



**Policing the Police:  
Formal and Informal Police Oversight Mechanisms in the  
Americas**



Canadian Defence  
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**Policing the Police:  
Formal and Informal Police Oversight Mechanisms in the Americas**

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## **EXECUTIVE SUMMARY**

This report provides an overview and assessment of the ways in which mechanisms for the oversight of police institutions in the Caribbean and Latin America have evolved in recent years. The study is selective: it reviews 2 countries in North America (Canada and Mexico); 4 countries in the Caribbean (the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago); 6 nations in Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama); and 5 nations in South America (Argentina, Brazil, Chile, Colombia and Peru). Every nation in the region that is surveyed has sought ways in which to build trust between police institutions and the public. It is evident that the models which have been developed in the region are diverse and complex. Some nations have developed stronger civilian oversight mechanisms than others; all have some degree of internal oversight to deal with potential police abuse of power as well as more routine complaints against police operations. Some reform initiatives have been more successful than others. This study is not designed to praise some nations and to critique others, but it will be evident from the review that there continue to be challenges that need addressing in the region. The authors note in the course of the analysis and especially in their conclusions some of the best practices that have been followed. It is also evident from this review that there is a role for the international community to play in addressing some of the challenges, notably promoting best practices and encouraging dialogue among the countries of the region.

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## INTRODUCTION

All nations, whether Canada and other North American countries or the countries of the Caribbean and Latin America, face challenges in developing a culture of trust between police institutions and the nation's citizens. The evidence suggests that on the whole the higher the level of accountability of police institutions to the public the stronger the degree of trust that exists between a police force and the citizens. As one analyst has suggested: "the creation of mechanisms for the routine oversight of police conduct on behalf of the public, mechanisms that curb or correct abuses of power, is a common project of democratic societies."<sup>1</sup> Nations vary considerably in their political and historical heritage, and the objective of this report is not to critique what have been the patterns and practices in the hemisphere but rather to identify some of the challenges which the countries have faced and the measures which they have taken in developing that culture of trust. The goal is to identify what has worked and what has not worked as well, in other words to seek to build on best practices in the interests of the citizens of the region. What have been the obstacles to building that culture of trust and what measures might be taken to improve the relationship between citizens and the police institutions which have been established to protect the society as a whole and to enforce the rule of law?

At the heart of much of the debate over civilian oversight of police institutions is the question of whether more controls are required than a strong and independent judicial system, the constitutional protection of citizens' rights, and the kinds of expectations that citizens have of protection from abuse in democratic societies. Yet there are certainly those who argue that these guarantees alone are not sufficient, that police powers should be limited, that the police should not police themselves, and that civilian controls are essential to avoid the kinds of human rights problems which we have witnessed over the years in a number of nations. It has been noted that in the United States, for instance, in recent years some reformers have sought to limit the power of police chiefs to deal with discipline of officers, preferring to have such matters dealt with by independent civilian oversight bodies. In Canada most cities have police commissions which function more as sounding boards for the engagement of civilians in public-police relations rather than as mechanisms to interfere directly in police disciplinary matters. For more serious violations of the law the court system comes into play and police institutions are bypassed. The result of concerns in various nations that neither the judicial system nor internal police mechanisms are sufficient guarantee against abuse of power has been to establish increasingly autonomous review bodies. Examples include the police ombudsmen in several states of Brazil and in Northern Ireland, civilian complaint review boards, monitors, and inspectors general in some cities of the United States, and the Independent Complaints Directorate in South Africa.<sup>2</sup>

Western hemisphere countries vary considerably in both the structure of their police institutions and in the ways in which they have sought to develop internal and external mechanisms to oversee the operation of those institutions. Some countries in the region, similar to Canada and the United States, have national, regional or state police forces as well as municipal police forces, with the result that it would be difficult to examine all of the variety and permutations which have been developed throughout the hemisphere over the decades.

## CHALLENGES AND PATTERNS

Nations of North America, the Caribbean and Latin America continue to face challenges concerning the conduct of their security forces, whether military or police. For the average

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<sup>1</sup> Christopher Stone, Vera Institute of Justice, "Civilian Oversight of the Police in Democratic Societies," presented at the Global meeting on civilian oversight of police, Los Angeles, May 5-8, 2002.

<sup>2</sup> Ibid.

citizen in the Caribbean and Latin America, just as it is in Canada and the United States, the face of government is often that of the police, with the result that a citizen's perceptions of the police- their honesty, their commitment to the protection of civilians, and their commitment to justice- shape their perception of their governments.<sup>3</sup> The data on high levels of violence, organized crime, problems of impunity of state officials, and corruption, among other issues are well documented, and all governments in the region have been seeking ways to address those challenges. The challenges have been particularly difficult for those governments in nations that have only in the past two decades emerged from civil strife, such as Guatemala, El Salvador and Nicaragua, or in a nation such as Mexico which has been confronted by rising levels of violence associated with organized crime. All of the countries in the region face the challenge of offsetting negative perceptions of police and security forces and building public confidence in the integrity of police institutions. It is essential that the police not be viewed as part of the problem but rather that they are seen to be the guarantors of civil order and justice. It is that context which has brought increasing attention by national governments and the international donor community to the importance of establishing mechanisms to control police institutions, to reduce levels of corruption, to ensure that hiring, assessment, promotions and dismissals are dealt with by independent organizations and in a transparent manner. This report identifies the state of police reform in a sample of countries in the Americas, traces the development of police reform policies, outlines the strengths and weaknesses of those reforms and highlights the best practices.

### **VARIETIES OF OVERSIGHT MECHANISMS:**

Mechanisms to ensure the ethical conduct of police organizations and the protection of basic civilian rights vary considerably across the nations of the Americas from arms length civilian bodies with considerable independence from both security forces as well as from political interference to mechanisms that are purely internal to police organizations and hence not subject to public scrutiny.<sup>4</sup> There is also a growing trend toward the development of community policing in several countries in the region, initiatives in which local communities play a direct role in the policing of their communities. Some of the regulatory bodies have been created by legislation, others by executive appointment. Some of the mechanisms are strictly designed to deal with citizen complaints against police conduct. Some have the capacity to deal with such complaints directly; others are only able to review appeals made following an initial internal police investigation of a complaint. Some have power only to make recommendations in disciplinary matters; others have the capacity to enforce decisions. In the most effective instances oversight agencies also have the power to develop and implement policies designed to improve the ethical conduct of police departments. In some instances there is no more than a single individual, often an ombudsman, with an oversight mandate. In other cases there are several person commissions. Analysts also make a distinction between those oversight agencies which have the capacity to initiate investigations and policies and those which are purely reactive in nature. Almost every jurisdiction in Canada has some kind of civilian police commission or other watchdog organization. In Latin America there are 14 countries that have a formal office of an ombudsman for human rights. Of those 14, the majority have enshrined that office in their constitutions, thus lending the office a greater degree of protection from political interference. The three countries which have established an office of an ombudsman solely by law are Costa Rica, Ecuador and Panama. The first office of the ombudsman in the Latin American region was established in Guatemala in 1985. Some Latin American countries restrict by law the areas of an ombudsman's jurisdiction. Argentina, for instance, excludes the ombudsman from matters pertaining to defense and national

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<sup>3</sup> Orlando J. Perez, "Democratic Legitimacy and Public Insecurity: Crime and Democracy in El Salvador and Guatemala," *Political Science Quarterly*, 118, 4 (Winter 2003/2004), 628.

<sup>4</sup> Samuel Walker, "Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police," *American Journal of Police*, vol. XV, no. 3 (1996), 72-73.

security, and in most countries electoral matters are outside their jurisdiction. Ombudsmen of course have far broader responsibilities than monitoring police operations in contrast to the work of police oversight commissions.

There appears to be a general consensus among analysts of police reform that without effective internal governance of police operations elaborate external police oversight mechanisms are unlikely to have the desired results. There is also concern that unless effectively calibrated external controls may have the equally undesirable impact of weakening the capacity of police institutions to operate efficiently. In other words the watchdog needs to ensure adherence to ethical standards of conduct, have sufficient powers to enforce policies without political interference, but be cautious not to interfere with normal police operations.<sup>5</sup> One has to be conscious of the fact the police in all countries perform an essential public service and their jobs are dangerous ones. The responsibility of civilian oversight mechanisms should not be to hamper police from performing their jobs effectively but rather to ensure that they perform in an ethical manner.

### **OBSTACLES TO POLICE ACCOUNTABILITY**

With some exceptions police and security forces in the Caribbean and Latin America have had a long history of independence from civilian controls, and those forces have keenly guarded their independence. Civilian oversight is more well established in Canada, less so in Mexico, the other nation in the North American region that is reviewed in this study. In some well documented cases in the Americas the region has also witnessed corruption, inefficiency, abuse of power, political interference with the operation of security forces, a lack of professionalism in hiring, promotions and disciplinary actions. The reforms that have taken place across the region in the past few decades have been designed to correct these problems. The following section provides a detailed account of the institutional developments throughout the region. That section is followed by a summary and analysis of best practices. It is evident from the review that although there may be ideal mechanisms for oversight of police operations, what is feasible in each context will depend on a wide range of variables from historical traditions to the strength of democratic institutions, the strength of civil society organizations, and the will of authorities to accept a higher degree of civilian oversight with a corresponding reduction in autonomous police powers. The evidence suggests that progress is being made throughout the region even if many challenges remain. Working together and sharing information on best practices will strengthen the capacity to meet the challenges. It would be dishonest to suggest that there is a level playing field in the region. Some countries have better records than others in addressing police reforms; others have long histories of problems and have further to go to resolve issues. The international community also bears some responsibility to assist countries in the region to succeed in meeting their goals if for no other reason than good practices in the Caribbean and Latin America are in the interest of North American societies as well.

### **THE SCOPE OF THIS REPORT**

Given the number and diversity of the countries in the regions, the report divides the region into North America, the Caribbean, Central America and South America. The report also focuses on a sample of countries in each region: Canada and Mexico in North America, Trinidad and Tobago, Jamaica, Haiti and the Dominican Republic in the Caribbean; Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in Central America; Colombia, Peru, Chile, Argentina and Brazil in South America. Over the past twenty five years a number of these countries have emerged or are still in the process of emerging from lengthy periods of civil conflict, authoritarian, military regimes, with the result that in many of

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<sup>5</sup> Stephen Mastrofski and Cynthia Lum, "Meeting the Challenges of Police Governance in Trinidad and Tobago," *Policing*, vol. 2, no. 4 (September 2008), 486.

them the establishment of effective police institutions is only one component of a larger process of building effective state institutions. It should be noted that some of the assessment in this report is critical of both police institutions and of the governments to which they report. If societies are to be successful in building public trust in their police institutions the first challenge is to be honest in recognizing that problems exist.

## NORTH AMERICA

In part for the sake of organizational convenience and in part because Mexico has since the conclusion of the North American Free Trade Agreement been considered part of a North American community, Mexico is discussed in this section, in spite of the fact that many of the challenges the nation faces have more in common with other countries of Central and South America. This report does not review the structures in the United States.

### Canada:

Canada faces many of the problems that its partners in the hemisphere face: transnational crime associated with narcotics and illegal arms traffic, money laundering, and youth gangs. Canada thus has a common interest with other countries of the Americas to share best practices in the ways in which civilian oversight of police has evolved in the Canadian context. At the same time Canada has been fortunate to witness a decline in crime rates in recent years. Statistics Canada reports that the 2010 crime rate, which measures the volume of police-reported crime, reached its lowest level since the early 1970s, and the Crime Severity Index, which measures the seriousness of crime, declined to its lowest level since 1998. The Violent Crime Severity Index also declined by 6% in 2010.<sup>6</sup>

At the national level Canada has the Royal Canadian Mounted Police (RCMP) as well as several provincial police forces and municipal police. In some jurisdictions the RCMP acts in lieu of a provincial or municipal force. In Canada oversight mechanisms have developed at the national, provincial and municipal levels. At the national level there is the Canadian Commission for Public Complaints Against the RCMP as well as an RCMP External Review Committee and a Military Police Complaints Commission. There is also one national organization which is focused on these issues: The Canadian Association for Civilian Oversight of Law Enforcement. Its counterpart in the United States is the National Association for Civilian Oversight of Law Enforcement, a non-profit organization.<sup>7</sup>

Given the largely decentralized nature of law enforcement in Canada, with some overlap of federal and provincial jurisdictions, it is not surprising that there are some differences from one province to another, but there is commonality in the sense that all jurisdictions have sought to establish some form of oversight body which is designed to regulate police conduct. The province of Ontario, for instance, has an Office of the Independent Police Review Director. The Province of Quebec has a Police Ethics Commissioner and an Ethics Committee. The province of Saskatchewan has a Public Complaints Commission. The province of British Columbia has an Office of the Police Complaint Commissioner. As this report notes, the challenge in Canada as elsewhere in the Americas is to achieve a balance between ensuring police accountability to civilian authority and avoiding interference with the day to day operation of police institutions. Governing police boards as mandated in provincial police acts are the norm across Canada, with the exception of at least the province of Manitoba. As in other regions of the Americas the powers of oversight bodies vary. Normally, public complaint bodies are separate from the police service with clearly

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<sup>6</sup> Shannon Brennan and Mia Dauvergne, "Police-Reported Crime Statistics in Canada, 2010," Statistics Canada, July 21, 2011. <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11523-eng.pdf>. Accessed 22/10/2011.

<sup>7</sup> Canadian Association for Civilian Oversight of Law Enforcement: Compendium 2010. "Canada's Federal, Provincial and Municipal Models of Civilian Oversight," located at <http://www.cacole.ca/resources/publications/2010-Compendium-eng.pdf>. Accessed 21/10/2011.

defined scope and function. Some have the authority to investigate complaints themselves while others review those that have already been investigated by police departments. Examples of Canadian provincial oversight bodies include Ontario's Office of the Independent Police Review, Alberta's Law Enforcement Review Board, and Newfoundland's Public Complaints Commission. At the municipal levels police commissions normally have a role in the appointment of chiefs of police and some degree of control, along with elected municipal councils, over police budgets. Some commissions also are mandated to engage in collective bargaining with police associations on salary and working conditions.<sup>8</sup>

To provide one precise example of the powers of a police complaints commissioner: the Commissioner of the Province of British Columbia has statutory jurisdiction over complaints lodged against members or former members of municipal departments or about the service or policies of a municipal police department. The Commissioner is empowered, among other provisions, to make recommendations to the Solicitor General for a public inquiry under the Inquiry Act if there are reasonable grounds to believe that the issues in respect of which the inquiry is recommended are so severe or so widespread that an inquiry is necessary in the public interest. The Commissioner may also refer to Crown Counsel a complaint, or one or more of the allegations in a complaint, for possible criminal prosecution.<sup>9</sup>

Elsewhere in this report it is noted that one of the challenges which all societies have faced in the development of civilian oversight of police has been the need to gain the confidence of police institutions in the concept and process. Canada has not been immune to that challenge over the years, but there appears to be a consensus in Canada now as elsewhere that if implemented effectively such oversight bodies need not hamper the effective operation of the police. Pieter Tinsley, Chairperson of the Military Complaints Commission of Canada, observed at a 2009 conference sponsored by the UNDP that "a perhaps surprising evolution, coincidental with the changes already noted, has been the attitude of the police towards independent oversight. It is fair to say that historically the attitude towards the reception of oversight was one of resentment and even active resistance by both police leaders and front line officers. With some that continues to be the case, but, overall it is also fair to say that such oversight is now generally accepted with a far higher degree of cooperation and recognized as a necessary part of police professionalism and the maintenance of community confidence."<sup>10</sup>

### **Mexico:**

Mexico counts more than 400,000 police officers from many jurisdictions across the country, approximately one quarter of whom are located in the Federal district of Mexico City. There are three levels of jurisdiction, federal, state and municipal. State forces are governed by general statutes included in the public safety laws of the states while municipal police are governed by local statutes.

In 1998 President Ernesto Zedillo, in an effort to respond more effectively to an increase in organized crime and to deal with corruption, initiated a reform of the Mexican federal police.<sup>11</sup> In 2001 the Federal Judicial Police, which was long viewed as corrupt, was abolished and replaced by the Federal Investigative Agency (FDI). The new organization combined three existing groups: the Fiscal Police, the Interior Ministry's Centre of National

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<sup>8</sup> Manitoba Association for Rights and Liberties, "Civilian Oversight of Police in Canada: Governance, Accountability and Transparency," February 2009. Located at <http://www.marl.mb.ca/content/briefs-and-submissions/civilian-oversight-police-canada-governance-accountability-and-transp>. Accessed 21/10/2011.

<sup>9</sup> Canadian Association for Civilian Oversight of Law Enforcement: Compendium 2010. "Canada's Federal, Provincial and Municipal Models of Civilian Oversight," located at <http://www.cacole.ca/resources/publications/2010-Compendium-eng.pdf>. Accessed 21/10/2011.

<sup>10</sup> Located at <http://www.cacole.ca/resources/publications/CanExperOversight-eng.pdf>. Accessed 21/10/2011.

<sup>11</sup> Angel Gustavo Lopez-Montiel, "The Military, Political Power and Police Relations in Mexico City," *Latin American Perspectives*, vol. 27, no. 2 (March 2000), 81.

Security and Investigation, the Mexican army's third brigade of the military police, and the Federal Highway Police. The highest percentage of members of the new organization was drawn from the third brigade, indicative of the military orientation of the organization.

Each level of police in Mexico has its own areas of jurisdiction. For instance, narcotics trafficking is considered a federal police matter; murder is handled by the state police. It is evident that no single jurisdiction is capable of responding to challenges of that magnitude.

The relationship between the police and the Mexican military, especially with the increasing problems associated with organized crime, has contributed to the weakening of public confidence in police across the country. In the course of the 1990s the military assumed control of the police in a number of Mexican states, including Guerrero, Veracruz, Oaxaca, Yucatan and Chiapas, the latter because of the Chiapas uprising by indigenous groups in 1994. In 1996 Mexico City officials decided to militarize the police in that city as well and an army general was appointed chief of police.

The Federal District (i.e. the capital) has a Human rights Commission (Comisión de Derechos Humanos del Distrito Federal) which deals with complaints against the police. The Commission has the power to issue recommendations to the Attorney General and to the Ministry of Public Safety of the Federal District. As a reflection of the magnitude of the problems in the relationship between the public and the police just in the federal district, in the period 2001 to 2005 more than 25,000 citizen complaints were received, dealing with the improper exercise of public service, arbitrary arrests, injuries, forceful disappearance, torture and summary executions. During that period the Commission issued 9 recommendations to the Attorney General, 7 to the Ministry and 4 to both agencies, and reports indicate that the recommendations were acted on.<sup>12</sup>

In addition to the Human Rights Commission, since 2002 the Mexico City police has a General Office of Internal Affairs, which replaced the largely discredited General Office of Inspection, the main focus of which is to attempt to control corruption. When a citizen complaint against the police is initiated an internal police investigation is launched. On the completion of that investigation the General Office determines whether or not the case merits being referred to the Honor and Justice Council, which in turn determines whether the matter should be referred to the Public Prosecutor. There is no independent civilian body involved in this process.

Emilio Alvarez Icaza Longoria, President of the Human Rights Commission, indicated at an international conference in 2005 that there was a "collective feeling of lack of safety and impunity in the country." He added that there was widespread corruption and inefficiency which undermined the response capacity of the police. He recommended the need to move toward a democratic law enforcement model that would include broad citizen participation. To date that has not happened.

The Mexico City Human Rights Commission parallels that of the National Human Rights Commission, established in the early 1990s. It is independent, has constitutional status and has been replicated in each state. The general assessment of the effectiveness of the Commissions is mixed. The main criticism of the commissions is that neither government nor police officials are obligated to follow the recommendations of the commissions.<sup>13</sup>

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<sup>12</sup> No author, "Approaches to the Mexico City Police Force and its Makeup," International Conference on Police Accountability and the Quality of Oversight: Global Trends in the National Context," October 19-21, 2005, The Hague.

<sup>13</sup> Daniel Sabet, "Police Reform in Mexico: Advances and Persistent Obstacles," Working Paper Series on U.S.-Mexican Security Collaboration, (Washington: Woodrow Wilson Center, May 2010), p. 7.

Without any enforcement powers there is the danger that the Commissions will serve little more than public relations functions.

Efforts to reform and improve police performance in Mexico have tended to focus largely on internal police structures, training, discipline, etc., rather than on the establishment of external oversight mechanisms. Daniel Sabet in his study of police reform notes that the reforms have concentrated on improving recruitment and training methods, raising salaries to reduce the temptation of corruption, strengthening merit based promotional procedures, vetting police officials, among other initiatives.<sup>14</sup> These are important initiatives, but the evidence suggests that more needs to be done in these areas.

## THE CARIBBEAN

This study provides comparative analyses of two former British colonies: Trinidad and Tobago and Jamaica; one former French colony, Haiti; and one former Spanish colony, the Dominican Republic. Although not all of the former British colonies in the Caribbean are surveyed here it is worth noting that all of them (including Guyana on the mainland of South America) have police service commissions; all save St Vincent and the Grenadines have internal police investigation divisions; only Jamaica has an ombudsman as well as a Police Complaints Authority; Barbados and Trinidad and Tobago have a civilian oversight body. Throughout the English Caribbean where police commissions exist they are appointed by Prime Ministers/the executive branch not the legislatures.<sup>15</sup>

### **Dominican Republic:**

As in the case of a number of Caribbean and Latin American nations the Dominican Republic has made a transition from an authoritarian political system to a more democratic one in recent decades. That transition has of course necessitated a reform of the police and justice system and in the case of the national police more emphasis on the modernization and professionalization of the police. The U.S. Department of State reports on human rights issues for the Dominican Republic indicate that there continue to be serious violations of human rights by the police, including unlawful killings, beatings, arbitrary arrest and detention, widespread corruption, harassment of some human rights groups, violence and discrimination against women, violence against persons based on sexual orientation.<sup>16</sup> Those are some of the challenges which reformers are addressing.

The Dominican Republic has a national police force of 30,000 members under the jurisdiction of the Ministry of the Interior and Police.<sup>17</sup> The force was established originally in 1936 but it has undergone considerable transformation since that time. The Republic also has a military and to some extent as a legacy of the more authoritarian years there continues to be some collaboration between the army and the police in crime prevention. The rather military character of the Dominican police is reflected in the fact that its chief officer holds military rank. In 2000 the Dominican Republic established a National Commission for the Reform and Modernization of the Police. That process included civilians from outside the police, but the process seems to have faltered because of political interference. In 2004 the country adopted a new code of criminal procedure. The following year a National Plan for Democratic Security was adopted to provide improvements in justice and public safety. The Plan included training in human rights, improved forensic capacity, a stronger Department of Internal Affairs and more focus on neighbourhood policing. Under the Plan two pilot projects

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<sup>14</sup> *Ibid.*

<sup>15</sup> See Carolyn Gomes, Executive Director, Jamaicans for Justice, "Police Accountability in the Caribbean: Where are the People?" Paper presented May 23-27, 2007, Glasgow.

<sup>16</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Reports, Dominican Republic, April 8, 2011.

<sup>17</sup> For a detailed official history of the National Police see <http://www.policianacional.gob.do/v2/Principal/static/20100901-Historia.ashx>.

in community policing (*barrios seguros*) were launched, one in the capital and one in Santiago, the second largest city.<sup>18</sup>

In the Dominican Republic the Office of Internal Affairs has the responsibility to hold police accountable for misconduct.<sup>19</sup> The director of the Office is appointed by the President, an arrangement which provides some autonomy from the national police but not necessarily independence from political interference. At the same time it is potentially a powerful office. It is well resourced, an important criterion, with a staff of more than 200 persons; it also has an independent investigatory capacity and is empowered to initiate its own investigations as well as to respond to public complaints. The Office has shown considerable strength in its use of the country's court system to deal with misconduct in contrast to the past when misconduct tended to be dealt with internally by the police. Although it is difficult to obtain recent data, the figures for the period August 2005 to May 2006 indicate that the Office received 637 complaints, approximately half of which involved complaints of police physical abuse or death threats by officers. Three quarters of the complaints were investigated. The Office also publicizes on its website some of the actions that have been taken to deal with police misconduct. The U.S. Department of State reported that in 2010 Dominican authorities dismissed 157 members of the police force and referred 684 to the judicial system for prosecution.<sup>20</sup>

Unlike in a number of other Latin American countries the Dominican Republic does not have a national ombudsman or national justice commissioner with a mandate wider than oversight of the police. There is, however, a National Human Rights Commission, which is a non-governmental organization. Citizens also have recourse such international organizations as the Inter-American Court of Human Rights.<sup>21</sup>

#### **Haiti:**

Haiti's poverty combined with a series of natural disasters in recent decades has made it difficult for the country to address the challenges it faces. The establishment of the Haitian National Police (HNP) dates only from the end of the decades of authoritarian rule by the Duvalier family in the 1980s and the disbanding of the Haitian military. The HNP was established under Articles 263 (b) and 269-274 of the Haitian Constitution of 1987. The Constitution provided for the establishment of a Police Academy, a Police School and a number of subdivisions of the police. The Constitution further established disciplinary codes, and the Criminal Code provided for the state sanction of human rights violations. In 1995 the Office of the Inspector General was established to serve as the main mechanism for dealing with complaints of human rights abuses. The Office has the power to assure police compliance with the laws and police regulations and also to evaluate the effectiveness of the HNP. The Justice Minister also acts as the Secretary of State for Public Security and is a member of the Superior Council for the HNP. The Minister has final responsibility for oversight of the police. The Director General of the HNP is appointed by the President of Haiti. Analysts have noted that although there has been improvement in addressing corruption and inefficiencies the HNP has had a very uneven human rights record since its establishment. The entire justice system has had significant problems with efficiency, overly complex decision-making processes, excessive centralization, and slow legislative change.<sup>22</sup>

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<sup>18</sup> Todd Fogelson and Christopher Stone, "Measuring the Contribution of Criminal Justice Systems to the Control of Crime and Violence," Kennedy School of Government, Harvard University, April 2007, p. 36.

<sup>19</sup> See the official website of the Department. <http://www.policianacional.gob.do/v2/Principal/static/20100901-Historia.ashx>.

<sup>20</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Reports, Dominican Republic, April 8, 2011, p. 9.

<sup>21</sup> Todd Fogelson and Christopher Stone, "Measuring the Contribution of Criminal Justice Systems to the Control of Crime and Violence," Kennedy School of Government, Harvard University, April 2007, pp. 11-12.

<sup>22</sup> Human Rights Watch, The Human rights Record of the Haitian National Police (1 January 1997). Located at <http://www.unhcr.org/refworld/docid/3ae6a7e20.html>. Accessed 26/7/2011. Isabelle Fortin and Yves-Francois Pierre, Haiti and the Reform of the Haitian National Police. Located at <http://www.nsi-ins.ca/english/pdf/NSI%20->

It was not until 2006 that a serious effort was undertaken by Haitian authorities, with the oversight of the United Nations, to develop a more comprehensive reform plan for the HNP to promote democratic policing standards and democratic values with an enhanced respect for the rule of law and the repudiation of corruption. The massive earthquake in January 2010 which devastated Port au Prince and the southwest of the country was a serious setback to the reforms that had been instituted.

The Inspector General's Office deals with the internal investigation of alleged police misconduct and the Superior Council, normally composed of the Minister of Justice, the Secretary of State for Public Security, the Director General of the police and the Inspector General, provides policy guidelines and direction on security issues. In short Haiti has no independent civilian oversight mechanism for control of the police, a fact which has been of concern to Haitian and international human rights groups and the international donor community.

### **Jamaica:**

Jamaica has experienced many of the same challenges as other nations in the Caribbean: violence, organized crime, corruption of police officers, a poor record in resolving crimes. It has one of the highest homicide rates in the world, and Kingston is often identified as one of the world's most dangerous cities<sup>23</sup> The Jamaican Constabulary Force has long been associated with an unfortunate combination of excessive use of force and an inability to address the rising levels of violence in the country. A series of Jamaican government have sought to address these problems. In 1993 the Jamaican government commissioned a National Task force to report on and make recommendations for the reform of the police system. The Wolfe Report, as it is known, recommended a number of measures to reduce the abuse of power by police officers, to improve relations between the public and the force, to control corruption and to depoliticize the force.

In Jamaica final financial control of police force operations rests with the Minister of National Security and Justice. The Jamaican system does have a Police Service Commission composed of between two and five members, all of whom are civilians. Members of the Commission are appointed by the Governor General on the recommendation of the Prime Minister under the provisions of Section 129 of the Jamaican Constitution. The Commission has the power to make recommendations to the Governor General on matters pertaining to discipline, including the removal of officials. A number of offices have been created over the years to improve the performance of the JCF and protect human rights. These bodies included the Bureau of Special Investigations, the Police Public Complaints Authority and the Office of the Director of Public Prosecutions. The Complaints Authority has the power to review police investigations and to initiate its own investigations. It may submit reports to the Commissioner of Police and to the Director of Public Prosecutions where its findings suggest that a criminal proceeding might be pursued. The Complaints Authority also has the power to monitor internal police investigations, but it lacks the power to compel suspect police officers to cooperate by giving statements.<sup>24</sup>

One initiative which began in 2005 was only possible because of the traditional relationship to the United Kingdom. The initiative involved the appointment of a number of high-ranking

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[%20Haiti%20and%20the%20Reform%20of%20the%20HNP](#). Accessed 26/7/2011. Rachael Neild, "Democratic Police Reform in War-Torn Societies," *Journal of Conflict, Security and Development*, vol. 1, no. 1 (2001). United Nations Security Council, Secretary General to the President of the Security Council, 31 August 2006. Located at <http://www.resdal.org/haiti/haiti-crisis-onu-carta5.pdf>. Accessed 25/7/2011.

<sup>23</sup> Amnesty International, *Public Security Reforms and Human Rights in Jamaica* (London, 2009), 6.

<sup>24</sup> Susan Goffe, *Complaints Against the Police: The Jamaican Experience – An NGO Perspective*. Jamaicans for Justice, November 2003, p. 5, cited in Alston, p. 16.

officers from Scotland Yard within the Jamaican police as well as the appointment of a British Deputy Chief of Police to be in charge of a new Major Investigation Task Force.<sup>25</sup>

In 2008 a number of reforms were recommended. The very categories of the Ministry of National Security report underlined the range of challenges that confront the reform of the constabulary: changing the culture; tackling corruption, building an accountability framework; more effective leadership, a more professional JCF.<sup>26</sup> Recommendations included disbanding of the Police Public Complaints Commission and its replacement by an independent commission for investigations. The Jamaican Constabulary Force has also taken some steps to improve its record in particular establishing a number of pilot projects for community based policing in an effort to be more proactive in addressing local problems.

As in the case of most of the countries in the Caribbean and Latin America Jamaican authorities have sought to develop community policing initiatives. One of the most important has been the Grant's Pen project in one of the poorest sections of Kingston, a community of slightly more than 8,000 residents with a high volume of serious crimes and dominance by gangs. Partnering with the police are NGOs, churches, the local business community and some foreign agencies, including the American Chamber of Commerce.<sup>27</sup>

As much as Jamaica continues to have one of the highest levels of violence in the region, it is evident that authorities have been making serious and sustained efforts to address the challenges.

### **Trinidad and Tobago:**

Trinidad and Tobago is one of the wealthiest nations in the Caribbean due in large part to its rich natural resources. It has also been blessed with reasonably efficient and honest governments. Like other countries in the region, however, it has experienced high crime rates, a considerable presence of organized criminal activity associated with international narcotics traffic, and concerns about police performance. Trinidad and Tobago has both a Police Service and a Special Anti-Crime Unit that is independent of the Police Service. The latter is closer to a military organization and is headed by a brigadier. The two island nation has been in the forefront of police oversight reform in the Caribbean, most recently adopting a reform which is adapted from the example of the Independent Commission on Policing for Northern Ireland,<sup>28</sup> with the result that it will be important to watch how effectively recently developed reforms perform in the next decade.

Trinidad and Tobago have made sustained efforts to reform the police operations in the country, including the use of foreign consultants from George Mason University, Penn State University and a number of Canadians.<sup>29</sup> The present (2011) Provost Marshall, for instance, is a Canadian. The reforms allocate to the Trinidad and Tobago Ministry of National Security some of the duties that in the case of North Ireland were assigned to the independent Policing Board. In 2006 the Trinidad and Tobago Constitution incorporated provisions establishing a new Police Service Commission with the power to appoint and remove the Commissioner of Police as well as the Deputy Commission of Police. The Police Service Act of 2006 consolidated and revised existing legislation with the primary goal of improving

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<sup>25</sup> Uildriks, "International Police Assistance in Jamaica under Escalated Violence and Institutional Non-Integrity," in Uildriks, *Policing Insecurity*, p. 110.

<sup>26</sup> Jamaica, Ministry of National Security, *A New Era of Policing in Jamaica: Transforming the JCF. The Report of the JCF Strategic Review Panel*.

<sup>27</sup> Anthony Harriott, "Police Transformation and International Cooperation – The Jamaican Experience," in Uildrick, *Policing Insecurity*, pp. 140-142.

<sup>28</sup> Stephen Mastrofski and Cynthia Lum, "Meeting the Challenges of Police Governance in Trinidad and Tobago," *Policing*, 2, 4 (September 2008), 481-496.

<sup>29</sup> Interview with Michael Judd, a former Canadian policeman who worked with the Penn State team from March-July 2010 as a special advisor to the Ministry of National Security. September 19, 2011. Mr. Judd is not responsible for any of the interpretations presented in this report.

the efficiency, equity and transparency of policy operations. The Commission was also empowered to monitor the effectiveness of the police and the effectiveness of the senior administrators, prepare performance appraisal reports and to hear and determine appeals against the Commissioner of Police. The Commissioner of Police currently has most of the powers over promotion and termination of police officers, a power that was previously the purview of the Police Service Commission. An important feature of the reforms was the increased authority to the Commissioner of Police in budget and personnel matters, specifically over hiring, training, and discipline. The Commissioner of Police reports directly to the Minister of National Security. The fact that the Police Service Commission is not entirely independent of political interference was reflected in the April 2011 decision by the President to remove the head of the Police Service Commission for making public comments about the racial imbalance (between those of East Indian and those of African heritage) in the police service. Reports on the police reforms in the country suggest that there has been some decline in the commitment to reforms that followed the election in May 2010 of a new government. There is also a perception that there needs to be a higher degree of commitment to reform from the senior command structure within the police force.

In addition to the Police Service Commission, the reform measures revitalized the existing Police Complaints Authority, which is an independent body with responsibility to investigate complaints against the police. Prior to the reforms the PCA was mandated only to monitor the progress of investigations of such complaints within the police itself.

## CENTRAL AMERICA

Several of the Central American countries have undergone considerable reform in the security sectors since the 1980s: Panama following the United States intervention in 1989; Guatemala, with the signing of a peace agreement ending more than thirty years of civil war; El Salvador, with the end of its civil war in the early 1990s. The focus in all three countries was the demilitarization of existing police forces and in the case of Panama disbanding the military entirely.

### **Costa Rica**<sup>30</sup>

In 1948 the government of Costa Rica abolished its military, and established a national police force. The former military school was officially converted in 1964 into a national police academy. Costa Rica's national police is the Fuerza Pública, which is under the jurisdiction of the Ministry of Government, Police and Public Security (Ministerio de Gobernación, Policía y Seguridad Pública). There are several distinct units affiliated with the main force: Immigration Police (Policía de Migración), Border Police (Policía de Fronteras), Drug Enforcement Police (Policía de Control de Drogas), Tourism Police (Policía turística), Transit Police (Policía de Transito). The criminal investigative branch of the national police is the Judicial Investigative Bureau (Organismo de Investigación Judicial). There is also a small elite special forces unit which is independent of the national police. It is part of the Security and Intelligence Directorate which reports directly to the Office of the President.

The mission of the Fuerza Pública is to be a professional organization, integrated with the community and dedicated to the promotion of a culture of human security. That mission comes closer to being realized in Costa Rica than elsewhere in Central America.

Costa Rica is one of three countries in Latin America in which the office of the ombudsman for human rights is not established under the constitution. There was an initial effort to do so in 1979 but it failed, with the result that in 1982 an Organic Law of the Public Prosecutor was passed establishing the Office for the Defense of Human Rights. It was not until 1992,

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<sup>30</sup> Costa Rica has the most professional law enforcement website in Central America. See <http://ministeriopublico.poder-judicial.go.cr/>.

however, that the Law of the Office of the Ombudsman was passed (Defensoria de los Habitantes). The Costa Rican ombudsman is under the jurisdiction of the legislative branch but has functional and administrative independence. The term is four years and re-election is permitted. The legislature also has the power to appoint deputy ombudsmen on the recommendation of the ombudsman. The Costa Rican law does not grant any immunity to the ombudsman in the conduct of his work, something which is seen as an impediment to his autonomy. At the same time the Costa Rican ombudsman is authorized by law to request and obtain without notice any information required from public offices, including police stations.<sup>31</sup>

The force has been under increasing pressure in recent years because of the growing challenges posed by narcotics-related organized crime in the Central American area, with the result that recently (2011) the Costa Rica national police have been working closely with advisors from the Colombian national police on means to respond to the threat of organized crime. As well, in June 2002 the United States and Costa Rica signed an agreement to establish an International Law Enforcement Academy in Costa Rica to train police officers in the areas of counter-narcotics and counter-terrorism.<sup>32</sup>

As in the case of a number of Latin American countries Costa Rica has over the past two decades experimented with community policing models as a way to improve policy-community relations as well as reduce crime. One successful initiative has taken place in the Hatillo neighbourhood in the 1990s where advisory committees were established, including representatives from the community at large, churches, sports leagues and health services.<sup>33</sup> Such initiatives are viewed as a positive means to engage civil society and a supplement to more formal oversight mechanisms.

#### **El Salvador:**

The resolution of the decade's old civil conflict in El Salvador was made possible largely by the end of the Cold War, the reduction of Cuba's influence in the region, and the persistent pressure brought to bear by the international community to reach a negotiated settlement. To be meaningful that settlement had to include substantive reforms in the security sector and the establishment of a police force whose operations were based on solid democratic principles. Significantly, in the case of El Salvador the police reforms were incorporated into the constitution. After years of conflict and with a general lack of public confidence in the military and the police this was a major challenge in the post-conflict years. The peace accords called for the abolition of the existing security and intelligence organization and the creation of a National Civil Police (Policia Nacional Civil, PNC). Legislation was also introduced to establish a new National Academy of Public Security. The objective was to bring new people to control the system, change the recruitment and training and introduce a new sense of mission, specifically to "to protect and guarantee the free exercise of the rights and liberties of persons, to prevent and combat all kinds of crimes, as well as to maintain internal peace, tranquility, order, and public security."<sup>34</sup> In an effort to build confidence in the new national police force the agreements specified that only 20% of the new police force would be derived from the former national police and that 20% would come from the now disbanded guerrillas, the FMLN.

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<sup>31</sup> Lorena Gonzalez Volio, "The Institution of the Ombudsman. The Latin American Experience," *Revista IIDH*, vol. 37 (2003), 230, 235, 240.

<sup>32</sup> Washington Office on Latin America, "Human Rights Concerns," 2 January 2003. Located at [http://www.wola.org/publications/human\\_rights\\_concerns\\_regarding\\_the\\_proposed\\_international\\_law\\_enforcement\\_academy\\_in\\_c](http://www.wola.org/publications/human_rights_concerns_regarding_the_proposed_international_law_enforcement_academy_in_c). Accessed 3 August 2011.

<sup>33</sup> Inter-American Development Bank. "The Role of the Police in Violence Prevention.," Technical Note 9 (Washington, n.d.). Located at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=362998>. Accessed 3/08/2011.

<sup>34</sup> Chapultepec Peace Accords, chapter 2 (1992), cited in Perez, "Democratic Legitimacy," p. 630.

El Salvador is considered to be the most successful of the Central American countries in making the transition from civil war to more democratic practices including the reform of its police institutions, although the country has been faced with a continuing rise in the crime rates, widespread violence associated with organized crime. Analysts have observed that the promise of the original accords has not been entirely fulfilled, although there have been marked improvements, including in the training of new recruits, the reform of police doctrine, concrete efforts to weed out and prosecute even senior officers found guilty of crimes, and desirable structural reforms to deal with such issues as financial crimes. Politicization has not been fully overcome, nor has some of the corruption that characterized the previous organization. Officers have been implicated in a range of crimes, including murder and kidnappings. The evidence suggests that the office of the Ombudsman for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos), which was also established under the Peace Accords, has been overwhelmed by citizen complaints. In 2001 the El Salvador government implemented changes in the structure of the police force, introduced new rules and increased the role of civilians.<sup>35</sup>

A public opinion survey conducted in El Salvador in 1999 indicated that there was a reasonably positive public perception of the new police force, with 59% expressing confidence. Even more significant was the fact that only 3% of those surveyed had been asked for a bribe by a police officer and only 12% had witnessed a bribe being paid.<sup>36</sup> No directly comparable recent data appears to be available, but the fact that in 2008 8.3% El Salvadorans polled reported they had been subjected to police abuse, the second highest percentage in Latin America, suggests that some problems persist.<sup>37</sup>

The clearly identified need to address high levels of gang violence and crime has led El Salvador governments to introduce tougher legislation, the Mano Dura laws, although there has been an effort to soften the impact of this approach with such initiatives as the Mano Extendida initiative. A primary aim of Salvadoran law enforcement initiatives since 2003 has been to capture and detain as many gang members as possible. International and domestic civil society organizations have suggested that this emphasis on mass detentions – carried out by police-military forces with limited investigative capacity and poor human rights records – has resulted in troubling patterns of arbitrary stops and arrests by Salvadoran police.<sup>38</sup>

International assistance has sought to address some of these shortcomings. In 2005, for instance, the Salvadoran government and the American State Department joined forces to create the International Law Enforcement Academy (ILEA), to teach police, prosecutors, and judges in improved law enforcement techniques.

Challenges remain but significant progress has been since the 1980s civil strife.

### **Guatemala:**

As in the case of El Salvador and Nicaragua Guatemala has only in the past two decades emerged from years of civil war. In 1996, with significant international involvement, Guatemalan factions<sup>39</sup> signed a peace agreement inaugurating considerable state restructuring. The main thrust of security reforms was to demilitarize the Guatemalan police

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<sup>35</sup> C.T. Call, "Democratization, War and State-Building: Constructing the Law in El Salvador," *Journal of Latin American Studies*, vol. 35, no. 4 (2003), 827-862.

<sup>36</sup> Perez, "Democratic Legitimacy," p. 634.

<sup>37</sup> José Miguel Cruz, "Police Abuse in Latin America," American Barometer Insights: 2009. Vanderbilt University. The 1999 data is drawn from Perez, "Democratic Legitimacy," p. 634.

<sup>38</sup> Harvard Law School, "No Place to Hide: Gang, State and Clandestine Violence in El Salvador," February 2007, located at <http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport%283-6-07%29.pdf>. Accessed 21/10/2011.

<sup>39</sup> The former guerrilla group Unidad Revolucionaria Nacional Guatemalteca and the Guatemalan government.

and establish the National Civil Police. The new National Police was placed under the jurisdiction of the Ministry of the Interior.<sup>40</sup>

1997 reforms, which were incorporated into the constitution, included the creation of an Academy of Civilian National Police as well as offices for receiving complaints about crimes. The new force was to be more reflective of the ethnic diversity of Guatemalan society and training was to be more professional in nature. There was a commitment to expand the presence of the police into a higher percentage of the country's departments. There was a serious effort to recruit new officers who had not been part of the old order, with the result by the end of 1999 approximately 37% of the force was composed of new recruits. Unfortunately the officer corps was drawn almost exclusively from the old national police that was so tainted with corruption and human rights abuses.<sup>41</sup> There was also an effort, as in a number of other Latin American countries to recognize the importance of improving the relationship between the public and the police through the creation of Juntas Locales de Seguridad.<sup>42</sup> The juntas proved to be unpopular with a number of human rights groups who viewed them as ways in which the state would control local populations as had been the case during the civil war. In the late 1990s Guatemala was part of a community policing initiative for all of Central America that was supported by the Inter-American Human rights Institute. That initiative was short lived, ending in 2000. Between 2004 and 2008 a vice-Ministry of citizen's support was established within the Ministry of the Interior in an effort to improve police-public relations.<sup>43</sup>

The reforms that followed have had mixed success. The country continues to be wracked by high levels of violence, and high crime rates. There is also international concern that the security forces are not sufficiently accountable for their actions.

Observers contend that the Guatemalan reforms have been flawed, but improvements have been hampered by the need for police and security forces to deal with high crime rates on the one hand and the pressures to promote human rights and engage the citizens more constructively. Critics note that there was no oversight mechanism or screening procedure for new police officers, with the result that more than half of the newly established national police force was drawn, as noted above, without additional vetting, from the old national police, resulting in moving many formerly corrupt officers into the new organization. Nor was the separation of military and police pursued with any vigour. In a number of areas the army continued to perform what were essentially police functions. Although the practice of joint military-police patrols may have been more common in rural areas it was also practiced in the cities.<sup>44</sup> In his report to the United Nations Human Rights Council in 2010, Philip Alston observed that one of the major failings of police reform has been the continuing presence of a military rather than civilian ethos within a police force" and that is what has tended to characterize the Guatemalan reforms.<sup>45</sup> To a considerable extent this situation was inevitable without a significant increase in the number of police officers. In 1997 there was only an estimated one police officer for each 4500 to 5000 citizens.<sup>46</sup> It has also been

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<sup>40</sup> The authors would like to thank Mr. John Noyes for his insights on the Guatemala police situation. A former RCMP officer Mr. Noyes served in 1996-97 with the United Nations peacekeeping mission in Guatemala. Interview October 3, 2011.

<sup>41</sup> Perez, "Democratic Legitimacy," p. 822.

<sup>42</sup> Paulo de Mesquita Neto, "Paths Toward Police and Judicial Reform in Latin America," in Joseph Tulchin and Meg Ruthenburg, eds., *Toward a Society Under Law* (Washington: Wilson Centre Press, 2006), p. 157.

<sup>43</sup> Marie-Louise Glebeek, "Postwar Violence and Police Reform in Guatemala," in Uildrik, *Policing Insecurity*, p. 90.

<sup>44</sup> A. Douglas Kincaid, "Demilitarization and Security in El Salvador and Guatemala: Convergences of Success and Crisis," *Journal of Interamerican Studies and World Affairs*, vol. 42, no. 2 (Winter 2000), 49

<sup>45</sup> Alston, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions," United Nations, Human Rights Council, 28 May 2010.

<sup>46</sup> Marie-Louise Glebeek, "Police Reform and the Peace Process in Guatemala: The Fifth Promotion of the National Civilian Police," *Bulletin of Latin American Research*, 20, 4 (2001), 437.

argued that although the PNC is accountable to the government, the legislature and to the public it lacks transparency in its operations. An additional problem was that the internal investigation unit was staffed mostly by officers from the old force, and they have shown little energy or initiative in investigating the conduct of the police.<sup>47</sup>

In 2003 the Guatemalan government in collaboration with international aid agencies and civil society organizations increased the power of the National Police Commission to investigate and remove police officers who were implicated in serious crimes. In 2005 the Inspector General's Office was established as the main body responsible for police discipline.

Public Opinion surveys conducted in Guatemala in 1999 suggested that there had been an increase in public confidence in the police (50% indicated confidence), but that there was still concern that the police alone could not cope with the magnitude of crime levels and violence in the country, with the result that 70% of Guatemalans surveyed believed that the military still had a role to play in fighting crime. Comparable data for 2011 is not available, but a recent poll conducted by Plaza Pública indicates that a majority of Guatemalans believe their judiciary is corrupt.<sup>48</sup> That general conclusion, however, masks serious efforts by police officials to improve their relationship with the public. For instance Police Commissioner Jaime Leonel Otzín Díaz, who was appointed chief director of the PNC in June 2010, indicated in an interview with *Diálogo* what the police reforms mean for his institution. "In this reorganization, the citizen is most important," he said. He sees the reform as the institution's opportunity to work closely with the community and believes that "the police need that integration so we can do a better job." Cooperation between his forces and residents has already led to successful police operations. "The success is not only due to the police, but also to the population that reports the illicit activities, allowing us to act."<sup>49</sup> Guatemala has also fared much better than a number of Latin American countries in reports on police abuse. Data for 2008, for instance, indicated that 3.7% of Guatemalans polled had experienced police abuse in the previous twelve months. That ranked Guatemala 15<sup>th</sup> among Latin American countries in contrast to El Salvador, which was ranked second.<sup>50</sup> As in much of Central America the challenge in Guatemala will be to find effective ways to address high crime rates and the threat of organized crime without compromising a commitment to improving human rights. The "mano dura" or hard line approach that has become increasingly the norm in a number of countries, while understandable in the circumstances, nonetheless threatens to undermine trust between police forces on the one side and citizens on the other, especially in a country with a long history of lack of public trust.

There is a strong consensus among international observers of the Guatemalan situation that the Guatemalan government is not sufficiently pro-active in addressing the need for police and judicial reform and that it takes little action without international pressure and assistance. The weak government commitment to reform has given credibility to organizations such as the Helen Mack Foundation and the International Commission Against Impunity in Guatemala, which was established in 2007 by agreement between the UN and the Guatemala government. The Commission's formal mandate is to support and assist domestic justice institutions in the investigation and prosecution of crimes committed by

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<sup>47</sup> Marie-Louise Glebeek, "Postwar Violence and Police Reform in Guatemala," in Uildrik, *Policing Insecurity*, p. 88.

<sup>48</sup> LatinIntelligence, Analysis on Latin America, "Public Opinion in Mexico and Guatemala," <http://www.latintelligence.com/2011/09/02/reads-of-the-week-public-opinion-in-mexico-and-guatemala-argentine-elections-and-the-fall-of-%E2%80%99Cla-barbie%E2%80%99D/>. Accessed 21/10/2011.

<sup>49</sup> *Diálogo*, April 1, 2011, located at [http://www.dialogo-americas.com/en\\_GB/articles/rmisa/features/viewpoint/2011/04/01/feature-04](http://www.dialogo-americas.com/en_GB/articles/rmisa/features/viewpoint/2011/04/01/feature-04). Accessed 21/10/2011

<sup>50</sup> José Miguel Cruz, "Police Abuse in Latin America," American Barometer Insights: 2009. Vanderbilt University. Located at <http://www.vanderbilt.edu/lapop/insights/10811en.pdf>. Accessed 21/10/2011. The 1999 data is drawn from Perez, "Democratic Legitimacy," p. 634.

clandestine security organizations, to identify their structures, operations and financing and ultimately to dismantle them. At the same time, the Commission has sought to strengthen the weak judicial system in order to put an end to impunity.<sup>51</sup>

### **Honduras:**

The 1998 police reform in Honduras, as in other Central American countries, sought to separate military and police functions and transferred all police functions to civilian control with the establishment of a National Police. The legislation created a Security Secretariat, called the General Directorate of Criminal Investigation, to be in charge of the preventive and investigative police. The legislation also created an external control body as an oversight mechanism, the National Council for Internal Security (Consejo Nacional para la Seguridad Interior). The Council is chaired by the secretary of security and is composed of the secretaries of justice and interior, the attorney general, the human rights commissioner (ombudsman), a representative of the Supreme Court and several civil society representatives. The Council is clearly not entirely free of government ties given its membership, but the presence of an extensive number of civil society representatives lends it more credibility.

The Council has the power to develop security polices, evaluate police performance, present the list of candidates for chief of police, advise the president and the secretary of security, revise police regulations, monitor complaints against the police and revise police budgets. In addition to the Council the 1998 legislation established an Internal Affairs Unit to investigate crimes allegedly committed by the police, but there is little perception that the Unit has attained the degree of independence that would make it effective. The unit's operations are supplemented by the disciplinary responsibilities of the Inspector General's Office, which has the power to evaluate police performance and investigate administrative faults.

Since 2008 police training has been the responsibility of the National Police University of Honduras, which is under the direct command of the Security Ministry. There is also a Police Polytechnic School and a Police Technological Institute which are responsible for training patrol officers, investigative agents and prison police. There are also schools for training junior officers and a National Police Academy for training those seeking higher rank.

As with many Latin American countries, Honduras has an Ombudsman's Office, The Comisionado Nacional de los Derechos Humanos. With all such offices its effectiveness varies according to the degree of commitment by the ombudsman, the level of financial and political support provided by government and the degree of cooperation from police and other officials. In Honduras there have been some proactive ombudsmen who have criticized policies and suggested reforms. The one major concern that has been raised about the office's effectiveness has been a failure of government to commit sufficient resources to enable the office to follow up on its own recommendations.<sup>52</sup>

In addition to the more formal work of the Ombudsman and the National Council for Internal Security Honduras has experimented with community policing. In the 1990s local citizen security committees were encouraged to work with the police, and they have rapidly multiplied. Although such initiatives are important because they provide for active community engagement in their own security, committees have no legal status and no formal powers. In 2002 they were revamped into a more formal Safer Community program in which police

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<sup>51</sup> International Crisis Group, "Learning to Walk Without a Crutch," <http://www.crisisgroup.org/en/regions/latin-america-caribbean/guatemala/036-learning-to-walk-without-a-crutch-the-international-commission-against-impunity-in-guatemala.aspx>. Accessed 3/10/2011.

<sup>52</sup> Washington Office on Latin America, *Protect and Serve? The Status of Police Reform in Central America* (Washington: WOLA, June 2009), p. 13.

officials cooperated with citizens in local policing activities. These are excellent initiatives if a society is to foster trust between police and the public.

### **Nicaragua:**

The Nicaraguan National Police was established in 1979 with the overthrow of the authoritarian government of Anastasia Somoza and the disbandment of the National Guard which had existed since the 1920s and which had long been viewed as repressive.

As in the case of Honduras, the Nicaraguan reforms which followed the end of the 1980s conflicts did not emerge from an internationally brokered agreement but rather as the result of domestic initiatives. In 1996 the Nicaraguan legislature approved the Organic Law of the National Police which guaranteed the subordination of the police to civil authorities. Under the Nicaraguan constitution the National Police are defined as apolitical and nonpartisan. The President of Nicaragua is the commander in chief of the Nicaraguan National Police, which administratively is under the jurisdiction of the Ministry of Government. The law also established a human rights commissioner or Ombudsman. The Nicaragua human rights ombudsman is located in the National Human Rights Institute ( Procuraduría para la Defensa de los Derechos Humanos- PDDH). The Institute is required to submit an annual report to the National Assembly. There is a perception that the Institute is not sufficiently independent of political interference.<sup>53</sup>

Additionally, the Nicaraguan National Police has an Inspector General's Office which has responsibility for overseeing the conduct of the police and an Internal Affairs Unit which is empowered to investigate complaints filed either by private citizens or by other members of the police force. Unlike Honduras and El Salvador there is no external oversight body in which there is active civil society participation, although there have been concerted efforts to develop community participation in security.<sup>54</sup>

All police recruits in Nicaragua must complete a program at the Police Academy; part of the curriculum includes human rights instruction. In addition all officers are required to be recertified in human rights awareness annually.

### **Panama:**

The demilitarization process and the establishment of a national police force in Panama derived directly from the United States intervention in 1989 and the removal from power of Manuel Noriega. The reforms were thus largely determined by international intervention and stand in marked contrast to the reform processes that taken place in most of the Caribbean and Latin America. Prior to the U.S. intervention the Panamanian security system consisted of one national organization, the Panamanian Defense Forces, which was primarily military in nature but which included police forces, a presidential guard and military units, all centralized under the control of Noriega.

Following the intervention and the collapse of the Defense Forces the security system was divided into several independent organizations, none of which were intended to have the same military orientation of the earlier system, but which in practice retained much of the previous military character in part because many of the personnel remained unchanged. The new organizations included a National Police, the Technical Judicial Police, the National Maritime Service, the National Air Service and the Institutional Protection Service, the last of which was essentially a renamed national or presidential guard. These changes were institutionalized in constitutional amendments by 1994. The Director General of the National

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<sup>53</sup> *Ibid.*, p. 22.

<sup>54</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Reports, Nicaragua, April 2011, p. 7.

Police reports to the Minister of National Security, formerly the Minister of Government and Justice.

Law 18 of June 1997 consolidated all of the changes which had been introduced to the security system between 1989 and 1997. Significantly the legislation reinforced the civilian nature of the National Police and its subordination to civil authority. The legislation stressed the professionalism of the force's mission and reiterated the need for professionalization of the processes of recruitment, training, and promotion. The one unit which has retained its military character is the border police. They receive special training and equipment, indicative of the challenges faced on the Colombian border with narcotics cartels and paramilitary organizations.<sup>55</sup>

The U.S. State Department in its April 2011 report on the human rights situation in Panama outlined a range of existing problems associated with the Panamanian security forces: "Human rights problems included the use of excessive force by police during protests, which was investigated; harsh prison conditions; prolonged pretrial detention; corruption, ineffectiveness, and alleged political manipulation of the judicial system; political pressure on the media; corruption in the executive and legislative branches as well as in the security forces."<sup>56</sup>

Panama has a human rights ombudsman (Defensor del Pueblo), who is elected by the national assembly. Panama is one of the three Latin American countries with such an office that has not incorporated the provision into its constitution. This has resulted in some limitations on the powers of the ombudsman. For instance, as the result of a Supreme Court decision the ombudsman has no power to oversee the work of the judicial branch. The ombudsman has considerable powers of moral suasion but no legal powers of enforcement of his recommendations and findings. Nonetheless, Panamanian law stipulates that the decisions and recommendations of the ombudsman are not susceptible to administrative actions. As with most of the police forces in the region internal rather than external mechanisms to deal with police conduct apply in Panama. The Directorate of Professional Responsibility is part of the National Police. The DRP has a staff of independent investigators to hold officers accountable for their actions, administrative authority to open internal investigations, and a defined legal process.<sup>57</sup>

## SOUTH AMERICA

The majority of countries in the region have experienced authoritarian regimes, dictatorships and armed conflicts, a historical context that challenges the implementation of an effective mechanism of checks and balances. The experience in South America shows a variety of programs and innovative strategies to hold police accountable both at the national and local level, with multiple efforts to make those strategies politically sustainable over time. The following is a comparative analysis of police reforms in the region and the strategies of police oversight adopted by 5 countries: Argentina, Brazil, Chile, Colombia, and Peru. In addition to identifying differences and similarities between police oversight bodies, the analysis shows that since the democratization wave, the issue of demilitarizing the police forces and making them more accountable for their activities has been an important issue of their political agenda. One of the similarities among the cases is the use of "special commissions" not only

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<sup>55</sup> Corinne Caumartin, "Depolitisatiion in the Reform of the Panamanian Security Apparatus," *Journal of Latin American Studies*, 39 (2007), 107-132.

<sup>56</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Reports on Human Rights Practices, April 8, 2011. Located at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154514.htm>. Accessed 2 August 2011.

<sup>57</sup> U.S. Department of State, Bureau of Democracy, Human rights and Labor. 2008 Country Reports on Human Rights Practices, February 2009. Located at <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119168.htm>. Accessed 2 August, 2011.

to make recommendations, but also to guide the implementation of mechanisms and to evaluate results.

Moreover, the analysis demonstrates that local governments are an essential agent in the design and implementation of oversight mechanism. Most countries understand the importance of an external mechanism and the need to complement these efforts with strong internal mechanisms of control.

Finally, the cases analyzed below demonstrate how challenging it is to measure success. The development of appropriate performance indicators is still in the centre of the debate.

### **Argentina:**

Argentina has adopted a number of formal and informal reforms to demilitarize the police forces and to build a better system of checks and balances. Experts suggest that as a federal country, the opportunities for viable reforms in Argentina are greater than those for any centralized government since local governments carry out and implement their own initiatives.<sup>58</sup> The police force in Argentina includes a provincial police force for each of the 23 provinces controlled by governors, and the Argentine Federal Police (PFA) under the mandate of the President and responsible for federal crimes.<sup>59</sup> The PFA used to be responsible for the security of the city of Buenos Aires, but in 2008 the legislature approved the creation of the Metropolitan Police of Buenos Aires. As a federal state, police oversight is left to the responsibility of provincial ministers of public security. Each province has the authority to implement its own policies in terms of internal and external oversight mechanisms. Therefore, a review of successful experiences has to be conducted at the local level.

A number of reforms to police and public security have been adopted after the termination of the authoritarian rule in 1983. In general, public security reforms in Argentina are a response of critical events such as high crime rates, corruption, or economic instability. For instance, during the 1990s public opinion was more oriented to accept a *mano dura* (Iron Fist) approach as a way to stop alarming rates of crime violence. However, a series of events involving the police forces weakened community trust towards the police and the national government.<sup>60</sup> As a consequence, during both Menem administrations (1989-1999) and De La Rúa presidential period (1999-2001), security reforms in Argentina aimed to modernize the police (i.e. human rights training, new equipment, increase the number of officers), increase community participation in prevention and oversight, and reduce corruption levels. But the lack of political support hindered their sustainability over time.

The economic collapse of 2001 damaged the popularity of the national government and local governments began to design their own strategies to recover popular trust on political institutions including those to increase community participation and institutional accountability. For instance, the police force in Buenos Aires, known as the *Bonaerense*, is the largest provincial force. Since the 1990s, the Human Rights Commission had the responsibility to oversee police operations, but with little results. After many attempts to implement better forms of control, including changes to the judiciary, Governor Eduardo Duhalde proposed a new strategy in 1997, the *Plan de Reorganización general del Sistema Integral de Seguridad e Investigaciones de Delitos* (Plan for General Reorganization of the

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<sup>58</sup> See Unger, M., "Police reform in Argentina: Public Security versus Human rights," in Uildricks, *Policing Insecurity*, p.p. 169, 170.

<sup>59</sup> PFA is formally under the supervision of the Interior Ministry.

<sup>60</sup> The possible involvement of police in two terrorist attacks put the pressure on the government to respond to the public discomfort. Although formal investigations have not yet being concluded, the participation of the police to cover up the 1992 bombing of the Israeli embassy and in 1194 of a Jewish Centre put in evidence the public distrust towards the Argentinian police forces. See Hinton, Mercedes "A Distant Reality: Democratizing policing in Argentina and Brazil" in *Criminal Justice*, 2005, 5:1 p. 83.

Integral System for Security and Investigation).<sup>61</sup> The changes proposed by Duhalde in the Province of Buenos Aires required the reform and implementation of laws. Political parties agreed to establish a bicameral parliamentary committee to monitor the process.

The strategy included the establishment of a Ministry of Justice and Security, accountable to the secretary of Justice and Security, a civilian institution. It also included the creation of special affairs offices such as the Office of Control of Corruption and Abuses and the Office of Evaluation and Crime Prevention to control police misconduct. Other elements of the Duhalde strategy included: a Public Security System integrated by the Departmental Security Police, Investigative Police and Traffic Safety Police; a Provincial Council on Public Security formed by provincial ministers, heads of the police services the Chief Prosecutor and representatives of citizen safety forums; and municipal Defenders of Security responsible to report on police activities, present recommendations and receive complaints from citizens.<sup>62</sup> But increasing crime rates and the return to a *Mano Dura* approach hindered the sustainability of the reform. In 2004, the debate around the need for better accountability measures over the *Bonaerense* re-opened. This year marked the beginning of a series of reforms including the creation of the Buenos Aires Police 2 (PBA2), the decentralization of activities, the promotion of community participation in police affairs and the strength of mechanisms of control.

Although the unstable changes in the Province of Buenos Aires determine the direction of reforms in other provinces, some have developed strategies to overcome great resistance to change and the lack of leadership to support long-term reforms, such as the reform in Mendoza. In 1999, Governor Arturo Lafalla formulated the *Plan Estrategico de Seguridad y Prevencion de Conducta Anti-Social* (Strategic Plan of Security and Prevention of Anti-Social Conduct). The ambitious reform included not only reforms to the penal code, but also the creation of the General Inspector of Security with the power to receive complaints and carry out administrative investigations. Although the reform had the approval of the three main political parties and high acceptance by the population, the achievement of results is very limited due to the resistance inside the police and the lack of continuity after the 1999 provincial elections.<sup>63</sup>

However, local initiatives are the starting point for more formal changes at the national level. The latest security reform in Argentina implemented some recommended reforms to the *Ministerio Publico* (Public Ministry). In 2010, the President approved the recommendation presented by the Inter-American Human Rights Commission (IHR) in their 2009 Report on Urban Security and Human Rights, and created a separate Ministry to reconcile the police with the protection of human rights. Under the Public Ministry both preventive security and crime investigation are integrated. Among other changes, the reform includes the decentralization of police at the district level and a higher participation of the community in police activities.<sup>64</sup>

### **Brazil:**

In addition to the challenges after a long period of military rule, Brazil currently faces very complex social problems. Following the official transition to democracy and the demilitarization of police forces in 1988, the country faces very high crime and violence rates as a consequence many forms of organized crime, including drug trafficking. Also, police forces have to constantly deal with issues of gun control, all these resulting some episodes of policing abusive actions and low police legitimacy among civilians.

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<sup>61</sup> Ward, Heather H. "Police Reform in Latin America: Brazil, Argentina and Chile" in *Toward a Society under Law*, 2006, p. 183.

<sup>62</sup> Ibid.

<sup>63</sup> Ungar, M. "Police Reform in Argentina: Public Security versus Human Rights" in Uildriks ed., *Policing Insecurity*, 2009, p. 186.

<sup>64</sup> Centro de Estudios Legales y Sociales, *Derechos Humanos en Argentina*, 2011 Report, p. 85.

The police force in Brazil is divided into federal and state police forces, each with different responsibilities. As stated in the Constitution, the federal police force deals with federal crimes such as terrorism, organized crime, and border and immigration control and is responsible for the protection of indigenous peoples. The state police force is responsible for policing all 26 states and is integrated by the military police (responsible for maintaining public order) and the civil police (judiciary police that prepares inquires and investigate crimes),<sup>65</sup> both under the command of the State Secretary of Public Security.<sup>66</sup>

The Constitution of 1988 included, under the jurisdiction of the Public Prosecutor Office, a civilian oversight body for police activities. It was a very promising initiative in the process of transition to democracy. The Office shares its staff structure between the judiciary and the executive without being subordinated to either. In addition to formulating and referring complaints, the Public Prosecutor Office is empowered to evaluate police activity. However, in reality, it is not perceived to have fulfilled its mandate as an external police oversight body.<sup>67</sup> In 1992, a series of events made public the problem of police abuse of authority and the violation of human rights, generating a massive opposition and distrust among the population in São Paulo.<sup>68</sup> As a response, the government initiated a series of reforms that included the creation of a Community-Policing Commission formed by representatives of the military police, the civil police and the community. In addition, a variety of strategies have been implemented to promote a more democratic system of checks and balances, including three oversight mechanisms implemented by different governmental institutions: 1) Military courts implemented by the judiciary, 2) *Corregedorias* or internal affairs departments implemented by the executive, and 3) *Ouvidorias*, or police ombudsman implemented by the executive; with the *ouvidorias* acting as the only civil oversight mechanism and filling the vacuum left by the Public Prosecutor Office.

The first police Ombudsman was established in 1995 as part of the political agenda of Mario Cobas, governor of São Paulo. By 2002, a total of 10 police ombudsman offices were established using the São Paulo model, but with certain modifications in some states. For instance, the *ouvidoria* in São Paulo is capable of asking the judiciary and prosecution offices for updates on cases, while Rio Grande do Sul only may require information from the executive branch.<sup>69</sup> In general, the ombudsman office is part of the executive branch, and has the role of receiving and reviewing complaints, but lacks investigative power. Auditors are elected by the state Governor, by individual choice or in some cases from a list of three candidates presented by the Council on Human Rights Studies. This appointment method of ombudsman officers does not allow for independence, according to some analysts.<sup>70</sup> Tracking the investigation conducted by the *corregedorias* is as far as the ombudsman can go.

Since the creation of the Ombudsman, subsequent governments in Brazil have adopted more reforms but they have been poorly implemented and objectives have been more oriented towards the reduction of crime and violence than towards the democratization of police forces.<sup>71</sup>

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<sup>65</sup> According to the Brazilian Penal Code, only the Public Prosecutor Office can begin a criminal proceeding. See Lemgruber, J. *Civilian Oversight of the Police in Brazil: the case of the ombudsman's office*, 2002, p. 9.

<sup>66</sup> Husain S. "On the Long Road to Demilitarization and professionalization of the Police in Brazil"

<sup>67</sup> Lembruguer, J. *Civilian Oversight of the Police in Brazil: the case of the ombudsman's office*, p. 13.

<sup>68</sup> In 1992 1,451 civilians were killed by the military police and 7 by the civil police. That same year, in a police operation to control order in São Paulo penitentiary the police killed 111 convicts. In 1997 the military police killed 4. See Mesquita Neto, 2006.

<sup>69</sup> Macaulay F. "Problems of Police Oversight in Brazil", Centre for Brazilian Studies, 2002, p. 8 – 12.

<sup>70</sup> Boletim Segurança e Cidadania, 2003.

<sup>71</sup> Mesquita Neto, P. "Paths toward Police and Judicial Reform in Latin America" in Tulchini J. S. and Ruthenberg M. eds. *Toward a Society under Law*, 2006, p. 46.

## Chile:

Two institutions administer public security in Chile: *Carabineros*, a military-type organization responsible for the provision of public security with preventive and investigative powers, and the Investigative Police, a civil body responsible for conducting criminal investigations. Both institutions are still under the Ministry of Defence. Chile has in place several external mechanisms that serve as administrative or political mechanisms of control, but none of them have the capacity to exercise disciplinary control over the *Carabineros*. Even since the creation of the Public Ministry in 1999, any disciplinary misconduct undertaken by *Carabineros* officials will be treated under the military justice system with no participation of the Public Ministry. As a result, “police conduct is never publicly scrutinized, and this contributes to the impression within civil society that the process is biased.”<sup>72</sup>

In general, security policy in Chile faces two key challenges: a still militarized<sup>73</sup> police institution and a higher sense of insecurity. Although there was to be a clear independence between the *Carabineros* and the Military Forces after the democratization, *Carabineros*’ discipline and internal structure remains very similar to that of the Military Forces. Accountability is left to internal mechanism of control, such as the *Departamento de Asuntos Internos* (Office of Internal Affairs), the *Consejo Superior de Etica Profesional* (High council of Professional Ethics) and the *Departamento de Control de Procedimientos Policiales* (Control Office of Police Activities). In regards to the second challenge, *Chilean* crime rates are low compared to other places in Latin America, but concerns about public safety have increased during the last two decades. As a result, police reform in Chile concentrates on strategies of community policing, but reforms to make *Carabineros* a more responsive institution are rare. *Ad hoc* responses to police abuses have been successful, in addition to other forms of civilian oversight such as the National Institute of Human Rights created in 2009 or the *Consejo de Transparencia* (Transparency Council).<sup>74</sup>

Since the mid 1990s, the government has implemented a series of strategies to move towards a more democratic and effective institution. In 1994, the strategy *Puertas Abiertas* (Open Doors) aimed to increase public engagement. Along with the allocation of more resources to the democratization process, the strategy opened channels of communication between *Carabineros*<sup>75</sup> and the community. In addition, by 1996 another initiative, *Programa de Seguridad Compartida* (Program for Shared Security), was implemented to increase public awareness of *Carabineros*’ activities and better prepare *Carabineros* members for their relationship with the community.<sup>76</sup>

In the case of Chile, most of the plans and strategies to democratize police activities have been designed by *Carabineros* itself. For instance, Plan Cuadrante (Plan for Integrated Neighborhood Security and the National Plan for Dissemination of Preventive Police Activities) is known as one of the successful strategies designed and implemented by *Carabineros*. The plan worked towards three main objectives: 1) to increase their presence on the street, 2) To adopt a better management system of human resources and 3) to implement an innovative evaluation method based on quantifiable indicators of good

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<sup>72</sup> Dammert L., Police and Judicial Reform in Chile” in Uildriks ed., *Policing Insecurity*, 2009, p. 163.

<sup>73</sup> The term “militarized” is commonly used to describe *Carabineros* due to its internal structure and to the fact that disciplinary cases are still investigated and processed by the Military Justice. It is not used to mean that there is not independence between the military and *Carabineros*. In e-mail correspondence, Hugo Frühlings, the expert in public security issues in Chile, confirms that currently there is no signs of *Carabineros* sub-ordination to the Military.

<sup>74</sup> An example of this is the resignation of a head of the police after political pressure from the current government without a formal presidential petition for resignation. Frühlings H., e-mail correspondence with the authors.

<sup>75</sup> Is the segment of the police forces responsible of crime prevention and public order.

<sup>76</sup> Dammert L. “From Public Security to Citizen Security in Chile” in Bailey, J. and Dammert, L. eds. *Public Security and Police Reform in the Americas*, 2006, p. 65.

performance.<sup>77</sup> This underlines the relatively low level of citizen involvement in the design and implementation of strategies.

Efforts to bring community closer to police activities continued during the early-2000s. In 2005 the President was given the power to dismiss the *Carabineros* Director.<sup>78</sup> However, police accountability remained a critical issue. In December 2010 the Chilean congress approved Law No.20477, which establishes that those civilians incriminated in criminal actions against *Carabineros* would now be judged by civilian tribunals and not by the military justice.<sup>79</sup> In addition, efforts to move *Carabineros* and the Investigative Police to the Public Ministry are in the political agenda of the current administration. Although, the *Carabineros* enjoy high popularity rates compared to other police institutions in Latin America, 40,5% of those who present demands are not satisfied with the role of the police.<sup>80</sup> Currently, the question of responsiveness and transparency remains an issue for future security policy reforms.

### **Colombia:**

In contrast to other Latin American countries that had faced transitions to democracy and the challenge of democratizing the police forces after periods of authoritarian regime, Colombian police institutions have faced a long-lasting internal conflict, in addition to the problem of drug trafficking, situations that make the Colombian context one of the most difficult environments for police activities in the world.<sup>81</sup> During the years of the internal conflict, a number of approaches and different strategies have been adopted, essentially to provide the *Policía Nacional* (National Police) with appropriate tools and enough resources to fight the right-wing paramilitaries and the leftist guerrillas, and to handle the antinarcotics fight. The National Police is a centralized organization managed at the national level with the Colombian President as its nominal head. It reports to the Defence Ministry with the Attorney General as the oversight body with investigative powers. As a centralized government, most strategies to reform the National Police have been adopted at the national level with little involvement of local authorities.<sup>82</sup> In those cases where cities have played a more active role, results seem to be more positive.

During the 1990s Colombia was known to be among the most violent countries in the world with very high crime rates; violence originated from paramilitary forces, drug cartels, leftist guerrillas and in some situations, state armed forces. The characteristics of Colombian internal conflict highly deteriorated the trust and confidence local population had in the National Police. By the end of the 1990s, FARC initiated the strategy to urbanize the conflict. This change of strategy in the war front, in addition to a series of instances of corruption<sup>83</sup> and abuse of power, forced the government to launch a number of reforms inside defence and security institutions to regain the territorial control, increase the control over police activities, and improve their relationship with the communities.

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<sup>77</sup> Ward, Heather H. "Police Reform in Latin America: Brazil, Argentina and Chile" in *Toward a Society under Law*, edited by Joseph S. Tulchin and Meg Ruthenburg, 2006, p. 190.

<sup>78</sup> Frühling H., *Violencia y Policía en América Latina*, 2009, p. 126.

<sup>79</sup> Frühling H., e-mail correspondence with the authors.

<sup>80</sup> *Índice de Paz Ciudadana – Adimark*, Paz Ciudadana, June 2011.

<sup>81</sup> Goldsmith, A. "Police Accountability Reform in Colombia: The Civilian Oversight Experiment." in *Civilian Oversight of Policing: Governance, Democracy and Human Rights*, 2000, p. 171.

<sup>82</sup> The role of mayors and Governors in the administration of public security is still very limited. They have few mechanisms to improve the public safety of their regions. See Llorente M.V., "Demilitarization in a War Zone" in *Public Security and Police Reform in the Americas*, 2006, p. 115.

<sup>83</sup> Police ties with the drug cartels were revealed in many cases and members of the institution were charged for abuses in the use of force and for alliances with the Cali cartel during the war against the Medellín Cartel. See Llorente M.V., "Demilitarization in a War Zone" in *Public Security and Police Reform in the Americas*, 2006, p. 118.

In addition to the creation of the first civilian oversight body, the *Defensor del Pueblo* (Public Defender) in 1991, two major reforms have been implemented in Colombia during the last 20 years. The first was the political reform of 1993, under President Gaviria, with the goal of gaining more control over the National Police and a more clear difference between the group responsible to deal with the insurgency, and the police responsible for policing urban areas.<sup>84</sup> The reform was the result of consultative process with two advisory commissions: an internal commission with the task of evaluating and making recommendations regarding internal mechanisms of control; and an external one led by the Minister of Defence, including twenty-four members representing different sectors of Colombian civil society. Almost all recommendations were implemented six months after the final report was issued, including the establishment of the National Commission for Police and Citizen Participation ((NCPCP) under Law 62/93.<sup>85</sup> The Commission was capable of proposing and recommending preventive plans and programs, and was able to receive complaints. The Commissioner was to be appointed by the President from a list of three candidates presented by the National Council for Police and Citizen Safety (excluding the Director General of Police).

In general, The NCPCP was an innovative mechanism that provided the opportunity for a specialized body to be concentrated only on police matters, as opposed to the fiscalia or the procuraduria. However, it encountered some obstacles later on. The first commissioner resigned in 1994 stating the limited opportunities to fulfill his tasks as a consequence of internal opposition and lack of resources. By 1995 the National Police, headed by Rosso Jose Serrano, achieved high rates of popularity. During that year, the police itself initiated a plan to strengthen internal mechanisms of control through the Cultural Transformation Plan. This strategy made cuts to the budget of the Commissioner. It disappeared in 1997 and reappeared but with very different roles than those originally recommended. The series of reforms implemented between 1995 and 1998 are considered for some experts as a counter-reform to the changes adopted in 1993.<sup>86</sup> Currently, the NCPCP continues its activities of receiving and processing complaints. The Ministry of Defence reports yearly to Congress.

In addition to national strategies, each administration has also designed and implemented mechanisms to improve citizen security. For instance, Seguridad para la Gente (Security for people) implemented in 1993 under the Gaviria administration had the same objective as the Estrategia para la Convivencia y Seguridad Ciudadana (Strategy for coexistence and Citizen Security) implemented during the Pastrana government in 1998. Both targeted the implementation of local strategies requiring the approval and support of mayors.<sup>87</sup>

The second set of major reforms was adopted in 2003 under President Uribe. During that year, the scandal of corruption inside the National Police resulted in a public debate on the need to redesign the mechanisms of internal and external control. Although it was still operating, the National Commissioner for the Police had a very limited role.<sup>88</sup> As a result, the Uribe administration initiated a process of reform. The Police Special Mission, in contrast to the 1993 consultative commission, did not consult with members of civil society. The Special Mission was conducted by six "experts" with the objective of evaluating the current internal practices of the police and the internal and external mechanisms of control. In the 2004 final

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<sup>84</sup> Goldsmith, A., "Police Accountability Reform in Colombia: The Civilian Oversight Experiment." in *Civilian Oversight of Policing: Governance, Democracy and Human Rights*, 2000, p. 179.

<sup>85</sup> See Casas *Reformas y Contrareformas en la Policia Colombia*, in Rangel, A., ed., Seguridad Urbana y Policia en Colombia (2005), p. 17.

<sup>86</sup> Casas Dupuy, P., 2005, p. 9.

<sup>87</sup> De Francisco Z., G. "Armed Conflict and Public Security in Colombia" in *Public Security and Police Reform in the Americas*, 2006, p. 105.

<sup>88</sup> See Llorente, M. V. "La Honda Crisis de la Policia" in *Semana*, December 21, 2003. IN this article Llorente is very critical of both external and internal mechanisms of control, highlighting how disciplinary punishments have little deterrence effect and the urgent need for new mechanisms of control.

report, the Mission presented three key recommendations: 1) To strengthen the internal mechanism of control, the General Police Inspection, 2) the creation of a new disciplinary code and 3) the creation of a Police and Public Security Council, that will report to the Ministry of Defense, and that will have the mandate to oversee the institution and to propose a Security Public Policy coordinating mayors and local governors. However, this last recommendation created a major debate. Instead of creating a council or a Vice-ministry, experts recommended the establishment of a consultation office.

In addition to internal mechanisms of control such as the *Inspección General* (General Inspection) and committees of internal control, the civilian oversight mechanism to control police activities is still the *Defensoría del Pueblo* (Public Defender), under the jurisdiction of the *Procuraduría General* (Attorney's office). The *Defensor*, elected by the House of Representatives from a list of three candidates presented by the President for a period of four years, has the responsibility to promote human rights and the capacity to receive complaints from citizens about any misconduct. The Procuraduría has the power to initiate investigations and, according to the case, to discharge officials from office.<sup>89</sup> In other words, the powers of this civilian oversight mechanism are only disciplinary without any criminal function, besides the power to invoke the *habeas corpus*. Therefore, the mechanism can appear to be incomplete and in some instances ineffective when compare the disciplinary actions with the nature of the offences committed.<sup>90</sup> In spite of the ineffectiveness in terms of punishment for misconducts, it is fair to recognize the important role played by the *Defensoría* to protect human rights. However, abuses committed by the National Police are just one of the many areas in which human rights violations can occur in the context of an internal conflict.<sup>91</sup>

#### **Peru:**

The *Policía Nacional de Peru* (National Police of Peru) is a centralized institution reporting to the Ministry of the Interior.

The Peruvian context for police reforms and strategies to democratize police activities is as complex as the Colombian one. Peru not only had to face the consequences of an authoritarian ruling and the militarization of police forces that ended in 1980, but also the challenges of a guerrilla movement, Shinning Path, for almost a decade. The fight against the leftist guerrilla used a militaristic approach to policing under the authoritarian regime of Alberto Fujimori until 2000, deteriorating the image of the Peruvian Police forces. The *Policía Nacional de Peru* (National Police of Peru) is a centralized institution reporting to the Ministry of Interior. Currently, the institution faces a popularity rate of 29.3% according to the 2011 Victimization Survey.<sup>92</sup>

In 2001, under the leadership of the new Minister of the Interior Fernando Rospigliosi, a series of institutional reforms were proposed. The initiative included, restructuring and modernizing the National Police, efforts to demilitarize police activities and to combat corruption. The process commenced with the establishment of the Restructuring Commission, which included civilian advisors and managers, experts in human rights and civil-military relations, and officers of all ranks. As suggested by Costa "The inclusion of rank-and-file officers proved to be one of the more important aspects of the process, as they provided information on the corrupt practices of senior management, made concrete

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<sup>89</sup> See Political Constitution of Colombia, Art. 278 – 284.

<sup>90</sup> Goldsmith, A., "Police Accountability Reform in Colombia: The Civilian Oversight Experiment." in *Civilian Oversight of Policing: Governance, Democracy and Human Rights*, 2000, p. 177.

<sup>91</sup> For more specific information on the different strategies adopted by the *Defensoría* and the yearly reports, see [www.defensoria.org.co](http://www.defensoria.org.co).

<sup>92</sup> *Primera Encuesta Metropolitana de Victimizacion*, 2011, p. 10.

proposals and ultimately became the strongest internal pro-reform constituency”.<sup>93</sup> The Commission also implemented public consultations in the form of local visits to capture the views of local actors unrepresented at the national level. This process of consultation lasted four months and concluded with the submission of a final report listing a series of recommendations. The following step was the creation of the Modernization Commission responsible for supervising the implementation of the reform.<sup>94</sup>

In addition to strengthening the Inspector General’s Office, which has primary responsibility for internal oversight, the reform included the establishment of a new Office of Internal Affairs, reporting to the Minister of the Interior and with the task of dealing with disciplinary actions, including investigations of corruption. Other innovative strategies were the creation of the *Defensoría del Policía* (Police Ombudsman offices) and neighborhood committees.<sup>95</sup> The Police Ombudsman Office is considered to be unique among South American countries. The reform came about in a complex environment. Social protests and threats to the public order delayed the implementation of the reforms. The Ministers of the Interior appointed during the following years did not support the continuation of the reform. By 2005, the civilian control over the police was abandoned.<sup>96</sup>

### **BEST PRACTICES AMONG THE NATIONS SURVEYED**

It is evident that the ideal systems for the oversight of police institutions require both structure that is internal to police institutions to deal with citizen complaints as well as an independent overview body, whether it is one which deals solely with complaints against the police or a more general oversight body such as a national ombudsman or a human rights commission. Systems with only internal review mechanisms that are strictly within the control of the police themselves rarely have the full confidence of the public. The police must not, in other words, have final control over dealing with public complaints and likely not even with internal police discipline matters. At the same time in societies in which there is strong public confidence in the nation’s judicial system, the need for strong external controls over the police appear to lessen.

There are several other lessons and patterns which emerge from a review of patterns in the region.

- There is a general consensus that there needs to be a clear separation of police from the military, although in a few of the countries reviewed the degree of severity of criminal activity, as in Mexico and urban areas of much of the Caribbean and South America, has blurred the lines between the two jurisdictions.
- There is additional evidence that those oversight mechanisms such as the Costa Rican ombudsman which are responsible to the legislative rather than executive branch are more likely to have a higher degree of independence from political interference.

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<sup>93</sup> Costa G. and Nelid R., “Police Reform in Peru”, in *The Australian and New Zealand journal of Criminology*, 2005, p. 220.

<sup>94</sup> Basombrio I. C., “Civilian Oversight of Security in Peru: The Testimony of a Participant” in *Toward a Society under Law*, edited by Joseph S. Tulchin and Meg Ruthenburg, 2006, p. 265.

<sup>95</sup> Phillips E. and Trone J. *Building Public Confidence in Police through Civilian Oversight*, 2002, p. 2

- *Indice de Paz Ciudadana – Adimark*, Paz Ciudadana, June 2011.

[http://www.pazciudadana.cl/docs/pub\\_20110719113352.pdf](http://www.pazciudadana.cl/docs/pub_20110719113352.pdf)

- *Primera Encuesta Metropolitana de Victimización*, Instituto de Opinión Pública and Pontificia Universidad Católica de Perú, 2011; Frühling H., *Violencia y Policía en América Latina*, Ciudadanía y Violencia, Vol. 7, 2009, pp. 1-314.

<sup>96</sup> Costa and Nelid (2005) *op. cit.* p. 226.

- There is further evidence that guarantees of civil liberties and the provisions for the establishment of such entities as ombudsmen that are enshrined in constitutions are more likely to be honoured.
- Further, it is essential that the civilian oversight bodies have the power to initiate investigations without having the complaints referred to them by the police; they also need to have the power to act on their recommendations. The latter does not appear to be the case in the English Caribbean.
- There appears to be strong evidence that in the development of oversight mechanisms there needs to be direct involvement of civil society in those organizations which oversee police forces. The precise form in which civil society should play a role is not clear, however.
- Reforms which are important but which do not necessitate external oversight mechanisms include focusing on a change in the quality, vision and training of police leadership on the one hand at the same time giving rank and file police a stronger sense of responsibility.<sup>97</sup> It is noted, for instance, that one of the problems with the police reforms (Guatemala is an example) is the lack of a sense of independence on the part of local police officials in making decisions, developing policies and taking initiatives.
- Community policing has become an important initiative in many countries in the Caribbean and Latin America in enabling local communities to take an active role in promoting their own security as well as an important means of building trust between police and citizens.

The reforms that are identified in this study suggest one other feature and that is a tendency for governments to implement reforms in a time of crisis without consideration of longer term planning. In other words they have in some instances been reactive. For instance, in Argentina, reforms adopted during the 1990s happened after scandals associated with police involvement in the bombing of the Israeli embassy and the Jewish Centre. In Colombia, President Uribe called for the advice of the Police Special Mission after an internal crisis of corruption that ended with the removal from their positions of ten high level officials. Although this shows poor planning, lack of a long-term agenda in democratic security policies, and little probability for acceptance by police institutions, crises can provide opportunities to provoke good thinking and debate.

It is evident from the successes and failures of police reform in the Caribbean and Latin America over the past two decades that success requires more than adding oversight mechanisms. The experiences throughout the region demonstrate that the process of democratization of police activities has been a slow one and one that has encountered great resistance to change. The weaknesses in the reforms can often be traced to the fact that although there was basic institutional reform there was insufficient attention and effort given to changing the culture of police organizations, the attitudes of individual officers, or the vision of the leadership.

### **MEASURING SUCCESS**

There are a number of ways in which one can determine the degrees of success or failures of any police monitoring systems, but it is fair to say that at this stage there is no single “best practice” in the Americas which stands out from the rest. At the same time throughout the region in the past two decades there have been changes in the way police can operate, and the participation and involvement of civil society in these issues has increased significantly. That has been especially applicable to post-conflict societies. It is also important to stress

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<sup>97</sup> Uildriks, “Policing Insecurity and Police Reform in Mexico city and Beyond,” in Uildriks, *Policing Insecurity*, pp. 218-219.

that in measuring the overall success of a justice system, monitoring police conduct is only one component. Other issues include the number and kinds of crimes that are reported in a society, the clearance rates for the most serious crimes, the effectiveness with which the justice system deals with those who are accused, convicted and incarcerated. The most useful measures are determining the number of complaints against the police which are received, the percentage that are dealt with expeditiously and to the satisfaction of the complainants.

Except through public opinion surveys it is difficult to measure public confidence in a police system. Regardless of the oversight mechanisms which may be established in any society there are always broader cultural, political and socio-economic factors which contribute to the levels of crime and violence in any nation. There is a clear consensus in the literature that police reform, justice system reform, democratization, human rights issues and security challenges are inter-related.<sup>98</sup> It is thus not surprising that there have been counter reforms and resistance to civilian oversight in areas such as Central America which have experienced rising levels of crime. In a context in which governments and their police institutions are faced with high levels of crime it is understandable that the “mano dura” approach would have gained support.

There is relatively little literature which identifies the means by which the success of civilian oversight mechanisms can be measured, but as one study on the United States suggests some indicators are beginning to be identified in a more systematic way.<sup>99</sup> This study, which is based on survey data involving the public, police institutions and oversight bodies, identifies a range of criteria. They include the following:

- Complaint statistics
- Complaint outcomes
- Timeliness in dealing with complaints
- Community engagement
- Stakeholder satisfaction

Philip Alston in his 2010 report to the United Nations Human Rights Commission on oversight mechanisms and the protection of human rights contended that to be effective an oversight mechanism needed to meet certain criteria:<sup>100</sup>

- Adequate powers to carry out comprehensive investigations of police
- Sufficiently independent of police and government
- Adequately resourced
- Operate transparently and report frequently
- Have the confidence of the public and government
- Will involve civil society in its work

## CONCLUSION

It is evident from this overview of oversight of police institutions in selected countries of the Americas that regardless of the societies with which one is dealing, but especially in post-conflict societies, police reform is something which requires time, patience and commitment

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<sup>98</sup> Niels Uildriks, “Police Reform, Security and Human Rights in Latin America: An Introduction,” in Uildriks, ed., *Policing Insecurity*, p. 2.

<sup>99</sup> Beth Anne Mohr, “The Use of Performance Measurement in Civilian Oversight in the United States,” University of New Mexico, 2007. [http://civilianoversight.net/NACOLE-Perf\\_mgmt.pdf](http://civilianoversight.net/NACOLE-Perf_mgmt.pdf). Accessed 22/10/2011.

<sup>100</sup> Alston, “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,” United Nations, Human Rights Council, 28 May 2010, p. 12.

on the part of governments, police institutions and members of civil society. Reforms also may require significant cultural changes in a society, the transformation of what may be well entrenched power relationships between police and other state institutions on the one hand and civil society on the other. In most instance change requires more than technical tinkering with police doctrine or practice. Under those circumstances resistance to change is to be expected and some degree of patience in moving toward reforms absolutely essential.<sup>101</sup>

It is also evident from this review that no one single model fits all political cultures. Nonetheless, several common factors appear to be among the essential criteria for success. The first is a commitment from the highest political levels to ensure that the rule of law is enforced. A second criterion is the willingness of police forces to accept what may be viewed as a reduction of some degree of their sovereignty. A third factor is that any oversight mechanism must be as independent as possible from either the institutions they are mandated to oversee as well as from unwarranted political interference. A fourth criterion is that an oversight mechanism must be well resourced. Finally, no oversight mechanism can be effective if its recommendations are not taken seriously and where feasible implemented by political authorities.

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<sup>101</sup> William G. O'Neill, *Police Reform in Post-conflict Societies: What We Know and What We Still Need to Know*. New York: International Peace Academy, 2005.

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