

QUEENS' UNIVERSITY BELFAST

European Master's Degree in Human Rights and Democratisation  
A.Y. 2014/2015

# TIME FOR CHANGE IN POLICE CULTURE

Putting human rights at the centre of policing

Author: Sara Pastor

Supervisor: Brice Dickson



## – ABSTRACT –

Police have the power to both protect and breach human rights. The purpose of international standards for policing is to leverage the positive connections between policing and human rights, and to minimise potential negative clashes between the two concepts (abuse of power, discriminatory treatment, arbitrariness). This can only be achieved by enacting a significant change in police culture.

Holding that a human rights-based approach to policing is needed, this thesis argues that in order to have an impact on police behaviour patterns, international standards have to be implemented through comprehensive models aimed at putting human rights at the centre of policing, particularly through training and accountability measures. Through a parallel analysis of how these two elements are implemented in Spain and Northern Ireland, this thesis offers a guide for the identification of shortcomings and good practices in police training and accountability.

Noting that a change in police culture faces multiple challenges at different levels, and taking into account the key role of civil society in the process, this thesis also proposes ways forward based on strategies of persuasion and mutual understanding between police and civil society organisations (CSOs), since true change will only come with the conviction of police officers that the protection of human rights is at the core of their job.

## ABBREVIATIONS

AI	Amnesty International
CAT	Committee Against Torture
CDDT	Spanish Coordinator for the Prevention of Torture
CHR	Commissioner for Human Rights of the Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSOs	Civil Society Organisations
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IGOs	International Governmental Organisations
OHCHR	International Covenant on Civil and Political Rights
PSNI	International Governmental Organisations
RIS	Rights International Spain
UN	United Nations
UNDODC	Office of the High Commissioner for Human Rights
UNODC	United Nations Office on Drugs and Crime

## TABLE OF CONTENTS

5	Chapter I. Introduction
5	1.1. A first glance at the topic
8	1.2. Research aims and scope of the thesis
9	1.3. The relevance of this thesis
11	1.4. Methodology and outline
14	Chapter II. Why a human rights-based approach to policing?
16	A. Theoretical argument
17	A.1. Preventing the breach of core values
20	A.2. Generating trust in institutions and moral attachment to law
23	B. Pragmatic argument
26	C. Why a human rights-based approach to policing now?
27	C.1. Insufficient implementation of international standards
29	C.2. The trigger for change: to prevent or to cure?
33	Chapter III. A human rights-based approach for a change in police culture
35	A. Training: generating a culture of professionalism
35	A.1. Introductory remarks on training
36	A.2. Human rights as “part of the curricula” or “central to the curricula”
46	B. Accountability: generating a culture of responsibility
46	B.1. Introductory remarks on the concept of accountability
50	B.2. The commitment to policing the police through effective complaint mechanisms
51	B.2.1. Spain: a limited model of accountability
57	B.2.2. Northern Ireland: a committed model of accountability
61	Chapter IV. Challenges and ways forward
63	A. Challenges: in search of commitment
63	A.1. Change from within: a commitment to their job
67	A.2. Change from outside: the necessary political will
72	B. Ways forward: persuasion and social demand
72	B.1. Strategies from CSOs: from aversion to persuasion
75	B.2. Wider society: the need for social demand
78	Chapter V. Conclusion
78	5.1. Summary of the thesis
79	5.2. Message of the thesis
83	Bibliography
94	List of interviews

*“In any democracy, it is in the nature of the police institution to be volatile. That is why it must earn its legitimacy every day, in every citizen encounter, through persuasion, by word, and by deed. For as the evidence suggests, there is no other way to create and maintain the consent of the governed.”*

Sherman, 2001, p.32.

# I INTRODUCTION

## 1.1. A first glance at the topic

“There should be no conflict between human rights and policing, because policing means protecting human rights.”<sup>1</sup> This was one of the central ideas of the so-called “Patten Report”, which was the starting point for a human rights-based police reform in Northern Ireland. The process and results of that reform have been seen as exemplary within the international arena of human rights, and a considerable number of lessons learned can be drawn from this unique experience that took place in the aftermath of the conflict that divided Northern Ireland’s society for decades in the late 20<sup>th</sup> century. A true change in policing was understood as a *conditio sine qua non* for building long-term peace with respect for human rights. That is why the case of Northern Ireland presents a key scenario for understanding how police culture can be changed by putting human rights at the centre of policing.

International human rights standards for policing (on the use of force and firearms<sup>2</sup>, on the prohibition of torture and ill-treatment<sup>3</sup>, on the rights of detainees<sup>4</sup>, and on ethical conduct<sup>5</sup>, amongst others) have been set out over the last decades by the international community, and in principle accepted by many States, leading to an international recognition that there is a strong and sensitive connection between police action and human rights.<sup>6</sup> In the sphere of international political speech there seems to be somehow an –at least theoretical– agreement that human rights must be part of

---

<sup>1</sup> Independent Commission on Policing for Northern Ireland, 1999 (herein “the Patten Report”), para. 4.1.

<sup>2</sup> United Nations (UN) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

<sup>3</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

<sup>4</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1998).

<sup>5</sup> UN Code of Conduct for Law Enforcement Officials.

<sup>6</sup> Amir & Einstein, 2001; Das & Palmiotto, 2002, p. 216.

police training and that police officers must be accountable for their actions in terms of human rights. Accordingly, recommendations given by International Governmental Organisations (IGOs) in this area, such as including human rights in the police curricula, or the elaboration of codes of conduct, have started to be implemented by most democratic States. Nevertheless, this thesis departs from an “on guard” approach regarding the implementation of standards for policing, stressing that we should keep a critical eye and thoroughly analyse the nature of many of the measures allegedly adopted by States, namely on training and accountability. The timid inclusion of human rights in police training through stand-alone lessons without a practical and in-depth insight into how human rights may be affected and managed by police officers, cannot be taken as a success in the implementation of international guidelines in this area.<sup>7</sup> The same goes for the adoption of accountability standards aiming at answering the conceptual question of *sed quid custodiet ipsos custodies?* – Who polices the police? While in the last decades there has been a proliferation of police codes of ethics and a rhetorical recognition that the police must be accountable in terms of human rights, a true commitment towards the eradication of police impunity is still needed.<sup>8</sup>

We come up thus against a paradox: at the international sphere, States develop a discourse that seems to promote, in theory, a human rights culture within police forces; but at the national scale, the implementation of standards remains in many cases superficial, if not delayed or totally ignored. Of course, this paradox is commonly present in the field of international human rights law<sup>9</sup>: it is very frequent for States to adhere to international human rights treaties and declarations, without consequently adopting policies to implement the obligations implied.<sup>10</sup> However, this is especially

---

<sup>7</sup> See for instance UN Committee Against Torture (CAT), Concluding observations: Norway, 13 December 2012, CAT/C/NOR/CO/6-7, para. 18: “While noting different training programmes for law enforcement personnel on the provisions of the Convention [...] the Committee regrets that the training is too theoretical, providing little knowledge of the practical use of human rights provisions.”

<sup>8</sup> As reflected by the discussions held by the Steering Committee for Human Rights of the Council of Europe, in the Committee of Experts on Impunity. Meeting report of 3 March 2010, DH-I(2010)004, available at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/DH-I/DH-I\(2010\)04\\_Rep\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/DH-I/DH-I(2010)04_Rep_en.pdf) [accessed 25 May 2015].

<sup>9</sup> Goodman & Jinks, 2003.

<sup>10</sup> As Hathaway (2002, p. 1940) demonstrates in an empirical study about the effects of ratification of human rights treaties by States, asserting that: “I find not a single treaty for which ratification seems to be reliably associated with better human rights practices”.



observable in the field of policing. There is room to hold that, due to the controversial nature of policing<sup>11</sup>, there is a more determined and intractable reluctance by many States to fully implement human rights standards with their police institutions.

There seems to be, as this thesis suggests, a gap between the acceptance of human rights standards at the theoretical level (codes of conduct, declarations of values) and at the practical level (police performing their job), which means that principles are not fully embedded among police structures and that human rights standards are not effectively impregnating every police action.<sup>12</sup> Paraphrasing the European Committee for the Prevention of Torture (CPT), “the translation of words into deeds is proving to be a highly protracted process”.<sup>13</sup> Against this background, and in order to fill the gap between principles and practice, a human rights-based approach should be adopted under a real commitment to effect true change in police culture.

This thesis embraces the Patten Report’s assertion that “there should be no conflict between human rights and policing”.<sup>14</sup> However, as Ralph Crawshaw pointed out in the context of police reform in Northern Ireland, “in practice, tension does occur between human rights and policing, due to the nature of police powers”.<sup>15</sup> In the same line, the Human Rights Advisor to the Northern Ireland Policing Board, Alyson Kilpatrick, also recognises that “[i]t would be naive to suggest that there is not some tension between policing and human rights.”<sup>16</sup> The Patten Report’s assertion should not thus be taken for granted and great efforts have to be made first to persuade those

---

<sup>11</sup> As remarked by Gary T. Marx, 2001, p. 36: “[a] defining characteristic of police is their mandate to legally use force and to deprive citizens of their liberty. This power is bound to generate opposition from those who are subject to it. It also offers great temptations for police abuse and abuse on behalf of the authorities controlling them.”

<sup>12</sup> Whereas the observation hereby made might not be applicable to every police agency across the world, and examples of good practices are to be considered, the analysis made in this thesis departs from a general observance of a lack of proper implementation of human rights standards in policing, which will be contrasted with information provided by IGOs reports, case-law, and other relevant sources.

<sup>13</sup> See CPT Public Statement concerning d (1996), CPT/Inf (96) 34 | Section: 1/1.

<sup>14</sup> *Supra* footnote 1.

<sup>15</sup> Crawshaw, R., speech delivered at the conference “The Agreement: A New Beginning for Policing in Northern Ireland”, organised by the Committee on the Administration of Justice, Belfast 26-27 February 1999.

<sup>16</sup> Committee for the Administration of Justice (CAJ), ‘Policing with the Community? Patten’s New Beginning, 10 Years On’, 2010, p. 24. Available at: [http://www.caj.org.uk/files/2010/07/28/Final\\_document.pdf](http://www.caj.org.uk/files/2010/07/28/Final_document.pdf) [accessed on 2 June 2015].

who question its validity, and second to generate a police culture that allows addressing tense situations without undermining the human rights of any person.

The present research, however, does not ignore the differences between theory and practice, nor does it intend to blindly stress the need to commit to respect for principles without taking into consideration the difficulties and dangers that police officers encounter in their daily activity. That is why this thesis includes both theoretical and practical arguments, and tries to encompass the different angles to look at the issue, both from within and from outside the police. At the core of this thesis is the argument that human rights can and should be, as a matter of principle and as a matter of practice, the guiding line that helps the police officer to discern the lines that he or she should not cross.

## 1.2. Research aims and scope of the thesis

*Is there a need to promote a human rights-based change in police culture?* This is the main question that guides the contents of this thesis. Holding a positive response to that question, I will analyse WHY it is necessary and HOW this approach should be promoted and effectively implemented. In analysing the reasons why this approach is necessary, both theoretical and practical arguments will be developed. In responding to how this approach should be built, a close analysis of two of its core elements will be provided, and the challenges and ways forward will be explored.

The scope of the reflections will exclude non-democratic countries, where the police are frequently linked to the ruling regime and the lack of commitment towards human rights is often self-evident.<sup>17</sup> The starting point of the thesis is, indeed, that police must work harder in democracies to earn the consent of the policed.<sup>18</sup> In addition, while the main reflections of this thesis will offer ideas that may be applicable to every democratic country, the analysis will closely look at the European context, where standards have been further developed by the regional system of human rights.<sup>19</sup>

---

<sup>17</sup> Das, 2002, p. 208.

<sup>18</sup> As suggested by Tyler's work procedural justice theories applied to the police (1998).

<sup>19</sup> Namely standards derived from the Council of Europe (CoE): through ECtHR case-law, monitoring bodies such as the European Committee for the Prevention of Torture (CPT), standards

For the purpose of bringing the abstract reflections to the practical field, two main scenarios have been chosen for the identification of good practices and shortcomings: the case of Northern Ireland will serve as a guiding model for inspiration, while the case of Spain will serve to reflect particular deficiencies as well as the challenges that the wish for reform may encounter.

Furthermore, when analysing the elements of a human rights-based approach to policing, this thesis will only thoroughly consider two core elements of the proposed approach: training and accountability. The research will analyse the implementation of these elements as two sides of the same coin, since both need to be implemented in order to achieve effective results in police culture. Taking advantage of what has already been developed by IGOs to lay down the standards for a human rights compliant police, the main aim of the present thesis consists in proposing another turn of the screw for the effective and comprehensive implementation of those standards, which will necessarily have to come with a strong commitment to change police culture from a human rights prism.

### 1.3. The relevance of this thesis

Much has been written on human rights in relation to policing, which can be observed both in literature<sup>20</sup> and in the evolving source of materials developed by human rights organisations<sup>21</sup> and international agencies.<sup>22</sup> However, a quick look at the prominent literature on the topic reveals the dominance of Anglo-Saxon countries, and in particular of the UK, in addressing the issue academically, giving the impression that the debate in those countries is decades ahead from the rest.<sup>23</sup> In that sense, this thesis aims at spreading the idea that a human rights-based approach to policing is needed in every democratic country, particularly looking at those who have not yet

---

developed by the CHR, and recommendations adopted by the Committee of Ministers of the CoE, such as the European Code of Police Ethics (2001).

<sup>20</sup> O’Rawe & Moore, 1997; Crashaw, 1997; Neyroud & Beckley, 2001; Amir & Einstein, 2001; Osse, 2006; Crawshaw et al., 2007; Murdoch & Roche, 2013.

<sup>21</sup> Amnesty International, 1998a, 1998b; Commonwealth Human Rights Initiative, 2005; WOLA, 2000;

<sup>22</sup> European Union Agency for Fundamental Rights (FRA), 2013.

<sup>23</sup> Walsh & Conway, 2011, p.65.

tabled the issue as a relevant matter in their agendas. In addition to that, there are three main contributions that this thesis can bring to the field of human rights and policing:

First, the observance that to a great extent the numerous standards developed for policing are not being effectively implemented in fact and in practice.<sup>24</sup> Whereas noting that some steps are being taken by States in the field of training, and more timidly in the field of accountability, I will analyse how superficial models of implementation may be hindering a true change in police culture.

Second, this thesis will also contribute by putting the emphasis on the two core elements of training and accountability, which have been very frequently addressed independently both in academic texts and in official guidelines. In this sense, the present work will underline that the two elements constitute two sides of the same coin, which mutually reinforce each other, and the effectiveness of which is inter-dependent.

Third, the role of the different actors involved in the process of police reform will be analysed, shedding light on the challenges and the ways forward for achieving the commitment needed for effecting true change. Special attention will be paid to the key role of civil society in the process, and a critical analysis will be made of the traditional way in which Civil Society Organisations (CSOs) have addressed issues involving police forces, noting that very frequently the form and attitude of the strategy have led to an impasse that does not allow for mutual understanding between police officers and human rights advocates. A shift in the strategies and in the discourse will be proposed so that confrontation can be gradually avoided and a more persuasive approach be adopted.

Last but not least, a mention of the timely contribution of this thesis must be made in relation to how police matters are being perceived in today's globalised society, where events of police brutality easily cross borders and raise awareness in different parts of the world, the present moment being a propitious time for thinking

---

<sup>24</sup> Such observance will be made on the basis of reports made by international and regional monitoring bodies such as the CAT and the CPT, combined with ECtHR case-law on the specific issue of independent and effective investigations of police misconduct, and relevant inputs drawn from recommendations and declarations made by the Commissioner for Human Rights of the Council of Europe.

of a new “21<sup>st</sup> Century Policing”.<sup>25</sup> A recent example of that can be seen in the reaction that police incidents occurring in Ferguson, US, have provoked, leading President Obama to pronounce the following words:

“We have a great opportunity, coming out of some great conflict and tragedy, to really transform how we think about community law enforcement relations so that everybody feels safer and our law enforcement officers, rather than being embattled, feel fully supported.”<sup>26</sup>

#### 1.4. Methodology and outline

This research has been conducted under a mixed approach that combines legal primary sources (both hard and soft-law international texts, and ECtHR case-law), with secondary literature that includes philosophical and social science reflections about the role of police forces in democratic societies, addressing its nature and its connection with human rights. A pragmatic approach to research has been used, using mainly qualitative methods for providing answers to the questions “why” a human rights-based approach is needed in policing, and “how” this approach should be implemented.

A strong component of the research consists of analysing the current situation concerning international and European human rights standards on policing, for which a thorough desk research has been conducted on IGOs’ official reports and concluding observations, publications, recommendations, and other sources of either soft-law or hard-law obligations regarding to policing.

For the purpose of identifying and analysing good practices and challenges in the implementation of standards, field-based research has been conducted in the two chosen scenarios: Spain and Northern Ireland. The parallel analysis of these two cases does not intend to suggest that the model applied in one scenario should be similarly applied in the other. The purpose is rather to identify shortcomings that are a cause of

---

<sup>25</sup> As the report of the US President’s Task Force on 21st Century Policing (2015) suggests. Available at [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf) [accessed on 5 June 2015].

<sup>26</sup> Barack Obama during his speech on March 2, 2015, in the release of the report elaborated by the Task Force on 21<sup>st</sup> Century Policing. Available at: <https://www.youtube.com/watch?v=AIC98MdIecs>, [accessed 5 June 2015].

concern in terms of human rights standards, and to draw lessons learned pointing out that a comprehensive model of implementation is the key for effective results.

The field-based research has consisted primarily of visits to the main police academies in both countries, with the opportunity to attend as an observer some formative sessions, which was useful to acquire an insight into the training aspects to be analysed. Moreover, I conducted a number of in-depth semi-structured interviews<sup>27</sup> with key actors in police reform: police trainers, police chiefs, police officers and police students, on the one hand, and CSOs members and experts in human rights and policing on the other hand.<sup>28</sup> In addition, a group interview was conducted with police trainees at the National Police Academy of Spain<sup>29</sup>, whose answers and opinions have been useful in order to get an idea of what trainees value the most in their formative process. Meetings and interviews with members of CSOs involved in monitoring the police<sup>30</sup> helped to understand the complex nature of the topic and the depth of the obstacles faced. Whereas the interviews conducted have not constituted a quantitative method of research, their qualitative value resides in the variety of views and reflections expressed by the interviewees, who have helped me to obtain a complete picture of the different perspectives involved in the process of police reform.

The thesis proceeds as follows: *Chapter II* gives responses to the question: why is a human rights-based approach to policing needed?, giving reasons both from the theoretical and the practical point of view, and concluding with a reflection on why this approach is needed now. *Chapter III* focuses on how this human rights-based approach to policing should be implemented, focusing on the two core elements of such an approach (training and accountability) and observing shortcomings and good

---

<sup>27</sup> Ethical approval for conducting medium-risk interviews was granted by Queens' University, Belfast. See the list of interviews attached to the bibliography.

<sup>28</sup> Ten people were interviewed, most of them via Skype, except for three interviews that took place in the workplace of the interviewees (police academies, police station, organisation's headquarters). Two of the interviews were conducted in English, and the rest in Spanish. Quotations from such interviews were translated into English for the purposes of this thesis, with the consent of the interviewees.

<sup>29</sup> Eight police trainees participated voluntarily in the group discussion. Their identities will be kept anonymous. The group interview took place on 9 April 2015, with the permission of the head of the Humanities Department of the National Police Academy in Avila, Spain.

<sup>30</sup> Amnesty International Spain, Rights International Spain and the Spanish Coordinator for the Prevention of Torture.

practices in implementation (Spain and Northern Ireland). *Chapter IV* reflects on the challenges and ways forward for effecting a human rights-based change in police culture, and the discussion will take the form of an “imaginary roundtable” with the participation of some of the interviewees (police officers, CSOs members, experts and politicians) who will share their views and possibly reach common grounds for the future. Lastly, *Chapter V* summarises the reflections developed, and concludes with proposals for encouraging the adoption of the approach hereby presented.

## II WHY A HUMAN RIGHTS-BASED APPROACH TO POLICING?

“In diverse democracies, the fairness and effectiveness of policing  
are much the same thing.”<sup>31</sup>

The relationship between human rights and policing is often observed in negative terms, but as Osse states there is and should be a potential positive link between the two concepts.<sup>32</sup> In the same line, Crawshaw has stressed that policing can be seen as one of the means by which the State meets its obligations to protect fundamental rights.<sup>33</sup> Implicit and explicit reference to this positive relationship can be noted in the fact that human rights are frequently mentioned in police codes of conduct and statements of purposes, giving shape to the theoretical framework under which the police are meant to perform their activity. However, this interrelationship also implies a critical interdependence<sup>34</sup>, which means that whereas the police have the potential to protect human rights, there is also a potential risk of abuse and violation of rights in their activity.<sup>35</sup> This duality in the potential outcomes of police performance can be seen as a consequence of the nature of their responsibility (protection of rights, among others) and their powers (law enforcement, search, detention, use of force). Therefore, the relationship between human rights and policing is, at least partially, of a conflictual nature.<sup>36</sup>

International human rights standards aim at leveraging the positive connections between policing and human rights (protection, rule of law), and at preventing the potential negative clashes that may emerge (such as abuse of power, discriminatory

---

<sup>31</sup> Sherman, 2001, p. 18.

<sup>32</sup> Osse, 2006, p. 5.

<sup>33</sup> Crawshaw, 1997, p.2; and further remarked in Crawshaw et al., 2007, p. 3: “Police agencies and police officials are uniquely placed to prevent the barbarity of gross abuse of power; to protect the mental and physical integrity of vulnerable people; to alleviate the suffering of victims of human rights violations; and to bring to justice those responsible for such violations.”

<sup>34</sup> Crawshaw, 1997, p. 2.

<sup>35</sup> Crawshaw et al., 2007, p. 19; Cawthray et al., 2013, p. 188.

<sup>36</sup> Amir, 2001, p. 53.



treatment or arbitrariness), by setting limits to police action and by establishing guidelines for a legitimate and proportional use of powers.<sup>37</sup>

However, the introduction of human rights in policing mandates and codes of conduct has not wiped out the existence of a discourse among wide sectors within the police that remain sceptical about the applicability of human rights principles when it comes to police practice.<sup>38</sup> Whereas those values seem to have been generally accepted as a matter of principle, there is still a tendency to take them as mere theoretical foundations by the very people who should be imbued by the indispensability of those values at any time, under any circumstances. Deference, or even justification of disproportionate or abusive behaviour in certain situations is still a common pattern among police structures<sup>39</sup>, leading to certain permissiveness towards the so-called ‘noble cause corruption’<sup>40</sup>, and implying a degree of deference towards the breach of human rights principles in given situations or contexts.<sup>41</sup>

In giving a response to the question ‘Why should there be a human rights-based approach to policing?’, I will use both theoretical and practical arguments, since the reasons for emphasizing the importance of human rights standards in policing do not only imply legal and philosophical factors, but also pragmatic goals for enhancing police performance. The answer to the question posed by this chapter revolves around a theoretical argument (A: a human rights-based approach is necessary for the legitimacy of democratic institutions) and a pragmatic argument (B: it is also necessary for ensuring professional and more effective policing). These two points are closely linked by the hypothesis that when a police service carries out its functions being visibly consistent with human rights principles, it is more likely to generate citizens’ trust, cooperation, and in turn, a more effective policing.<sup>42</sup> Lastly, part C of this chapter underlines the reasons why there is a need to advocate for a human rights-based approach to policing nowadays.

---

<sup>37</sup> Osse, 2006, p. 45.

<sup>38</sup> Ibid, p. 41.

<sup>39</sup> Amir, 2001, p. 53.

<sup>40</sup> Crank et al., 2007, p. 103-116; Kleinig, 2002, pp. 287-314.

<sup>41</sup> Crawshaw, 2007, p. 2.

<sup>42</sup> Jackson & Bradford, 2010; Jones, 2013, p. 563.

## A. THEORETICAL ARGUMENT: *A human rights-based approach contributes to enhance perceived legitimacy*

For a vast majority of citizens, the police are the most visible agency of the State.<sup>43</sup> Due to the interaction with citizens that their job implies, they are the most tangible image of law enforcement, and the first ones in translating the abstract legal framework into real consequences for individuals (through sanctions or detention and, when required, using force). That is why the police image can have a great influence on citizens' perception about institutions and about the role of the State. Moreover, the State relies on the police for dealing with conflictual situations, for which they are allowed to use certain powers that imply restrictions on fundamental rights.<sup>44</sup> When those restrictions or the manner in which they are applied are not perceived as legitimate or fair, the citizen may question not only the police officer's behaviour but also the legitimacy of the State<sup>45</sup>, which is ultimately responsible for the performance of law enforcement officials.

At the core of democratic institutions is the need to secure legitimation, since a lack of perceived legitimacy may eventually damage the public sense of obligation and responsibility toward the law.<sup>46</sup> I would not question here that, in general, democratic States understand that the police play an important role on citizens' perception on justice, and more broadly, on the perceived legitimacy of the State. However, the emphasis, attention and effort that States put into this aspect of policing as a factor of legitimacy varies from some countries to others, and depends also on the views and values within the society at large, as Kutnjak points out.<sup>47</sup> In a report by Freedom House<sup>48</sup>, surveys on society-wide perceptions of justice point out that where people identify themselves with civil liberties ideals, police misconduct tends to be more controlled. Nevertheless, in designing and developing approaches to policing, a

---

<sup>43</sup> Marx, 2001, p. 35; Osse, 2006, p. 43.

<sup>44</sup> Crawshaw, 2007, p. 2.

<sup>45</sup> As stressed by Sherman, 2001, p. 18, the police play an essential role in building a democratic nation.

<sup>46</sup> Jackson & Bradford, 2010, p. 1.

<sup>47</sup> Kutnjak, 2008, p. 407.

<sup>48</sup> Freedom House, *Freedom in the world: The annual survey of political rights and civil liberties, 2000-2001*. Available at: [https://freedomhouse.org/sites/default/files/inline\\_images/2001.pdf](https://freedomhouse.org/sites/default/files/inline_images/2001.pdf) [accessed on 8 June 2015].

serious commitment towards specific measures that promote ‘policing by consent’<sup>49</sup> instead of authority-based models is still lacking in many countries, including long-term established democracies.<sup>50</sup>

From a theoretical point of view, a human rights-based approach to policing could help democratic States to secure their legitimacy by ensuring consistency with the principles that embody their institutions. Such consistency would contribute to: 1. Preventing the breach of core values, which damages the image of democracy and rule of law; 2. Generating trust in institutions and moral attachment to law.

### A.1. *Preventing the breach of core values*

As noted by Osse, “human rights standards were initially developed as a means of placing controls on the powerful State and its apparatus of power, and protecting the individual against State abuse of power”.<sup>51</sup> Democratic States are expected to be willing to accept those controls and to set the necessary limits through the constitutional and legal framework.<sup>52</sup> Doing otherwise would probably be labelled as a non-democratic attitude not only by citizens but also by international community.<sup>53</sup> While the police is not the only institution responsible for the State’s legitimacy, and knowing that the image of the State can be damaged at many levels and by many factors, the powers vested in police forces “expose them to a range of special opportunities to engage in diverse forms of misconduct”<sup>54</sup> that are likely to be detrimental to the State’s legitimacy as a whole. According to Beetham, the legitimacy earned by public institutions depends on both the adherence to standards of good behaviour and the representation of particular normative and ethical frameworks in those institutions.<sup>55</sup> In this regard, a human rights based-approach contributes to generate perceived legitimacy toward police institutions, and ultimately toward the State as a whole. I argue that such an approach fosters democratic coherence, helps to

---

<sup>49</sup> Sherman, 2001, pp. 31-32; Jackson et al., 2012, pp. 29-49.

<sup>50</sup> As Fielding (2001, p. 81) notes, crime control is still widely perceived as the *raison d’être* of the police institution.

<sup>51</sup> Osse, 2006, p. 45.

<sup>52</sup> Amir & Einstein, 2001, p. 13.

<sup>53</sup> Cardenas, 2004.

<sup>54</sup> Cawthray et al. 2013, p. 188.

<sup>55</sup> Cited in Hough et al., 2010, p. 205.

establish a fair balance between rights and freedoms, and prevents the major risk that power itself involves, that is, the abuse of power.

In the first place, **democratic coherence** involves the idea of the State and its institutions respecting the values and principles they are built upon.<sup>56</sup> At the core of this premise is the concept of rule of law as a social contract to commit to law, starting with fundamental rights.<sup>57</sup> These need to be embedded at every institutional level, and in particular within police institutions, which should reflect and demonstrate a great degree of commitment towards the set of fundamental rights that underpins the foundations of democratic States.<sup>58</sup> The monopoly of force and the authority that is conferred on the institution of police is of such a sensitive character that it needs to be backed by a coherent set of principles that renders that exceptional power enough legitimacy to be accepted by society.<sup>59</sup> For that to be achieved in a comprehensive way, it is not enough to elaborate texts and codes of conduct embracing those principles, but rather a pragmatic human rights-based approach to policing should be adopted, aimed at impregnating the whole concept of policing and the activity it implies. In this manner, consistency of policing with human rights principles would be ensured in police structures at both institutional level (through meaningful mandates, codes of conduct, accountability mechanisms) and at an operational level (skills training, guidance for the daily police activity).

In the second place, admitting that States also need to establish some restrictions on certain rights and freedoms for the sake of public order and security<sup>60</sup>, the police is granted certain powers that are recognised as necessary in a democratic society.<sup>61</sup> A human rights-based approach to policing would facilitate the establishment of a fair **balance of rights** that allows the State to use certain powers

---

<sup>56</sup> Amir & Einstein, 2001, p. 13.

<sup>57</sup> “One element in defining a democratic society is a police force that is subject to the rule of law embodying values respectful of human dignity [amongst others].” Marx, 2001, p. 35.

<sup>58</sup> Ibidem.

<sup>59</sup> Marx, 2001, p. 36.

<sup>60</sup> “It is important to recognize that there are internationally accepted limitations on the exercise of many human rights for the purpose of ensuring the requirements of maintaining public order in a democratic society.” OHCHR, 2002, p. 22.

<sup>61</sup> For instance, “[i]t is essential to the good functioning of society that the police have the powers to apprehend, temporarily detain and question criminal suspects and other categories of persons.” CPT Standards for Law Enforcement Agencies (2002, rev. 2015), CPT Section: 2/86, 2015, para. 33.

when required, but holding the sufficient morally accepted authority to do so.<sup>62</sup> In other words, the power to restrict certain rights needs to be founded on a moral authority that police must earn by ensuring that their actions are in line with a shared sense of right and wrong.<sup>63</sup>

In the third place, connected with the balance of rights is the **prevention of abuse of power**. As highlighted by the European Committee for the Prevention of Torture, the powers conferred to the police “inherently bring with them a risk of intimidation and physical ill-treatment”.<sup>64</sup> This can result, when safeguards are not established, in abuse of power and misuse of the authority they inspire.<sup>65</sup> The proper implementation of human rights standards in police institutions is of the utmost importance for the effective self-limitation of the State’s apparatus of power and the risk of abuse that it implies when proper safeguards are not established.<sup>66</sup> If the police are vested with a set of powers that can interfere with fundamental rights, a human rights-based approach would aim at ensuring that the limits are clear at every police level, and that a message of zero-tolerance<sup>67</sup> to overpassing those limits is effectively conveyed throughout the whole structure, from the highest-ranking to the low-level officers.<sup>68</sup>

Taking all these arguments into account, we must also consider that the legitimacy of the police is not only affected by the police activity itself and its governing structures, but it also depends on the legitimacy of the legal framework they

---

<sup>62</sup> Hough et al, 2010, p.205.

<sup>63</sup> Ibidem.

<sup>64</sup> CPT Standards for Law Enforcement Agencies (2002, rev. 2015), CPT Section: 2/86, 2015, para. 33.

<sup>65</sup> As remarked by Gary T. Marx, 2001, p.36, the power that policing implies “also offers great temptations for police abuse and abuse on behalf of the authorities controlling them”.

<sup>66</sup> Marx, 2001, p.36.

<sup>67</sup> The need for a zero-tolerance message has been repeatedly stressed by the CPT in its country reports: “[t]his should include the firm message of “zero tolerance” of ill-treatment to be delivered publicly, repeatedly and in person by the Minister of Interior, and to be backed by intensified and ongoing training activities. Police officers throughout the country should receive a stern reminder that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly.” (CPT/Inf (2015) 12, Report on Bulgaria, 29 January 2015).

<sup>68</sup> Crawshaw, 2007, p.18.

are meant to enforce.<sup>69</sup> When the police officers are “in charge of enforcing unpopular, biased, or discriminatory laws, the level of support for the police tends to be low”.<sup>70</sup> As recently acknowledged by the US President Barak Obama, “sometimes policies, politics and politicians put law enforcement in untenable positions”<sup>71</sup>. In line with this, Amir asserts that police at times serve political interests<sup>72</sup>, and certain political or legal scenarios can make the police face harsh criticism for being the ones that physically enforce laws.<sup>73</sup> Here we may ask who is responsible for the legitimacy of the police institution, since they are not a decision-making institution, but a law enforcement one. They are, ultimately, the tool that enforces the laws and decisions that are adopted at other institutional levels (parliamentary, governmental, and judicial). This aspect, however, goes beyond the scope of this thesis, which will only point at the behaviour of law enforcement officers, and not at the contents of the laws that are to be enforced.

### *A.2. Generating trust in institutions and moral attachment to law*

The arguments above tie in with a more specific goal: generating public confidence and attachment to law, which, according to procedural justice theories, can be better achieved where policing by consent is promoted.<sup>74</sup> Hough characterizes the police as “the most visible agent of social control and the most high-profile institution in a justice system that is empowered to define right and wrong behaviour”.<sup>75</sup> Being the “face of the rule of law”, when the police do not have a clear sense of their limits and recur to abusive forms of applying their authority and their powers, a negative impact may be observed in terms of perceived legitimacy: the moral right of the State to dictate appropriate behaviour may result damaged, and people’s sense of obligation to obey

---

<sup>69</sup> As asserted by Marx, 2001, p.38: “To those who disagree with those laws, police behaviour will not appear neutral since it is on behalf of the regime in power. This is one reason why even in a democratic society police are likely to be much more controversial than other agencies of government.”

<sup>70</sup> Kutnjak, 2008, p.413.

<sup>71</sup> Barak Obama’s speech on 21<sup>st</sup> Century Policing, on March 2 2015, available at <https://www.youtube.com/watch?v=A1C98MdIecs> min. 9, [accessed on 6 June 2015].

<sup>72</sup> Amir, 2001, p.53.

<sup>73</sup> An example of this is the case of house evictions in Spain, where the police are enforcing judicial judgements on the basis of a mortgage law that has been heavily criticised by civil society and international instances. See for instance: Center for Economic and Social Rights (CERSR), 2012; Human Rights Watch, 2014.

<sup>74</sup> Tyler, 2003; Sherman, 2001, p. 31.

<sup>75</sup> Hough et al., 2010, p.205.

the law enforcers may decrease.<sup>76</sup> In this line, Hough suggests that, contrary to what ‘simple crime control’ models of policing generate, approaches that aim at normative compliance instead of instrumental compliance<sup>77</sup> are more likely to make people feel a ‘moral or ethical obligation’ to comply with the law. This approach is part of the procedural justice theories, which put the emphasis on the relationships between the treatment received at the hand of the police, and outcomes such as the resultant trust and legitimacy that people confer on institutions of justice or the level of authority that these institutions can then command depending on whether they are regarded as legitimate.<sup>78</sup>

We can argue that a human rights-based approach to policing would fit with the theories of procedural justice and would potentially contribute to generating normative compliance with the law, due to the legitimation it provides to the institution of policing. Nevertheless, we must also question this assumption. Does the whole of society agree with a human rights-based discourse applied to policing issues? According to Hough, perceived legitimacy is more likely to exist when citizens consider that the police do the right thing and that therefore they are morally obliged to obey.<sup>79</sup> However, we must not take for granted that what citizens consider ‘the right thing’ in policing is always in accordance with human rights principles. Surveys on public satisfaction and perceived legitimacy of the police do not always correlate to the existence of properly implemented human rights standards.<sup>80</sup> Indeed, the tendency towards ‘penal populism’ that is visible in political discourses present in many well established democracies results in part from demands that are present among wide sectors of society in democratic countries –although those demands may also be encouraged by certain political discourses–. This would appear to challenge the idea that a human rights-based policing is indispensable to generate perceived legitimacy among the entire society, because widespread demands among social sectors requiring

---

<sup>76</sup> Ibidem.

<sup>77</sup> Ibid, p. 204: “Where people’s reasons for law-breaking are based on self-interested calculation.”

<sup>78</sup> Ibid, p.204.

<sup>79</sup> Sherman, 2001, pp. 31-32; Hough et al., 2010; p.204.

<sup>80</sup> See for instance the European Social Survey, on public satisfaction with the Police, available at: <http://www.esrc.ac.uk/research/surveys/ess.aspx> [accessed 25 June 2015]. Spanish police count on good overall public satisfaction, and is leading the rank together with Scandinavian countries. However, as it will be shown later, Spain has been repeatedly criticised by human rights monitoring bodies for the lack of implementation of standards for the police.

a firm-handed approach to certain crimes (i.e. terrorism) do not precisely take human rights standards into account. These demands are however often over-emphasized by the attention they receive within the media, and most frequently do not come from a thorough reflection on what fair policing is. Be that as it may, we must count on the fact that, as Hough eventually admits, “it will always be hard to assemble absolutely clinching evidence that fair and respectful treatment of the public builds legitimacy”.<sup>81</sup>

One may also think that the legitimacy of the police can depend to a great extent on the outcomes observed by society in relation to crime and social order. However, relevant research on public satisfaction with the police has pointed out that, ultimately, the general perceptions on the fairness of the institution –fair and respectful treatment– are of major importance in shaping the legitimacy of the institution.<sup>82</sup> In a study by Sunshine and Tyler it is suggested that, at least in the US, standards of procedural justice are more important in shaping perceived legitimacy than the outcomes of police performance in terms of efficiency.<sup>83</sup> Linked to this observation is the differentiation that Easton makes between specific and diffuse support for institutions.<sup>84</sup> Whereas ‘specific support’ is linked to the specific perceived benefits received from the institution, ‘diffuse support’ is independent of specific actions and has more to do with general views about the fairness of the institution. According to Dennis<sup>85</sup>, diffuse support would be a kind of “regime-level sentiment and support or rejection of institutional authority”. Conclusions derived from research on this topic<sup>86</sup> point at diffuse support as a more determinant factor in shaping perceived legitimacy towards the police. This would strengthen the point that an approach to policing founded in procedural justice purposes may have more positive effects on institutional legitimacy than other approaches that focus on instrumental or ‘simple crime control’ models of policing.

---

<sup>81</sup> Hough et al, 2010, p.205.

<sup>82</sup> Sunshine & Tyler, 2003.

<sup>83</sup> Ibid.

<sup>84</sup> Easton, 1965, p.125.

<sup>85</sup> Cited in Kutnak, 2008, p.408.

<sup>86</sup> As compiled by Kutnjak, 2008, pp. 406-434.



What is logical to imagine is that when individuals experience or witness disproportionate, discriminatory or aggressive behaviour by the police, a lower level of support by the public at large is to be expected.<sup>87</sup> We must also take into account that a lack of awareness about police misconduct does not equal the inexistence of the problem. The role of the media is of key importance here<sup>88</sup>, since it can be observed that “when incidents of police misconduct are highly publicized by the media, they seem to have not only direct, short-term effects on public support for the police, but also sizeable long term effects”.<sup>89</sup> A recent and clear example of this, at least as regards the short-term effects, is the new wave of movements against racially-based police brutality in the U.S, which probably would not have had such a great impact if the media coverage had not been high.<sup>90</sup>

#### B. PRAGMATIC ARGUMENT: *A human rights-based approach contributes to police effectiveness*

“We have all heard the argument that respect for human rights is somehow opposed to effective law enforcement, that in order to enforce the law, to capture the criminal and to secure his or her conviction, it is necessary to “bend the rules” a little (...) According to this way of thinking, law enforcement is a war against crime and human rights are merely obstacles thrown in the path of the police by lawyers and NGOs.”<sup>91</sup>

We could tie this quotation with another one from the Patten Report: “Yet the judgments that police officers make every day on this point determine the difference between good policing and bad. They also determine the difference between effective policing and ineffective policing.”<sup>92</sup> Policing tends to be assessed in relation to the results it attempts to achieve.<sup>93</sup> If the ultimate goal of policing is to achieve compliance

---

<sup>87</sup> Ibid, p. 408.

<sup>88</sup> Dowler & Zawilski, 2007.

<sup>89</sup> Ibid, p.413.

<sup>90</sup> See Barak Obama’s speech about the events in Ferguson and Missouri: “(...) This is not new, and we shouldn’t pretend that it is new. The good news is that there is a new form of awareness because of social media and video-cameras and so forth, showing that there are problems and challenges when it comes to how policing (...) is applied in certain communities. And we have to pay attention to it and respond.” Available at: <https://www.youtube.com/watch?v=QNHJrS9uSw8> (from minute 1:00) [accessed on 6 June 2015].

<sup>91</sup> OHCHR, 2002, p. 22.

<sup>92</sup> Patten Report, 1999, point 4.2.

<sup>93</sup> Sherman, 2001, p. 18.

with the law<sup>94</sup>, then we should think and design policing models that better meet such goal. Having previously held that a human rights-based approach would contribute to generating citizens' trust in the police, there is another argument beyond the abstract benefits: police effectiveness would be also increased. In this sense, the arguments exposed above, which we could consider of a theoretical nature (legitimacy of institutions through fostering citizens' trust), tie in with other practical implications that the approach proposed in this thesis may have. Whereas in part A of this chapter a human rights-based approach would be a 'matter of principle' for fostering legitimacy, I will now argue that it is also a 'matter of practice', and that respect for and commitment to human rights standards is of a key practical value. When a police agency and its members are effectively imbued by human rights principles, and committed to the importance of these in the performance of their work, they can use those guiding principles as a tool that helps them discern the limits of their powers, thus reducing the risk of police misconduct and increasing citizens' trust in their service. And when trust increases, a more positive answer from the community can be expected, which in turn may promote cooperation and therefore more effective policing.<sup>95</sup>

Although we may agree with Crawshaw when he underlines that "it is notoriously difficult to measure the effectiveness of policing –apart from the problems involved in deciding what amounts to 'effectiveness'"<sup>96</sup>, there is a relevant body of research that aims at establishing the link between citizens' trust, perceived legitimacy, and effectiveness of the police.<sup>97</sup> In a study about democratic police governance, Jones holds that "if citizens perceive the police as legitimate and worthy of trust, and if they view the manner in which the police exercise their authority as just, they are more likely to provide the police with information and co-operate as witnesses, to respond positively to requests for assistance from police officers, and arguably be less likely to break the law".<sup>98</sup> This would directly correlate with the main goal of policing, that is,

---

<sup>94</sup> Ibid, p. 19.

<sup>95</sup> Jackson & Bradford, 2010.

<sup>96</sup> Crawshaw, 2007, p.9.

<sup>97</sup> See for instance Sherman, 2001; Call, 2003; Tyler, 2003; Jackson & Bradford, 2010; Jones, 2013.

<sup>98</sup> Jones 2013, p.563.

compliance with the law.<sup>99</sup> In this line, Jackson and Bradford also stress the practical benefits that perceived legitimacy may have on police effectiveness while also contributing to a decrease in costs, due to citizens' cooperation.<sup>100</sup> They argue that normative compliance –which, as argued in part B, can be promoted through a human rights-based approach– also contributes to “grant the police the power and authority that are necessary for social regulation”.<sup>101</sup> It has been suggested that legitimacy can also facilitate citizens' cooperation with the police, for instance by reporting crimes or acting as witnesses.<sup>102</sup> The grounds for these theories tie in with procedural justice arguments, which are said to produce not only public satisfaction with the police as an institution (as argued in part A) but also a willingness to offer cooperation in the future.<sup>103</sup>

From this approach, a shift from militaristic or crime control models towards a more humane policing is not only morally desirable, but also instrumentally superior.<sup>104</sup> A more humane model of policing should start by enhancing the manner in which police officers approach citizens. As Sherman states, “the most powerful weapon a police officer employs is not his or her gun. It is his or her mouth. For the mouth is a source of persuasion, the tool for creating an idea of the police as fair and morally just”.<sup>105</sup> Studies about the impact of police behaviour on crime rates have suggested that ‘polite policing’ may help to reduce crime.<sup>106</sup> For instance, interviews conducted in a study by Paternoster<sup>107</sup> revealed that offenders who received a fair treatment at the hands of police officers had 40% less tendency to offend again. Paraphrasing Sherman, treating an offender like a ‘criminal’ rather than like a ‘citizen’ increases the repeat offending rate.<sup>108</sup> As he explains, “[l]istening to criminal suspects is a symbolic statement that they have value as citizens, no matter what they have done. Not listening is a statement that they do not matter, that they have been categorized in

---

<sup>99</sup> Sherman, 2001, p.19.

<sup>100</sup> Jackson and Bradford, 2010, p.1

<sup>101</sup> Ibid, p.6.

<sup>102</sup> Tyler & Huo, 2002.

<sup>103</sup> Jackson and Bradford, op.,cit., p. 6.

<sup>104</sup> Jones, 2013, p. 563.

<sup>105</sup> Sherman, 2001, p. 19.

<sup>106</sup> See for instance the case studies conducted by Paternoster et al, 1997; or Tyler, 1998.

<sup>107</sup> Case study in Milwaukee, conducted by Paternoster et al., 1997.

<sup>108</sup> Sherman, 2001, p. 27.

role of criminal and forfeited their rights as citizens.”<sup>109</sup> From here we can derive that when the police are prone to treat citizens as ‘criminals’ –with impoliteness and negligence of their rights– a less cooperative attitude is to be expected by those who are policed, which may result in less effective policing.

While taking into account the practical dilemmas that human rights might represent to policing in concrete delicate situations, there is room to persuade those who raise sceptical arguments –based on the operational needs of daily policing– about the benefits of a human rights-based police. There is a need to stress that the lack of implementation of human rights standards in policing can lead not only to an unethical image of the police, but also to practical problems in the relationship between citizens and police officers, making policing more ineffective in practice. To quote a key document, the Patten Report also emphasized the potential practical value that a human rights-based approach could bring to policing:

“We cannot emphasize too strongly that human rights are not an impediment to effective policing but, on the contrary, vital to its achievement. Bad application or promiscuous use of powers (...) can lead to bad police relations with entire neighbourhoods, thereby rendering effective policing of those neighbourhoods impossible. In extreme cases, human rights abuses by police can lead to wrongful convictions, which do immense damage to the standing of the police and therefore also to their effectiveness.”<sup>110</sup>

### C. WHY A HUMAN RIGHTS-BASED APPROACH TO POLICING NOW?

There is already a wide range of international standards guiding States towards a new approach to policing, and this thesis takes due account of that fact. Treaties such as the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984) set out the minimum level for the prevention of the most serious forms of misconduct. Other texts, which we could qualify as “soft-law instruments”, aim at developing and establishing guidelines for better and accountable policing: the UN Code of Conduct for Law Enforcement

---

<sup>109</sup> Ibidem.

<sup>110</sup> Patten Report, 1999, paragraph 4.1.

Officials (1979); the UN Basic Principles on the Use of Force and Firearms (1990); the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), or the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000), amongst others. This international framework has been further developed at the European level, where, mainly through the Council of Europe, a number of instruments and mechanisms have been created in order to promote further compliance with the so-called “European standards”, under the umbrella of the detailed interpretation of the European Convention on Human Rights (ECHR) by the Strasbourg Court. For instance, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) complements the work done by the review system of the UN Committee Against Torture (CAT)<sup>111</sup>, by making periodic visits to the Member States and by raising recommendations. This regional monitoring system, together with the case-law of the ECtHR, has led to the development of a more detailed and demanding system of standards for policing at a European level.<sup>112</sup>

This picture of the existence of international and European standards for policing confirms the idea that the issue has deserved broad attention from international community. Nevertheless, as frequently occurs regarding most international human rights provisions, the existence of international standards is far from putting an end to the problem<sup>113</sup>, which, in this case, is the conflict between human rights and policing.

### *C.1. Insufficient implementation of international standards.*

Far from being a solved conflict, we keep on seeing different levels of police misconduct in most countries. As Das and Palmiotto assert, “[i]t seems that no country of the world is free from either the excessive use of force against people and/or the use of deadly force when it may be inappropriate or even illegal”.<sup>114</sup> Incidents of police misconduct, ill-treatment and violence continue to take place across the world, as can

---

<sup>111</sup> By means of a system of periodic reports requested to the States, followed by Concluding Observations based on the assessment of the Treaty Body.

<sup>112</sup> Murdoch & Roche, 2013, p.21.

<sup>113</sup> Wade, 2015, pp. 405-441.

<sup>114</sup> Das & Palmiotto, 2002, p. 212.

be derived from CAT's concluding observations on different countries.<sup>115</sup> Among other purposes, this thesis aims at stressing that police misconduct is not an issue that democratic countries can take as solved and then forget about. By way of example, countries such as Denmark, Switzerland, Austria or the Netherlands, which are seen as well-established democracies generally compliant with human rights, have also been criticized in CAT's reports on the basis of reported police violence, ill-treatment and excessive use of force by law enforcement officials.<sup>116</sup> Whereas it is obvious that the degree and seriousness of police misconduct is lower in some countries than in others, and while it is true that many countries are making progress in adopting standards, there are some key aspects that are not being properly implemented by States, as can be seen in the repeated and almost systematic requests by the CAT in relation to adequate training and effective accountability. On the one hand, in almost every set of concluding observations consulted, the CAT has raised its concerns on the need to strengthen training aspects in order to prevent the abusive use of powers<sup>117</sup>, linking the existence of ill-treatment cases to shortcomings in education. On the other hand, the CAT has also systematically expressed serious concerns at the lack of effective and impartial investigations, this being a persistent widespread problem.<sup>118</sup>

---

<sup>115</sup> In the course of this research I have done a systematic analysis of CAT Concluding Observations on different countries from different areas of the world, with a special focus on members of OECD (democratic countries): Austria, Canada, Czech Republic, Denmark, France, Germany, Italy, Greece, Ireland, UK, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Sweden, Switzerland, USA and Spain. I have focused on the concerns raised on training and effective investigations. The CAT Concluding Observations on States parties are available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx) [accessed between 20 May and 15 June 2015].

<sup>116</sup> See last CAT concluding observations on these countries, particularly paragraphs assessing police violence, ill-treatment, excessive use of force, and lack of effective and impartial investigations.

<sup>117</sup> See for example CAT Concluding observations: Norway, 13 December 2012, CAT/C/NOR/CO/6-7, para. 18: "The Committee regrets that the training is too theoretical, providing little knowledge of the practical use of human rights provisions."

<sup>118</sup> Almost every CAT concluding observation contains critical concerns on the lack of safeguards for ensuring impartial and effective investigations. See for instance CAT Concluding observations: Switzerland, 25 May 2010, CAT/C/CHE/CO/6, para. 9: "[the Committee] is concerned that the State party has not yet fully implemented the Committee's recommendation to establish, in each canton, independent mechanisms of investigation to deal with complaints of violence or mistreatment lodged against police officials."; Germany, 12 December 2011, CAT/C/DEU/CO/5, para. 19: "[recommends to] take all appropriate measures both at the federal and Länder level so as to ensure that all allegations of torture and ill-treatment by the police are investigated promptly and thoroughly by independent bodies, with no institutional or hierarchical connection between the investigators and the alleged perpetrators among the police."

The lack of implementation of these core standards suggests that States may not have fully understood the importance of introducing human rights values within their police structures, nor the key impact that this may have on both the legitimation and the effectiveness of police action. It also suggests that, to a certain degree, States remain sceptical about the compatibility of human rights standards with police strategies, displaying a reluctance to adopt comprehensive approaches that truly challenge the traditional idea of policing (based on security and crime-control).<sup>119</sup> Using the premise that the existence of police misconduct patterns can pose a threat to a State's democratic legitimacy (for the reasons explained in part A of this chapter), and warning that the risk of abuse of power is always present where proper safeguards are not established<sup>120</sup>, I suggest that today there is a need to tackle this issue by putting the emphasis on a comprehensive human rights-based approach that aims to produce a true change in police culture. While admitting that much has been done at international scale, there is enough evidence to suggest that States have not fully embraced those international standards. Here I suggest that perhaps it is time for another turn of the screw towards persuading States of the benefits of this approach, and the risks involved in not adopting it.

### *C.2. The trigger for change: to prevent or to cure?*

A recent and clear example of the risks involved in non-human rights compliant policing can be portrayed by the situation that has emerged in the US, after serious incidents of police violence in Ferguson, Missouri (August 2014). While the problem of police violence in the US has often been connected with racially-based discrimination – a problem that is not unique to police forces, but that corresponds to a long-standing social conflict in the US<sup>121</sup>–, additional shortcomings in police training and a lack of accountability can also be identified at the core of the problem. By analysing how the events have developed, we could observe that: first, the lack of proper police training has resulted in a misuse of powers by law enforcement

---

<sup>119</sup> Fielding, 2001, p. 81.

<sup>120</sup> Marx, 2001, p.39.

<sup>121</sup> Amnesty International USA, 1998a, 1998b, and 2004.

officers<sup>122</sup> (leading to incidents of police brutality); and second, the lack of accountability has provoked great unrest and a sense of injustice among the community (leading to lack of legitimacy and trust). Therefore, the events which occurred in Ferguson, followed by the wave of protests against police violence across the US, are an example of how an instance of police abuse that is perceived as unjust by the community has the potential to generate a lack of legitimacy in the narrow and in the broad sense, beginning with the institution of police but also threatening the political credibility of democratic institutions.<sup>123</sup>

Barack Obama, under the pressure of emerging waves of protests nationwide, has publicly admitted the existence of a problem of mistrust, and has recognised the need to tackle the issue by taking measures on both police training and accountability: “(...) *we need to take strong steps through the training and education process (...) and put in place mechanisms to be able to monitor behaviour of police officers that perhaps are not engaging the public in that kind of positive way and take corrective action.*”<sup>124</sup> In his speech, Obama makes reference to a true change in the relationship between law enforcement and community, and calls for a new way of understanding policing (“21<sup>st</sup> century policing”). Many of the measures proposed by the President’s Task Force on 21<sup>st</sup> Century Policing had been, however, previously recommended by the CAT in its reports on the US<sup>125</sup>, without having seen a determined commitment by the State until this series of events of police brutality caught the attention of the community, both at domestic and international level.

A lesson must be drawn from the experience observed in the US in the last months. President Obama stated the following: “*We have a great opportunity, coming out of some great conflict and tragedy, to really transform how we think about*

---

<sup>122</sup> In line with what Maria Haberfeld, expert in police training, explains in an interview by *The American Prospect*, on 27 August 2014, following the events in Ferguson. Available at: <http://prospect.org/article/expert-us-police-training-use-deadly-force-woefully-inadequate> [accessed on 7 June 2015].

<sup>123</sup> As can be reflected by the criticisms on Obama following the incidents, since people understood that there was a degree of political responsibilities at various levels.

<sup>124</sup> Barack Obama during his speech on March 2, 2015, in the release of the report elaborated by the Task Force on 21<sup>st</sup> Century Policing. Available at: <https://www.youtube.com/watch?v=A1C98MdIecs> [accessed on 7 June 2015].

<sup>125</sup> UN Committee Against Torture (CAT): Conclusions and Recommendations, United States of America, 25 July 2006, CAT/C/USA/CO/2, para. 23 and 25.



*community law enforcement relations so that everybody feels safer and our law enforcement officers, rather than being embattled, feel fully supported.*<sup>126</sup> Listening to Obama, we must then ask the following questions: Do opportunities for true change only arise after a crisis? Is it necessary, in order to see political will to bring about a true change in policing, to go first through “great conflict and tragedy”? Would not it be more desirable ‘to prevent than to cure’?

History shows that, indeed, political will towards true change often comes after serious crisis. Northern Ireland represents a clear example of this, where it was after great suffering and a documented record of human rights violations by the police force (Royal Ulster Constabulary)<sup>127</sup> that an agreement was reached for bringing about “...a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole.”<sup>128</sup> In the context of the peace process in Northern Ireland, a deep understanding of what the country had gone through led to the conclusion that a “holistic change of a fundamental nature [was] required [in policing]”.<sup>129</sup> A human rights approach to policing was then adopted, and now Northern Ireland is often presented as an example of good practice on standards for policing.

If serious commitment to change has only been achieved after scenarios of crisis, we may wonder, then, what are the prospects for other European countries? Does the absence of turmoil allow for complacency? As previously mentioned, there is evidence that European countries have not achieved a level of compliance with international and European standards that frees them from criticism and concern. The former Commissioner for Human Rights of the Council of Europe (CHR) declared that there are ‘no grounds for complacency’ in terms of human rights in Europe<sup>130</sup>, and police abuse and its impunity were amongst the issues of concern. In his report, the CHR stated that “police brutality is still a grave problem in several European

---

<sup>126</sup> Barack Obama, *supra* footnote 124.

<sup>127</sup> Weitzer, 1995; O’Rawe & Moore, 1997.

<sup>128</sup> The Agreement of April 1998 (Northern Ireland “Good Friday Agreement”).

<sup>129</sup> The Patten Report, 1999, p. 5.

<sup>130</sup> CHR, 2011 *Human Rights in Europe: no ground for complacency. Viewpoints by the Council of Europe*, 2011. Available at [http://www.coe.int/t/commissioner/source/prems/HR-Europe-no-grounds-complacency\\_en.pdf](http://www.coe.int/t/commissioner/source/prems/HR-Europe-no-grounds-complacency_en.pdf) [accessed on 8 June 2015].

countries”, having received “numerous allegations against the police of unprovoked violence before, during and after arrest”.<sup>131</sup> Also the European Court of Human Rights has had the opportunity to address police misconduct under arts. 2 and 3 in numerous cases<sup>132</sup>, often reaching the conclusion that, where there might have been police misconduct seriously affecting human rights, the lack of effective investigations had impeded the attribution of responsibilities.<sup>133</sup>

While acknowledging that “[m]uch effort is also made to recruit and train police officers to cope with difficult situations”, and while “corruption is [being] discouraged and codes of ethics promoted”, the CHR asserts that still “cases of police brutality remain.”<sup>134</sup> Having the 20th century been the age of human rights declarations and treaties, both at global and European level, the 21<sup>st</sup> century could be taken as the time for another turn of the screw towards implementation. For such implementation to be effective and not superficial in relation to policing we must go to the root of the problem: police culture.

A real change in police culture implies tackling not only the most brutal instances of police violence – such as deadly shootings or torture – but a wide range of conduct that is not in accordance with what should be expected from a police service in a modern democratic society. Every discriminatory, abusive or arbitrary pattern in police conduct must be tackled. With that purpose, the urgency for change in police culture should not be postponed or underestimated by democratic countries, but should rather be tackled with a human rights-based approach to policing as a way to generate long-term perceived legitimacy.

---

<sup>131</sup> Ibid, p.91.

<sup>132</sup> See for instance *Plattform Ärzte für das Leben v. Austria*(1998), *Makaratzis v. Greece* (2004), *Voskuil v. the Netherlands* (2007), *Frérot v. France*(2007), *Khider v. France* (2009), *Kummer v. the Czech Republic* (2013).

<sup>133</sup> Smith, 2010, p.60: “The number of violations for failure to conduct an effective investigation has dramatically increased each year and a total of 21 states have been found to be in breach of their obligation to investigate.”

<sup>134</sup> CHR, 2011, p. 218.

### III

## A HUMAN RIGHTS-BASED APPROACH FOR A CHANGE IN POLICE CULTURE

Having emphasized the need for a meaningful change in police culture, the central argument of this thesis is that the approach to such change should aim at putting human rights at the core of policing. Whereas many other aspects can contribute to enhance policing, such as democratising police structures or changing the very composition of the police<sup>135</sup>, this thesis focuses on the argument that human rights should be taken as the backbone of the policing framework. The aim would be to jump from mere rhetoric regarding the promotion of human rights principles (through codes of ethics or superficial human rights training) to effective implementation that is tangible and reflected in practice throughout police daily behaviour.

I argue that a human rights-based approach to policing should aim at changing police culture at two main levels. On the one hand, a change generating *a culture of professionalism*, with the aim of ensuring that every police officer is imbued by human rights principles, being able to apply them in her or his daily job. On the other hand, a change generating a *culture of responsibility*, with the aim to promote acceptance of accountability principles within police structures, in order to counter any culture of impunity. In promoting a culture of professionalism, the element of **training** plays an essential role, whereas at the level of promoting a culture of responsibility, **accountability** mechanisms are fundamental. Both elements, however, have an influence on each other and cannot be considered separately. Training without the establishment of proper accountability mechanisms would leave the principles learned unprotected in practice. In the same way, accountability measures without proper training would only create an atmosphere of fear to the sanction instead of the desired culture of responsibility. That is why both elements are inter-dependent and must be implemented in parallel. Whereas a human rights-based change in policing needs to

---

<sup>135</sup> See for instance the Patten Report (1998), in the context of police change in Northern Ireland, or the US Report on 21st Century Policing, elaborated by the President's Task Force (2015). Both documents address several issues for promoting better policing, not confining the proposals solely to human rights issues.

involve many other aspects apart from training and accountability, such as recruitment and community policing, I consider that the two elements here chosen are the core and the catalyst of such an approach.

Prior to looking at the specific elements (training and accountability), it has to be said that there are a number of premises that constitute a starting point for a human rights-based approach, such as the need for a legal framework setting overarching principles, purposes and guidelines<sup>136</sup>; the need to promote a “zero tolerance” philosophy towards misconduct at every level<sup>137</sup>, not only within the police but also in society<sup>138</sup>; and the need for a continuous assessment and evaluation of the objectives and outcomes.<sup>139</sup> These premises must, in sum, be contained in a comprehensive “human rights action plan” that sets the basis for the effective and comprehensive – as opposed to deficient and superficial – adoption of human rights standards at every level of policing.

Below I look closely at (A) training and (B) accountability, which are the two core elements that cannot be missing in a human rights-based reform of the police, and that have been object of repeated concerns in CAT and CPT reports because of their superficial implementation by many countries.<sup>140</sup> For each element I will expose shortcomings and good practices identified in the course of the two case studies I have focused on. The case of Spain presents a scenario where human rights aspects have been addressed very shallowly in policing, which can be inferred from IGOs reports and from an analysis of the status of the two elements assessed (training and accountability). The case of Northern Ireland represents the opposite scenario, where an awareness of the relevance of human rights to policing has been achieved both at

---

<sup>136</sup> Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2009, p.7.

<sup>137</sup> CPT recommendation on zero-tolerance policy. Cfr. supra footnote 69.

<sup>138</sup> Smith, 2010, p.66.

<sup>139</sup> For a model of evaluation see for instance the guidelines developed by the Association of Police Authorities, 2009.

<sup>140</sup> See for instance the concerns expressed by the CPT in relation with accountability measures: CPT standards, CPT/Inf/C, 2002, [Rev. 2015], para. 14: “it should be noted that some Parties to the Convention are reluctant to implement fully certain of the CPT’s recommendations concerning safeguards against ill-treatment for persons in police custody, and in particular the recommendation that such persons be accorded a right of access to a lawyer as from the very outset of their custody.”

political and at police levels, and this is reflected in the way training and accountability are conceived and delivered in policing.

## A. TRAINING: *Generating a culture of professionalism*

“The effective training of police in human rights is an essential element in global efforts to promote and protect human rights in every country (...) The goal here is to send the message that knowledge of human rights is a key element of professionalism in modern law enforcement and that, as professionals themselves, police trainees have both much to gain and much to contribute in this area.”<sup>141</sup>

### A.1. *Introductory remarks on human rights training*

Training has been given a central role in international standards for policing, as the wide range of guidelines and handbooks on training for law enforcement officers developed by international organisations indicates.<sup>142</sup> In particular, human rights training has been identified as an indispensable prevention tool<sup>143</sup>, with the potential to “transfer skills, knowledge and attitudes about human rights, and make them appropriate and applicable in the daily work of officers”.<sup>144</sup> Very few would disagree nowadays with this statement, and most States have indeed introduced human rights content into the training curricula of their police agencies<sup>145</sup>. This emergence of human rights lessons within police academies must not, however, allow for lowering the guard, and a critical analysis of the way in which States are introducing human rights training in police curricula is crucial. As warned throughout this thesis, superficial implementation of human rights standards for policing might be contributing to the perpetuation of –or at least the continuing failure to change– a culture that in essence

---

<sup>141</sup> OHCHR, 2002, pp.17 and 4.

<sup>142</sup> Just to name a few: Office of the UN High Commissioner for Human Rights, *Human Rights and Law Enforcement: A Trainer’s Guide on Human Rights for the Police* (2002); International Committee of the Red Cross, *To Serve and Protect: Guide for Police Conduct and Behaviour* (2002); Organization for Security and Co-operation in Europe (OSCE) *Guidelines on Human Rights Education for Law Enforcement Officials* (2012); Fundamental Rights Agency, *Fundamental rights-based police training – A manual for police trainers*, (2013).

<sup>143</sup> “The best possible guarantee against ill-treatment is for its use to be rejected by law enforcement officials themselves.” CPT report on Spain, CPT/Inf (2007) 28, para. 15.

<sup>144</sup> OSCE, 2012, p. 9.

<sup>145</sup> O’Rawe & Moore, 1997, p. 82.

remains hardly compatible with human rights values. It may also be leading to a situation where States “keep up the appearance” of compliance with standards, while the depth of the problem remains unaddressed.

The central question that must be assessed regarding the introduction of human rights into police curricula is whether behavioural change is being effected, which, as Celermajer and Grewal have noted, remains largely unexplored.<sup>146</sup> Even noting the great development of guidelines on how police human rights training should be conducted, these authors consider that a theory on how attitudes and behaviours are affected by training is still lacking.<sup>147</sup>

Theories and guidelines about human rights training for the police have been thoroughly exposed in the literature on human rights and policing.<sup>148</sup> In the following section I will not develop a model for human rights training, but I will rather contribute with a critical eye about how human rights are actually being introduced in the police curricula in practice, focusing on Spain and Northern Ireland as two different models of implementation. The purpose is to critically think about superficial and comprehensive implementation. Are the efforts made enough for generating a change in police culture? What are the keys for making police trainees aware of the importance of human rights in their formative process? For answering these questions I will assess some of the key aspects in the human rights training design and delivery. A parallel analysis of Spain and Northern Ireland will expose shortcomings and directions for better implementation.

#### *A.2. Human rights as “part of the curricula” or “central to the curricula”*

As some have suggested, when human rights are introduced into police training there is a potential outcome that should be avoided: that such training becomes mere “window-dressing”<sup>149</sup>, a sort of formal requirement or tokenism<sup>150</sup> to be included within police curricula without being given true relevance. Whereas it is true that there

---

<sup>146</sup> Celermajer & Grewal, 2013, p. 252.

<sup>147</sup> Ibidem.

<sup>148</sup> Amongst others, two books have been of great help to this thesis: Crawshaw et al., 2007, pp. 375-380; and O’Rawe & Moore, 1997, pp. 63-95.

<sup>149</sup> Amnesty International, 1998, p. 7.

<sup>150</sup> O’Rawe & Moore, 1997, p. 70.

appears to be an increasing will to promote human rights training in the police curricula, such will is not always accompanied by an adequate approach, sufficient depth, nor the required commitment and conviction. This deficient implementation is very likely to result in poor and ineffective human rights training.<sup>151</sup>

In a critical analysis on the weight and nature of human rights training for the police in different countries, Celermajer and Grewal detect that when police agencies are asked about this issue the response tends to consist in “an extremely formulaic and almost identical statement indicating that the country provided comprehensive human rights education”, with a resistance to further specifying details concerning the materials, methodologies and indications of the effectiveness of such training.<sup>152</sup>

The case studies analysed for the present research represent two different models for introducing human rights into police training. On the one hand, a model where human rights are “part of the police curricula” (Spain)<sup>153</sup>, and, on the other hand, a model where human rights are “central to the police curricula” (Northern Ireland). Based on literature on the topic and on the features observed in case study research, I have identified a number of shortcomings that may be hindering true assimilation of human rights principles by police trainees in Spain. Correlating those flaws, I propose deeper implementation based on good practices largely inspired by the example of Northern Ireland. This correlation of shortcomings and good practices is not, however, exhaustive, and other elements may of course contribute to a more complete approach.

- ***Lack of strategy v. comprehensive plan of action.***

The lack of strategic framework setting the purposes, the methodologies and the guidelines in relation to human rights training is likely to result not only in ineffective

---

<sup>151</sup> The CAT has noted with concern that many countries are not assessing the impact of their human rights training programmes for the police, and that this lack of assessment may be leading to ineffective results in the prevention of torture and ill-treatment. See for instance CAT concluding observations on Portugal (CAT/C/PRT/CO/5-6, 23 December 2013), Netherlands (CAT/C/NLD/CO/5-6, 20 June 2013), or Spain (CAT/C/SR.1328, 15 May 2015).

<sup>152</sup> Celermajer & Grewal, 2013, p. 246.

<sup>153</sup> In relation to Spain, this research will only address one of the main law enforcement bodies at national level in Spain: Policía Nacional. It has to be borne in mind that there are other bodies that may have different models of training: Guardia Civil at national level, Local Police in different municipalities, and other territorial bodies such as Ertzainza (Basque Country) and Mossos D’Esquadra (Catalonia).

training, but in the impossibility of assessing what the needs and the failures are and what should be improved. It may also be an indicator of the lack of commitment towards the proper implementation of standards, inferring a lack of will both within the political sphere (lack of political decisions) and within the police governing bodies (lack of initiative for providing sufficient guidance). This scenario has been identified in the case of Spain, where the legislation in relation to the police<sup>154</sup> does not make any explicit reference to human rights<sup>155</sup>, in particular in those provisions related to training. As Amnesty International notes in its report about the status of human rights training in the Spanish security forces<sup>156</sup>, “there seems to be a belief, both in the executive and in the legislative powers responsible for the legal framework, as well as within the bodies responsible for elaborating the curricula (...), that the mere adaptation of the training to the Constitution and to the basic principles of the Security Forces (...) guarantees by itself the quality of human rights training.”<sup>157</sup> The lack of a strategic plan for human rights in policing, and more specifically in training, makes it difficult to set objectives and guidelines, which in turn poses serious limits to the assessment of the training provided.

As opposed to this failure at the strategic level, the Patten report, which inspired police reform in Northern Ireland, recommended “a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach”<sup>158</sup>, highlighting in particular the importance of putting in place “an education and development strategy in terms of human rights.”<sup>159</sup> Following that recommendation, the Police Service of Northern Ireland (PSNI) developed the first Human Rights Programme of Action (2004), in which training was thoroughly addressed. This programme of action is up-dated annually in order to monitor the implementation of

---

<sup>154</sup> Ley Orgánica 2/1986, de Fuerzas y Cuerpos de Seguridad del Estado (Law Enforcement general legal framework), and Real Decreto 614/1995, sobre el Reglamento de los procesos selectivos y de formación en el Cuerpo Nacional de Policía (on the selection and formative process of the National Police).

<sup>155</sup> As remarked by Amnesty International in its report on police training in Spain (Amnistía Internacional, 2010, p. 18), the police legal framework mentions the values and rights enshrined in the Constitutional order, but such mention, in view of Amnesty International Spain, is not enough to be considered in line with the human rights approach required by international standards.

<sup>156</sup> Amnistía Internacional, 2010.

<sup>157</sup> Ibid, p.48 (original text in Spanish).

<sup>158</sup> The Patten Report, 1999, points 4.6 and 4.9.

<sup>159</sup> Ibid, point 16.4, p.92.



recommendations made by the Human Rights Annual Reports of the Policing Board (the supervisory body of the PSNI).<sup>160</sup> In addition, this programme of action also responds to the assessment of the Policing Board's Human Rights Advisor, who checks progress being made on the measures implemented, with a special focus on training.<sup>161</sup> The Human Rights Advisor also "assists in the production of training materials, delivers training to trainers, and engages with stakeholders to ensure that concerns that may relate to training are addressed".<sup>162</sup> In addition, the PSNI counts specifically on a Human Rights Training Advisor, who plays a key role in developing training plans, paying especial attention to the contextualization of human rights in operational policing scenarios in order to make training effective in practice.<sup>163</sup>

Therefore, the analysis of how States have implemented human rights within their police curricula must start by a look at the police legal, strategic, and monitoring framework, since it constitutes the first step for establishing clear purposes and objectives and proper mechanisms for the follow-up of police training. The great consideration of human rights aspects in the Northern Irish training plans is in clear contrast with the Spanish model, which lacks a planned strategy for introducing human rights in police training.<sup>164</sup> In a personal interview with Rebecca Dudley<sup>165</sup>, former Human Rights Training Advisor to the PSNI, she stated that "without a comprehensive plan, based on a human rights legal framework, change is not foreseeable". This would be therefore the first step for ensuring that human rights are given the adequate weight and the proper approach in police training.

- ***Human rights as an add-on v. Human rights as the backbone.***

Linked to the lack of a strategic plan, it is common to see the introduction of human rights through stand-alone lessons or through an isolated thematic section with limited capacity to affect the whole philosophy of police activity. As O'Rawe and Moore

---

<sup>160</sup> Northern Ireland Policing Board, *Human Rights Annual Report 2012*, p. 1. Available at: [http://www.nipolicingboard.org.uk/human\\_rights\\_annual\\_report\\_online\\_version.pdf](http://www.nipolicingboard.org.uk/human_rights_annual_report_online_version.pdf) [Accessed 16 June 2015].

<sup>161</sup> Ibid, p.2.

<sup>162</sup> Ibid, p.4.

<sup>163</sup> Ibidem.

<sup>164</sup> As reported by Amnistía Internacional, 2011, p. 48.

<sup>165</sup> Personal interview on 17 February 2015, at the Police College of the PSNI, Garnerville, Belfast.

remark, “human rights are an integral concern to all aspects of policing and as such cannot be taught in isolation but must imbue all aspects of a police officer’s training.”<sup>166</sup> Contrary to this ideal purpose, on the basis of reports<sup>167</sup>, and just by looking at the police curricula of the Spanish National Police<sup>168</sup>, it can be considered that, in general terms, “human rights training is still marginalised”.<sup>169</sup> This assertion was made after a systematic study conducted by Amnesty International Spain on the weight of specific and cross-cutting human rights contents in the training curricula of the two national law enforcement bodies<sup>170</sup>, reaching the conclusion that the percentage of human rights training only constituted from 2% to 4,5% of the police curricula.<sup>171</sup> In an interview with Manuel Hernández<sup>172</sup>, head of the department of Humanities, which is the area within which human rights contents are developed in the Spanish National Police Academy, he explained that he “would like to see a higher number of hours devoted to human rights”, but that he understood that “many other subjects are important for police training as well” and that “increasing the weight for human rights would imply a reduction in other areas”. Linked to this, Cristina de la Serna<sup>173</sup>, member of Rights International Spain (RIS), thinks that the problem resides not only in the small percentage of hours, but also in the fact that many of the subjects that are sensitive to human rights issues (such as borders, migration control, arrest or interrogation of suspects)<sup>174</sup> are not taught from a human rights-based approach.

---

<sup>166</sup> O’Rawe M., Moore L., 1997. Human Rights on Duty. Principles for better policing – International lessons for Northern Ireland. Committee on the Administration of Justice. P.88.

<sup>167</sup> See Amnistía Internacional, 2010; and shadow reports for the last CAT review process on Spain (CAT/C/ESP/CO/6).

<sup>168</sup> Where human rights constitute one unit in the broader section of “deontology and sociology”.

<sup>169</sup> Title of the report of Amnesty International Spain: *La formación en derechos humanos de las Fuerzas de Seguridad de ámbito estatal sigue siendo marginal* (“Human rights training for the Security Forces at the national level is still marginal”).

<sup>170</sup> Policía Nacional and Guardia Civil.

<sup>171</sup> Shadow report elaborated by Rights International Spain (RIS) for the CAT review process on Spain, (CAT/C/ESP/CO/6), p. 23, available at: <http://www.rightsinternationalspain.org/uploads/publicacion/ee3997437439a8b49bf86c0cdcfeb856c32c82f0.pdf> [Accessed 29 June 2015].

<sup>172</sup> Skype Interview, 20 March 2015.

<sup>173</sup> Skype interview, 10 March 2015.

<sup>174</sup> In the shadow report to the CAT review process on Spain (CAT/C/ESP/6) submitted by Rights International Spain, it is noted how “everything related to immigration law is addressed [...] from a criminal perspective, that is, without any human rights-based approach. On the other hand, asylum law seems to be studied without establishing any connexion with international law” (p. 24, original text in Spanish).

As opposed to a model where human rights are just a subject among the rest within police curricula, which appears to be the case in Spain, the alternative hereby proposed would not consist in a mere increase in the number of hours, but rather in integrating the “human rights dimension into every module of police training”<sup>175</sup>, as has been done in Northern Ireland following the recommendations of the Patten Report. As explained by Rebecca Dudley, former Human Rights Training Advisor to the PSNI, human rights should not be conceived as a subject, but rather should be integrated into every module, combined with stand-alone lessons for specific background on human rights.<sup>176</sup> This responds to the approach proposed by Crawshaw, where “human rights should be dealt with as a specific topic, and should be incorporated, where appropriate, into the subject matter of themes dealt with in other lessons”.<sup>177</sup> The emphasis is put, therefore, not just on the need to increase human rights hours within training programmes, but on making them one of the principal pillars of the curricula<sup>178</sup>, combining a holistic approach with specific inputs.<sup>179</sup>

- *Theoretical v. Practical emphasis*

The persistence of theoretical transmission of knowledge instead of focusing on the practical aspects has been pointed out as one of the major problems in police training<sup>180</sup>, notably when it comes to human rights contents.<sup>181</sup> Anneke Osse considers that “an important part of police education must consist in understanding their role in society, and in that sense philosophical and normative training is needed.”<sup>182</sup> However, if human rights principles “need not merely to be taught but to shape the nature of a police officer’s training and his/her formative process”<sup>183</sup>, then it is clear that an effort beyond the mere explanation of the normative aspects is required. As Celermajer and Grewal note, there is still much to do in developing skills-focused training on human

---

<sup>175</sup> Independent Commission on Policing for Northern Ireland, 1999, point 4.9.

<sup>176</sup> Personal interview with Rebecca Dudley, cit.

<sup>177</sup> Crawshaw et al, 2007, p. 377.

<sup>178</sup> Ibidem.

<sup>179</sup> CPT, report on Spain, 2007, cit., para. 15: “The CPT recommends that the Spanish authorities integrate human rights concepts into practical professional training for high-risk situations, such as the arrest and interrogation of suspects. This will prove more effective than separate courses on human rights.”

<sup>180</sup> Oliva & Compton, 2010.

<sup>181</sup> Celermajer & Grewal, 2013.

<sup>182</sup> Skype interview with Anneke Osse, expert in Human Rights and Policing, on 22 June 2015.

<sup>183</sup> O’ Rawe & Moore, 1997, p. 88.

rights<sup>184</sup>, and in the human rights field the emphasis is frequently put on the values that trainees ought to bear in mind, based on international standards, without focusing on the practical aspects of how to effect behavioural change.<sup>185</sup> Moreover, the same authors warn that, when normative principles cannot be situated by trainees within the everyday realities of police action, there is a risk of human rights “being perceived as at best overly idealistic and at worst antithetical to the day to day work of a police officer.”<sup>186</sup>

From my field research on police training in Spain I obtained mixed impressions on this issue. On the one hand, in my visit to the National Police Academy in Avila, Manuel Hernández<sup>187</sup>, responsible for the elaboration of the human rights contents<sup>188</sup> explained how they were increasingly putting the emphasis on the practical implications of human rights in policing by analysing real factual situations and discussing the different implications, trying to avoid a theoretical and normative approach.<sup>189</sup> On the other hand, in a group interview<sup>190</sup> that I conducted with police trainees at this academy, when asked about their opinion on the need to increase human rights material in their curricula, most of the trainees responded that for them “*that would mean a greater amount of conventions and declarations to learn, with few relevant impact in the real police work*”, and that they would rather need “*more practical training on the possible problems and dilemmas that police performance may imply*”.<sup>191</sup> From these opinions<sup>192</sup>, while acknowledging that efforts might have been

---

<sup>184</sup> Celermajer & Grewal, 2013, p. 253.

<sup>185</sup> Ibidem.

<sup>186</sup> Ibid, p. 249.

<sup>187</sup> Personal interview with Manuel Hernández, 9 April 2015, Escuela Nacional de Policía, Ávila, Spain.

<sup>188</sup> Within the area of ethics and deontology.

<sup>189</sup> This improvement in the learning methodology of the human rights contents at the National Police Academy in Spain has been positively noted by Amnesty International (Amnistía Internacional, 2010, p. 32).

<sup>190</sup> Group interview with a group of 8 police trainees, whose identity will be kept confidential. The interview took place during my visit to the National Police Academy, on 9 April 2015, with the permission of the head of the Department of Humanities, Manuel Hernandez.

<sup>191</sup> Opinions expressed by various participants during the group interview. The names of the participants will not be revealed, since one of the requirements to conduct the interview was that trainees would remain anonymous.

<sup>192</sup> Even though we have to bear in mind that those opinions were personal, and that personal appreciations are often out of the scope of the success or failure of training itself, this perception was shared among all the trainees interviewed, and can be considered as a relevant indicator on the effectiveness of the human rights training as it is now in Spain.

made by trainers to deliver a more practical training<sup>193</sup>, one can infer that human rights training is still being perceived by trainees as merely theoretical and with few practical implications. Such a perception is profoundly worrying since it reflects an implicit misunderstanding of human rights as a set of “declarations and conventions”, and a lack of true assimilation of what human rights imply for police performance.

Whereas a full proposal for elaborating a more practical approach to human rights training is beyond the scope of this thesis, a suggestion can be made regarding the need to re-think learning methodologies and methods, which, as Celemajer and Grewal point out, has not yet been systematically discussed in the field, and a thorough reflection on how training is thought to impact attitudes, behaviours and motivations of participants is needed.<sup>194</sup> Of course, there are not easy proposals for the improvement of training on this aspect, since the issue goes beyond the design of teaching methodologies, involving more abstract problems such as the motivation of trainees.<sup>195</sup> What is clear is that, bearing in mind the operational way of thinking in policing, for training to be effective it should be delivered in a form that is easily translated into behaviours, linked to actions that can be readily understood and identified with police daily work.<sup>196</sup>

An example of good practice can be drawn, again, from Northern Ireland, where especial attention has been paid to the contextualization of human rights in operational policing scenarios in order to make training effective in practice.<sup>197</sup> The importance of a strategic plan for human rights training must be once more stressed here, since it is thanks to the existence of systematic annual reports (part of the action plan) that the assessment of the methodologies is constantly checked, allowing for the assessment of the appropriateness of learning methodologies.

For research purposes I had the opportunity to attend a human rights training class at the Police College in Northern Ireland<sup>198</sup>, where I observed the emphasis put by the

---

<sup>193</sup> Amnistía Internacional, 2010, p. 32.

<sup>194</sup> Celermajer & Grewal, 2013, p. 249.

<sup>195</sup> Ibid, p. 255.

<sup>196</sup> Ibidem.

<sup>197</sup> Northern Ireland Policing Board, 2012, p. 4.

<sup>198</sup> On 17 February 2015. The human rights training was delivered by the former Human Rights Training Advisor, Rebecca Dudley.

trainer on the practical implications of human rights in the police mandate. Also, having had access to some of the human rights learning materials of the PSNI, some examples of good practice on decision-making process skills can be useful for generating the perception among trainees that they are gaining useful skills for their future performance. What is clear is that the goal should be “to provide officers with the skills and abilities that they can use in any encounter”, and to “develop critical skills and abilities that will transfer into the field when needed”.<sup>199</sup>

- ***Recruit training v. career-long training.***

One of the main principles that Crawshaw identifies for police training is that of continuity, stressing that “human rights should be given due prominence and emphasis in instructional programmes that police officials follow throughout their entire careers”<sup>200</sup>, which has also been stressed by the CPT.<sup>201</sup> The need for in-service training is of course a relevant aspect for every area of policing, since police performance needs to be up-dated in accordance with new regulations, technologies and social dynamics. Moreover, as some trainers acknowledge, it is difficult in basic training to go too into depth on every issue, and therefore “continuing training during officers’ careers [is] a crucial way of ensuring that concepts acquired in training are continually reinforced.”<sup>202</sup> Taking this into account, it is common sense that police training should not stop when they leave the academy, and human rights should not be an exception in this continuous formative process. In Rebecca Dudley’s words, “training is an endless challenge; you can never be complacent about it.”<sup>203</sup> In line with her, we could say that training is not something that can be “achieved”, but rather constantly developed and subject to permanent assessment and improvement. That is why if we advocate for human rights training for the police this should not be confined

---

<sup>199</sup> Lynch (2005) cited in Oliva J.R, Compton M.T, 2010, ‘What do police officers value in the classroom? A qualitative study of the classroom social environment in law enforcement education’. *Policing- An International Journal of Police Strategies & Management*. Vol. 33 No. 2, pp. 324.

<sup>200</sup> Crawshaw et al, 2007, p.377.

<sup>201</sup> CPT report on Spain, 2007, cit., “training should be pursued at all levels of the law enforcement officials’ hierarchy, and should be ongoing”.

<sup>202</sup> Francesc Guillen, research director of the Catalonia Police Academy, cited in O’Rawe and Moore, 1997, p.84

<sup>203</sup> Email from Rebecca Dudley, former Human Rights Training Advisor, PSNI, 22 April 2015.

to the training of new recruits, but must also be demanded in relation to in-service training.

From my research on Spain I have understood that in-service training is based on specialization, according to which police officers receive specific training on their area of work (public security, scientific policing, border control, etc.) but, according to Manuel Hernández, there is a very limited offer of specialized modules on human rights, and they are normally voluntary or used for professional promotion.<sup>204</sup> Therefore, human rights training is even more marginal over the course of police career, and is left up to personal interest or ambition. As O’Rawe and Moore warn, there is a serious risk of relying alone on basic training to transmit important principles and values for policing<sup>205</sup>, underestimating the need to recall them outside the Academy, where the real job starts.

By contrast, in Northern Ireland human rights are presented as an essential part not only in the training of new recruits but also in in-service training. Under the premise that “[h]uman rights principles must be integrated into all training received throughout an officer’s career”<sup>206</sup>, career-long learning is provided through district training and refresher courses.<sup>207</sup> This is accompanied by continuous evaluation, which can be seen in the PSNI Human Rights Programme of Action 2013-2014<sup>208</sup>, where the implementation of recommendations on human rights training is assessed both for recruitment and in-service training. Also, training for mentors is an pointed as an important aspect that should include human rights considerations, since the supervision of newly appointed officers depends on the former.<sup>209</sup>

Proper and sufficient implementation of those guidelines cannot, however, be taken for granted, and the Northern Ireland Policing Board has noted that the area of in-training service has received less attention, but recommendations are being taken into account and a new training plan for police staff is being developed by the PSNI

---

<sup>204</sup> Skype interview with Manuel Hernández, cit.

<sup>205</sup> O’Rawe & Moore, 1997, pp. 84-85.

<sup>206</sup> Northern Ireland Policing Board, 2012, p. 5.

<sup>207</sup> Ibidem.

<sup>208</sup> Available at [http://www.psni.police.uk/final\\_human\\_rights\\_programme\\_action\\_201314.pdf](http://www.psni.police.uk/final_human_rights_programme_action_201314.pdf) [Accessed on June 16 2015].

<sup>209</sup> Northern Ireland Policing Board, 2012, p. 3.

Human Rights Training Advisor<sup>210</sup>, which demonstrates that continuous monitoring and assessment of the training programmes is useful for introducing improvements, bearing out Rebecca Dudley’s statement that “training is an endless challenge”.

## B. ACCOUNTABILITY: *Generating a culture of responsibility*

On the other side of the coin of this human rights-based approach to policing, if training is the main catalyst to permeate police structures with human rights principles, accountability is the necessary response and safeguard against potential breaches of such values. Together with the culture of professionalism that human rights standards inspire, a culture of responsibility is crucial in completing the design of a human rights compliant police. What I mean by “culture of responsibility” is the awareness among police officers that the breach of human rights principles not only brings discredit on the police as a whole, but may also carry individual consequences proportionate to the seriousness of the breach. At the core of such culture of responsibility is the indispensable commitment to avoid any sign of impunity.<sup>211</sup> Whereas the development of police codes of ethics can contribute to foster a culture of responsibility, the valuable message that these codes try to convey cannot be left alone, but rather should be accompanied by measures that aim at ensuring adequate accountability in police activity.<sup>212</sup>

### B.1. *Introductory remarks on the concept of accountability*

In the last decades accountability has become a core concept in modern policing<sup>213</sup>, in line with the development of international standards<sup>214</sup> particularly addressing the right to an effective remedy and to impartial and effective investigations

---

<sup>210</sup> Ibid, 2012, p.5.

<sup>211</sup> CHR, Viewpoint “There must be no impunity for police violence”, 3 December 2007, available at [www.commissioner.coe.int](http://www.commissioner.coe.int) [Accessed on 17 June 2015].

<sup>212</sup> O’Rawe and Moore, 1997, p. 115.

<sup>213</sup> Gilsinan, 2012.

<sup>214</sup> As Osse (2006, p. 192) remarks, even though accountability is not mentioned as such in the binding international treaties, the concept is underlying in a number of texts. Articles 7 and 8 of the UN Code of Conduct require police to oppose and report any violation of the UN Code of Conduct internally or to “other appropriate agencies or organs vested with reviewing or remedial power”.



in relation to human rights breaches.<sup>215</sup> Police accountability has been broadly discussed and debated in literature<sup>216</sup>, and repeatedly used in the discourse of human rights and policing, to the extent that some have warned about the trivial use that the word is being given at many levels, with the consequent risk of voiding its meaning.<sup>217</sup> As Gilsinan wonders, ‘[a]fter all, who could be against transparency and accountability?’<sup>218</sup> While it is true that such perception may exist among Anglo-Saxon countries, where the debate around ‘who polices the police’ has been present at least since the 70s<sup>219</sup>, many other countries have not yet even tabled the issue, and their political and police agendas remain rather reluctant to include it. Police accountability has not been developed in the same way in different countries<sup>220</sup>, and while some overcame the debate about external oversight of the police decades ago (mostly Anglo-Saxon), others have recently started the process (Norway, Denmark, Sweden)<sup>221</sup>, while others simply do not even have it on their agenda (Spain, Italy, Greece).<sup>222</sup>

Literature on the topic suggests that there is a cultural gap between those countries with common law jurisdictions and those with civil jurisdictions<sup>223</sup>, and additional difficulties seem to hinder the culture of accountability in those countries heirs of the ‘French Napoleonic’ system<sup>224</sup>, where the idea that the State and its institutions are neutral, independent and impartial by origin ‘overrides’ the need for external independent oversight.<sup>225</sup> In several interviews conducted in the course of the

---

<sup>215</sup> For instance, article 2(3) of the ICCPR; or Principle 22 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>216</sup> Perez, 2000; Amir, 2001; Walker, 2001; Call, 2003; Greenwood & Sander, 2004; Stone, 2007; Hopkins, 2009; Walsh & Conway, 2011; Gilsinan, 2012; Smith, 2013.

<sup>217</sup> Gilsinan, 2012.

<sup>218</sup> Ibid, p.93.

<sup>219</sup> Walsh & Conway, 2011, p.65.

<sup>220</sup> Some countries have understood accountability as the need for external controls apart from the judiciary, while others still rely on internal disciplinary control and judicial control.

<sup>221</sup> After repeated recommendations by the CAT and CPT, these countries have started adopting external mechanisms for the control of police activity, including the handling of citizens’ complaints, as can be noted in the last CAT concluding observations on these countries.

<sup>222</sup> In a Skype interview with Jorge del Cura, spokesperson of the Spanish Coordinator for the Prevention of Torture, he made a reflection on how “it seems that the further countries are from the Mediterranean, the more the accountability mentality is developed (as we can see in the Netherlands and Scandinavian countries).” (13 March 2015).

<sup>223</sup> Walsh & Conway, 2011, p.65; Osse, 2006, p.189.

<sup>224</sup> Amir, 2001, p. 55: “Under the European system the State “wins”, while under the British and American Systems, society and the community prevail.”

<sup>225</sup> As observed by Anneke Osse, in a Skype interview on 22 June 2015.

present research, interviewees have expressed the view that the UK is a special case in terms of accountability, since “there is a tradition of constant scrutiny of public matters, which is boosted by social demand.”<sup>226</sup> In addition to this, we must also consider linguistic problems, since the word “accountability” is not easily translatable into other languages<sup>227</sup>, and therefore attempts to explain what it implies become more difficult than in an English context.<sup>228</sup>

Nevertheless, such cultural and linguistic differences should not serve as an excuse for not going further in accountability measures, nor should they make us desist from advocating for independent oversight of the police in every country, since after all, the main problem to be solved is the same regardless of the context and the political culture: *quis custodiet ipsos custodet?* – Who polices the police?

In developing answers to this question, the concept of accountability emerges as “the process by which we call our police officers to answer for the way in which they have carried out their job”.<sup>229</sup> Many aspects are involved in the paradigm of police accountability<sup>230</sup>, and there are some premises needed to create the conditions for a complete picture of accountability, notably those making oversight possible.<sup>231</sup> Nevertheless, few topics in police governance and accountability have deserved more attention than the handling of citizen complaints against the police.<sup>232</sup> The CAT<sup>233</sup> and

---

<sup>226</sup> Skype interview with Jorge del Cura, spokesperson of the Spanish Coordinator for the Prevention of Torture, on 13 March 2015.

<sup>227</sup> For instance, the closest translation into Spanish would be “responsabilidad”, which does not transmit the same implications as the word “accountability”.

<sup>228</sup> Osse, 2006, p.185.

<sup>229</sup> O’Loan, 2001/2002, p.21.

<sup>230</sup> For a complete overview of the issue of police accountability, the handbook *Understanding Policing: A Resource for Human Rights Activists, Amnesty International Netherlands*, 2006 (Author: Anneke Osse) offers a comprehensive explanation of all the aspects involved, taking into account the different types of accountability, e.g accountability *a priori* (oversight) and *a posteriori* (complaints).

<sup>231</sup> As remarked by Osse (2006, p.186): “accountability also implies direction, control or diligence exercised before or during any operation to ensure that it is carried out according to the law and policies in use and with respect for human rights. This is called a priori accountability. Oversight refers to continuous accountability, before, during, as well as after operations have taken place.”

<sup>232</sup> Walsh and Conway, 2011, p. 64; Hopkins, 2009; Smith, 2010.

<sup>233</sup> It is very frequent to see the following remark in the CAT concluding observations: “The Committee is concerned at the number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated.” (CAT Concluding Observations on Italy, CAT/C/ITA/CO/4, 16 July 2007, para. 19).

the CPT<sup>234</sup> have systematically pointed out the failure by many States to ensure that effective and impartial investigations are conducted in cases that may involve human rights breaches by the police, and this has been also reported by human rights NGOs.<sup>235</sup> To prevent such failure, both monitoring bodies have repeatedly recommended the creation of independent complaints mechanisms<sup>236</sup>, which has also been echoed by the Commissioner for Human Rights of the Council of Europe (herein “CHR”), who in the last years has made a thorough and extensive contribution to the development of standards on this matter.<sup>237</sup>

Despite the emphasis put by human rights bodies and experts on the need to ensure impartial and effective procedures, the specific recommendation on creating independent complaint bodies is still being ignored when not totally rejected by some countries.<sup>238</sup> This is the case of Spain, where interviews conducted with police officers, chiefs and unions, on the one hand; and with civil society organisations on the other, have led me to conclude that the reluctance to implement this recommendation is profoundly embedded both at political and police level. Below I reflect on how the degree of commitment towards police accountability can be reflected by the willingness to establish external independent mechanisms to oversee the police and to handle complaints. The study will take again the case of Spain for the analysis of the causes that hinder implementation of recommended standards, and the case of Northern Ireland as a model of serious commitment towards police accountability.

---

<sup>234</sup> CPT, 14<sup>th</sup> General Report on the CPT’s activities, CPT/Inf (2004) 28, in its section “Combating Impunity”, Strasbourg, 21 September 2004. Available at <http://www.cpt.coe.int/en/annual/rep-14.htm> [Accessed 20 June 2015].

<sup>235</sup> “Recommendations formulated by Amnesty International in its country reports almost invariably address the failure of police to take responsibility for acts, resulting in effective impunity.” Osse, 2006, p. 186.

<sup>236</sup> As expressed by the CAT in its concluding observations on Greece, CAT/C/GRC/CO/5-6, para. 13: “The State party should: (a) Strengthen existing mechanisms for monitoring and oversight of the police and other public officials, including by establishing a reliable, independent and accessible complaints system to undertake prompt, impartial and effective investigations into all allegations of torture, ill-treatment or excessive use of force”.

<sup>237</sup> CHR, 2009.

<sup>238</sup> As can be derived from the numerous state reports where the CAT recalls the States that an independent body should be created. See for instance CAT Concluding Observations on Spain, CAT/C/SR.1328, 15 May 2015, para. 19: “The Committee urges the State party to combat impunity by establishing an independent mechanism for ensuring prompt, impartial and exhaustive investigations of every complaint of torture and ill-treatment allegedly committed by law enforcement officials.”

## B.2. *The commitment to policing the police through effective complaint mechanisms*

If a human rights-based approach to policing has at its core the protection of human dignity from abuses, accountability mechanisms must be put in place so to ensure that abusive conducts are properly investigated, punished, and that when required, redress is provided for the victim. From this perspective accountability is the right of the citizen to hold police officers accountable for their behaviour in the exercise of their functions.<sup>239</sup> For that to be possible, there must be channels for individual complaints to be effectively and impartially investigated. In this line, the ECtHR (herein “the Court”) has developed the procedural aspect of articles 2 and 3 of the ECHR in relation to complaints against the police that engage these two articles, declaring that:

“...where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3 [...] there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible [...] If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”<sup>240</sup>

Through its case law<sup>241</sup>, the Court has established five principles for an investigation to be considered in accordance with the ECHR standards: independence, adequacy, promptness, public scrutiny and victim involvement. Going further, the CHR has pointed out these five principles as a useful framework that should be applicable to every complaint against the police, not only those engaging articles 2 and 3. According to the CHR “[a] complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police

---

<sup>239</sup> O’Loan, 2001/2002, p. 21.

<sup>240</sup> *Assenov v. Bulgaria* (ECtHR, 1999), para 102.

<sup>241</sup> See amongst others: *Jordan v United Kingdom* (2001), para 105; *Ramsahai v The Netherlands* (2007); *Isayeva v Russia* (2005); *Bati v Turkey* (2006).

in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against."<sup>242</sup>

On the basis of these standards, the two case studies included in this research portray two different models of control over police misconduct: on the one hand, Spain maintains a **limited model of accountability**, with limited channels for complaining and lack of external oversight; on the other hand, Northern Ireland has adopted a **committed model of accountability** that encompasses different degrees of misconduct and relies on external investigations of police misconduct. I here analyse to what extent these two opposed models ensure effective investigation of complaints and meet the objective to eliminating the risk of impunity. The analysis offered might be useful to understand the remaining reluctance to introduce external mechanisms in several countries, and at the same time will contribute to further disseminate the good practices that the case of Northern Ireland presents.

### B.2.1. Spain: *a limited model of accountability.*

The Spanish system relies on the judiciary and on the internal disciplinary regime for holding police officers accountable for their actions, which may lead to the establishment of either criminal responsibilities (by courts), or disciplinary measures (by the different levels of internal authority established in the disciplinary regime<sup>243</sup>). Both the CHR<sup>244</sup> and the CPT<sup>245</sup> have insisted that Spain should establish an independent body empowered to receive and investigate complaints as a way to tackle any feature of impunity among police forces. Nevertheless, there seems to exist an outright rejection of the need for an independent channel for the handling of individual complaints that could be summed up in this argument:

---

<sup>242</sup> CHR, 2009, p. 3.

<sup>243</sup> Ley Orgánica 4/2010, del Régimen disciplinario del Cuerpo Nacional de Policía.

<sup>244</sup> Commissioner for Human Rights, Report on Spain, CommDH(2013)18, 9 October 2013, para. 153.

<sup>245</sup> CPT report on Spain, CPT/Inf (2007) 28: "The CPT reiterates its recommendation that consideration be given to creating a fully independent investigating agency to process complaints against law enforcement officials; such a body should have the power to instigate disciplinary proceedings against law enforcement officials and to refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought."

“There is no need to establish a mechanism for complaints against misconduct because in our country such complaints can be made through the courts or through the police itself, being processed both internally and, if necessary, criminally.”<sup>246</sup>

The State authorities have repeatedly used the same argument in response to the CPT’s insistence on the importance of independent and external mechanisms for preventing a culture of impunity.<sup>247</sup> While the Spanish authorities assert that “the existing channels are fully adequate”, the CPT has replied that “[such] position is untenable”.<sup>248</sup> I here contribute to develop the CPT’s position on why the argumentation by Spanish authorities is flawed, arguing that it is based on two wrong assumptions:

- a) **First flawed assumption:** “*independence and impartiality of investigations can be ensured at the two existing channels (judicial and disciplinary).*”

This optimistic perception of the role that these two levels can play in the handling of individual complaints is not in line with what international standards require in terms of police accountability. As explained by Smith<sup>249</sup>, the ECtHR has established two limbs for the meaning of independence: there must be no institutional or hierarchical connection between the police officer under investigation and the investigator, and the conduct of the investigation must be independent in practice.<sup>250</sup>

With respect to the role of courts, while it is true that in principle they are deemed to be a guarantee of independent judgement according to objective criteria established by law<sup>251</sup>, and while it is no less true that they have the potential to punish police officers when they act in breach of criminal law, as well as to establish the right to a remedy for victims through the civil jurisdiction<sup>252</sup>, there are reasons for not relying solely on the judiciary as a mechanism for control of police misconduct.

---

<sup>246</sup> Email from Javier Estévez de Cáceres, spokesperson of the Sindicato Unificado the Policía (SUP), one of the main police unions at national scale (4 May 2015).

<sup>247</sup> CPT report on Spain, cit., para. 16.

<sup>248</sup> Ibidem.

<sup>249</sup> Smith, 2013, p.94.

<sup>250</sup> *Ramsahai v the Netherlands* (2007) 46 EHRR 43.

<sup>251</sup> Walsh and Conway, 2011, p.66.

<sup>252</sup> Ibidem.

Official statistics in Spain<sup>253</sup> reveal the disproportion between the number of individual complaints and the number of condemnatory rulings<sup>254</sup>, with derisory numbers of condemnation (6 out of 1046 in 2011; 6 out of 1279 in 2010; 15 out of 1404 in 2009).

Whereas we should avoid general and abstract criticisms of the lack of independence of courts, the truth is that frequently they fail to meet the requirements of an effective and impartial investigation on police matters. The ECtHR in its case law, and the CAT and CPT in their state reports, have often found a failure by courts to conduct effective and impartial investigations, and this has been particularly observed in the case of Spain.<sup>255</sup> International standards require the judicial system to be independent and impartial, but this is not always ensured if the investigation is conducted by the police themselves. This is further aggravated by an aspect that was pinpointed by Chema García<sup>256</sup>, from Amnesty International Spain: the so-called “presumption of veracity” that exists in the Spanish judicial system and that is granted in favour of the testimony of public officers<sup>257</sup>, which has also been applied in cases of police misconduct when the main source of evidence is the testimony of the parties.<sup>258</sup> Instances of lack of judicial responsiveness towards police-related complaints have been reported to the CAT by various CSOs<sup>259</sup> in their shadow reports, indicating that there is a tendency by courts to easily file the case under “lack of evidence” without having conducted the minimum inquiries required.<sup>260</sup>

---

<sup>253</sup> Annexes to the State party report in the last CAT review process on Spain, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=961&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=961&Lang=en) [accessed 22 June 2015].

<sup>254</sup> Those judicial rulings determining the responsibility of the police officers based on adverse findings.

<sup>255</sup> See CAT report on Spain, cit., para. 19, and the shadow reports annexed to it by CSOs (notably AI, and RIS).

<sup>256</sup> Personal interview, 7 April 2015, Amnesty International Spain’s headquarters, Madrid.

<sup>257</sup> Which is in contradiction with ECtHR case law determining that police testimonies should not be uncritically accepted (*Kaya v. Turkey* (1999) 28 EHRR).

<sup>258</sup> RIS shadow report on Spain, 2015, doc. cit., pp. 26-27.

<sup>259</sup> Rights International Spain, Amnesty International, Coordinadora para la Prevención de la Tortura, Asociación Pro Derechos Humanos de España, and Behatokia, amongst others.

<sup>260</sup> RIS shadow report on Spain, 2015, doc. cit.

Another way of handling complaints is through the internal disciplinary regime. Scepticism about the impartiality of this channel is even higher<sup>261</sup>, since the control and decision depends solely on the police structures themselves. In interviews with police officers<sup>262</sup>, they insisted that citizens can file complaints directly with the police in all police stations and also via online<sup>263</sup>, through a system of “complaints and suggestions mailbox”. However, a complaint through this channel does not necessarily open a proceeding, and the complainant barely knows whether his or her complaint is being taken into account for disciplinary proceedings. While admitting that internal controls could play an important role in promoting professionalism provided that they meet a number of conditions<sup>264</sup>, there is a matter of fact: disciplinary proceedings deal with the conduct of police officers as employees<sup>265</sup>, and very frequently police management let human rights violations go unreported and unpunished.<sup>266</sup> The CPT has deemed that the internal investigation of complaints by the disciplinary mechanisms of the National Police and the Guardia Civil does not meet the requirements of independence and impartiality, and that their potential contribution to the prevention of ill-treatment is, at best, limited.<sup>267</sup>

In a system relying in those two channels, independence is called into question because the available channels (judicial and disciplinary) are not able to provide a satisfactory answer to the main question: *who polices the police?* It is reasonable to think that if it is the police themselves who investigate their colleagues in case of misconduct, independence cannot be guaranteed unless adequate checks and balances

---

<sup>261</sup> Smith, 2011, p.63: “Concerns have been raised by human rights monitoring bodies with the operation of internal police procedures, including investigations managed by bodies external to the police and carried out by the police, in several European states.”

<sup>262</sup> Interviews with Manuel Hernández, David Martín Abanades (both police officials), and email conversation with Javier Estévez de Cáceres (spokesperson at police union).

<sup>263</sup> The information given in the website of the Ministry of Interior about this procedure does not refer to misconduct or incorrect treatment to citizens by police officers, but rather contemplates complaints and suggestions about the bad quality of services:

<http://www.interior.gob.es/web/servicios-al-ciudadano/participacion-ciudadana/derechos-de-participacion-administrativa/quejas-y-sugerencias>

<sup>264</sup> See the guidelines for proper internal auditing of the police in Wisler, 2011, p.17.

<sup>265</sup> Osse, 2006, p.199.

<sup>266</sup> Ibid, p.200.

<sup>267</sup> CPT report on Spain, 2007, doc. cit.



(for instance, through external scrutiny of how the investigation is conducted) are put in place.<sup>268</sup>

b) **Second flawed assumption:** *“a system based on the judicial and disciplinary channels is enough for responding to every complaint of misconduct.”*

Walsh and Conway stress that the courts are not normally in a position to offer a comprehensive and reliable source of remedies for improper police acts, omissions, policies and practices, since they have their own complications and limitations concerning jurisdiction, procedure, access, cost and delay.<sup>269</sup> This leads us to call into question the ability of courts to meet some of the ECtHR requirements (further developed by the CHR)<sup>270</sup>, such as adequacy, promptness and public scrutiny, apart from the already mentioned independence. Furthermore, criminal proceedings on misconduct are normally left for serious instances and do not reach minor misconduct that may still involve behaviour that is not compatible with human rights, such as sexist or racist comments<sup>271</sup>. As Smith notes, it is easy to observe that cultures of police impunity are usually linked to extreme cases of human rights abuse, involving torture, unlawful killing, or disproportionate use of force.<sup>272</sup> However, he makes the point that such highly visible cases are only a part of the police impunity problem. A comprehensive system should look at the various degrees of police misbehaviour, from the extreme cases to the minor misdemeanours such as verbal abuse or rudeness.<sup>273</sup> Jorge del Cura thinks that as soon as police conduct gives rise to an element of humiliation, there should be channels to complain and to investigate such behaviour.<sup>274</sup> A system that fails to provide effective accountability channels for minor abuses might

---

<sup>268</sup> Osse, 2006, p. 201: “In this connection, the CPT considers that the persons responsible for overseeing and carrying out investigations into possible ill-treatment by law enforcement officials should be independent from those implicated in the events. Further, such investigations should offer guarantees of effectiveness, promptness and expeditiousness.”

<sup>269</sup> Walsh and Conway, 2011, p.67.

<sup>270</sup> CHR, 2009.

<sup>271</sup> Personal interview with David Abanades, police officer, Local Police of Fuenlabrada, 14 April 2015: “There are no mechanisms to scrutinise those more subtle behaviours that do not reach the threshold for a sanction or criminal proceedings, but that are still harmful for the citizen and for the police as an institution.”

<sup>272</sup> Smith, 2010, p. 66.

<sup>273</sup> Ibidem.

<sup>274</sup> Skype interview with Jorge del Cura, spokesperson of the Spanish Coordinator for the Prevention of Torture, 12 March 2015.

be contributing to perpetuate the roots of police misbehaviour, and in turn, the culture of impunity. Some would argue that these can be dealt with through internal discipline<sup>275</sup>, but for the reasons explained above, the truth is that it is not common to see police officers internally sanctioned for these type of conducts.<sup>276</sup> Furthermore, as Osse remarks, the sole fact of filing a complaint directly with the police depends on confidence in the police, and if people do not trust the police they will not have faith in the internal complaints system.<sup>277</sup>

Another factor to take into account is that citizens may also play an indirect role in the perpetuation of the culture of impunity. If citizens do not seek redress after what may be considered an abuse of power, public acceptance of a level of police misconduct may permeate police behaviour, giving rise to an “expectation that police officers will misbehave.”<sup>278</sup> As stressed by Smith, “any strategy to transform, or prevent, a culture of police impunity will have to tackle its pervasiveness by targeting different types of misconduct with appropriate and proportionate measures.”<sup>279</sup> In line with this, the CHR considers that the five principles established by the ECtHR for independent and effective investigations should be applied to every complaint, taking into account the various degrees of misconduct, and that for that to be properly achieved all complaints should be handled through an Independent Police Complaints Body (IPCB).<sup>280</sup>

It is important to stress that both the judiciary and the internal disciplinary regime have the potential to contribute to deliver accountability in policing and to promote better practices by punishing misconduct, and the critical analysis made here by no means intends to deny entirely their suitability as channels for the control of police conduct towards citizens.<sup>281</sup> However, what this analysis tries to suggest is that

---

<sup>275</sup> As Manuel Hernández, from the National Police Academy in Spain, suggested in a personal interview on 9 April 2015.

<sup>276</sup> CPT report on Spain, 2007, doc. cit.

<sup>277</sup> Osse, 2006, p.194

<sup>278</sup> Smith, 2010, p.66.

<sup>279</sup> Ibidem.

<sup>280</sup> CHR, 2009.

<sup>281</sup> As the CHR (2009, p. 7), stresses in his opinion on independent complaint mechanisms: “[t]he police complaints system should operate in addition to, and not as an alternative to criminal, public and private legal remedies for police misconduct.”

accountability cannot rely only on those channels, and needs to be supported by external control that helps to ensure independence in the investigation of every complaint. The aim would be to create “a balanced system of multiple actors”<sup>282</sup> responsive towards different degrees of citizens’ complaints. The example of Northern Ireland provides such balance.

### B.2.2. Northern Ireland: *a committed model of accountability*

Departing from the concern that effective investigations of police misconduct could not be ensured if the police are to be the subjects and the actors of such investigation, the debate around police accountability has evolved towards the acceptance that there is a need to replace traditional police-controlled systems of dealing with complaints with systems controlled by non-police personnel.<sup>283</sup> This way of understanding accountability has been particularly embraced by Anglo-Saxon countries, among which the example of Northern Ireland is noteworthy.

In the process of police human rights-based reform (1997-2000), a report (the so-called “Hayes report”<sup>284</sup>) provided guidance for improving the police complaints system in Northern Ireland, pointing at the need to create an independent body that would be tasked with the investigation of police complaints. Such body is now the Office of the Police Ombudsman for Northern Ireland (OPONI), and is based on the principles that the Hayes report and the Patten report set out for ensuring effective and independent investigations. Taking the principles identified by Stenning on complaints systems<sup>285</sup>, the Patten report set out the requirements that the new system should meet, amongst others:

“a sound legislative foundation; dedicated, competent, experienced and/or trained personnel; a reasonable level of commitment and cooperation on the part of the police organisations and personnel to whom the process applies; an adequate degree of knowledge of, confidence in, and willingness to use the process, and good faith, on the part of potential complainants in particular and the public more generally; and the

---

<sup>282</sup> Osse, 2006, p. 188.

<sup>283</sup> Harris, 2012, p. 241.

<sup>284</sup> Dr. Hayes’ Report on the review of the police complaints system in Northern Ireland, 1997, cited in the Patten Report, 1999, point 6.40.

<sup>285</sup> Stenning, cited in the Patten Report, 1999, point 6.39.

commitment of adequate resources for full and effective implementation of the process.”<sup>286</sup>

In addition, a number of principles were established following Stenning’s guidelines, recommending that the process of handling complaints against the police should be:

“accessible, fair to complainants and police officers, respectful of human rights and dignity, open and accountable, timely, thorough, impartial, independent and should take account of both the “public interest” and the interests of the parties involved in the complaint. It should also be appropriately balanced between formal and informal procedures for resolving complaints, between remedial and punitive dispositions, and between internal management and external oversight. It should provide appropriate systemic information to police management and governing authorities, and it should avoid unnecessary duplication or overlap with internal disciplinary and grievance processes.”<sup>287</sup>

As Nuala O’Loan<sup>288</sup> has explained, there are different degrees of police external accountability systems, ranging from pure oversight and review functions to complete responsibility for the investigation of all complaints against the police.<sup>289</sup> The South African Independent Complaints Directorate has been often presented as a relevant example of this last model with great degree of independence to investigate. Such an example was also followed by Northern Ireland, who established the most advanced and developed degree of police accountability<sup>290</sup> by conferring the new institution, the OPONI, with great independent powers to investigate a wide range of citizen complaints against police officers.

This comprehensive approach to how a police complaints system should look like has deserved the recognition and admiration from the human rights arena, and Northern Ireland is often presented as the most developed system of police accountability<sup>291</sup>, being referred to as an example of “best practice” in the field.<sup>292</sup> The main difference with the shortcomings identified in the case of Spain resides precisely

---

<sup>286</sup> Patten report, 1999, point 6.40.

<sup>287</sup> Ibid, point 6.39.

<sup>288</sup> Former Police Ombudsman for Northern Ireland.

<sup>289</sup> O’Loan, 2001, pp. 21-22.

<sup>290</sup> Osse, 2006, p. 209.

<sup>291</sup> Smith, 2013; Osse, 2006.

<sup>292</sup> United Nations Office on Drugs and Crime (UNODC), 2011, p. 61.

in the fact that the approach taken in Northern Ireland avoids acritical assumptions that invite us to lower the guard on how complaints are handled by the traditional channels, and departs instead from an “on guard” premise that independence can never be taken for granted but rather needs to be externally reinforced and properly ensured by a balance of safeguards.

The OPONI has been given the functions of receiving complaints, deciding how to deal with those complaints, investigating situations where a police officer may have committed a criminal act or a breach of the discipline code, gathering all evidence and making a decision as to whether the evidence is such that it should recommend criminal or disciplinary proceedings against an officer.<sup>293</sup> When it is deemed that there has been a degree of misconduct but criminal or disciplinary sanctions do not arise, the OPONI can mediate between the police officer and the complainant. This complete range of actions allows the OPONI to encompass different degrees of misconduct, from the most serious to the minor ones, which meets the CHR standards for a comprehensive system of complaints where “every complaint matters”.<sup>294</sup>

Of course, the delivery of accountability by meeting demanding standards of independence and effectiveness as established by the ECtHR is not an easy task, and, as it might be expected, praise of a system such as exists in Northern Ireland does not imply an assumption that such system is free from corruption and mistakes. As Walsh and Conway warn, even if we devised an ideal system in theory, it will still be subject to the distorting influences of institutional and other vested interests existing in reality.<sup>295</sup> The OPONI, of course, is not free from such distortions, and its reputation has also been called into question in relation to the degree of independence of its staff and its investigations.<sup>296</sup> Indeed, from a critical perspective, we could endlessly apply the question “who polices the police?” to the external oversight bodies tasked with the handling of complaints (“who ensures their independence?”). That is why it is of utmost importance that the maxim of accountability systems relies on a “never lower

---

<sup>293</sup> O’Loan, 2001, p. 23.

<sup>294</sup> Smith, 2010.

<sup>295</sup> Walsh & Conway, 2011, p.65.

<sup>296</sup> See for instance the critical report of the Committee on the Administration of Justice (CAJ, 2011), on the OPONI’s performance in relation to some historical cases:  
<http://www.caj.org.uk/contents/962>

the guard” premise, trying to keep the independence principle safe by establishing a balance between different actors at stake. As Anneke Osse has remarked, “it is naïve to think that the police can be objective and impartial, but it is also naïve to think that an external oversight mechanism will be completely independent and impartial. All different actors are needed in the balance.”<sup>297</sup>

To conclude this reflection on the need to ensure independent police accountability mechanisms, it must be reiterated that the ultimate aim of police accountability is to increase citizens’ trust and the perceived legitimacy of both the police as a whole and of the State as the stakeholder that must provide the safeguards required to avoid any culture of impunity that undermines the rule of law. Again, these standards for policing can be also seen as an opportunity for the police to learn from their mistakes and to provide a more professional service that enhances its effectiveness. As the CHR underlines, police practice is liable to error and misunderstanding, and the reluctance to accept such failures should be replaced by “a willingness to address grievances and acknowledge mistakes at the earliest opportunity”.<sup>298</sup> In this line, complaints can be taken as a source for evaluating police activity and for drawing lessons for future performance, which would enhance effectiveness and public trust.

---

<sup>297</sup> Skype interview with Anneke Osse, cit.

<sup>298</sup> CHR, 2009, p. 6.

## IV CHALLENGES AND WAYS FORWARD

Throughout my research on the prospects for achieving a real change in police culture, I conducted a number of interviews that helped me understand the complexity of the issue from different prisms: with police trainers, police officers, police trainees and police unions, on the one hand, and with civil society and experts on the topic, on the other hand. At the beginning I expected to get a disparity of views and concerns depending on the different angles, especially regarding the situation in Spain, which is the country that I chose for the identification of shortcomings and challenges. Surprisingly enough, however, I found many points in common between the views held by people from inside the police and from civil society, both in identifying challenges and in pinpointing ways forward. Having compiled the impressions that interviewees shared with me, I came up with the idea that a discussion among them would be very fruitful for reflecting on the ways forward together. Organising a real meeting with them was of course out of my reach, but I have instead structured this chapter in the form of an “imaginary roundtable” with some of the interviewees: on the part of the police, David Abanades<sup>299</sup> and Manuel Hernández<sup>300</sup>; on the part of civil society, Cristina de la Serna<sup>301</sup>, Jorge del Cura<sup>302</sup>, Chema García and Manuel Pardo<sup>303</sup>; and Julen Arzuaga.<sup>304</sup> Lastly, Anneke Osse<sup>305</sup>, whose inputs can contribute to the debate as an external expert. There will also be a political insight into the topic by Jon

---

<sup>299</sup> Second chief officer, Local Police of Fuenlabrada, Spain. Personal interview, Fuenlabrada, 14 April 2015.

<sup>300</sup> Police trainer, National Police Academy, Avila, Spain. Skype interview (20 March 2015) and personal interview (9 April 2015).

<sup>301</sup> Human Rights Lawyer, Rights International Spain. Skype interview, 10 March 2015.

<sup>302</sup> Spokesperson at Coordinadora de Prevencion contra la Tortura. Skype interview, 13 March 2015.

<sup>303</sup> Both members of the Amnesty International Spain’s team on Security Forces. Personal meeting, Amnesty International Spain’s headquarters, Madrid, 7 April, 2015.

<sup>304</sup> Member of the Basque Observatory of Human Rights (Behatoia). He is also member of the Basque Parliament, participating in the parliamentary Commission on Institutions, Security and Justice. Skype interview, 10 July 2014.

<sup>305</sup> Expert on human rights and policing. Skype interview, 22 June 2015.

Iñarritu<sup>306</sup>, who participates at the parliamentary level and can shed some light on the political status on this issue. The debate will revolve around the main challenges for achieving change in police culture, with a special focus on the Spanish scenario, and will conclude with some suggestions for ways forward. I will play the role of a moderator, linking the participants' arguments and comments, drawing the thematic lines of the discussion, and eventually contributing to the reflections.

As a matter of fact, it has to be borne in mind that the real complexity of the challenges cannot be portrayed by the views of those who, both inside and outside the police, are already convinced by the need to make changes. This is a problem that would be equally present in a real roundtable, where the mere acceptance to participate reflects a degree of willingness to address this issue. In this sense, the views expressed by the two police officers interviewed are by no means representative of the police as a whole –if that was the case, challenges would be definitely lesser,- the same way that opinions expressed by civil society interviewees do not equal the concerns of broader civil society perceptions. Therefore, this “imaginary roundtable” does not intend to be an accurate reflection of how discussions for improvement would actually be, but rather a positive image of how they could be.

The process towards true change in police culture presents great challenges, sometimes prompting one to be pessimistic, which I have been at many moments as I researched about the topic. However, I feel encouraged to take a positive approach and highlight that there are reasons to think that this is a good time to advocate for commitment to a human rights-based approach to policing. Having had a look at the current status of shortcomings in the implementation of standards in Spain, the imaginary roundtable will follow the structure of two main sets of discussion: (A) the existing challenges for achieving commitment to change, both at police level and at political level; and (B) the ways forward for civil society organisations but also for wider society as a whole.

---

<sup>306</sup> Member of the Spanish Congress, participating in various parliamentary commissions on human rights and development issues. Skype interview, 30 June 2015.



## A. CHALLENGES. *In search of commitment*

In this first set of debates, interviewees give their opinion on what are the main challenges for the achievement of true change in the police, which involves not only aspects of reform but also underlying elements of police operational culture. Here we wonder where does change start, what are the cultural and the political challenges, and what actors play a key role. First, we will focus on the internal change, that is, the willingness to change from within the police, as well as the behavioural and cultural aspects that require a commitment from the police officers themselves, beyond legal reforms. Second, we will move on to change from outside, that is, the political will that is needed and the main aspects that hinder it.

### A.1. Change from within: a *commitment to their job*

Anneke Osse, expert in policing and human rights, starts by saying that “*culture is by definition something that is created and developed internally within the police*”, and “*minor -but important- conduct, such as jokes or racist comments, must be tackled through training.*” David Abanades, local second chief of police, agrees that training is essential for effecting change, but raises an issue that is related to why some police officers fall into misconduct<sup>307</sup>: “*to some extent it is true what some say that ‘what is learnt in the academy is later forgotten in the streets’, because if you don’t adapt to the environment you are very likely to fall by the wayside. The environment marks you, and you can be a wonderful person but if during your working time your colleagues mark you and isolate you, in a job where support from the rest is of vital importance in critical situations, then keeping a different position becomes a very difficult personal decision.*”

Cristina de la Serna, member of Rights International Spain (RIS) and experienced in dealing with the police on human rights and discrimination issues, also underlines the influence of “the group” in police daily behaviour: “*although in reality those who are prone to show racist and violent attitudes may be a minority, they have*

---

<sup>307</sup> The question of the reasons why there are misconduct patterns within the police has also been addressed in literature. See for instance Goldschmidt, 2012.

*the potential to hoard the discourse, and very frequently those who are against that kind of behaviour don't dare to say it publicly.”*

All of them seem to agree that this issue is a matter of police culture in which training has an important role to play. It is interesting therefore to know how this is being tackled by those who are involved in the design and teaching of police curricula. Manuel Hernández, police trainer and chief of the department of Humanities in the National Police Academy, explains that *“it is a matter that has to be tackled with a long-term perspective, trying to change the way police officers perceive themselves. Since it is a cultural matter, the change is necessarily going to be long term.”*

Culture is frequently linked to custom, and custom is defined as ‘a traditional and widely accepted way of behaving’ or ‘a thing that one does habitually’.<sup>308</sup> The difficulties of changing a specific kind of custom are, as might be expected, embedded in the nature of its meaning. David Abanades remarks that *“there are many attitudes within the police that are based in the custom, that is, they are not based in any strategic decision from the leadership, nor in the legal system, but just in the custom. You enter the police and do the same thing as your veteran colleague.”* Anneke Osse thinks that culture can be changed, and highlights the role of police managers in that mission: *“managers have a great potential to influence police culture within their team, and sometimes they do not realize how strong their impact can be. Sometimes, indeed, they are very reluctant to acknowledge their responsibility for the kind of culture that is developed within the police. That is why training for managers is of a key importance.”* Chema García and Manuel Pardo, from the team on security forces of Amnesty International Spain, also stress the importance of training for police managers and assert that *“the involvement of civil society in police training is much more successful on managers than on the police trainees, since police managers can play a crucial role in stopping certain bad practices.”* The local police of Fuenlabrada has been pointed out as an example of success in the development of good practices on the initiative of the police managers, for instance on issues of community policing and conflict resolution. However, the limits of relying on the initiative of police

---

<sup>308</sup> Oxford English Dictionary.

managers are clear, since, as David Abanades recognises, it ultimately depends on the person who is the manager at that moment.

When asked about what kind of problematic attitudes still remain embedded within the police operational culture, David Abanades responds that he observes *“problems of stereotypes, mutual distrust, but especially a lack of communication, linked to a reluctance to explain why we act in a certain manner, among others.”* Cristina de la Serna also agrees that there is a particular problem linked to the lack of ability to empathise with the citizen, stressing that *“there is a need to emphasize that police officers should explain why they perform a specific action, since it may not be always understandable for citizens and they might perceive an action as unjust if they don’t understand the reasons.”* Also, Abanades remarks that *“police officers are persons: some are extremely nice and some are extremely unsympathetic. What should be stressed through training is that we are not ‘shoemakers’. If I want my shoes to be repaired and the shoemaker is unpleasant, I simply won’t go back. But we handle rights and freedoms, and therefore we are obliged to be nice and polite, and to empathise with the citizen, apart from respecting the legal order.”*

Another of the problems that were pinpointed was that of measuring authority. As David Abanades notes, there is a problem of proving or showing the authority that police officers are granted: *“very frequently police officers join the police very young, they start wearing a uniform, a weapon, plus they are allowed to use force when required. That can give them a sense of power and superiority which, if they don’t know how to handle, can generate conflict.”* Moreover, Abanades stresses that most of their job is about conflict resolution, and that *“if officers do not receive proper skills training on how to solve conflicts, at the drop of a hat the officer will respond with aggressiveness.”* But he also explains with sadness how most police officers do not seem interested in that kind of training, and *“whenever voluntary courses are offered on tactical shooting on the one hand, and conflict management on the other, the first one will probably have a waiting list whereas the other will be almost empty, which is paradoxical, because most of their careers will be about trying to solve conflicts without using a gun.”*

Going to the issue of misconduct, Manuel Hernandez explains how the Code of Ethics is intended to promote, through voluntary compliance, that *“if there is a colleague who does not behave in line with those principles, then he or she is not ‘one of us’.* *The rejection of misconduct has to come from the police professionals themselves.”* He says that he prefers to picture change in police culture by generating self-conviction and not by fostering fear based in sanctions, because the latter *“can encourage blind solidarity, and when a police officer is being tried or investigated, the rest immediately endorse him because ‘he is one of us’.”* As might be expected, opinions from civil society organisations differ on the approach taken by Manuel Hernández, mostly focused on voluntary commitment but distant from the accountability approach. While it is easy to agree on the first premise of this perspective –voluntary commitment –, participants from civil society think that it is important that police officers feel that their acts may be scrutinised and, when required, punished. We can clearly observe here differing views on the role of accountability in changing police culture: whereas for Manuel Hernández it can create fear and, in turn, blind solidarity, for Jorge del Cura, Cristina de la Serna, Chema García, and Manuel Pardo change cannot come without accountability. Perhaps the common ground of this disjunction can be found in what Jorge del Cura points out: *“when someone is ill-treated by a police officer, at the first moment what he seeks is to ‘kill’ him or her; but then, after all, what the person really seeks is an acknowledgement, an official and public apology that may partially repair the damage.”* From his long-standing experience in the Spanish Coordinator for the Prevention of Torture, he has realized that *“almost nobody seeks the police to be put in prison, except for serious cases. What people seek is an acknowledgement of the wrongdoing.”* From these words we could draw the conclusion that accountability could be internally promoted from the prism of responsibility rather than from the sense of fear of the punishment.

All the participants agreed that changing police culture requires a look beyond normative aspects. This was particularly stressed by Julen Arzuaga, who indicates that *“we cannot change police culture just by changing the normative framework, because to a great extent it is at the level of orders and commands where the problem resides.*

*Any strategy for change must be designed with the aim of changing attitudes at every level, and not just with the purpose of introducing normative aspects”.*

To sum up this first section, we could draw a number of conclusions in relation to the challenges expressed by the participants about achieving change from within the police. First, all of them relate internal change to cultural and behavioural change, which can only be achieved with a long term perspective. Second, training plays a key role in fostering appropriate behaviour, but there are practical difficulties in ensuring training’s impact in practice because of the influence of custom in the police work environment. Third, among the problems in police attitude we could underline the lack of communication and empathy, and the misunderstanding of what authority implies, which should be tackled through specific skills training. Lastly, we have seen how the role of accountability is differently perceived by the different parties, though a common ground could be achieved by focusing on the culture of responsibility and avoiding a discourse of fear.

## A.2. Change from outside: *the necessary political will*

Despite the importance that all the participants have granted to the need to foster change from the internal sphere of the police, Anneke Osse warns that “*change usually does not come from within the police. I am not aware of any police agency in the world that has initiated comprehensive change by themselves, without external pressure. Of course they may incorporate operational methods, or use new technical tools, or introduce new internal measures, but it will be more about professionalism. But as for what we understand as accountability, I have never seen change in that sense coming from inside. They will try to defend their interests and advantages.*” She points out, however, that the reluctance to include self-control mechanisms is not unique to the police institution, since “*nobody likes to be overseen. Look at the financial sector.*”

David Abanades corroborates that it cannot be expected that initiative for comprehensive change will come from within the police. He explains that “*any initiative for change is usually received with a total rejection from police unions and*

*police leadership*”, therefore change necessarily requires outside impetus, notably a good dose of political will. Moreover, Anneke Osse made a point that “*the lead of the change should not be left to the police, because the police mandate should follow the democratically elected powers. Whereas the police should be part of the process, other external actors should pinpoint the guidelines for change which the police should later implement. If we let the police design the measures by themselves, we can imagine that it could easily go in a wrong direction.*”

The political actors necessarily play a key role in police reform. Political commitment both from the legislative and from the executive is needed. But then we have to think of all the challenges that make it difficult to achieve such political will towards change. First of all, at least in the context of Spain, but also observable in many other countries, the participants expressed that there is a “culture of denial” on the part of the authorities when it comes to any issue involving patterns of police misconduct. Jon Iñarritu, member of the Spanish Congress, observes the existence of such culture of denial both in the executive and in some parliamentary sectors: “*the denial of any police abuse is of a systematic nature at political level, the tendency is always to ignore, when not to hide, as happened with the case of the deaths in Tarajal, Ceuta.*”<sup>309</sup> He says that there seems to be a sense of paternalism from the executive power towards the security forces, and “*when a question or attempt to monitor a controversial police incident is raised in the Parliament, the reaction is frequently irritation and denial.*” On this aspect, Jorge del Cura explains how “*it is frequent, almost constant, that every time that a case of torture or police abuse is made public, immediately the political leadership of the police or the Mayor (for the local police) says from the outset that it is false, and in some cases they even announce lawsuit initiatives against those who denounce (i.e civil society organisations).*” And he continues “*as long as the authorities, the Ministry of Interior, Ministry of Justice, the public prosecutor, and the judges do not accept that there might be cases of ill-*

---

<sup>309</sup> The incidents referred to as the “tragedy of Tarajal”, in the Spanish border with Morocco, where 15 people died drowned trying to reach Spanish land, after a very controversial action by the Guardia Civil, who used rubber balls against the group of people while they were in the water.

*treatment –whether many or few, that is another issue - there won't be any opportunity to advance.”*

Not only civil society participants considered that there is a culture of denial deeply embedded at the various institutional levels, but the chief of police David Abanades also recognises it and believes that *“the acknowledgement of misconduct patterns is the first step that the State must take in order to advance, otherwise the problem will be perpetuated.”* Of course, his critical view is not common among police officers. But also Manuel Hernández seemed open to discuss the issue, and expressed that *“it might be true that, being a concerned party, I am not seeing the situation objectively in relation to the rates of misconduct. We must make an effort and be open to discuss whether we are responding properly to these issues.”*

If we agree that this culture of denial is the first barrier for any attempt of comprehensive reform, reflection on how to counter such culture of denial is therefore needed in order to achieve political will.

In the first place, we may consider an element of discourse. If the culture of denial is a defensive attitude to avoid the discrediting of institutions – since being accused of torture or ill-treatment is a source of delegitimation - perhaps the discourse for change should avoid generalisation and exaggeration. As Cristina de la Serna says *“in Spain we have a structural problem of torture and ill-treatment, but that does not mean that torture is a generalised or systematic practice. The tactic of exaggeration can be counter-productive, and we have to be careful with that.”* From her words we can derive that the discourse could be more effective if it does not start from the outset with the denunciation of torture, even if such denunciation has to occur at some point. What David Abanades expresses can contribute to this view: *“there is a distorted vision of what is meant by human rights, many officers associate it with the denunciation of torture. Such perception exists because for a long time the human rights discourse has focused on denouncing torture, which many police officers take as ‘they say that we torture’.”* He proposes a more positive approach to the discourse in order to generate another idea of human rights within the police: *“if the human rights discourse stressed the huge positive impact that the police can have on human rights,*

*perhaps there would be a lesser reluctance to be influenced by such discourse.”* Perhaps a shift in the discourse in that sense could also generate a less defensive attitude at the political level. If reluctance has to be tackled, it might be easier from a positive approach than from a discourse based solely on accusation. As Cristina de la Serna suggests, such a positive approach could consist in *“persuading that a change in this way would contribute positively to the police function itself and to the citizen security as well.”*

Another way to encourage political will may consist in pointing out what other democratic countries have done. The example of Northern Ireland is identified by many as an example to follow. However, all the participants have remarked that each country has its own context and particularities, and as Abanades says: *“it is easier to start a process of reform in transitional countries, when you have the opportunity to start from scratch.”* In line with David Abanades, Anneke Osse asserts that *“usually change comes together with a process of democratisation, where there might be an opportunity to think of police reform as part of the process.”*<sup>310</sup> Some of the participants have suggested that there might be a parallel between the process in Northern Ireland and the situation of the Basque Country now, after the ceasefire by terrorism. Chema García and Manuel Pardo noted how the peace process in the Basque Country may be opening an opportunity for police reform, which has been reflected in a proposal for the Peace Plan of the Basque Government.<sup>311</sup> Indeed, many of the participants suggest that the end of terrorism has had an impact on the willingness by national authorities, not only the Basque ones, to tackle police misconduct problems. On this issue both civil society and police participants shared views and prospects: *“in Spain there has been a basic problem that has biased political decisions and police culture: the fight against terrorism”*, says Manuel Hernández. In line with him, Jorge del Cura considers that *“the existence of ETA hampered the fight against torture. Those who denounced torture cases at that time were immediately defined as ‘pro-*

---

<sup>310</sup> This observation in relation with the propitious context for police reform has been previously addressed in literature. See for instance Otwin, 2005; O’Rawe & Moore, 1997; O’Neill, 2005; or Weitzer, 1995.

<sup>311</sup> Plan de Paz y Convivencia del Gobierno Vasco, available at: [https://www.irekia.euskadi.eus/uploads/attachments/3814/Propuesta\\_del\\_Plan\\_de\\_Paz\\_y\\_Convivencia.pdf?1385119634](https://www.irekia.euskadi.eus/uploads/attachments/3814/Propuesta_del_Plan_de_Paz_y_Convivencia.pdf?1385119634) [accessed 30 June 2015].



*etarras'*.<sup>312</sup> *Now that it has come to an end, we are starting to see more permeability, notably by citizens, since now the denunciation of torture has passed to be linked to social movements or racism, where people are more prone to criticize police abuse.*"

From this we could imagine positive prospects for future change. The thoughts expressed by the participants were on the one hand pessimistic regarding the difficulties in achieving political will, but on the other hand there was a shared impression that the present moment might be favourable for starting working towards change. Jon Iñarritu notes how *"in the last few years there have been many parliamentary debates regarding police performance in relation to demonstrations and in relation to migrants, and this has brought the concern about patterns of police abuse to the forefront."* Political will to reform, however, still depends on the political majority at the moment, which might change in the upcoming times. From an 'on guard' perspective, Jon Arzuaga warns that *"for a non-superficial change, the commitment must necessarily come with a recognition of the breaches that the police may have committed, which is essential for analysing the patterns of misconduct. That is a step that needs to be made in order to abandon the culture of denial."*

To sum up this set of discussions, we could draw from the participants' views that police reform needs to be facilitated by a great dose of political will that seems very difficult to achieve. The overcoming of the culture of denial is a prerequisite for moving forwards, and the contextual situation of the country may determine the emergence of political demands that may generate political commitment. We could conclude this section with a statement that was expressed using the exact same words both by David Abanades, from the police, and by Jorge del Cura, from civil society: *"The moment to take a step forward is approaching."*

---

<sup>312</sup> Term used to suggest that someone was supportive of ETA.

## B. WAYS FORWARD. *Persuasion and social demand*

In this second set of discussions, the participants look at the ways forward and the strategies to foster commitment towards a true change in police culture. If the previous section was focused on the political and the police actors, this section will closely look at the role that civil society plays in the process. From the example of Northern Ireland we can derive an important lesson for the necessary engagement of civil society in the process of reform, which must provide channels for CSOs' involvement and public consultation.<sup>313</sup> Looking at the current scenario in Spain, we will consider, on the one hand, the strategies used by civil society organisations (CSOs) in their relationship with the police, and on the other, the role of society as a whole through social demands.

### B.1. Strategies from CSOs: *from aversion to persuasion*

The two police officers participating in this imaginary roundtable complain that the attitude from CSOs towards the police has often been too belligerent, and that this has caused major problems for establishing channels of communication between both sides. Manuel Hernández stresses that “*it is of the utmost importance not to fall into stereotypes, and to avoid generalisations about police conduct.*” David Abanades explains why general accusations against the police provoke an overall defensive reaction from all police officers: “*the police are like a Spartan group, if someone from outside attacks us, the group closes ranks and takes a defensive attitude.*” That is why Manuel Hernández emphasizes the need to moderate the discourse, from both sides, in order to reach common grounds.

From the side of CSOs, such shift towards moderation also seems to have been accepted, and the traditional aversion is giving way to a much more persuasive approach. Cristina de la Serna, from Rights International Spain, insists on this point: “*if we aim at having an influence on the police, we cannot approach them by criticising how much they abuse, or how racist they are.*” Based on her experience in dealing with

---

<sup>313</sup> Patten report, 1999, point 3.13.

the police, she warns that prejudices exist on both sides, and therefore an effort of mutual understanding is needed. Far from being acritical, however, David Abanades believes that criticisms by civil society are understandable because the police handles sensitive rights and freedoms, and that *“perhaps criticisms should lead us to reflect about our inability to transmit what we do.”* Nevertheless, he also remarks that *“very often police officers feel a lack of understanding by society, in particular by human rights CSOs; many times we feel that their job is disregarded and that the risks and difficulties we have to cope with are underestimated.”* Cristina de la Serna seems to be aware of this concern, and she recognises that *“we must make an effort to understand their position; after all, they have the main idea of doing good and ensuring a safe society.”*

The way in which CSOs approach police officers is therefore crucial for building instead of breaking bridges among the two sides. Jorge del Cura explains how the traditional aversion that has characterised the relationship between CSOs and the police has created serious obstacles in communication, for instance when trying to persuade the police about the need to include safeguards against torture, which many police officers take as an accusation that every police officer tortures. Cristina de la Serna suggests communicative strategies for persuading about given problems within the police: *“if you talk about racism, you may start by saying ‘everybody has prejudices’; if you talk about misconduct you may say ‘everybody commits mistakes’. I always stress the point that we are aware that 99% of police officers do not commit torture or ill-treatment.”*

From a very self-critical perspective, Jorge del Cura has acknowledged that a shift in the discourse and in the manner of approaching the police and the authorities is needed, particularly pointing at his own organisation, the Coordinator for the Prevention of Torture. He acknowledges that perhaps they have failed to adopt a mediating role, and that sometimes they have been too impulsive: *“we are like two locomotives that go in opposite directions. Our attempts of dialogue very frequently result in a frontal collision.”*

One of the problems in this lack of mutual understanding is, as Anneke Osse pinpoints, the issue of the language used. She explains how she perceives that human rights organisations are too determined to use the language and the concepts of the human rights paradigm, which very often do not coincide with the language used by the police. For instance, she says that *“the accountability concept is much a human rights way of thinking, and it is not very present in the operational way of how police officers think. But many times they are indeed taking measures which are about accountability and human rights, however they may not frame it as an accountability issue or a human rights issue.”* Taking this into account, perhaps greater openness is required on the side of the human rights arena by admitting that the fact that police officers do not use human rights language does not necessarily mean that they are not putting measures into practice.

Taking into account the operational way of thinking that dominates in policing, it is normal to understand that police officers will try to focus on the practical benefits of any kind of proposal, rather than on the normative aspects. Cristina de la Serna asserts that *“there is always a way to convince them without constraining arguments to a justice or human rights matter. We have to be strategic and demonstrate with good examples and arguments that bad practices are not even useful to the end they pursue.”* In line with what Cristina says, the emphasis has to be put on the fact that a bad practice or misconduct must be rejected not only for moral reasons, but also because it is counter-productive and makes policing less effective. Promoting good practices such as community policing can be done by persuading the police that if they generate trust among a given community or minority, citizens will be more prone to co-operate and to communicate instances of crime.

Summing up, all the participants seem to agree that there is a need to make efforts by both sides to eliminate prejudices and enhance communication. Special attention has to be drawn to the role of CSOs and the discursive strategies that have characterised their relationship with the police for a long time. It can be observed, however, that self-critical steps have been made by CSOs, and a shift towards a persuasive approach seems to be the way forward. The analysis has also highlighted the importance of the language and concepts used, and that an effort has to be made in trying to communicate

with police officers in their own language, with a special focus on practical aspects. Overall, a general willingness to enhance the relationship between both sides was perceived throughout the discussion, and I feel encouraged to be positive about the future in this sense. As David Abanades has stated: *“the key is to build communicative spaces where CSOs and police officers talk to each other from the mutual understanding. That is the way forward. I believe we are entering that phase.”*

## B.2. Wider society: *the need for social demand*

The last part of our discussion points out to the role of society as a whole in the process of demanding meaningful changes in policing. Here we wonder to what extent we may expect citizen involvement in denouncing that this is a problem that must be tackled, and to what extent citizens are showing a demanding attitude concerning police behaviour.

Manuel Hernández asserts that *“the police is a product of society: each type of society has a type of police.”* Anneke Osse also seems to agree with this, and insists again on the point that change usually does not come from the police: *“if there is a general hostility in society against migrant minorities, or if there is a huge gender discrimination, then it is likely that such problems will also create problems in police behaviour.”* An example of this can be portrayed by looking at the USA’s well known problem with racially-based police brutality.

This leads us to think about the role of human rights education. When we stress the need for human rights training for police officers, should we not address first a general lack of human rights awareness among the citizens? Jorge del Cura believes that *“human rights education for the police will only be fully effective when human rights education is tangible in the street”*, and he highlights the great misunderstanding among citizens regarding the limits of police powers. He explains that he has *“even heard improper comments made by people that involved in human rights CSOs, for instance, when they are arrested in a demonstration and later they complain about how ‘they treated me as if I was an offender’* [implying that it would be acceptable to

treat an actual offender in that way]. *And I wonder, hasn't the offender the same right to be treated correctly?*" From this reflection we should derive that, in order to create a demanding attitude towards police behaviour, we must work to eliminate the widespread idea among citizens that an offender can be treated badly, which ultimately means that his or her rights can be ignored or violated.

The role of the TV and the proliferation of crime movies and series plays an important role on what citizens expect from police officers. Jorge del Cura warns that *"it is very frequent to see torture or excess in the use of force presented in a manner that the audience can see it as a justifiable act. It is seen as normal that someone is mistreated, until it happens to you or to your son. As long as it is a stranger, particularly if he is black, Arab, or gypsy, it is assumed that 'he must have done something'."*

We must also wonder about what is the general perception that citizens have about the police. Manuel Abanades asserts that *"in general, the image of the police in Spain is quite good, as the surveys and statistics on public satisfaction show."* It is true that when citizens are asked about their general satisfaction with the police, there is a majoritarian positive answer.<sup>314</sup> However, from a more critical perspective, David Abanades warns that *"it must be borne in mind that we have a very limited scope of interaction."* He is referring to the fact that most of the citizens do not have relevant contact with the police, and the interaction increases when it comes to minorities, migrants, activists or young people, among others. It has also been suggested that the more interaction a person has with the police, the more negative their opinion tends to be.<sup>315</sup> But it is also frequent that, even when citizens have an encounter with the police, they do not have a clear idea of the standards they are allowed to demand.<sup>316</sup> In this sense, Manuel Hernández says that *"we must generate an awareness among citizens that they should complain when they are not treated properly. The rejection of misconduct must not only come from within the police, but also from the citizens, who play a key role in demanding proper behaviour from police officers."* As for the

---

<sup>314</sup> See European Social Survey, on public satisfaction with the Police, available at: <http://www.esrc.ac.uk/research/surveys/ess.aspx> [accessed 25 June 2015].

<sup>315</sup> Tyler, 2003.

<sup>316</sup> Smith, 2010, p. 66.

general criticism from society to the police, David Abanades thinks that *“reactive movements against the police only arise when instances of misconduct reach the general public, for which the media play a key role.”*

As has been previously expressed by the participants, the end of terrorism and the new wave of mobilizations are setting the ground for a more demanding citizenship in terms of what is expected from the authorities, and in particular from the police. As Jon Iñarritu explains, he feels that *“the critical attitude towards the police is increasing in the whole territory, and people are more prone to criticize police abuse now.”* Jorge del Cura also believes that *“something is changing, in part thanks to the social media, the recording of instances of police abuse...and this is contributing to increase people’s critical attitude.”*

If social pressure is often the prerequisite for generating political will, it is logical to think that, without the presence of social demands claiming for a change in police culture, little attention will be paid from the political sphere. Whereas citizens as a whole will not probably come up with a comprehensive and elaborated proposal for tackling the issue, increasing criticism and a more demanding attitude are key for drawing the attention of political actors to this issue. As David Abanades concluded, *“true change will depend on the existence of meaningful social pressure, which has to be embraced by a relevant political sector that is determined to bring the debate to the political arena.”* In conclusion, it seems that change will mostly depend on the existence of political commitment to social demand.

# V

## CONCLUSION

### 5.1. Summary of the thesis

The main purpose underpinning this thesis has been to demonstrate that another turn of the screw is needed in the implementation of human rights standards for policing. Throughout the research it has been shown how, generally speaking, States have not reached a satisfactory level of implementation and how, paraphrasing the CHR, there are “no grounds for complacency”, even in Europe.<sup>317</sup> Police misconduct is still happening across the globe, and democratic countries cannot free themselves from this phenomena unless they continuously make serious efforts to prevent it.

Instead of departing from a “low guard” perspective assuming that in a democracy human rights breaches by the police do not take place, this thesis encourages States to take an “on guard” approach that promotes a continuous improvement of standards, therefore reducing the risk of police officers overstepping their functions. Bearing in mind that the root of much of police misconduct resides in police operational culture, the long term goal should take form of a well-planned and designed commitment to generate true change in police culture. The main argument of this research is that the backbone of such change should be human rights, constituting a core principle of policing. In order to avoid superficial implementation of standards, this thesis advocates for the adoption of a human rights-based approach to policing.

Through the sequence of chapters, several questions have been addressed regarding such human rights-based approach. Both theoretical and practical arguments have been provided for arguing that democratic countries should introduce such an approach to policing, since it would enhance perceived legitimacy, public trust, and in turn, police effectiveness. For achieving such ultimate goals, a step towards comprehensive –instead of superficial- implementation of standards should be made for promoting a true change in police culture. This has been reflected through the case

---

<sup>317</sup> CHR, 2008.



study research on Spain and Northern Ireland, concluding that the effective implementation of standards depends on the degree of commitment to put human rights at the centre of policing, both through training and accountability.

A fruitful discussion has taken place through an imaginary roundtable with participants from within the police, civil society, experts, and a politician, who have dynamically discussed the challenges and the ways forward for achieving a true change in police culture. The views shared by the participants have revealed that, despite the great difficulties in generating commitment to change, there is a common will to work towards a mutual understanding between police officers and CSOs, and the way forward is a shift from aversion to persuasion in civil society's discourse.

## 5.2. Message of the thesis

This thesis aims to contribute to the academic reflections about the need to further promote human rights in modern policing, and to reinforce the arguments on two of the main standards that international human rights bodies have repeatedly recommended (proper human rights training and independent and effective investigation of complaints). But, more importantly, going beyond academic purposes, this thesis intends to send a message to the various actors that play a role in generating commitment to change police culture.

First, to police officers, who should see themselves as the main upholders of fundamental human rights and must transmit their commitment to the citizens. By making of human rights a guiding principle in their performance, and by assuming their responsibility to protect and respect them, their job will eventually be seen as more professional, more legitimate, and in turn, their job will be facilitated by a greater public cooperation. Some police officers have already realized that this approach benefits and facilitates their role in society. As the local chief of police David Abanades has stressed, *“if we truly value the public service that we are charged with, we should not mind being assessed in line with human rights standards.”*<sup>318</sup>

---

<sup>318</sup> Interview David Abanades, cit.

Second, to the police institution and leadership, who very often show a corporate rejection of change, impeding any advancement. The point that should be stressed here is the opportunity for the police to renovate the mandate and the role that society has conferred on them. It is evident that the police are increasingly subject to persistent and critical public scrutiny, which, as Fielding explains, can cause lower morale amongst police officers, a feeling that clarity of mission is being lost.<sup>319</sup> In an evolving society that is increasingly aware of and sensitive to police abuse implications, the police have to make an effort to live up to what democratic citizenship expects from them.

Third, to the State authorities and to the political actors, who are responsible for boosting police reform through political will. A sense of democratic responsibility should be expected from them. If the political actors at stake are truly committed to establish safeguards for a long-term democracy, human rights breaches on the side of the State cannot be tolerated at all. Political and institutional ignorance, denial or tolerance of police misconduct, in its various degrees and forms, sets the grounds for public mistrust and lack of perceived legitimacy of both the police and the State. That is why true political willingness to “address grievances and acknowledge mistakes at the earliest opportunity”<sup>320</sup> is of the utmost importance for achieving a more mature democracy.

Fourth, a key message must be sent to civil society organisations. Their role in generating a propitious atmosphere for change is undeniably important, since they have the potential of influencing all the other actors: the police, the political stakeholders, and the wider society. Therefore, the strategies CSOs use when interacting with police and political actors must be assessed according to their impact in convincing them of the need to undertake reforms. If strategies based solely on accusation have caused a defensive response and a further refusal to embrace the proposals, perhaps a more strategic and persuasive dialogue could bring about more fruitful encounters.

---

<sup>319</sup> Fielding, 2001, p. 73.

<sup>320</sup> CHR, 2009.

Fifth, it must not be forgotten that wider society has the potential to be the main driving force for change. If police misbehaviour is not perceived by citizens as a problem, and if misconduct does not produce a clear social rejection, the atmosphere of permissiveness and impunity will persist. As some have already remarked, “one of the most important ways to affect change is for people to know what their rights are, and what cops are allowed to do and what they are not allowed to do”.<sup>321</sup> Therefore, of key importance is to achieve a greater level of human rights awareness among citizens so that a public zero-tolerance arises every time that we witness police misbehaviour in the streets.

Last but not least, the role of the international community has proven to be crucial in the development of better standards for policing. The existence of human rights monitoring bodies such as the CAT or the CPT is essential for maintaining the “on guard” approach that will contribute to develop continuing improvements. However, greater efforts should be made for disseminating and giving due relevance to the work done by these bodies. If the conclusions and reports elaborated by these bodies are only known by the small human rights community, little impact can be expected at the level of political pressure.

If the 20<sup>th</sup> century was the age of human rights declarations and conventions, the 21<sup>st</sup> century presents an opportunity for going further and translating words into deeds. International standards point the ways for better policing, but achieving true change in police culture depends to a great extent on a combination of political willingness, contextual aspects, and strategies. Commitment has to be fostered by convincing the many actors involved of the need for such change, for which a great dose of persuasion is needed. This thesis is a contribution to the efforts and strategies in persuading States of the need to put human rights at the centre of policing.

---

<sup>321</sup> Member of New York Civil Liberties Union (NYCLU) quoted in Jefferson, 2015, p.14.



# BIBLIOGRAPHY

## BOOKS AND ARTICLES

- Amir M. & Einstein S., (eds.), *Policing, Security and Democracy: Theory and Practice*. Huntsville: Office of International Criminal Justice, 2001.
- Amir M., 'Police, policing, State and Society: Some basic problems in protecting human and civil rights', pp. 53-73 in Amir M. & Einstein S., (eds.), *Policing, Security and Democracy: Theory and Practice*. Huntsville: Office of International Criminal Justice, 2001.
- Aitchison A. & Blaustein J., (2013) 'Policing for democracy or democratically responsive policing? Examining the limits of externally driven police reform', pp. 496–511 in *European Journal of Criminology*, 10(4), 2013.
- Association of Police Authorities (2009), *Human rights guidance for police authorities Monitoring compliance with the Human Rights Act 1998*. Available at: [http://blackexperienceofpolicing.org/files/2013/07/EHRCHuman\\_Rights\\_Guidance\\_for\\_Police\\_Authorities-Human-Rights-Guidance-Jan-091.pdf](http://blackexperienceofpolicing.org/files/2013/07/EHRCHuman_Rights_Guidance_for_Police_Authorities-Human-Rights-Guidance-Jan-091.pdf) [Accessed on 10 June 2015].
- Beckley, A. & Sharp, D., (eds), *Police Research and Management*, vol. 5-3, 2001/2002.
- Call, C.T., 'Challenges in police reform: promoting effectiveness and accountability', *International Peace Academy Policy Report*. New York: International Peace Academy, 2003.
- Cao, L., 'Differentiating confidence in the police, trust in the police, and satisfaction with the police', pp. 239 – 249 in *Policing: An International Journal of Police Strategies & Management*, Vol. 38 (2), 2015.
- Cavallaro, J.L., *Crime, Public Order and Human Rights*, Versoix, Switzerland: International Council on Human Rights Policy, 2003.
- Cardenas, S., 'Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior', pp. 213-231 in *International Studies Review*, Vol. 6 (2), 2004.
- Cawthray, T., Prenzler T., Porter, L., 'Updating International Law Enforcement Ethics: International Codes of Conduct', pp.187-209 in *Criminal Justice Ethics*, Vol. 32 (3), 2013.
- Celermajer D. & Grewal K., 'Preventing Human Rights Violations 'From the Inside': Enhancing the Role of Human Rights Education in Security Sector Reform', pp. 243–266 in *Journal of Human Rights Practice*, Vol. 5 (2), 2013.
- Crank, J.; Flaherty, D.; Giacomazzi, A., 2007, 'The noble cause: An empirical assessment', pp. 103-116 in *Journal Of Criminal Justice*, 35 (1), 2007.
- Crawshaw, R., 'Human rights and the theory and practice of policing', pp. 1-22 in *The International Journal of Human Rights*, Vol.1(1), , 1997.

- Crawshaw, R., *Police and Human Rights: A Manual for Teachers and Resource Persons and for Participants in Human Rights Programmes*, BRILL, 2009
- Crawshaw, R., Barry D., and Tom W., eds. *Human Rights and Policing: Standards for Good Behaviour and a Strategy for Change*. The Hague: Kluwer Law International, 1998.
- Crawshaw R., Cullen S., Williamson T., *Human Rights and Policing* (2nd Edition), Raoul Wallenberg Institute Professional Guides to Human Rights, Leiden, NLD: Martinus Nijhoff, 2008.
- Das, D., Palmiotto, M.J., ‘International Human Rights Standards: Guidelines for the World's Police Officers’, pp. 206-221 in *Police Quarterly*, Vol. 5, 2002.
- Dowler K. & Zawilski V., ‘Public perceptions of police misconduct and discrimination: Examining the impact of media consumption’, pp. 193–203, *Journal of Criminal Justice* 35, 2007.
- Wisler D., *Police Governance: European Union Best Practices*. Centre for the Democratic Control of Armed Forces, COGINTA, 2011.
- Easton, D., *A framework for political analysis*. Englewood Cliffs, NJ: Prentice Hall, 1965.
- European Platform on Police and Human Rights, *Police and NGOs: why and how human rights NGOs and police services can and should work together*, 2004. Available at: [http://www.amnesty-polizei.de/d/wp-content/uploads/police-and-ngos\\_epphr-dec-2004.pdf](http://www.amnesty-polizei.de/d/wp-content/uploads/police-and-ngos_epphr-dec-2004.pdf) [Accessed 26 June 2015].
- European Union Agency for Fundamental Rights (FRA), *Fundamental rights-based police training: A manual for police trainers*, Luxembourg: Publications Office of the European Union, 2013. Available at: [http://fra.europa.eu/sites/default/files/fra-2013-fundamental-rights-based-police-training\\_en\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2013-fundamental-rights-based-police-training_en_0.pdf) [Accessed on 20 March].
- Fielding, N., ‘The Police: Social Control, the State and Democracy’, pp.73-99 in Amir M. & Einstein S., (eds.), *Policing, Security and Democracy: Theory and Practice*. Huntsville: Office of International Criminal Justice, 2001.
- Fluri P., & Johnsson A. B., eds. *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*. Geneva: Inter-Parliamentary Union & Geneva Centre for the Democratic Control of Armed Forces, 2003.
- Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Police Legislation Model: Sweden. The Swedish Police Act*. DCAF, 2009. Available at: <http://www.dcaf.ch/Publications/Police-Legislation-Model-The-Swedish-Police-Act> [accessed 10 June 2015].
- Gilsinan J.F, ‘The numbers dilemma: the chimera of modern police accountability systems’, pp. 93-110 in *St. Louis University Public Law Review*; Vol. 32 (1), 2012.
- Goldschmidt, J., ‘The necessity of dishonesty: police deviance, “making the case”, and the public good’, pp. 113-135 in *Policing and Society*, vol. 18, No. 2, 2008.
- Goodhart, M.E., *Democracy as human rights: freedom and equality in the age of globalization*. London: Routledge, 2005.

- Goodman, R., & Jinks, D., 'Measuring the effects of Human Rights Treaties', pp.1711-183 in *EJIL*, vol. 14, 2003.
- Greenwood, D., & Sander H., eds. *Transparency and Accountability of Police Forces, Security Services and Intelligence Services*. Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2004.
- Hathaway, O. A., 'Do Human Rights Treaties Make a Difference?', pp. 1942-2034 in *Yale Law Journal*, Vol. 111, 2002.
- Harris F., 'Holding Police Accountability Theory to Account', pp. 240–249 in *Policing*, 2012, Volume 6, Number 3.
- Hopkins, T., *An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia*. Melbourne: Victorian Law Foundation, 2009.
- Hough, M., Jackson, J. and Bradford, B. 'Legitimacy, Trust and Compliance: An Empirical Test of Procedural Justice Theory Using the European Social Survey', in Tankebe, J. and Liebling, A. (eds.) *Legitimacy and Criminal Justice: An International Exploration*, Oxford: Oxford University Press, 2013.
- Hough, M., Jackson, J., Bradford, B., Myhill A., Quinton, P., 'Procedural Justice, Trust, and Institutional Legitimacy', pp. 203-210 in *Policing*, 4 (3), 2010.
- Independent Commission on Policing for Northern Ireland (the Patten Report), *A New Beginning: Policing in Northern Ireland—The Report of the Independent Commission on Policing for Northern Ireland*. 1999. Available at: <http://cain.ulst.ac.uk/issues/police/patten/patten99.pdf> [last accessed 10 July 2015].
- Jackson, J. & Bradford, B.. 'Police Legitimacy: A Conceptual Review', *National Policing Improvement Agency Wiki*, 2010, available at SSRN: <http://ssrn.com/abstract=1684507> [accessed 29 May 2015].
- Jackson, J., Bradford, B., Hough, M. and Murray, K. H., 'Compliance with the law and policing by consent: notes on police and legal legitimacy,' pp. 29-49 in: Crawford, A., and Hucklesby, A., (eds.) *Legitimacy and Compliance in Criminal Justice*. London, UK: Routledge, 2012.
- Jackson, J., Bradford, B., Hough, M., Kuha, J., Stares, S., Widdop, S., Fitzgerald, R., Yordanova, M. & Galev, T. 'Developing European indicators of trust in justice', pp. 267-285 in *European Journal of Criminology*, 8(4), 2011.
- Jefferson B.J, 'Zero tolerance for zero tolerance?: Analyzing how zero tolerance discourse mediates police accountability activism', pp. 9–17 in *City, Culture and Society*, vol. 6, 2015.
- Jones, T., Newburn, T. and Smith, D.J., *Democracy and Policing*, London: Policy Studies Institute, 1994.
- Jones, T., "Democratic police governance in comparative perspective", pp. 561-576, in *Policing: An International Journal of Police Strategies & Management*, Vol. 36 (3), 2013.

- Kleinig, J., 'Rethinking noble cause corruption', pp. 287-314 in *International Journal of Police Science & Management*, Vol. 4 (4), 2002.
- Klinger D.A., 'Police Training as an Instrument of Accountability', pp.111-121 in *Saint Louis University Public Law Review*, 32(1), 2012.
- Kutnjak, S., 'A Comparative Study of Public Support for the Police', pp. 406-434 in *International Criminal Justice Review*, Volume 18 (4), 2008.
- López Portillo, E., & Frühling, H., (eds.) *Responsabilidad Policial en Democracia: Una Propuesta para América Latina*. Mexico City: Instituto para la Seguridad y la Democracia and Centro de Estudios en Seguridad Ciudadana, 2010.
- Lynch, M.D, 'Developing a scenario-based training program', pp. 1-8 in *FBI Law Enforcement Bulletin*, Vol. 74 No. 10, 2005.
- Marx, G.T., 'Police and Democracy', pp. 35-47 in Amir M. & Einstein S., (eds.), *Policing, Security and Democracy: Theory and Practice*. Huntsville: Office of International Criminal Justice, 2001.
- Miller, J., *Civilian oversight of policing: lessons from the literature*. New York: Vera Institute of Justice, 2002.
- Murphy, K., Hinds L., and Fleming J., 'Encouraging public cooperation and support for police' pp. 136-155 in *Policing and Society*, vol. 18(2), 2008.
- Murdoch, J. & Roche, R., *The European Convention on Human Rights and Policing: A handbook for police officers and other law enforcement officials*. Council of Europe Publishing, 2013.
- Northern Ireland Policing Board: Human Rights Annual Report 2012. [http://www.nipolicingboard.org.uk/human\\_rights\\_annual\\_report\\_online\\_version.pdf](http://www.nipolicingboard.org.uk/human_rights_annual_report_online_version.pdf) [Accessed 16 June 2015]
- O'Loan, N., 'Human Rights and Policing – Accountability', pp. 19-29 in Beckley, A. & Sharp, D., (eds), *Police Research and Management*, vol. 5-3, 2001/2002.
- O'Neill, W.G., *Police reform in post-conflict societies: what we know and what we still need to know. Policy paper*. New York: International Peace Academy, 2005.
- O'Rawe M., Moore L., *Human Rights on Duty. Principles for better policing – International lessons for Northern Ireland*. Committee on the Administration of Justice, Belfast, 1997.
- Office of the High Commissioner for Human Rights (OHCHR), *Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police*. United Nations, New York and Geneva, Professional Training Series No. 5/Add.3, 2004.
- Office of the High Commissioner for Human Rights (OHCHR) *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police*. United Nations, New York and Geneva, Professional Training Series No. 5/Add.2, 2002.
- Oliva J.R, Compton M.T, 'What do police officers value in the classroom? A qualitative study of the classroom social environment in law enforcement education' pp. 321-338 in



- Policing- An International Journal of Police Strategies & Management*, Vol. 33 No. 2, 2010.
- Organization for Security and Co-operation in Europe (OSCE), *Guidelines on Human Rights Education for Law Enforcement Officials*. Warsaw: ODIHR, 2012.
- Organization for Security and Co-operation in Europe (OSCE), *Countering Terrorism, Protecting Human Rights*. Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2007.
- Organization for Security and Co-operation in Europe (OSCE), *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*. Warsaw: ODIHR, 2008.
- Osse, A., 'Corruption prevention: a course for police officers fighting organized crime', pp. 53-71 in *Crime, Law and Social Change*, vol. 28(1), 1997.
- Osse, A., *Understanding Policing: A Resource for Human Rights Activists*, Amsterdam: Amnesty International Netherlands, 2006.
- Otwin, M., *Restoring Policing Systems in Conflict Torn Nations: Process, Problems, Prospects*. DCAF Occasional Paper, No. 7. Geneva: Geneva Centre for the Democratic Control of Armed Forces, June 2005.
- Paternoster, R., Brame, B., Bachman, R., and Sherman L.W., 'Do fair procedures matter? Procedural justice in the Milwaukee Domestic Violence Experiment', pp.163-204 in *Law and Society*, vol. 31, 1997.
- Perez, T.E., 'External governmental mechanisms of police accountability: three investigative structures', pp. 47-77 in *Policing and Society*, vol. 10, No. 1 (2000).
- President's Task Force on 21st Century Policing (2015) *Final Report of the President's Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services, 2015. Available at: [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf) [accessed 6 June 2015]
- Rover, C., *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces*. Geneva: International Committee of the Red Cross, 1998.
- Sherman, L.W., 'Consent of the Governed: Police, Democracy, and Diversity', p. 17-35 in Amir M. & Einstein S., (eds.), *Policing, Security and Democracy: Theory and Practice*. Huntsville: Office of International Criminal Justice, 2001.
- Schnabel, A., & Born, H., *Security Sector Reform: Narrowing the Gap between Theory and Practice*, The Geneva Centre for the Democratic Control of Armed Forces (DCAF), SSR Paper 1., 2011.
- Smith, G., 'Every complaint matters: Human Rights Commissioner's opinion concerning independent and effective determination of complaints against the police'. pp. 59-74 in *International Journal of Law, Crime and Justice*, vol. 38, 2010.
- Smith, G., 'Why don't more people complain against the police?' 251-268 in *European Journal of Criminology*, vol. 6 (3), 2009.

- Smith, G., 'Oversight of the police and residual complaints dilemmas: independence, effectiveness and accountability deficits in the United Kingdom', in *Police Practice and Research: An International Journal*, 14(2), 2013.
- Stone, C., 'Tracing police accountability in theory and practice: from Philadelphia to Abuja and Sao Paulo', pp. 245-259 in *Theoretical Criminology*, vol. 11 (2), 2007.
- Sunshine, J. & Tyler, T. R., 'The role of procedural justice and legitimacy in public support for policing', pp. 513–548 in *Law and Society Review*, vol. 37(3), 2003.
- Tyler, T., *Why people obey the law*. New Haven: Yale University Press, 1990.
- Tyler, T., 'Trust and Democratic Governance' in Valerie Braithwaite and Margaret Levi (eds.), *Trust and Governance*. N.Y: Russel Sage Foundation, 1998.
- Tyler, T., 'Procedural justice, legitimacy, and the effective rule of law', pp. 431–505 in Tonry, M. (ed.). *Crime and Justice—A Review of Research*, vol. 30, Chicago: University of Chicago Press, 2003.
- Tyler, T. & Huo, Y., *Trust in the law: encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation, 2002.
- United Nations Office on Drugs and Crime (UNODC), *Handbook on police accountability, oversight and integrity*, Criminal Justice Handbook Series, Vienna: UNODC, 2011. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability\\_Oversight\\_and\\_Integrity\\_10-57991\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf) [accessed 28 June 2015].
- United States of America, Department of Justice, *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, Office of Community Oriented Policing Services and International Association of Chiefs of Police, 2009.
- Wade M.C. 'Mind the Gap: State Capacity and the Implementation of Human Rights Treaties', pp. 405-441 in *International Organization*, vol.69, 2015.
- Wahl, R., 'Justice, Context, and Violence: Law Enforcement Officers on Why They Torture', pp. 807-836, in *Law & Society Review*, Vol. 48(4), 2014.
- Walker, S., 'Police Accountability: The Role of Civilian Oversight', *Wadsworth Professionalism in Policing Series*. Belmont, California: Wadsworth Thompson Learning, 2001.
- Walsh D.P, Conway V., 'Police governance and accountability: overview of current issue', pp. 61–86 in *Crime Law Soc Change*, vol. 55, 2011.
- WOLA, *Themes and debates in public security reform. A manual for public society*. Internal Controls and Disciplinary Units, 2000. Available at: <http://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/internal%20controls%20formatted.pdf> [accessed 27 May 2015].
- Weitzer, R., *Policing under fire: Ethnic Conflict and Police-Community Relations in Northern Ireland*. State University of New York Press, 1995.

## LEGAL SOURCES

- Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights, as Amended) (ECHR), 1950. Available at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [last consulted on 29 May 2015].
- Council of Europe, *European Code of Police Ethics*, Recommendation Rec(2001)10, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, available at: <http://polis.osce.org/library/f/2687/500/CoE-FRA-RPT-2687-EN-500> [last consulted on 13 June 2015].
- Ley Orgánica 2/1986, *de Fuerzas y Cuerpos de Seguridad del Estado*, available at: [http://noticias.juridicas.com/base\\_datos/Admin/lo2-1986.html](http://noticias.juridicas.com/base_datos/Admin/lo2-1986.html) [last consulted on 20 June 2015].
- Real Decreto 614/1995, *sobre el Reglamento de los procesos selectivos y de formación en el Cuerpo Nacional de Policía*, available at: [http://www.policia.es/cnp/normativa/normativa\\_rd\\_1995\\_614.html](http://www.policia.es/cnp/normativa/normativa_rd_1995_614.html) [last consulted 20 June 2015].
- United Nations (UN) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 7 September 1990, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> [consulted on 20 April 2015].
- UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, 9 December 1988, available at: <http://www.un.org/documents/ga/res/43/a43r173.htm> [consulted on 29 May 2015].
- UN *Code of Conduct for Law Enforcement Officials*, adopted by General Assembly resolution 34/169 of 17 December 1979, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx> [last consulted 25 June 2015].
- UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), Adopted by General Assembly resolution 39/46 of 10 December 1984, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [last consulted on 29 June 2015].
- UN *International Covenant on Civil and Political Rights* (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly resolution 40/34, 29 November 1985, available at: <http://www.un.org/documents/ga/res/40/a40r034.htm> [last consulted 11 June 2015].
- UN *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Recommended by General Assembly resolution 55/89 of 4 December 2000, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx> [accessed 11 June 2015].

## CASE LAW

- ECtHR, *Assenov v. Bulgaria*, 28 October 1998.
- ECtHR, *Ramsahai v the Netherlands*, 15 May 2007.
- ECtHR, *Jordan v United Kingdom*, 4 May 2001.
- ECtHR, *Ramsahai v The Netherlands*, 15 May 2007.
- ECtHR, *Isayeva v Russia*, 24 February 2005.
- ECtHR, *Bati v Turkey*, 03 October 2012.
- ECtHR, *Plattform Ärzte für das Leben v Austria*, 21 June 1988.
- ECtHR, *Makaratzis v. Greece*, 20 December 2004.
- ECtHR, *Voskuil v. the Netherlands*, 22 November 2007.
- ECtHR, *Frérot v. France*, 12 June 2007.
- ECtHR, *Kummer v. the Czech Republic*, 25 July 2013.

## MONITORING BODIES' REPORTS

Commissioner for Human Rights of the Council of Europe (CHR):

- CHR, *Report on Spain*, CommDH(2013)18, Council of Europe, 9 October 2013.  
Available at:  
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2> [last consulted 9 July 2015].
- CHR, *Human Rights in Europe: No grounds for complacency*, Council of Europe, 2011,  
available at: [http://www.coe.int/t/commissioner/source/prems/HR-Europe-no-grounds-complacency\\_en.pdf](http://www.coe.int/t/commissioner/source/prems/HR-Europe-no-grounds-complacency_en.pdf) [last consulted 10 July 2015].
- CHR. *Opinion Concerning Independent and Effective Determination of Complaints Against the Police*, CommDH(2009)4, Council of Europe, 2009. Available at:  
<https://wcd.coe.int/ViewDoc.jsp?id=1417857> [last consulted 20 June 2015].
- CHR, *Ensuring Independence and Effectiveness*. Expert Workshop Police Mechanisms, COMMDH(2008), Council of Europe, 16, May 2008. Available at:  
<https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1005697&SecMode=1&DocId=1275950&Usage=2>  
[accessed 20 June 2015].

CHR, *There Must be No Impunity for Police violence, Viewpoint*, Council of Europe, 2007. [http://www.coe.int/t/commissioner/Viewpoints/071203\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/071203_en.asp) [accessed 20 June 2015].

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT)

CPT Report to the Spanish Government on the visit to Spain, CPT/Inf (2007) 28, 10 July 2007, available at: <http://www.cpt.coe.int/documents/esp/2007-28-inf-eng.pdf> [accessed 10 June 2015].

CPT Report to the Spanish Government on the visit to Spain, CPT/Inf (2013) 6, 07/12/2011, available at <http://www.cpt.coe.int/documents/esp/2013-06-inf-eng.htm> [accessed 17 June 2015].

CPT, Report to the Danish Government on the visit from 4 to 13 February 2014 CPT/Inf (2014) 25. Available at: <http://www.cpt.coe.int/documents/dnk/2014-25-inf-eng.pdf> [accessed 10 June 2015].

CPT Report to the Bulgarian Government, on the visit from 24 March to 3 April 2014, CPT/Inf (2015) 12, 29 January 2015 <http://www.cpt.coe.int/documents/bgr/2015-12-inf-eng.pdf> [accessed 10 June 2015].

CPT Public Statement concerning Turkey (1996), CPT/Inf (96) 34 | Section: 1/1, 06/12/1996, <http://www.cpt.coe.int/documents/tur/1996-34-inf-eng.htm> [consulted on 10 June 2015].

CPT, Report to the Turkish Government on the visit to from 9 to 21 June 2013, CPT/Inf (2015). Available at <http://www.cpt.coe.int/documents/tur/2015-06-inf-eng.pdf> [accessed 10 June 2015].

CPT, 14<sup>th</sup> General Report on the CPT's activities, CPT/Inf (2004) 28, "Combating Impunity", Strasbourg, 21 September 2004. Available at <http://www.cpt.coe.int/en/annual/rep-14.htm> [Accessed 20 June 2015].

United Nations Committee Against Torture (CAT), concluding observations available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx) [accessed between 20 May and 15 June 2015].

CAT Concluding observations on Austria CAT/C/AUT/6 29 September 2014

CAT Concluding observations on Canada CAT/C/CAN/CO/6 25 June 2012.

CAT Concluding observations on Czech Republic CAT/C/CZE/CO/4-5, 13 July 2012.

CAT Concluding observations on Denmark CAT/C/DNK/CO/5, 16 July 2007.

CAT Concluding observations on France CAT/C/FRA/CO/4-6, 20 May 2010.

CAT Concluding observations on Germany CAT/C/DEU/CO/5, 12 December 2011.

CAT Concluding observations on Ireland CAT/C/IRL/CO/1, 17 June 2011.

CAT Concluding observations on Italy, CAT/C/ITA/CO/4, 16 July 2007.  
CAT Concluding observations on Japan CAT/C/JPN/CO/2, 28 June 2013.  
CAT Concluding observations on Netherlands CAT/C/NLD/CO/5, 6 20 June 2013.  
CAT Concluding observations on New Zealand CAT/C/NZL/CO/6, 2 June 2015.  
CAT Concluding observations on Norway CAT/C/NOR/CO/6-7, 13 December 2012.  
CAT Concluding observations on Portugal CAT/C/PRT/CO/5-6, 23 December 2013.  
CAT Concluding observations on Sweden CAT/C/SWE/CO/6-7, 12 December 2014.  
CAT Concluding observations on Switzerland CAT/C/CHE/CO/6, 25 May 2010.  
CAT Concluding observations on UK CAT/C/GBR/CO/5, 24 June 2013.  
CAT Concluding observations on USA CAT/C/USA/CO/2, 25 July 2006.  
CAT Concluding Observations on Spain, CAT/C/SR.1328, 15 May 2015.

Shadow reports submitted by CSOs to the CAT review process on Spain:

Amnesty International:

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT\\_CAT\\_CSS\\_ESP\\_20097\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT_CAT_CSS_ESP_20097_S.pdf) [accessed 20 June 2015]

Rights International Spain (RIS):

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT\\_CAT\\_CSS\\_ESP\\_20103\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT_CAT_CSS_ESP_20103_S.pdf) [accessed 20 June 2015]

Basque Observatory of Human Rights (Behatoia):

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT\\_CAT\\_CSS\\_ESP\\_20109\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT_CAT_CSS_ESP_20109_E.pdf) [accessed 20 June 2015]

Coordinadora para la Prevención de la Tortura:

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT\\_CAT\\_CSS\\_ESP\\_20100\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT_CAT_CSS_ESP_20100_S.pdf) [accessed 20 June 2015]

Fundación Acción Por Derechos Humanos:

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT\\_CAT\\_CSS\\_ESP\\_20111\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/INT_CAT_CSS_ESP_20111_S.pdf) [accessed 20 June 2015]

#### NGO REPORTS AND PUBLICATIONS

Amnesty International, *Public Outrage: Police Officers Above the Law in France*. AI index: EUR 21/003/2009. London: Amnesty International, 2009.

Amnesty International, *Basic Human Rights Standards for Law Enforcement Officials*. Index POL/04/98, London: Amnesty International Secretariat: 1998a.



Amnesty International, *A 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials.*, AI Index: ACT 30/1/98, London: Amnesty International Secretariat: 1998b.

Amnesty International USA, *Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States*, 2004, available at: [http://www.amnestyusa.org/pdfs/rp\\_report.pdf](http://www.amnestyusa.org/pdfs/rp_report.pdf) [last consulted on 13 June 2015].

Amnesty International USA, *Race, Rights and Police Brutality*, AI Index: AMR51/147/99, September 1999, available at: <https://www.amnesty.org/en/documents/amr51/147/1999/en/>

Amnistía Internacional España, *España: La formación en derechos humanos de las Fuerzas de Seguridad de ámbito estatal sigue siendo marginal*. Sección Española de Amnistía Internacional, 2010, available at: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI?CMD=VERLST&BASE=SAI&DOCS=1-10&separador=&INAI=EUR4110210> [accessed on 14 June 2015].

Center for Economic and Social Rights (CERSR), *Fact Sheet Report on Spain*, 2012, available at <http://www.cesr.org/downloads/FACT%20SHEET%20SPAIN.pdf> [Accessed 4 June 2015].

Committee for the Administration of Justice (CAJ), *Policing with the Community? Patten's New Beginning, 10 Years On*, 2010, available at: [http://www.caj.org.uk/files/2010/07/28/Final\\_document.pdf](http://www.caj.org.uk/files/2010/07/28/Final_document.pdf) [accessed on 2 June 2015].

Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay*. New Delhi: Commonwealth Human Rights Initiative, 2005. Available at: [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2005/chogm\\_2005\\_full\\_report.pdf](http://www.humanrightsinitiative.org/publications/chogm/chogm_2005/chogm_2005_full_report.pdf) [accessed 24 May 2015].

Freedom House, *Freedom in the world: The annual survey of political rights and civil liberties, 2000-2001*. Available at: [https://freedomhouse.org/sites/default/files/inline\\_images/2001.pdf](https://freedomhouse.org/sites/default/files/inline_images/2001.pdf), [accessed on 8 June 2015].

Human Rights Watch (HRW), *Shattered Dreams: Impact of Spain's Housing Crisis on Vulnerable Groups*, 2014. Available at: <https://www.hrw.org/report/2014/05/27/shattered-dreams/impact-spains-housing-crisis-vulnerable-groups> [accessed 3 June 2015].

## LIST OF INTERVIEWS

- Rebecca Dudley, Human Rights Training Advisor to the PSNI. Personal interview at the Police College, Garnerville, Belfast, 17 February 2015.
- Manuel Hernández, Head of the department of Humanities, Escuela Nacional de Policía, Skype interview on 20 March 2015.
- Cristina de la Serna, Human Rights Lawyer, Rights International Spain (RIS), Skype interview on 10 March 2015.
- Jorge del Cura, spokesperson at Coordinadora para la Prevención de la Tortura, Skype interview on 13 March 2015.
- David Martín Abanades, local second police chief, personal interview, police station of Fuenlabrada, Spain, on 14 April 2015
- Chema García and Manuel Pardo, members of Amnesty International Spain's team on security forces, personal meeting at Amnesty International Spain's headquarters, Madrid, 7 April 2015.
- Anneke Osse, expert in human rights and policing, Skype interview on 22 June 2015.
- Jon Iñarritu, Member of the Spanish Congress (political party: Bildu), Skype interview, 30 June 2015.
- Julen Arzuaga, Member of the Basque Observatory of Human Rights (Behatoia), and member of the Basque Parliament (political party: Bildu), Skype interview, 10 July 2014.
- Group interview with eight police trainees (anonymous), Escuela Nacional de Policía, 9 April 2015.



