislative changes, the CEDAW Committee expressed concerns with the growing number of women murdered by their husbands or partners and of women victims of other forms of violence. It urged Georgia to, inter alia, ensure the effective investigation of cases of violence against women, prosecute and punish perpetrators with sanctions commensurate with the gravity of the crime and provide victims with adequate compensation, protection and assistance.

In 2015, the PDO launched a comprehensive review on violence

against women in Georgia. The review was a good example of an own-initiative study, which revealed neglect and misconduct by the law enforcement as well as a lack of capacity to implement the laws. While the study lists a number of recommendations, it is important to track their implementation. In this regard, the South African example of reporting progress to the parliament every six months embodies best practice.

In June 2016, the UN Special Rapporteur published a report on violence against women, its causes and consequences on her mission to Georgia (A/HRC/32/42/Add.3). The report reiterates the PDO's findings and stresses the shortcomings in law enforcement, particularly with respect to:

- The lack of proper data collection, and mis-categorisation of domestic violence as family conflict;
- The failure to inform victims of restriction orders, and issuing disproportionately few restriction orders as compared to the total number of reported cases; and
- The lack of due diligence by law enforcement officers in investigating these cases.

As stated in the UN Special Rapporteur's report, in Tbilisi, Pankisi, Gori, Kutaisi, Zugdidi and Gali regions, the police services are elaborating Standard Operating Procedures (SOP) on Prevention and Response to sexual and gender-based violence to maximize the efficiency of coordinated actions of governmental and non-governmental bodies. The PDO may consider reviewing the SOPs and providing input before they are finalised. In this regard, a recent report by HMIC in the UK on 'Improving Police Response to

Domestic Abuse’ could be a useful reference for PDO. See:
<https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>

Key reference material:

Children:

- UNODC, ‘Justice in Matters Involving Children in Conflict with the Law Model Law on Juvenile Justice and Related Commentary’, (2013), available from:
http://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf
- Marie Wernham, Savina Geerinckx and Elanor Jackson, ‘Police Training on Child Rights & Child Protection: Lessons Learned and Manual, Consortium for Street Children’, (2005), available from:
<http://www.unicef.org/tdad/mwpolicetrainingmanual.pdf>

Persons with disabilities:

- UN OHCHR, ‘Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors’, Professional Training Series, No. 17, (2002), available from:
<http://www.undp.org/content/dam/undp/library/Poverty%2>

[OReduction/Inclusive%20development/DisabilityGuidance_Web41pgs.pdf](#)

- World Health Organisation, 'Prevalence and Risk of Violence against Adults with Disabilities a systematic review and meta-analysis of observational studies', (2012), available from: [http://www.who.int/disabilities/publications/violence_children_lancet.pdf?ua=1](#)
- UN OHCHR, 'Thematic Study on the Issue of Violence Against Women and Girls and Disability', A/HRC/20/5, (2012), available from: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-5_en.pdf](#)
- World Health Organization, 'Mental Health and Development: Targeting people with mental health conditions as a vulnerable group' (Geneva: 2010), available from: [http://www.who.int/mental_health/policy/mhtargeting/en/](#)

Migrants:

- OHCHR, 'Recommended Principles and Guidelines on Human Rights at International Borders', (2014), available from: [http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf](#)
- UNODC, 'Combatting Violence Against Migrants', (2015), available from: [http://www.ifrc.org/Global/Documents/Secretariat/Combating%20Violence%20against%20Migrants%20-%202015.pdf](#)

- European Agency for Fundamental Rights, ‘Apprehension of migrants in an irregular situation—fundamental rights considerations’, (n.d), available from: https://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf
- United Nations Human Rights Council, ‘Report of the Special Rapporteur on the human rights of migrants’, A/HRC/26/35/ADD, (2014), available from: http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf

Women:

- OSCE/ODIHR, ‘Handbook for National Human Rights Institutions on Women’s Rights and Gender Equality’ (Warsaw: 2012), available from: <http://www.osce.org/odihr/97756?download=true>
- Megan Bastick. ‘Integrating Gender into Oversight of the Security Sector by Ombuds Institutions & National Human Rights Institutions’ (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014), available from: <http://www.dcaf.ch/integrating-gender-oversight-security-sector-ombuds-institutions-national-human-rights-institutions>
- United Nations, ‘Handbook for Legislation on Violence Against Women’, (New York: 2010) available from: <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

- Penal Reform International, and APT: ‘Women in Detention—A Guide to Gender Sensitive Monitoring’, (2013), available from: <https://cdn.penalreform.org/wp-content/uploads/2016/01/women-in-detention-2nd-ed-v7.pdf>

3. Monitoring Detention Facilities and Conditions

Detention monitoring—international standards

At the international level, the primary instruments concerning detention monitoring are the UN Convention Against Torture (CAT) and its optional protocol (OPCAT). Articles 2 and 16 of the (CAT) oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.

Article 11 of the CAT provides the legal basis for detention monitoring by stipulating that ‘Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.’¹⁷⁰

¹⁷⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Optional Protocol to the Convention against Torture (OPCAT) establishes a system of visits to places of detention by **independent institutions** for the better prevention of torture and other cruel, inhuman and degrading treatment or punishment. The system relies on the UN Subcommittee on Prevention of Torture (SPT), together with National Preventive Mechanisms (NPMs) in each State.¹⁷¹

States that ratify the OPCAT are obliged to designate a National Preventive Mechanism, either by designating existing institution(s) with a NPM mandate or establishing a new mechanism. Some countries grant the NPM function to their national ombuds institution, others to national human rights commissions. In Europe and Latin America, the majority of ratifying states have chosen to designate their ombuds institution as the national preventive mechanism under the OPCAT. In other countries, several institutions share the NPM function. For instance in New Zealand, the following bodies have been designated as NPMs: the Ombudsman, the Independent Police Conduct Authority, the Children's Commissioner and the Inspector of Service Penal Establishments. The New Zealand Human Rights Commission has been given the coordinating role as the Central National Preventive Mechanism.¹⁷² A number of states have also set up new institutions to carry out the NPM mandate.

¹⁷¹ OPCAT, Art. 3.

¹⁷² Human Rights Commission, *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention against Torture (OPCAT) 1 July 2009 to 30 June 2010*, (New Zealand: 2010), p. 4, available from: <http://www2.ohchr.org/english/bodies/cat/opcat/docs/NewZealandAnnualReport2010.pdf>

OPCAT, Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Source:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

A further legally binding instrument concerning detention is the **International Convention for the Protection of All Persons from Enforced Disappearance (CED)**. The convention describes ‘enforced disappearance’ as ‘the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.’¹⁷³

The Convention stipulates that competent authorities shall examine allegations of enforced disappearance and, where necessary, undertake without delay a thorough and impartial investigation. In

¹⁷³ *International Convention for the Protection of All Persons from Enforced Disappearance*, Art. 2, available from:

<http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

this respect, such authorities should have the necessary powers and resources to conduct the investigation effectively, including access to documentation and other relevant information.¹⁷⁴ The provisions of this convention are relevant to ombuds institutions since they can be mandated to examine and investigate enforced disappearances carried out by law enforcement officials.

While CAT, OPCAT and CED provide the legal-institutional basis for detention monitoring and independent investigations, soft-law instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); as well as reports of the UN Subcommittee on the Prevention of Torture (SPT) and European Committee for the Prevention of Torture provide important standards on preventing torture and other ill treatment in detention as well as practical guidance on the implementation of those standards.¹⁷⁵

A detailed explanation of those instruments and standards are beyond the scope of this guide. However, internationally reputable institutions, such as the Association for the Prevention of Torture,

¹⁷⁴ Ibid. Art. 12.

¹⁷⁵ For a more detailed overview of those instruments, see: OHCHR, APT & APF. *Preventing Torture: An Operational Guide for National Human Rights Institutions*, (2010), Part I, available from: <http://www.ohchr.org/Documents/Publications/PreventingTorture.pdf>

and Penal Reform International, have developed resource material focusing on those standards, as well as practical measures for their application.¹⁷⁶

Scope of detention monitoring

According to the OPCAT, NPMs shall have access to any place where persons may be deprived of their liberty, including but not limited to: prisons, police stations, pre-trial facilities, transport vehicles, hospitals, immigration centres, psychiatric institutions, children's homes, military facilities, and airports.¹⁷⁷ However, this section will focus only on monitoring places of detention within the criminal justice system, namely police custody facilities and prisons.

The key function of NPMs is to undertake preventive monitoring, including through regular visits to places of detention, and comprehensive assessments of facilities and the treatment of detainees, even in the absence of a specific complaint or allegation.¹⁷⁸ This section will focus on preventive detention monitoring, rather than visits to detention facilities as part of an investigation into an individual complaint.

¹⁷⁶ See: <http://www.apr.ch/en/resources/>; and <https://www.penalreform.org/resources/>. Key resources of both organisations are available in multiple languages. For more institutions working in the areas of torture prevention and detention monitoring, see: <http://antitorture.org/resourcesintro/related-ngos/>

¹⁷⁷ See: <http://www.apr.ch/en/opcat-faq-1/#preventive%20visit>

¹⁷⁸ OHCHR, APR & APF. *Preventing Torture: An Operational Guide for National Human Rights Institutions*, (2010), p. 86.

Essential powers for effective detention monitoring

The OPCAT lists the powers that NPMs should have in order to effectively undertake preventive monitoring of detention facilities. These are:

- Undertaking regular and unannounced visits to all places of detention;
- Access to all types of places where persons are deprived of their liberty;
- Access to all facilities within the place of detention;
- Access to all necessary records and information;
- Access to all persons deprived of their liberty and to any other persons;
- Liberty to choose the persons to interview and the location where the interview is carried out; and
- The ability to interview detainees in private.¹⁷⁹

Key stages of detention monitoring—best practices

Detention monitoring, particularly with respect to conducting preventive visits to places of detention, is a demanding and difficult task, requiring knowledge of international standards, thematic expertise on different forms of torture, cruel, degrading and inhuman treatment, and numerous tools and techniques to properly examine treatment and conditions in detention, as well as to document them. The Association for the Prevention of Torture (APT) has developed two comprehensive resource materials, ‘Monitoring places of

¹⁷⁹ OPCAT, Art. 20.

detention—A Practical Guide’¹⁸⁰, and ‘Monitoring Police custody—A Practical Guide’,¹⁸¹ which provide detailed, step-by step guidance for NPMs on every aspect of conducting visits, from issues to pay attention to in custody registers, to questions to be asked and avoided when interviewing detainees. While such a level of detail is beyond the scope of this guide, this section provides an overview of the key stages of a monitoring visit to detention facilities together with examples of best practices in selected aspects.

Stage 1: Preparation for the visit

- **Establishing a monitoring programme:** Preventive monitoring requires regular visits to selected places of detention. Given the resources NPMs have, and the number of detention facilities in the country, NPMs need to prioritise and choose the institutions they plan to visit. This prioritisation depends on the context of the country and the previous patterns of complaints received.

¹⁸⁰ Association for the Prevention of Torture (APT), *Monitoring Places of Detention—A Practical Guide*, (2004), available from: www.ap.t.ch/content/files_res/monitoring-guide-en.pdf

¹⁸¹ Association for the Prevention of Torture (APT), *Monitoring Police Custody—A Practical Guide*, (2013), available from: www.ap.t.ch/en/resources/monitoring-police-custody-a-practical-guide

Best Practice: Her Majesty's Inspector of Prisons (HMIP), the United Kingdom

HMIP is considerably well-resourced, and conducts regular monitoring of men and women's prisons, as well as immigration detention, police, court and border force custody facilities. However in conducting its regular visits, HMIP chooses a focus theme. The selected themes of 2014-2015 were 'isolation and solitary confinement' and 'de facto detention', which are particularly problematic areas and may amount to torture and ill-treatment under certain circumstances. In its annual report, HMIP analyses each of the above-mentioned institutions with respect to their practices of isolation and solitary confinement, followed by customised recommendations.

The report can be accessed at:

<http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/NPM-Annual-Report-2014-15-web.pdf>

Best Practice: Parliamentary Ombudsman, Denmark

The Danish Ombudsman draws up an annual monitoring plan, and similar to the HMIP of the UK, selects priority themes for monitoring. Recent years' themes included treatment of women and children in detention. The draft monitoring plan is then shared with the Danish Institute for Human Rights and DIGNITY—Danish Institute Against Torture, for their feedback.

(See the Ombudsman's report:

<https://en.ombudsmanden.dk/inspektioner/report/> p. 85)

Such consultation and cooperation with civil society organisations that have specific expertise on the subject matter is an excellent way of using resources, and contributes to the legitimacy of the Ombudsman's choice of places to visit.

Best Practice: Parliamentary Ombudsman, Norway

Given the high number of detention facilities, the Norwegian Ombudsman drew up prioritisation criteria to identify facilities where a higher risk of abuse exists. These criteria include:

- Whether the place holds persons deprived of their liberty at an early or later stage of their deprivation of liberty;
- The personal circumstances of the persons deprived of their liberty (e.g., circumstances that increase vulnerability);
- How intrusive the deprivation of liberty is; and
- Whether supervisory mechanisms exist, and what is their effectiveness.

The criteria were developed in consultation with the APT and other NPMs. More information can be found in the Norway—NPM 2014 report, at: <http://www.theioi.org/ioi-members/europe/norway/norwegian-parliamentary-ombudsman>

- **Developing tools for monitoring:** In order to ensure a systematic and consistent approach is used during each visit to places of detention, NPMs could develop practical tools such as checklists or guidelines for interviews. These tools become all the more important when different teams are sent to different institutions.¹⁸² Detailed and customised checklists for monitoring the treatment of certain groups of detainees, such as children or asylum seekers, are available online.¹⁸³

Best Practice: Commission on Human Rights, Philippines

The Commission carries out regular visits to all prisons in order to assess conditions against national and international human rights standards for the treatment of prisoners and detainees. The Commission has developed a set of guidelines for detention monitoring in order to standardise their inspection procedure.

¹⁸² OHCHR, APT & APF, *Preventing Torture: An Operational Guide for National Human Rights Institutions*, (2010), p. 86-87.

¹⁸³ See: American Civil Liberties Union (ACLU), *Checklist for a Visit to a Juvenile Detention or Correctional Facility*, available from: <https://www.aclu.org/files/assets/3%203%20Checklist%20for%20a%20Visit%20to%20a%20JJ%20Facility.pdf>; and APT, UNHCR & ICD. *Monitoring Immigration Detention—A Practical Manual*, (2014), available from: <http://idcoalition.org/publication/view/monitoring-immigration-detention-a-practical-guide/> Also see: APT's Detention Focus Database which includes detailed information on standards and questions for monitors, disaggregated by theme and vulnerable group, available from: <http://www.apr.ch/detention-focus/en>

Those guidelines were then integrated into a memorandum of agreement between the Commission and the Department of Justice, signed in 2012. An English translation of the guidelines can be accessed at:

<https://www.scribd.com/document/253162051/CHR-Guidelines>

(Source: OHCHR, APT & APF, 'Preventing Torture: An Operational Guide for National Human Rights Institutions', (2010), p. 86)

- **Setting up the visiting team:** In setting up the visiting team, NPMs should consider:
 - The type of expertise needed, based on the objectives of the visit and the type of facility being visited (these may include medical doctors, experts on human rights and administration of justice, and depending on the context, survivors of torture);¹⁸⁴
 - The gender balance of the visiting team, as well as the representation of ethnic and/or religious minorities;
 - The size of the visiting team, including identification of the team leader; and
 - The division of tasks between team members, as well as ensuring that each member of the visiting team understands their specific responsibilities.¹⁸⁵

¹⁸⁴ APT & IIDH, *Optional Protocol to the UN Convention Against Torture, Implementation Manual*, (2010), available from:

http://www.apr.ch/content/files_res/opcat-manual-english-revised2010.pdf

¹⁸⁵ OHCHR, APT & APF. *Preventing Torture: An Operational Guide for National Human Rights Institutions*, (2010), p. 87.

Best Practice: Human Rights Commission, Australia

The Australian Human Rights Commission includes medical experts in their teams. While this is considered standard practice, the Commission also involved medical experts in their efforts to promote public awareness of their findings on health-related consequences of child detention. The commission stated: 'Clear and accurate presentation of the medical evidence of ill treatment by experts can help to focus attention on the harm caused by detention policies. Following the project, there has been heightened public scrutiny and questions raised about the detrimental impacts of Australia's immigration detention and 'offshore processing' policies on asylum seekers, including from the medical profession.

The Australian Government has released several hundred people from closed immigration detention facilities in Australia, and as of 1 April 2016, there were no longer any asylum seeker children in detention in Australia.

Details of this particular case can be found at:

<http://www.apr.ch/en/resources/the-torture-prevention-ambassadors-good-practice-report/> p. 26-28.

Stage 2: Undertaking the visit

Typically, a visit to a detention facility begins with an initial talk with the person in charge of the facility, followed by a tour of the

premises, consultation of registers, interviews with detainees and a final discussion with the person in charge. This section of the guide does not provide step-by-step guidance, but rather standards and best practices on selected areas, in which the risk of torture and ill treatment is high when human rights standards are not respected.

- **Physical conditions of the premises:** A tour of the physical premises can reveal important signs of ill-treatment. NPMs should pay particular attention to areas of accommodation, kitchen and sanitary facilities. The revised Standard Minimum Rules for the Treatment of Prisoners, adopted in 2015, provides a detailed list of standards on these matters.¹⁸⁶ Besides those rules, the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment's (CPT) report also provides standards with concrete examples of what constitutes best practice with respect to accommodation, food, health, hygiene and other matters.¹⁸⁷ During the tour, NPM members should be allowed to take photos to aid memory, and to be used as supporting documents for reporting. However, NPM members should pay utmost attention to ensure that photos taken during the visit do not compromise the security of the detainees or facilities.

¹⁸⁶ The revised Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), *Rules 12-25*.

¹⁸⁷ European Committee for the Prevention of Torture and Inhuman or degrading Treatment of Punishment (CPT) Report, (2002), p. 7, para 40, available from: <https://rm.coe.int/16806cd1ed>

ECtHR Ruling on Detention Conditions

The European Court of Human Rights has held that in several cases detention conditions amounted to a violation of Article 3 of European Convention on Human Rights, which prohibits inhuman or degrading treatment. For instance, in *Peers v. Greece*, the Court noted that there was no window or ventilation in the applicant's cell, and the applicant had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cellmate. The Court recognised that such conditions diminished the applicant's human dignity. In *Kalashnikov v. Russia*, the Court ruled that the severely overcrowded environment (twenty-four detainees within 17 square meters), among other conditions, had a detrimental effect on the applicant's health.

Further examples of ECHR cases on detention conditions can be found at:

http://www.echr.coe.int/Documents/FS_Detention_conditions_EN_G.pdf

Best Practice: Quebec Ombudsman, Canada

The Ombudsman launched an own motion investigation into police detention centres in indigenously populated areas of Northern Quebec. The Ombudsman observed unacceptable detention conditions, and made concrete recommendations to local authorities, including:

- Lowering the occupancy rate of cells;

- Altering the angle of the CCTV cameras so that toilets cannot be viewed on screen;
- Ensuring that suicide intervention equipment is available and officers are trained to use it; and
- Overcoming language barriers with members of indigenous communities.

A few days after the Québec Ombudsman's report was submitted, the relevant Departments announced the introduction of immediate improvements, which included better physical facilities; translation of information useful to detainees into Inuktitut (the local language); and enhanced use of video-conferencing in order to reduce repeated transfers of detainees. As regards the long term, the authorities committed to producing a comprehensive action plan in response to the Ombudsman's recommendations.

(Source: <http://www.theioi.org/ioi-news/current-news/quebec-ombudsman-s-investigation-on-detention-conditions-produces-concrete-results>)

- **Video surveillance:** Another key aspect to pay attention to when touring detention premises is **video surveillance equipment**. The use of video recording technologies during police interrogations is an important safeguard against torture and ill-treatment,¹⁸⁸ but NPMs should pay utmost

¹⁸⁸ See: Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56 (2003).

attention to the proportionality of the use of such technology. Overuse of surveillance, such as constant CCTV surveillance in prison cells, can constitute an infringement of the right to privacy and dignity. Furthermore, cameras or voice recording technology should not be used to violate the confidentiality and professional secrecy of detainees' meetings with lawyers, or their right to privacy during medical examinations.¹⁸⁹ Therefore, NPMs should pay particular attention to the location of such technology, and how the information is stored and used by the authorities. More information on video surveillance and detention monitoring can be found on APT's factsheet on video recording in police custody:

www.apr.ch/content/files_res/factsheet-2_using-cctv-en.pdf

- **Consultation of registers:** The Mandela Rules expressly list what needs to be recorded upon admission of a detainee and during the course of their detention.

According to the Mandela Rules, the following information should be entered into the prisoner file management system **upon admission of every detainee/prisoner:**

- (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;

¹⁸⁹ Panel Reform International, *Balancing Security and Dignity in Prisons, A Framework for Preventive Monitoring*, p. 17.

- (b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- (c) The day and hour of his or her admission and release, as well as of any transfer;
- (d) Any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable,
- (g) his or her children, the children's ages, location and custody or guardianship status; and
- (h) Emergency contact details and information on the prisoner's next of kin.¹⁹⁰

The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:

- (a) Information related to the judicial process, including dates of court hearings and legal representation;
- (b) Initial assessment and classification reports;
- (c) Information related to behaviour and discipline;
- (d) Requests and complaints, including allegations of torture or other cruel, inhuman, or degrading

¹⁹⁰ Mandela Rules, Rule 7, available from:
<https://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf>

treatment or punishment, unless they are of a confidential nature;

- (e) Information on the imposition of disciplinary sanctions; and
- (f) Information on the circumstances and causes of any injuries or death, and in the case of the latter, the destination of the remains.¹⁹¹

- **Interviews with detainees and staff:** Interviews are perhaps the most important part as they provide in-depth information and first-hand accounts of how detainees are treated and the various policies and procedures applied at the detention facility. As stipulated in OPCAT, international standards in this regard are to ensure that the visiting team select the detainees and staff to be interviewed, and not the authorities; and that interviews are held in private with due regard to the principle of confidentiality.

As shown above, best practice suggests that NPMs select focus themes for their annual monitoring, namely, particular aspects and/or policies in detention where risk of torture and ill treatment is high if human rights standards are not respected.

- **Use of force in detention:** International standards prohibit the use of force and firearms in places of detention apart from three exceptions: (i) self-defence; (ii) cases of attempted escape from the detention facility; and (iii) active

¹⁹¹ Mandela Rules, Rule 8.

or passive physical resistance to an order based on law or regulations.¹⁹² The use of force for self-defence is only legitimate in situations in which a member of the prison staff, or a co-detainee or any other person within the establishment is threatened with physical violence. As per APT guidance, during an attempted escape, force should only be used if the escape is being carried out or in progress; and not based on a hypothetical risk of evasion.¹⁹³

The use of force in detention can be broadly grouped into three categories:

1) Means of restraint: Means of restraint are described as ‘equipment intended to restrain or temporarily limit the freedom of movement of a person without injuring him/her, for example, handcuffs, straps, straitjackets, or restraining beds’.¹⁹⁴ If not used in line with the principles of legality, proportionality and necessity; their use can lead to serious human rights violations, including:

- Serious physical and psychological suffering;
- Humiliation and stigmatisation, especially when used on minors and in public view; and

¹⁹² Mandela Rules, Rule 82.

¹⁹³ Association for the Prevention of Torture (APT), *Detention Focus—Use of Force*, (n.d), available from: http://www.apr.ch/detention-focus/en/detention_issues/34/?vg=-1

¹⁹⁴ Association for the Prevention of Torture (APT), *Detention Focus—Means of Restraint*, (n.d), available from: http://www.apr.ch/detention-focus/en/detention_issues/35/#legal-standards

- Discrimination, when the use of restraints affects certain groups independent of their alleged level of danger or their detention regime.¹⁹⁵

When monitoring the use of restraint equipment in detention, ombuds institutions should pay attention to the following standards:

- The use of chains; irons or other instruments of restraint, which are inherently degrading or painful, should be prohibited under all circumstances.¹⁹⁶
- Instruments of restraint should never be used on women during labour, during childbirth or immediately after childbirth.¹⁹⁷
- Recourse to instruments of restraint and to force on children should be prohibited, except for preventing the child from inflicting self-injury, injuries to others or serious destruction of property.¹⁹⁸
- Instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. A record should be kept of every instance in which force is used against prisoners.¹⁹⁹
- For the purposes of preventing the risk of detainees escaping in certain situations (e.g., court appearances, hospitalisation,

¹⁹⁵ Ibid.

¹⁹⁶ Mandela Rules, Rule 47.

¹⁹⁷ Ibid. Rule 48; and Bangkok Rules, Rule 24.

¹⁹⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 63.

¹⁹⁹ 20th CPT General Report—CPT/Inf (2010) 28, para 70.

transfer to another establishment or removal of a detainee in anticipation of him/her being sent to a third country) the least incapacitating methods of restraint (e.g., handcuffs, straps, or belts) should be used.

- For the purposes of preventing physical assaults on other detainees or members of staff or on the security of buildings, or to prevent acts of self-harm, more incapacitating methods of restraint (e.g., straitjackets, restraining beds, medical sedation) may be used.²⁰⁰

2) Use of less lethal weapons and equipment: As detailed in the previous chapter, less lethal weapons include, inter alia, batons, rubber bullets, conducted energy devices (tasers) and teargas. They may only be used where the aforementioned restraint methods have failed and if the person is showing violent behaviour, which is likely to cause serious injury or result in the death of a third person. As per APT guidance, 'Refusal to comply with an order can never justify recourse to a weapon, lethal or not'.²⁰¹

3) The use of lethal force: Lethal weapons must be regulated even more strictly: their use must be prohibited within detention facilities, except when their use is considered absolutely necessary to protect someone's life. The use of these types of weapons must be limited to situations where there is a risk of serious injury or death or when an escape of a violent nature is in progress and no other weapons or equipment can be used to prevent it. The carrying and use of lethal

²⁰⁰ APT, *Detention Focus—Means of Restraint*.

²⁰¹ APT, *Detention Focus—Use of Force*.

weapons should be forbidden in detention facilities housing children.²⁰²

Best Practice: The Office of the Correctional Investigator, Canada

The Ombudsman for sentenced officers, the Correctional Investigator, launched a review of the use of inflammatory agents in prisons. The investigation was launched upon the finding that security incidents in federal prisons involving inflammatory agents, primarily Oleoresin Capsicum (OC) or pepper spray, had tripled since 2012.

The office of the investigator reviewed all cases of security incidents and found that 60 per cent included the use of inflammatory agents. The report states that ‘Pepper spray has become the ‘go-to’ tool for inducing inmate compliance and managing security incidents in federal prisons. Reliance on coercive measures has largely displaced other less invasive methods of resolving tension and conflict behind bars.’ Furthermore, the investigation found that prisoners with mental health issues were disproportionately affected.

The investigator recommended establishing regional monitoring mechanisms to oversee how inflammatory agents are stored, weighed, inspected, assigned and controlled; and introducing policies that prohibit the use of spray to secure compliance with

²⁰² Ibid.

orders.

The full report can be accessed at: <http://www.theioi.org/ioi-news/current-news/correctional-investigator-concerned-by-rising-use-of-force-incidents-involving-inflammatory-agents>

Best Practice: Parliamentary Ombudsman, Denmark

The office of the Ombudsman developed a set of questions for interviewing the detention authorities on their policies and practices concerning the use of force. While the interviews have the flexibility for additional and spontaneous questions, a minimum set of required questions ensure a systematic approach to comparing different detention facilities or analysing a policy change in a particular facility over a sustained period of time. The required questions include:

- Typical situations in which use of force occurs;
- Checking forms regarding use of force to make sure that all boxes (including those covering injury/damage and medical attendance, by way of example) are filled in;
- Instructions to, for instance, carry pepper spray when dealing with certain inmates;
- Follow-up procedures and supervision carried out by the management;
- Complaints on the use of force and respective outcomes; and
- Storage of instruments for the exertion of physical force (e.g., shields, truncheons, pepper spray, and stun guns).

(Source: Report on the Monitoring Activities Carried Out by the Danish Ombudsman,
<https://en.ombudsmanden.dk/inspektioner/report> p. 30)

Best Practice: Ontario Ombudsman, Canada

In 2010, the Ombudsman's office identified a disturbing pattern of complaints concerning the excessive use of force in prisons, and launched a subsequent own-motion investigation. The Ombudsman's investigators conducted more than 180 interviews with correctional officers, their union representatives and managers, whistleblowers, inmates and Ministry officials at all levels. They also visited prisons throughout the province, and reviewed thousands of documents, photos and videos relating to incidents in which force was used.

The Ombudsman subsequently published a comprehensive report, containing forty-five recommendations for the Ministry of Community Safety and Correctional Services to end the 'dysfunctional culture' and ensure such incidents are properly investigated and disciplined. The Ministry has pledged to implement the Ombudsman's recommendations.

Since then, the Ombudsman's office monitors the implementation of their recommendations, and dedicates a special section to this case in its annual report. The report of the initial investigation, as well as the yearly updates in the Annual Reports, can be accessed

at:

[https://ombudsman.on.ca/Newsroom/Press-Release/2013/Ontario-must-crack--code-of-silence"-among-correct.aspx?lang=en-CA](https://ombudsman.on.ca/Newsroom/Press-Release/2013/Ontario-must-crack--code-of-silence)

- **Isolation/solitary confinement:** The Istanbul Statement on the Use and Effects of Solitary Confinement²⁰³ defines solitary confinement as the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. Across detention facilities, segregation or solitary confinement are used for several purposes, such as:
 - A disciplinary sanction, arising from offences or disruption caused within the place of detention;
 - An administrative measure to deal with disruptive or dangerous behaviour;
 - A preventive measure against future harm or risk;
 - A measure to protect a prisoner from others; and
 - As a result of a regime and/or physical environment that restricts contact with others.²⁰⁴

²⁰³ *Istanbul Statement on the Use and Effects of Solitary Confinement*, drafted by a group of independent human rights experts on 9 December 2007, available from: http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf

²⁰⁴ National Preventive Mechanism, 'Monitoring Places of Detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 – 31 March 2015', (2015), p. 21.

However, such practices remain open to abuse when prison authorities do not comply with human rights standards.

As stated in the Mandela Rules, indefinite and prolonged solitary confinement should be absolutely prohibited. Prolonged solitary confinement is defined as solitary confinement for a time period in excess of fifteen consecutive days.²⁰⁵ The Human Rights Committee has noted that prolonged solitary confinement of detained or imprisoned persons might amount to acts of torture, cruel or inhuman treatment as prohibited by Article 7 of the International Covenant on Civil and Political Rights.²⁰⁶ The UN Rules for the Protection of Juveniles Deprived of their Liberty, and the Bangkok Rules for the Treatment of Women Prisoners, absolutely prohibit the use of solitary confinement for children and pregnant women, women with infants and breastfeeding mothers in prison.

Best Practice: NPM, the United Kingdom

UK's NPM chose isolation and solitary confinement as focus themes in 2014-2015. In doing so, members of the NPM first developed a set of criteria and standards for their inspections, and published them. Then, in the selected institutions, the inspectors reviewed individual prisoners' files; checked the minutes of meetings relating to the oversight of isolation, spoke to prisoners and staff and observed practices to formulate judgments relating

²⁰⁵ Mandela Rules 43 & 44.

²⁰⁶ Human Rights Committee, *General Comment No. 20* (A/47/40, annex VI.A), on the International Covenant on Civil and Political Rights, Art. 7, para 4.

to the use of isolation and solitary confinement.

In a high security prison, the NPM members identified a restrictive regime known as ‘duty of care’, aimed to protect those at risk of becoming a victim of retaliatory violence. Prisoners on this informal regime remained on a main wing of the prison, but could only spend thirty minutes a day outside of their cell. A prolonged implementation of such a practice goes beyond a protection measure, and amounts to torture.

The NPM also inspected whether prisons kept disaggregated data on the sex, ethnicity and religion of detainees/prisoners who are subjected to segregation/isolation policies, and discovered that such data is not collected centrally.

(Source: National Preventive Mechanism, ‘Monitoring Places of Detention: Sixth Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2014 – 31 March 2015’, (2015), p. 24-28, available from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481254/npm-annual-report-web-version.pdf)

- **Medical services:** As a standard practice, all detainees, upon entry, should be assessed for signs of illness, injury, alcohol or drug intoxication, and mental illness. This serves as a preventive measure against torture or other cruel, inhuman, or degrading treatment and protects law enforcement from becoming liable for ill health sustained before detention.

Guidance for medical examinations conducted by independent doctors for detainees entering the prison system is provided for in rule 32 of the Mandela Rules:

‘A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

- (a) Identifying health-care needs and taking all necessary measures for treatment;
- (b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;
- (c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;
- (d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period; and
- (e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.’

Besides medical checks upon arrival, the Mandela Rules provide for a number of standards on emergency service, continuity of treatment of diseases such as HIV or tuberculosis, confidentiality of medical examinations and files, and specific health-care services for certain groups such as pregnant women and persons with disabilities.²⁰⁷

The International Committee of the Red Cross (ICRC) developed a comprehensive resource material, ‘Health Care in Detention—A Practical Guide’, which explains in detail the proper implementation of the aforementioned standards, and provides checklists and sample questions for interviewing medical staff, prison authorities and detainees.²⁰⁸

Best Practice: The Office of the OSCE in Albania

The OSCE supported the capacities of the Office of the People’s Advocate in Albania, in monitoring prison conditions across the country. In this regard, the OSCE developed a number of tools, one of which was the following interview template focusing on monitoring medical services:

- Do detainees have access to adequate medical facilities?
- What are the most prevalent medical conditions? Does the prison have a strategy for addressing them? Where do medical consultations take place? How is the visit

²⁰⁷ See: Rules 26-35.

²⁰⁸ See: International Committee of the Red Cross (ICRC), *Health Care in Detention—A Practical Guide*, (2015), available from: <https://www.icrc.org/en/publication/4213-health-care-detention-practical-guide>

organised?

- Where do medical consultations take place? How easily can detainees have access to medical services? Are medical personnel on duty during night?
- Does the prison have enough medication? Where is it stored? Do prisoners have the possibility to get medication from outside?
- What is the number of doctors/nurses? Do they have appropriate professional qualifications?
- Are there any detainees with mental health problems? What happens once the detainee has been diagnosed with mental health problems; is he transferred, or is he treated in the same prison? Does he have access to psychiatrist? Does he have access to proper medication?

(Source: OSCE Presence in Albania, Report on Conditions in Albanian Prisons, and Recommendations for Reform, (2013), p. 24, available from:

<http://www.osce.org/albania/104571?download=true>)

Stage 3: Reporting and recommendations

Visits should be followed by credible reports addressed to the relevant authorities, including practical recommendations for change.²⁰⁹ There are multiple layers of reporting, starting with internal reporting on the visit to places of detention, followed by an

²⁰⁹ OHCHR, APT & APF, *Preventing Torture: An Operational Guide for National Human Rights Institutions*, (2010), p. 90.

official report on the visit, shared both with the institution visited, as well as higher authorities (e.g., relevant department ministry). Beyond visit reports, NPMs publish thematic reports based on several visits, and annual reports.²¹⁰

Recommendations form an essential part of the monitoring cycle. Without effective recommendations, preventive detention monitoring cannot go further than identifying the problem. The APT has developed a ‘double-smart recommendations model’ that builds upon assessing the effectiveness of recommendations against ten criteria:

Specific: each recommendation should address only one specific issue

Measurable: the evaluation of the implementation should be as easy as possible

Achievable: each recommendation should be realistic and feasible

Results-oriented: the actions suggested should lead to a concrete result

Time-bound: it should mention a realistic timeframe

AND

Solution-suggestive: Wherever possible, recommendations should

²¹⁰ Ibid.

propose credible solutions

Mindful of prioritization, sequencing and risks: it might be useful to address more urgent recommendations first and reserve others for subsequent reports

Argued: recommendations should be based on high-quality, objective evidence and analysis and refer to standards

Real-cause responsive: recommendations should address the cause of the problem, rather than the symptoms

Targeted: recommendations should be directed to specific institutions/actors rather than to ‘the authorities.’²¹¹

Best Practice: HMIP, United Kingdom

HMIP has developed a ‘recommendations database’, among other databases, that holds a wide range of information that feeds into all inspections. In this way, HMIP can measure what per cent of recommendations have been achieved, and what remain. For example, in its latest annual report, HMIP stated that ‘In the adult male prisons reported on in 2015–16, 46% of our previous recommendations (including main recommendations) in the area of safety had been achieved, 18% partially achieved and 37% not achieved.’

²¹¹ Ibid. Also see: APT, Briefing No: 1, *Making Effective Recommendations*, (2008).

(Source: HM Chief Inspector of Prisons for England and Wales, Annual Report 2015-2016, p. 19, available from: https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/07/HMIP-AR_2015-16_web.pdf)

In 2015, the Ludwig Boltzmann institute of human rights (BiM) and the University of Bristol undertook a comprehensive study entitled **‘Enhancing Impact of National Preventive Mechanisms—Strengthening the Follow-Up on NPM Recommendations in the EU: Strategic Development, Current Practices and the Way Forward’**. The study presents comparative best practices in drafting recommendations from NPMs in Europe.²¹²

Monitoring Detention Facilities and Conditions—Relevance to Georgia

The international community has acknowledged the visible and quantifiable effects of the implementation of reforms made following the parliamentary elections, held in October 2012 in Georgia, to prevent and punish torture. However, in his latest report from 2015 (A/HRC/31/57/Add.3), the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, emphasised that areas for improvement remain, such as:

²¹² See: http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study_final.pdf

- Lack of an independent and effective framework for investigating, prosecuting, punishing and remedying cases of torture and ill-treatment.
- The increase in prison population, which is approaching its maximum capacity (para 35).
- Physical and verbal abuse by law enforcement officers despite guarantees provided for by law (para 42).
- Overuse of video surveillance technologies (para 72).
- Inadequate light and ventilation in closed and high security prisons (para 84).
- Incomplete medical files lacking correct and complete descriptions or photographic documentation of the injury, and an interpretation of the probable cause (para 92).
- Permanent or prolonged solitary confinement, as a disciplinary measure (para 89).

The most recent report of the PDO (Annual NPM report, 2016) affirms the concerns voiced by the UN Special Rapporteur, and stresses that the use of force in detention, confidentiality of medical examinations, and incomplete arrest records continue to be areas of concern.

(Source: <http://ombudsman.ge/en/reports/specialuri-angarishebi/the-report-of-the-national-preventive-mechanism-2016.page>)

Most of the above-mentioned issues raised by the Special Rapporteur have been addressed in this section, with the provision of best practices intended to serve as a reference point for the

PDO. In this context, the PDO may consider revising its annual monitoring plan, and prioritise visiting closed and high security prisons, and if time and resources permit, conduct a focused review of solitary confinement practices, medical services and the use of video surveillance in places of detention.

Key reference material:

- Association for the Prevention of Torture (APT). 'Monitoring Places of Detention—A Practical Guide', (2004), available from: www.apr.ch/content/files_res/monitoring-guide-en.pdf
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- Denmark, Parliamentary Ombudsman, Report on the Monitoring Activities, available from:
<https://en.ombudsmanden.dk/inspektioner/report>
- Philippines, The Commission on Human Rights, Guidelines for Monitoring, available from:
<https://www.scribd.com/document/253162051/CHR-Guidelines>

National human rights institutions (NHRI)—also known as ombuds institutions—have a crucial role to play in monitoring the security sector and holding the security sector accountable for its practices. NHRIs are also well placed to interact with other stakeholders to help facilitate broader security sector oversight and can ensure the development and maintenance of human rights-observant security policies and practices.

DCAF programming with NHRIs in Ukraine and Georgia focuses on a variety of human rights and security sector governance challenges and the need for guidance materials on monitoring law enforcement and state security services has been noted for some time.

This Series of Monitoring Products is designed to facilitate the work of National Human Rights (Ombuds) Institutions on monitoring the security sector. The series provides guidance on relevant best practices and may also be used for relevant capacity development trainings.

DCAF has also developed a number of products to assist Ombuds institutions on both broad and highly specific oversight and policy challenges, particularly in terms of gender equality and human rights monitoring within the armed forces. For more information please see: <http://www.dcaf.ch/ombuds-institutions>

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