



## A situational analysis of civilian police oversight agencies in the Ministry of Police and Public Safety, Lesotho

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### Abstract

Police services around the world are generally tasked with upholding the rule of law and maintaining order in society. However, the use of excessive force by members of police services can result in violations of human rights. For that reason, governments often introduce measures and processes to hold members of police services accountable to ensure that they execute their duties within the remit of the law and in observance of human rights. This paper presents a critical discussion of the current state of accountability within the three civilian police oversight agencies in Lesotho: the Police Directorate, the Police Complaints Authority (PCA) and the Police Inspectorate within the Ministry of Police and Public Safety. Face-to-face interviews, as well as a review of various documents such as legal frameworks, international instruments, media reports and previously conducted research, were used to obtain information. While Lesotho has taken positive steps in observing some of the principles laid down by international instruments for civilian police oversight agencies, legal loopholes and administrative challenges have reduced their effectiveness.

The country's legislation emphasises the establishment of civilian police oversight mechanisms and the appointment of their senior leaders. Moreover, the lack of relevant legislation covering the powers, functions and independence of oversight agencies erodes respect for them among the various policing services. The omission of clear provisions in these key areas of accountability to oversight agencies enables political interference in policing services to the extent that politicians can take effective control over the country's police agencies. There

is therefore a need for a review of the legal framework that governs the civilian police oversight agencies in Lesotho. A comprehensive Act should underpin the broad and detailed mandate, powers and independence of the agencies.

**Key words:** Accountability; agencies; civilian; governance; oversight; police.

## Introduction

In recent decades, countries that are committed to democratic governance have increased their police oversight establishments (Phillip & Trone 2002; World Bank, 2009) following reports of police misconduct and public dissatisfaction with internal police investigations (Stelkia, 2020; p. 1). According to Lunn (2015, p. 12), democratic oversight of security agencies is vital for the kind of control over policing services that underpins the development of democratic, stable, free and prosperous societies. Effective policing services play a pivotal role in maintaining public tranquillity, law and order (Buffone *et al.*, 2017; Carty, 2008; Campesi, 2019).

In legally mandated circumstances, police officers have powers to arrest persons, search persons or property, seize property, interrogate suspects in crimes, investigate the lives and actions of suspects and in limited circumstances, proactively prevent the commissioning and execution of crimes in the interests of protecting the safety, freedom, rights and dignity of citizens. However, the powers with which police officers are entrusted can sometimes lead them to subvert the safety and rights of people and property. Such abuses can result in forms of police brutality such as torture and ill-treatment, as well as severe human rights violations (Amnesty International, 2015; Osse, 2006).

As the African Police Civilian Oversight Forum (2008; p. 1) notes, recognising “this double-edged nature of police powers and discretions” has led governments in various countries to introduce more active measures and processes aimed at ensuring that members of policing services “do not abuse their powers with impunity”. Without such measures, as the UN puts it, “police are essentially left to police themselves” (United Nations General Assembly, 2010). Essentially, addressing the deficiencies inherent in unchecked police investigations and misconduct requires external, specialised mechanisms of monitoring and control (Prenzler, 2000). These are often embodied in civilian police oversight agencies.

## Objectives of the study

While Lesotho has various accountability mechanisms for the police service, the country has established three oversight agencies whose mandate is exclusively to hold this service accountable.

The objectives of the study are as follows:

- To provide a detailed current situational analysis of the three oversight agencies within the Ministry of Police and Public Safety.
- To evaluate the performance of the oversight agencies based on the international standards and other relevant research.
- To recommend policy amendments regarding the oversight agencies.

Two important paradigm shifts with regard to police oversight have occurred in and beyond Africa since the early 1990s. The first paradigm shift involved a new emphasis on the establishment of independent agencies to oversee and often also to investigate complaints against police agencies. The second paradigm shift related to the perceived need to introduce performance-driven management strategies in public services (Faull, 2013; p.1).

A range of international and regional instruments providing for accountability mechanisms and standards for the governance and oversight of policing functions have been established. These include the International Covenant on Civil and Political Rights 1966 and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (United Nations Commission on Human Rights, 1984). All these instruments require the establishment of fully independent and accessible mechanisms through which any person can lodge allegations of torture and ill-treatment (Amnesty International, 2015). Lesotho has ratified the mentioned instruments.

Other standards include the Declaration of Basic Principles of Justice for Victims and Abuse of Power (the Victims Declaration) (United Nations Commission on Human Rights, 1985), the UN Code of Conduct for Law Enforcement Officials (United Nations General Assembly, 1979), and the Principles on the Effective and Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (Economic and Social Council, 1989).

In the 2000s, there was growing concern that many African states lacked effective independent policing oversight mechanisms through which members of the public could report police misconduct and abuses of their powers, and that where such mechanisms existed, they fell directly under the control or management of police authorities. Hence, in its 40th Ordinary Session, the African Commission on the Human and Peoples' Rights (2006) adopted a resolution on police reform in which member states were urged to establish mechanisms for police accountability and civilian oversight.

## **Significance of the study**

The paper seeks to outline the legislative mandates and operational functions of the three civilian police oversight agencies within the Ministry of Police and Public Safety in Lesotho. Most research about police oversight agencies in Lesotho mentions a wide range of agencies that hold police accountable. These include parliament, the judiciary, the ombudsman, the media and civil society organisations. This paper focuses on the three civilian police oversight agencies within the ministry. Unlike the other oversight agencies, these agencies exclusively oversee the Lesotho Mounted Police Services (LMPS). The context in which the three oversight agencies operate includes the administrative and legislative challenges they face, and these are also briefly explored.

## **The rule of law in Lesotho**

Research has shown that political unrest has compromised Lesotho's rule of law since the early 1970s. The Constitution was suspended after 1975 elections (Lehobo, 2017, p. 59). After the military toppled the Basotho National Party (BNP)-led government in 1986, it also ruled without the Constitution (Makoa, 2004, p. 3). In the democratic era, BNP supporters would not concede to defeat after the 1998 elections and held protests outside the Royal Palace, with neither the military nor the police services able to disperse the crowds. The result was yet another political impasse and the government had to request the Southern African Development Community (SADC) to intervene (Ellett, 2012). In recent years, the country has had two snap elections, resulting in three coalition governments in a five-year period (Shale, 2018).

## **Overview of oversight agencies in Lesotho**

Under democratic rule in 1993, the lack of accountability and resources within the LMPS was so great that the police service fell into disarray (Scher, 2010, p.1). In 1997 there was a serious police mutiny, during which junior officers abducted and assaulted their seniors and took over the police headquarters (Scher, 2010, p.1). The military was ordered to quell the mutiny (Scher, 2010, p.1). This resulted in a range of police reforms that saw civilian oversight institutions to monitor police activities and hold the LMPS accountable established for the first time. These were the Police Complaints Authority (PCA), the Police Inspectorate and the Police Directorate.

The Police Directorate was established to ensure that the LMPS operated according to the established standards (Scher, 2010, p. 4) as stipulated in the Service Charter (Lesotho Mounted Police Service, 2000). The Police Inspectorate monitors the progress made on the implementation of the LMPS annual policing

plan (Scher, 2010, p. 4) while the PCA investigates grievances against the police (Scher, 2010, p.4).

However, there have been numerous reports of police brutality despite the establishment of the mentioned police oversight agencies, especially since 2012 following the advent of coalition governments (Dissel & Fran, 2012). In 2020, the LMPS was sued for torture and unlawful arrest (Pakela, 2020). The US Department (2012) has also reported multiple cases of police brutality.

### **What is police accountability or oversight?**

The purpose of civilian police oversight is to hold policing services accountable to an institution that is independent of the police services' functions and command structures. In general, policing services are accountable to a range of civilian institutions, including governmental bodies such as Parliament, the cabinet, the judiciary and the ombudsman (Bruce & Neild, 2005). Police oversight mechanisms need distance from the staff structures and activities of policing services to ensure their clarity and objectivity in evaluating them (Phillip & Trone, 2002, p 18).

Dissel & Fran (2012) argue that allowing the police to investigate allegations of misconduct against other fellow police officers may result in biased, unfair and ineffective processes. It is for this reason that independent external accountability plays a vital role in holding police officers accountable. Musila (2018, p. 5) outlines the key objectives of civilian oversight as ensuring transparency, accountability and observance of the rule of law, protecting the rights of citizens, ensuring accountable use of public resources, enhancing public participation in security governance and improving service delivery, and hence they are key to establishing good governance for the security sector (Brinkerhoff *et al.*, 2009).

Accountability can be simply defined as observing and recording what the police do and how they perform (Walker, 2000, p. 25). More specifically, police accountability activities can take the form of the open observation of police activities, ranging from the behaviour of a single police officer at the grassroots level to that of the highest ranks of the police service, whose functions include managing police operational strategy, human resource procedures and budgeting (Balcioglu & Pala, 2015; Carty, 2008; Pyo, 2008). According to Osse (2006), instruments of accountability in cases of misconduct can include sanctions such as disciplinary procedures and criminal prosecutions. It may be observed that civil society organisations and media can also play a crucial role in holding police accountable, in the sense that their activities are made public.

Civilian police oversight is defined as information gathering, analysis, operations and the dissemination of information. All of these are a precondition

for accountability, and should be present in all aspects of an accountability organisation (Gill, 2020, p. 973). That is, the function of accountability requires an independent repository of qualitative and quantitative data.

## **Models of police accountability/oversight**

Several terminologies are used to describe aspects of civilian police oversight. The terms include citizen oversight, citizen review, external review, external oversight, and civilian review or civilian monitoring (Hope, 2021, p. 425).

Stone & Ward (2000) have identified three levels of police accountability; the extent of their presence in civilian policing oversight organisations in different countries depends on their institutional capacities. The first consists of the internal or departmental controls that are present in each organisation. These are the processes and rules within the police departments that are used to ensure compliance with rules and regulations, investigate complaints, determine the culpability of officers in cases of alleged offences and compile depositions (Alemika, 2013; Gill, 2020). The second level of control exists at the level of the state or government, and includes such functions as police ombudsmen and police complaints bodies (Alemika, 2013; UN General Assembly, 2010) as well as cabinets and parliaments (Bruce & Neild, 2005). These are institutions, rules and processes through which the government holds police accountable for their policies, actions, use of resources, performance and conduct. The third level involves social control of or oversight over policing by civil society organisations. “Civil society is an arena of voluntary collective actions around shared interests, purposes and values distinct from families, state and profit-seeking institutions” (United Nations Development Programme, 2009, p.6). Civil society can be a vital aspect of social monitoring police actions, performance, conduct and use of resources in many countries (Stone & Ward, 2000).

## **The importance of complaints systems**

Complaints systems have an integral role to play in police oversight because they allow victims of police brutality to lodge complaints about police misconduct. According to the UN General Assembly (2010, p. 3), victims of police brutality are often reluctant to report abuse directly to the police, either because they fear reprisals or because they do not believe that serious investigations of their complaints will be undertaken.

Through police oversight bodies, citizens are accorded an opportunity to engage with the government. (Hryniewicz, 2011). Gill (2020) and Bruce & Neild (2005) agree that citizen-government dialogues can also serve as a foundation for policy review or development concerning law enforcement and thus enhance

cooperation between democratic institutions, the security sector and civil society on security governance issues.

Independent complaints systems are therefore an integral part of an accountability function that serves as a system of checks and balances to hold police officers accountable for abuse of power and misconduct (Stelkia, 2020, p. 1). Civilian police oversight organisations must assume “the inability or unwillingness of the police to police themselves in a manner acceptable to the public” (Lumina, 2006, p. 100).

## **Challenges of police oversight agencies**

Countries around the world have considerably improved their police oversight agencies in recent years, but institutions still face challenges that have implications for their performance in holding policing services accountable (Alemika, 2013). Police oversight agencies often do not have investigatory powers (UN General Assembly, 2010). They often lack investigation expertise, and have to rely on cooperation from police officers and authorities (Alemika, 2013; Berg & Howell, 2019; Hope, 2021). They also often lack political support, as well as adequate human and financial resources. Without adequate political support, oversight agencies are likely to fail to execute their duties (Hope, 2021).

Hope (2021) notes, for example, that South Africa’s Independent Police Investigative Directorate (IPID) has complained about a lack of resources. Berg & Howell (2019, p. 6) point out that IPID began its operations without a budget and had to rely on resources and support from the South African Police Service (SAPS) before eventually acquiring an independent budget.

Oversight bodies also often lack the power to impose and enforce penalties; they merely recommend. In some countries, civilian oversight mechanisms are not seen as essential (Berg & Howell, 2019, p. 9). Alemika (2013, p.8) argues that staff members of civilian oversight organisations may have unrealistic expectations of what the police should do, or undue empathy for the police. However, appointing police officers to oversight bodies may not solve this problem. Moreover, politicians tend to put people in positions of accountability leadership who are disposed to favour the police or be politically compliant (Hope, 2021).

## **Research design**

This paper describes the current policy and administrative situation of the three civilian police oversight agencies in Lesotho’s Ministry of Police and Public Safety. Their current levels of performance are evaluated according to their envisaged mandates.

## Methodology

Information was obtained by means of (a) a desk review (content analysis) to generate historical background regarding the three oversight agencies and (b) face-to-face interviews with senior management officers within the oversight agencies and operational staff of the three oversight agencies within the Ministry of Police and Public Safety, as well as the non-governmental organisation, Development for Peace Education. A retired police commissioner and former minister of police and public safety were also interviewed.

Structured and open-ended questionnaires were used. All respondents were informed that this paper was not intended as a study for academic degree purposes but that the intention was to publish it in an academic context.

Members of the public, especially people who have lodged complaints with the PCA, were not interviewed. The PCA would not disclose any information about complaints it had received, which was regarded as classified. Consolidated records of cases since the inception of PCA were not readily available. PCA only had records of referred cases for the 2019/2020 and 2020/2021 financial years. Moreover, the author is a staff member in the Ministry of Police and Public Safety deployed in the Police Inspectorate as an information analyst. Some of the findings are due to her observations and knowledge of the Ministry.

## Results

### The legal framework of oversight agencies

Between 2005 and 2011, both the civilian police oversight agencies and the LMPS fell under the administration of the Ministry of Home Affairs, Parliamentary Affairs and Public Safety. In 2012, the civilian police oversight agencies were moved to a newly established Ministry of Police and Safety under the administration of the first coalition government, along with the LMPS.

### Police reforms

The Police Service Act of 1998 Section 3(2) states that the minister of police and public safety is the primary police authority, and appoints the director of police and other staff members. However, the director of the Police Directorate is recruited under the Public Service Act of 2005. The office of the inspector of police, referred to as the Police Inspectorate, was established by Section 21 (1) of the Police Service Act of 1998 which reads: “The King, acting on the advice of the Prime Minister, shall appoint an Inspector of Police, on such terms and conditions as he may prescribe.” The PCA, on the other hand, was established under Section 22 (1) of the Police Service Act of 1998. The Act establishes a Police



Complaints Authority comprising a chairperson and at least three members. The PCA members are appointed by the Police Authority.

### **Operations of the agencies**

This section outlines the scope of operations of the civilian police oversight agencies as defined by the Lesotho Government White Paper on Police Reforms (1997), and the current state of affairs. The envisaged mandates and operations are highlighted and the practical operations of the civilian police oversight agencies within the Ministry of Police and Public Safety are described.

### **The Police Directorate**

The Police Service Act 1998 states that the Police Directorate’s mandate is to assist the Police Authority to carry out functions of the Police Authority as stipulated in the Act. The White Paper (1997) elaborates the functions of the Directorate, which is divided into three main units: Crime Reduction, Service Delivery and Resource Management.

Crime Reduction is headed by a Controller Crime. This unit scrutinises crime trends in the country, and is also expected to propose strategies and best practices to address crime throughout the country. Currently, the role’s duties are to research crime trends, such as crime prevalence and policing areas with high rates of crime, and to propose strategies or initiatives for tackling crime. Some of the common types of crime in the county are shown in Table 1 below.

**TABLE 1: LESOTHO CRIME STATISTICS 2010-2020**

Type of crime	2010	2015	2020
Housebreaking	4,590	4,680	4,351
Stock theft	3,416	33	2,365
Sexual assault	1,748	1,646	1,419
Assault /grievous bodily harm	1,536	1,412	1,029
Robbery	916	1,197	798
Murder	764	897	898
Armed robbery	434	584	419
Attempted murder	387	360	248
Car theft	340	168	119
Fraud		309	483
Human trafficking		17	15

Source: Bureau of Statistics-Lesotho: 2012, 2016 and 2021.

Service Delivery is headed by the Controller Standards. The purpose of this role is to assist the LMPS to draft standards for measuring service delivery. The role is still operational and documents on standards have been produced. However, the acting Director-Police Directorate expressed concern that the office is underutilised by the LMPS and the Police Authority. In their view, the LMPS ought to work with the Police Directorate in drafting policies and operating standards, which is not the case currently. The Police Authority likewise ought to work with the Police Directorate on matters relating to policing inclusive of the reports submitted by PCA and the Police Inspectorate (The White Paper, 1997).

The Resource Management Unit was supposed to be headed by a Controller Resources. The purpose of the unit was to ensure that the LMPS had all the required resources to execute its duties, including fleet, personnel and equipment. However, this position fell into abeyance when the newly established Ministry of Police and Public Safety took over. Poor communication and coordination between Controller Resources and the new administration led to the role becoming redundant. When the position became vacant, it was abolished (interview, 3 November 2021, Maseru).

The Police Directorate has limited human capacity and presently only has six serving officers. Its director heads the department as well as two other units, Crime Reduction and Service Delivery. Each of these two units is currently manned by just one officer. The current Controller Standards will be retiring at the end of 2022 and no succession has been planned. The department also has a Research Unit, headed by the chief research officer, with two researchers under their command (interview, 3 November 2021, Maseru).

### **The Police Inspectorate**

The Police Service Act section 16 (3) mandates the commissioner of police to obtain opinions from members of the public on matters relating to policing and the draft Policing Plan. The Policing Plan must include policing priorities for each year and be presented for endorsement to the Parliament as the National Annual Policing Plan. The core mandate of the inspector of police is to “inspect and report on the efficiency and effectiveness of the Police Service and the extent to which the Policing Plan for that year has been carried out”. The Police Inspectorate is led by an inspector of police, who has two deputies. There are four information analyst posts but at the time of writing only three posts were filled.

## **The Police Complaints Authority**

The PCA's mandate is to investigate and report to the Police Authority on any complaints referred to it by the Police Authority or the police commissioner, or any complaint by the public regarding the misconduct of a member of LMPS.

The powers of the PCA are minimal and are limited to summoning suspected perpetrators or witnesses to give evidence. This limitation is due to the legal framework which is not elaborative, argued a former minister of police and public safety (telephone interview, 8 December 2021, Maseru). The Police Service Act 1998 Section 22 (5) stipulates that "Police Complaints Authority shall have the power to summon persons before it to give evidence or to produce documents and any person who fails to comply with such summon shall be liable to a fine of M500.00." The PCA does not have access to LMPS information, such as police dockets or exhibits. PCA can neither search police premises nor seize property from the LMPS (US Department of State, 2021).

According to the former commissioner of police, the LMPS was not clear about which investigations were to be conducted by the PCA (telephone interview, 10 October 2021, Maseru). The LMPS indicated that at some point the PCA wanted to investigate cases that LMPS was working on. This resulted in tensions between the two offices. As a result, standard operating procedures were signed and endorsed in 2009.

The SOPs were intended to remove misconceptions that members of the LMPS had about the PCA. In fact, the SOPs merely reiterate what is already outlined in the Police Service Act of 1998 concerning the referral of complaints against members of the LMPS. In addition, the SOPs require the LMPS to provide PCA with any assistance and information it may require to conduct an investigation, though this also requires the approval of the LMPS's Inspection, Complaints and Discipline unit. The SOPs require the PCA to submit its findings and recommendations to the Police Authority in writing, and a copy may be provided to the commissioner of police. Lastly, the PCA is mandated to inform a member of the LMPS through the Office of Officer Commanding that they are being investigated.

Despite the SOPs, however, PCA still encounters myriad challenges in obtaining information and documents of misconduct from the LMPS, according to the Director Investigation (interview, 13 December 2021, Maseru). According to a member of the LMPS, the PCA does not have the authority to request information or documents from the PCA because they report only to the commissioner of police; this appears to be a mistaken understanding of the situation. Table 2 below illustrates the number of cases of police misconduct referred to PCA by

the Police Authority, not the commissioner of police, in the last two government financial years.

**TABLE 2: CASES REFERRED TO PCA IN 2019/2020 AND 2020/2021**

Referred cases Type of misconduct	Financial year	
	2019/2020	2020/2021
Assault	5	7
Service delivery issue	2	5
Murder	3	3
Damage to property	2	0
Attempted murder	1	2
Rape	1	0
Over detention	1	1

Source: PCA records.

Cases of complaints against the LMPS are shown below that were never referred to PCA but directly brought before the courts of law from 2009 to 2020.

**TABLE 3: CASES AGAINST LMPS IN THE COURTS OF LAW**

Year	No. of cases in the courts of law	Compensation awarded to victims of police brutality
2009	2	M160,000.00
2010	1	M25,000.00
2011	1	M30,000.00
2012	5	M658,827.07
2013	7	M239,169.32
2014	8	M966,374.66
2016	5	M708,706.13
2017	10	M1,398,071.77
2018	3	M201,902.97
2019	3	M247,125.00
2020	3	M108,295.32
<b>Total</b>	<b>48</b>	<b>M4,743,472.24</b>

Source: PCA records.

## **Shortfalls of the oversight offices**

Previously conducted research (Scher, 2010) indicates that the Director-Police Directorate acted as the link between the Police Inspectorate, Police Complaints Authority, LMPS and the Police Authority. However, according to the Acting Director-Police Directorate, this relationship was operational in the early years of the civilian police oversight offices (interview, 3 December 2021, Maseru). More recently, each oversight agency has been reporting directly to the minister independently of the Director-Police Directorate.

According to the acting Director-Police Directorate (interview, 3 December 2021, Maseru) these reporting structures have serious implications for implementation of the recommendations made by Inspectorate and PCA. As it is, ministers play three roles, to which the additional reporting requirement adds a further burden. Members of the Cabinet, for example, have a daily schedule involving multiple tasks. They are also members of Parliament, which involves duties that compete with their ministerial duties. The electoral constituency for which each minister is responsible in Parliament also expects the visibility of their representative.

Respondents working in the oversight agencies indicated that direct reporting to the Minister of Police and Public Safety also involves other administrative challenges for the PCA and the Inspector (interviews, 16 December 2021 and 2 February 2022, Maseru). According to the law, the police inspector and chairperson of the authority report directly to the Police Authority, yet administratively, the principal secretary is the chief accounting officer. This creates some tension between the chief accounting officer and appointees, who report directly to the Police Authority.

Respondents working at the LMPS and the oversight agencies cited political interference as another major challenge that the oversight agencies are faced with. The inspector of police, the chairperson and the members of authority are appointed by a political figure, not necessarily on merit, and are on contract.

All the respondents concurred that frequent changes of regime and therefore of the responsible ministers frustrate the effective operation of the civilian police oversight agencies. Since the establishment of the Ministry of Police and Public Safety, different incumbents of the ministerial and principal secretary roles have introduced different goals and objectives for the organisations. According to the acting Director-Police Directorate, during the regime of the first Lesotho coalition government, the LMPS reported directly to the prime minister. During this period, neither the prime minister nor the LMPS engaged with the Police Directorate.

All of this clearly amounts to political interference in the function of the oversight bodies, the mandates of which are set out in legislation. According to the civil society organisation, ministers deployed at the ministry do not fully understand the roles of civilian police oversight agencies (interview, 14 December 2021, Maseru). One of the former ministers interviewed said that the Police Directorate’s roles are difficult to comprehend (telephone interview, 8 December 2021, Maseru). A former minister of police proposed the closure of the civilian police oversight agencies, saying that they strained already limited resources (telephone interview, 8 December 2021, Maseru).

As Lesotho heads for general elections in October 2022, members of parliament have begun vigorous campaigns in their respective constituencies. The Minister of Police and Public Safety is no exception. As a result, the ministerial fleet has been diverted to use of the minister’s office, leaving ministry officials with no transport to execute their duties. A member of staff with the Police Inspectorate said the organisation had not been able to conduct inspections in the third and fourth quarters of the 2021/2022 financial year due to the unavailability of transport (interview, 21 February 2022, Maseru).

Members of staff of the oversight agencies said that oversight offices do not have direct control over their operational budgets, which is controlled by the administration. Each office budgets for its activities, but they often find that they are unable to carry out some of their duties due to a lack of funds. Table 4 below outlines the operational budget allocated to the oversight agencies over the last five financial years.

TABLE 4: ALLOCATED BUDGET TO THE CIVILIAN OVERSIGHT AGENCIES AND LMPS

Department	Budget				
	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022
Police Inspectorate	M68,736.00	M58,937.00	M29,883.00	M80,811.80	M117,725.00
Police Directorate	M68,467.00	M28,350.00	M26,460.00	M494,406.65	M383,848.97
Police Complaints Authority	M49,480.00	M44,532.68	M35,660.00	M101,058.00	M57,901.72
LMPS		M509,816.25	M100,000.00	M100,000.00	M270,922.31

Source: Ministry of Police and Public Safety, 2022.

According to some interviewees, former employees of the LMPS are often deployed to the civilian police oversight agencies. The civilian police oversight agencies and the LMPS fall under the same ministry, and PCA employees noted that vehicles assigned for the use of the oversight agencies were sometimes “lent” to the LMPS.

The civilian police oversight agencies’ reports are not published. According to some respondents within the PCA, people claiming to have been subjected to police brutality are not formally informed of the findings and recommendations of PCA investigations. The civilian police oversight organisations have never been audited, while their reports are not submitted to Parliament, but to the Police Authority. Staff members of the PCA believed that members of the public were unlikely to trust the department to conduct objective investigations. Given all this, it is little surprise that members of the public are often sceptical about PCA investigations.

### **Views of LMPS on civilian police oversight agencies**

Some members of LMPS were not conversant with the oversight offices and their mandates. One district commissioner of police even called in some of the officers and asked them to explain the role of the police oversight offices. The officers indicated that they were not aware of the police oversight offices and their mandates.

Interviewed members of the LMPS believed that the civilian police oversight agencies had no notable and significant impact because the civilian police oversight offices do not provide feedback upon completion of their inspection or investigation. They said that they often saw the Police Inspectorate on their premises conducting inspections, but were never informed of the results of the inspections. The presence of some of oversight officers of the Police Directorate was seldom felt except when they worked with the unit on crime prevention. Ministry administration staff members believed that the Police Directorate dealt only with payment of compensation for police misconduct.

LMPS members believed that it would in principle be beneficial to include former police officers in the staffs of the oversight agencies because their knowledge of the police service system would enable them to recognise when things were not being done properly. In particular, they might be in a position to know when crucial information was being withheld from oversight agencies. On the other hand, their experience with colleagues who had worked with the LMPS was that they tended to bring LMPS culture and practices into oversight agencies. In some cases, former LMPS employees had held senior positions

within the LMPS, and it was felt that they tended to see the LMPS as being under the control of oversight agencies.

## Discussion

### Compliance with international and regional treaties

Lesotho has ratified international and regional instruments that urge the member states to establish civilian police oversight agencies. Lesotho has also undertaken to implement Goal 16, Target 6 of the UN Sustainable Development Goals, which advocates for the development of effective, accountable and transparent oversight institutions at all levels. Nationally, an Act establishing the oversight agencies has been enacted.

### Legal framework environment

Though the roles of the civilian police oversight agencies are formally legislated, their effectiveness is largely overshadowed by the same Act and their independence is compromised. The Police Service Act of 1998 does not elaborate the functions, powers and specific duties of the departments and office bearers. This is evident when the Act is compared to the South African Independent Police Investigative Directorate Act (2011)<sup>1</sup> and Civilian Secretariat for Police Service Act (2011)<sup>2</sup> as well as the Kenyan Independent Policing Oversight Authority Act (2011)<sup>3</sup>. The Paris Principles Article 2 directs that national oversight agencies should be given broad mandates.

As noted, the national legislative law permits external and political interference in how oversight agencies should carry out their duties, in particular, the PCA, contrary to Article 36 of the UN Convention against Corruption as well as recruitment of the chief accounting officers of the oversight agencies. Good principles of oversight agencies include organisational discretion to exercise duties, statutory underpinning, reporting to the national parliament, independent funding and a transparent process based on the appointment on merit of commissioners and staff.

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<sup>1</sup> The Independent Police Investigative Directorate Act is the South African Act enacted in 2011. The Act established the Independent Police Investigative Directorate and outlines the powers of office bearers, their reporting obligations and cooperation with the South African Police Service.

<sup>2</sup> This is a South African Act enacted in 2011. The Act outlines in detail that the Civilian Service Police Service will monitor the police service and its systems. Most importantly, the Act provides for the cooperation of IPID, SAPS and the Civilian Secretariat.

<sup>3</sup> The Independent Policing Oversight Act is a Kenyan Act enacted in 2011. The Act outlines the work of civilian oversight on the Kenyan Police Service as well as its functions and powers.



## **Administration environment**

The Police Authority is also at liberty to work in collaboration with the Police Directorate in police matters, as seen in 2012. Administrative bottlenecks, combined with political interference, pose serious implications for the quality of the day-to-day operations of the oversight agencies.

The limited provisions of the law are further undermined misunderstandings and even lack of knowledge of the role of oversight agencies. Decision-makers within the ministry were not fully conversant with the mandate of the oversight agencies. There appears to be resistance to PCA and Inspectorate investigations. It was apparent that members of the LMPS believed that the oversight agencies were encroaching on their territory and independence.

The resources required by the oversight agencies, particularly their finances and transport, were centrally controlled by the administration of the Ministry of Police and Public Safety. The oversight agencies had little control over these crucial factors in their operations. This therefore limits the effectiveness of the work of the agencies.

## **Reporting**

Another best practice on police accountability is that the oversight bodies themselves must be subjected to rigorous oversight, including reporting to Parliament, and their reports ought to be accessible to the public. Since the police oversight agencies' reports are not publicly published, the general public is deprived of information about police service performance. This further undermines the accountability of the police oversight agencies since the general public is not in a position to raise questions about them, either in public discussion or with their political representatives. Moreover, the oversight agencies report solely to the minister, a political and not a civil service figure. This means that the reports of the oversight agencies may be subject to political control, particularly where issues raised in their reports are likely to jeopardise the minister politically. The current reporting system has also resulted in a lack of collaboration and cooperation among the oversight agencies within the ministry.

## **Perceptions on oversight agencies**

The civilian police oversight agencies are viewed as “toothless watchdogs” by their main stakeholder, the LMPS. This means they have little or no impact on the activities and culture of the LMPS. This is primarily due to the inadequacy of legislated powers of the oversight agencies. Interviews revealed that members of the LMPS were fully aware that it was unlikely that the minister of police

or Parliament would take action based on the reports of the civilian police oversight agencies.

## Recommendations

The paper has presented a legal and administrative analysis of the civilian police oversight agencies within the Ministry of Police and Public Safety. The challenges faced by the agencies are not unique to Lesotho, but the issues raised in this article highlight the particular ways in which loopholes in the legislation, political manipulation and lack of awareness of existing oversight mechanisms overshadow the effectiveness of Lesotho's oversight agencies, thus inhibiting them from fulfilling their intended mandates. The following measures are therefore recommended:

To be effective, the oversight agencies need a legal framework that is separate and independent of the Police Service Act. An oversight Act emphasising the agencies' independence should give them greater inspection and investigative powers and effective operational powers to obtain information from the LMPS. The oversight agencies should report to the Parliamentarian Law and Public Safety Committee, rather than the minister, as currently. This would ensure that members of the public have access to the oversight agencies' reports.

The oversight agencies should collaborate more effectively with other government institutions, in particular the Office of the Auditor-General, whose reports are submitted to the Parliament Portfolio Committee for Public Accounts. As it is, various ministries and parastatal institutions are called before this committee to account for the use of public funds. Finally, there is a need for better policy direction on collaboration and coordination among the oversight agencies and the LMPS. Civil society organisations should also be included in the discussion as the public's representatives.

## Biographical details

**Moliehi Ramonate** holds a Master's degree in Sociology from the University of KwaZulu-Natal and earned her Bachelor's degree in sociology at the National University of Lesotho. She has worked as an information analyst at the Lesotho Ministry of Police and Public Safety since 2018, where her responsibilities include collecting data during administrative inspections, analysis and compiling inspection reports. She has also worked at two other Government of Lesotho ministries, the Ministry of Justice and Correctional Services and the Ministry of Employment and Labour. An aspiring researcher, she is interested in research topics in governance such as the relationship between accountability and democracy,

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