

# Study for the State Inspector Service (SIS) of Georgia on the Best European Practices of the Independent Investigative Mechanisms

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## Introduction

From November 1, 2019, office of the State Inspector of Georgia (SIS) was given formal powers to investigate torture and other serious crimes committed by representatives of the law enforcement bodies. This was culminating moment of the reform discussed in Georgia for more than a decade aiming to create independent and efficient investigatory body to fight against impunity in law enforcement system. However, reform has not ended on that day. The most important part of enforcement of the new system and creation of rebuts institution has started. The work of the newly created institution (as a result of merging new investigatory powers with protection of personal data standards) for the first several of months, pending processes, as well as challenges can be seen in recently submitted annual report of the institution to Parliament of Georgia.<sup>1</sup> On this path of complex institutional development it is crucial for the SIS to look at the international standards, as well best practices, achievements and challenges faced by similar institutions abroad.

This study was commissioned by the Council of Europe technical support project towards the SIS with the aim to carry out comparative analyses of best European practices of the independent investigative mechanisms to provide valuable information for Georgian institution and provide suggestions for future institutional strengthening and development.

At the initial stages of the research, in close consultation with SIS leadership, top issues were identified to be a priority for the institution. The researcher has looked at pre-existing studies in this field, as well as reports issued towards individual states by the European Committee Against Torture (CPT) and UN Committee Against Torture (UN CAT) and other regional and international human rights bodies to identify country and system which would be interesting to study taking into account aim of the research. Existence of relatively independent agency in the system was priority for the research in opposite to internal police/law enforcement monitoring/disciplinary systems.

Furthermore, researcher took into account special role of national human rights institutions (Ombudsman) in CoE countries. While their role in fighting impunity in law enforcement systems is paramount, the aim of this study was to look at the institutions which do have formal power for inquiry/investigation (and in some cases prosecution). As below report shows independent investigatory bodies in selected countries and jurisdictions are the most interesting (e.g. Northern Ireland, UK; England and Wales, UK; Scandinavia states). While European jurisdictions are our prime interest, researcher analyzed globally acknowledged best examples from other continents, such as CoE observer status countries (Canada, Israel) and others (South African Republic, Jamaica, Guatemala). Present report is based on desk study and analyses of respective reports, officially available data from respective web-resources. In addition, researcher had individual research interviews with relevant international experts and practitioners.<sup>2</sup> Finally, while analyzing individual systems researcher took

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<sup>1</sup> See Report on Activity of the State Inspector Service for 2019, submitted to Parliament of Georgia, March, 2020;

<sup>2</sup> Research Interviews with: Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21<sup>st</sup> of April, 2020); Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23<sup>rd</sup> of April, 2020); Mr. John Wadham, Deputy Chair of the Independent Police Complaints Commission (UK) currently Independent Chair of the UK NPM (27<sup>th</sup> of April); Ms. Anna Myriam Roccatello, Deputy Executive Director - Director of Programs, International Center for Transitional Justice and Mr. Howard Varney, ICTJ (27<sup>th</sup> of April); Ms. Barbara Bernath, Secretary General and Ms. Eva Csergő, Europe and Central Asia Programme Officer, Association for the Prevention of Torture (APT) (28<sup>th</sup> of April); Mr. Bruno Min, Senior Policy Advisor, Fair

into account characteristics of criminal justice systems and basic elements of governance in law enforcement institutions of the given country.

This document does not aim to review entirely operation of independent investigatory bodies in European countries, rather it aims to identify best practices and challenges on selected topics. As indicated in the conclusions and general recommendations below further study of these systems and engagement with relevant counterparts of other countries will be beneficial for the development of the SIS.

## A. Mandate, Jurisdiction and Interaction with other Prosecutorial and Investigatory Bodies

International law does not regulate mandate of the independent investigatory bodies. In cases of torture, other ill-treatment and death, which involves law enforcement officers CPT<sup>3</sup> and UN CAT argues to member states about necessity to have independent and efficient investigation conducted by independent institutions. Council of Europe *Guidelines on European Standards on Effective Investigation of Ill-Treatment* is also comprehensive source of standards informative for this research.<sup>4</sup> At the same time, *it is up to national law to determine exact mandate, jurisdiction and procedural powers* of the institution in question.

### Jurisdiction

*The most common matters which as a minimum fall under the jurisdiction of the independent investigatory bodies are violations which result in serious injuries or other grave outcomes, including death as a result of action from police or other law enforcement official.*

Number of jurisdictions provide illustrative list of such *serious* violations: *the Independent Office for Police Conduct (IOPC)* which operates for England and Wales (UK) oversees the police complaints system and have the following jurisdiction for investigation: *Deaths or serious injuries during or following police custody; Police shootings, Allegations of use of excessive force.*<sup>5</sup> *Special Investigation Unit (SIU)*<sup>6</sup> which operates for Ontario, Canada has a mandate to investigate police activity where someone has been *seriously injured, alleges sexual assault or has died, incidents when firearm was used.*<sup>7</sup>

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Trials, UK (30<sup>th</sup> of April); Several communication with Mr. Ed Lloyd-Cape, Emeritus Professor of Criminal Law and Practice, Centre for Applied Legal Research, Law Department, University of the West of England and with Professor Rachel Murray, Director, Human Rights Implementation Center, School of Law, University of Bristol;

<sup>3</sup> See as an example latest Report published by the CPT with regard to Scotland, UK: Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 25 October 2018, 11 October 2019, available at the following link: <https://rm.coe.int/1680982a3e>;

<sup>4</sup> See *Effective Investigation of Ill-treatment, Guidelines on European Standards*, Second Edition, Erik Svanidze, 2014, available at: <https://rm.coe.int/16806f11a3>;

<sup>5</sup> See information at the following link: <https://www.policeconduct.gov.uk/investigations/what-we-investigate-and-next-steps>;

<sup>6</sup> See information at the following web-site of the unit: <https://www.siu.on.ca/en/index.php>;

<sup>7</sup> Similar specific list of *most grave* violations is also provided in case of *Independent Police Investigative Directorate (South African Republic)*: <http://www.ipid.gov.za/>;

*The Police Ombudsman of Northern Ireland (PONI)* which operates for Northern Ireland, UK and is identified by researchers as “Golden standard in police investigations”<sup>8</sup> has *exclusive jurisdiction* for cases where death has resulted from the conduct of a police officer. In such cases any involvement from police investigation is precluded from the first moment of investigation.<sup>9</sup>

While studying jurisdiction of various bodies it should be highlighted that *in the majority of countries reviewed* such institutions in addition to criminal investigation, also review (conduct inquiry) on matters which fall under area of disciplinary violations of police officials. Initial complaint or referral might lead to either disciplinary inquiry or to criminal investigation.

*In a majority of studied countries* independent mechanisms investigate *wide range of crimes committed* by police officers *based on complaint or referral from police force, ministry of justice or other relevant institutions*: *Garda Síochána Ombudsman Commission (GSOC)*<sup>10</sup> in Republic of Ireland deals with complaints against the police (Garda Síochána) of the country; *The Norwegian Bureau for the Investigation of Police Affairs*<sup>11</sup> has a jurisdiction (investigation and prosecution) on *any crimes* committed by representatives of police force, as well as prosecutors service while exercising their official duties. However, same *bureau* is not reviewing disciplinary violations committed by the stated officials;<sup>12</sup> *The Federal Bureau of Anticorruption (BAK)*<sup>13</sup> of Austria conducts security and criminal polices investigation of cases of corruption or suspected malpractice of public officials (including police officers); *The Independent Police Complaints Authority (IPCA)*<sup>14</sup> of Denmark has a mandate to investigate all crimes committed by police officials (while exercising their official duties). In case of *Internal Investigatory Department of the Police (MachaSh)* of Israel investigation is conducted when there is a suspicion that crime was committed by police officer *and* this crime entails minimum one year of imprisonment as a punishment.

In many developed systems where *exclusive jurisdiction* is not used, independent investigatory bodies *also oversee a process of handling complaints submitted to police agencies* from citizens and *can intervene with their own investigation* (pro-actively or based on complaint/appeal) in case of need. One of the most interesting example is in England and Wales - there is no one national police force. Instead, there are about 43 operationally independent forces across the jurisdiction with locally accountable chief constables and Policy and Crime Commissioners.<sup>15</sup> Citizens can submit their complaint locally and *the Independent Office for Police Conduct (IOPC)* has a power to review how complaint was handled and on its own initiative or referral/complaint investigate matter itself. In

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<sup>8</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p.6;

<sup>9</sup> *Ibid.*

<sup>10</sup> See <https://www.gardaombudsman.ie>; also see <https://ipcan.org/members/garda-siochana-ombudsman-commission>; also see Report On Police Oversight in the Council of Europe Countries, Jonny Byrne, William Priestley, (September 2015), Updated February 2017 by William Priestley, Council of Europe Publishing, p. 31;

<sup>11</sup> See <http://www.spesialenheten.no/English/Mainpage.aspx>;

<sup>12</sup> *Ibid.*

<sup>13</sup> See <https://www.bak.gv.at/en/101/start.aspx>; also see <https://polis.osce.org/country-profiles/austria#criminal-justice-system-9903>;

<sup>14</sup> See <http://www.politiklagemyndigheden.dk/english>; also see Report On Police Oversight in the Council of Europe Countries, Jonny Byrne, William Priestley, (September 2015), Updated February 2017 by William Priestley, Council of Europe Publishing, p. 25;

<sup>15</sup> See Investigation of Ill-treatment by the Police in Europe, Comparative Study of Seven EU Countries, Hungarian Helsinki Committee, 2017, 64;

Belgium *Standing Police Monitoring Committee (Committee P)* is mandated by the Federal Parliament to act as external body to police forces and monitor how police performs, including how complaints from individual citizens are handled.<sup>16</sup>

Another interesting system exists in Scotland, UK. Like in England and Wales, in Scotland *Police Investigations & Review Commissioner (PIRC)*<sup>17</sup> is appointed by Scottish Ministers with the mandate to provide independent oversight, investigate incidents involving the police and review the way the police handle complaints from public. As it is clear from 2019 CPT report not all cases of assault or excessive use of force are investigated by *PIRC*. In certain cases, the police investigate these cases themselves. Any complaint against the police must firstly be made to the police, who are in principle responsible for investigating the complaint. If the person concerned is not content with the outcome, he/she can then complain to *PIRC*, which has a separate department for the oversight of investigations into complaints carried out by the police.<sup>18</sup> This system was analyzed by the CPT and criticized:

*“29.... The CPT considers that persons complaining about alleged police abuse and ill-treatment should not firstly have to exhaust an internal police complaints’ process, before being able to complain to PIRC. First, this raises questions as to the independence of the process. Second, detained persons with whom the delegation spoke were not aware of the procedure governing complaints against the police, and several expressed their lack of understanding of and trust in the system.... Overall, the CPT considers that the Scottish police complaints system appeared opaque and that the system, as it currently stands, raises serious issues of independence of the investigation and prompt accessibility to an independent body, particularly when the complaint is about “assault” or “excessive use of force” by police officers at the point of arrest. The CPT is aware of discussions underway to refer all cases of alleged assault or excessive use of the police force to PIRC. The CPT considers that this would be more in line with the standards for effective investigations than the current situation referred to above. Nevertheless, this would require sufficient resources to be allocated to PIRC to fulfil any additional duties adequately. In this context, the CPT would like to be updated on the proposal to increase the mandate of the PIRC.”<sup>19</sup>*

## Additional mandate

As indicated above, aim of the present research, taking into account current mandate of SIS, is to look towards European jurisdictions and study how independent investigatory bodies are operating with the aim to investigate *criminal cases*. At the same time, it is interesting to note that in *majority of countries* independent investigatory bodies have additional mandate which they combine with criminal investigatory functions. During the research *no* country or jurisdiction was identified which combines investigation of criminal acts with overseeing enforcement of personal data protection standards.

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<sup>16</sup> See <https://comitep.be/index.html?lang=en>, <https://ipcan.org/members/committee-p>; also see Investigation of Ill-treatment by the Police in Europe, Comparative Study of Seven EU Countries, Hungarian Helsinki Committee, 2017, 23;

<sup>17</sup> See <https://pirc.scot>;

<sup>18</sup> Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 25 October 2018, 11 October 2019, available at the following link: <https://rm.coe.int/1680982a3e>, para 26;

<sup>19</sup> Ibid, para 27;

The most common combination with criminal investigation is power and duty to investigate other misconduct rather than crime. These include ethical violations, which might result in disciplinary actions applied to police officer. *IOPC, PIRC, OPIN, Committee P* and other agencies study complaint from citizens (on complaint submission procedures see below) or initiate proceeding themselves and proceed with investigation (inquiry) in case no crime was committed, but ethical violation has happened. In case of IOPC in England and Wales disciplinary proceedings can be proceeded against police officer notwithstanding any additional criminal proceedings, unless the appropriate authority considers they would prejudice such criminal proceedings. In such cases no involvement from Crown Prosecution is required.<sup>20</sup> Usual outcome of the proceeding is disciplinary sanction which is applied by the appropriate police authority based on outcomes of investigation from independent investigatory body.<sup>21</sup>

As confirmed by the practitioner from Northern Ireland – in practice, combining criminal investigation and inquiry/investigation of ethical misbehavior *has big advantages* for efficient functioning of the independent investigatory body. This is important not only from the perspective of ensuring public trust and perception of independence towards adjudication of *all types of misbehavior* from police officers, but also guarantees that respective investigatory body is engaged in the investigatory/inquiry process from the initial stages of any incident (based on complaint or its own initiative) even before it is not legally defined that criminal law has to be applied.<sup>22</sup>

Another example of additional mandate which is also commonly present in researched countries is power to *issue general policy recommendations* towards the police and other stakeholders which is based on analyses of individual investigations. IOPC in England and Wales and SIU in Ontario are exceptionally active with this regard (further discussed below). This practice is based on statutory powers, as well as developed as a matter of practice aiming to fulfil accountability obligation and carry out outreach activity towards respected institutions and wider public.

Austrian example is also interesting regarding additional mandate – BAK in addition to investigating police misconduct usually conducts training programs and other activities for prevention of corruption. BAK staff members are usually invited to give lectures at national and international educational institutions and at conferences. The BAK acts as the Ministry of Interior's contact point for all anti-corruption matters and delegates staff members to Austrian and international meetings of experts. Furthermore, it interacts with a number of local government bodies, NGOs and interest groups involved in anti-corruption activities.<sup>23</sup>

## Interaction with Prosecutorial bodies

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<sup>20</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p.1;

<sup>21</sup> *Ibid.*

<sup>22</sup> Interview with Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21<sup>st</sup> of April, 2020);

<sup>23</sup> See <https://www.bak.gv.at/en/101/start.aspx>; also see <https://polis.osce.org/country-profiles/austria#criminal-justice-system-9903>; and <https://polis.osce.org/country-profiles/austria#criminal-justice-system-990>;



As indicated above, while researching interaction between independent investigatory bodies and prosecutorial authorities we should take into account differences in regards criminal justice system. We have looked both in jurisdictions with Common law, as well as inquisitorial criminal justices. Some systems can be characterized as mix ones. Individual criminal justice system might be based on the notion of investigation conducted by investigatory bodies and after it is “completed” (grounds for charging individual are at place) formal prosecution is conducted by prosecutorial bodies (e.g. classic model in England and Wales, UK). Other systems (predominantly in Continental Europe) do entail formal engagement with prosecutor from the initial stages of criminal investigation which is similar to *prosecutorial oversight on investigation* in Georgia. The existence of such national systems for general criminal justice investigations and prosecutions inevitably influence operation of independent investigatory bodies. However, exceptions from general rule can happen and researcher also identified such special approaches in regards to specific procedures.

As dictated by the national criminal justice system, in case of *the Independent Office for Police Conduct (IOPC) (England & Wales, UK)* result of the investigation is a conclusion that potential criminal conduct was committed. In such cases case file goes to Crown Prosecutors Service (CPS). It is up to the CPS, not IOPC to determine whether there is enough evidence to bring criminal proceeding and prosecute police official (based on evidential and public interest test).<sup>24</sup> As indicated above, IOPC has a power to oversee investigation conducted at police offices. In such cases IOPC is encouraged to seek advice from the Crown Prosecutors Service on operational decisions as much as possible, such as whether they should investigate a complaint themselves (of course if act might be considered as criminal conduct and not disciplinary offence).<sup>25</sup>

Also, as in case of England and Wales, *the Police Ombudsman of Northern Ireland (PONI)* has no prosecutorial powers and case after completion of investigation is referred to Public Prosecution. Public Prosecutor cannot participate in PONI investigation. Neither *Police Investigations & Review Commissioner (PIRC)* of Scotland has any power to prosecute itself. If PIRC reviews the complaint and finds that there is an *inference of criminality* it is required to suspend the investigation notify the Crown Office & Procurator Fiscal Service (COPFS) and await instructions on how to proceed with investigation.<sup>26</sup>

In case of *the Independent Police Complaints Authority (IPCA)* of Denmark, after investigation is completed the criminal case is forwarded to relevant regional prosecutor for a prosecution decision. In case “no prosecution” decision is made the complainant or the IPCA may appeal it to the Director of Public Prosecutions.<sup>27</sup>

In Ontario, Canada when investigation is completed and evidences collected the *Special Investigative Unit (SIU)* Director must decide whether, based on the evidence, there are reasonable grounds to lay a charge. Once the SIU has laid a charge against a police officer, the Unit refers the matter to the Justice

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<sup>24</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p.1;

<sup>25</sup> *Ibid.*

<sup>26</sup> See <https://pirc.scot/investigations/more-about-investigations/>;

<sup>27</sup> See Report On Police Oversight in the Council of Europe Countries, Jonny Byrne, William Priestley, (September 2015), Updated February 2017 by William Priestley, Council of Europe Publishing, p. 25;

Prosecutions of the Criminal Law Division at the Ministry of the Attorney General, which prosecutes the charge. The SIU, as an investigative agency, is not involved in the prosecution, *although it does participate by preparing the Crown brief and assisting the Crown to prepare case for court*. It is also worth mentioning that when the SIU publicly announces when it has laid a charge against a police officer (not connected to decision of Crown to prosecute), the Unit releases limited information regarding the basis of that charge in order to protect the fair trial interests of that police officer and the community.

More intensive prosecutorial oversight/management of the process of investigation from initial stages can be seen in case of Sweden. *Special Investigations Department (SU)*<sup>28</sup> of the police authority is following a directive by Special Prosecution office: prosecutor decides whether an investigation should be started or not. The prosecutor then leads the investigations where a criminal investigation has begun.<sup>29</sup> The investigation is directed by the prosecutor, and each investigatory step is determined by him/her, including whether the complainant should be interviewed, whether any medical records on the incident should be secured and whether the alleged victim should undergo a forensic medical examination. No investigatory steps may be taken by the SU without the approval of the prosecutor, except if evidence could otherwise be lost or destroyed. In such instances, the Department shall obtain subsequent approval by the prosecutor.<sup>30</sup>

In case of *Internal Investigatory Department of the Police (MachaSh)* of Israel department lawyers have equal powers as police officers and prosecutors. State prosecutor is involved in prosecution only in case crime under investigation envisages more than 7 years of imprisonment.

Outside the jurisdictions of European systems two countries attract our attention with globally acknowledged successes in this area: *Jamaica and Guatemala*. In Jamaica *the Independent Commission of Investigations (INDECOM)*<sup>31</sup> is a Commission of Parliament, which initially had only investigatory functions and by 2013 decision of the Supreme Court INDECOM has being given power to initiate and conduct prosecutions (thought the Director of Public Prosecutions may still take over or cancel a prosecution). Guatemala's has unique example - *the International Commission Against Impunity in Guatemala (CICIG)*<sup>32</sup> – which is created with direct involvement from international bodies (UN) and funded by international organizations. CICIG unique mandate includes investigatory powers towards law enforcement officials, as well as prosecutorial powers.

### Interaction with police and other investigatory bodies

Obviously independent investigatory bodies in Europe do not operate in isolation from police forces and other investigatory bodies. As indicated above in a number of jurisdictions (e.g. in case of *IOPC*

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<sup>28</sup> See <https://polisen.se/en/the-swedish-police/the-swedish-police-authority/>;

<sup>29</sup> See Report On Police Oversight in the Council of Europe Countries, Jonny Byrne, William Priestley, (September 2015), Updated February 2017 by William Priestley, Council of Europe Publishing, p. 56;

<sup>30</sup> See Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 May 2015, 17 February, 2016, available at the following link: <https://rm.coe.int/1680697f60>, para 23;

<sup>31</sup> See <https://www.indecom.gov.jm>;

<sup>32</sup> See <https://www.un.org/undpa/es/node/183334>;



of England and Wales, UK) such bodies not only conduct their own investigations, but also act as monitoring bodies with regard to police investigations. The matter of interaction with police and other investigatory bodies relates to matter of independence, as well as efficiency of independent investigation.

The *PONI* in Northern Ireland act strictly independent way from other investigatory bodies with their own exclusive jurisdiction – in order to respect this principle Government should not be able to determine which cases are investigated, how they are investigated or what the outcome should be. Policing bodies are statutorily required to share all information requested by PONI, but PONI has no such duty.<sup>33</sup> Despite such strong policy approach, in practice PONI and policing bodies have MoUs signed with the aim to facilitate the sharing of information necessary for PONI to conduct investigations.<sup>34</sup> As provided by the PONI's 2019 Annual Report in addition to annual statistics published periodically and other reports for interested groups, the office produces monthly and quarterly reports to the police agencies which provides them with regular information about trends and patterns in police complaints and helps identify any issues they may need to address. Additional reports are also provided to the Northern Ireland Policing Board which give a profile of complaints received. The Chief Executive meets with the Board twice a year to discuss such topics.<sup>35</sup> Practitioners working in this jurisdiction suggest that overall relationship between PONI and police agencies are healthy and constructive in the area of *current investigatory cases*. Historically more tensions exists in regards to specific jurisdiction of PONI to investigate past misconducts by police officers (and military) in Northern Ireland from mid 20<sup>th</sup> Century till good Friday agreement was reaches in 1998.<sup>36</sup>

As indicated above, more intensive interaction exists between IOPC and police agencies at various levels in England and Wales, UK. The IOPC recognizes the fact that in a complex system of criminal justice in England and Wales there are multiple actors who needs to interacted and cooperated.<sup>37</sup> As in case of PONI, despite availability of detailed statutory legal framework IOPC has developed MoU's with police authorities and other relevant state national and local agencies with the aim to improve information sharing and cooperation.<sup>38</sup>

More active engagement with police investigators exists in Sweden – *IU*'s officers carry out actual investigatory actions, the unit may also draw upon ordinary police officers, if required. In practice, *IU* investigations are usually carried out in the regional units of the police where the alleged crime was committed. Specialized investigators are used for particular types of crime, such as economic crime.

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<sup>33</sup> See Final report of research findings, Program to enhance the capacity of NGO's and institutions to advocate for implementation of human rights decisions and standards to prevent torture, the European Union's European Instrument for Democracy and Human Rights programme, For the Kyrgyz Republic, p.21;

<sup>34</sup> *Ibid.*

<sup>35</sup> See Annual Report and Accounts for the Year Ended 31 March 2019, Police Ombudsman for Northern Ireland, available at the following link: <https://www.policeombudsman.org/PONI/files/04/048d82dd-0255-414f-8af4-b47b692e9cc1.pdf>

<sup>36</sup> Interview with Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21<sup>st</sup> of April, 2020);

<sup>37</sup> See "Michael Lockwood on improving the work we do", short video prepared by IOPC: <https://www.youtube.com/watch?v=-QtD0COpwJU;>

<sup>38</sup> MoU's are publicly available the following link: <https://pirc.scot/publications/?cat=our%20business&category=memoranda%20of%20understanding&p=1;>

However, such practice is criticized by the CPT as negatively influencing perception of independence of investigatory body.<sup>39</sup>

## B. Guarantees for efficient functioning (investigation)

### Access to forensic, video/audio recording evidence, covert investigation

In accordance to international human rights standards efficiency of the investigation is as equally important for the independent investigatory bodies as principle of independence and accountability. Efficiency of investigation is connected to availability of clear mandate, resources and formal as well as practical ability to carry out investigatory actions. While looking at the researched institutions we need to take into account what powers prosecutors have towards investigative actions carried out by agencies (as discussed above). As respective information available and discussion with practitioners confirm institutions carry out investigation based on national criminal law and disciplinary regulations and have equal rights vis a vis to other investigatory bodies. Within the scope of this study and taking into account our interest towards specific elements of the investigation, we have looked at the matters of access to *forensic evidence, access to video/audio recordings and power to conduct covert investigatory actions*.

Among studied systems *no institution* was found with limitation to access to either *inhouse* or *outside state employed or independent forensic expertise*. *PONI's* (Northern Ireland) investigators has ability to invite independent scientists and medical experts and attend the post mortems conducted by the state pathologist.<sup>40</sup> Similar powers are given to *PIRC* (Scotland) and *IOPC* (England and Wales).<sup>41</sup>

Extensive powers to carry out forensic expertise and seek expert opinion is given to *SIU* (Ontario, Canada). The SIU has its own forensic lab<sup>42</sup> and employ *forensic investigators*<sup>43</sup>. Previously, the SIU relied on police forensics. Furthermore, SIU's investigators has a power to seize police equipment for forensic examination.<sup>44</sup> SIU also has a priority access agreement with the Ontario Center of Forensic Science (which is an Ontario Government facility, not a police facility) to process autopsies, blood, DNA, ballistics, and toxicology, among other things. Furthermore, SIU receives support from the Finance Ministry for video and photo analysis.<sup>45</sup> Funding of the respective forensic investigations in these agencies are financed by the budget of the respective executive ministry.<sup>46</sup>

*The majority* of the independent investigatory mechanisms studied *have unlimited power to request and receive any audio/video recording for the purposes of investigation*. Furthermore, agencies can

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<sup>39</sup> See Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 May 2015, 17 February, 2016, available at the following link: <https://rm.coe.int/1680697f60>, para 21;

<sup>40</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p. 6;

<sup>41</sup> *Ibid.*

<sup>42</sup> See following short videos about this topic: SIU Video: The Evidence: <https://www.siu.on.ca/en/video.php?vidid=8>; Going to the Scene: <https://www.siu.on.ca/en/video.php?vidid=6>;

<sup>43</sup> See information on the following web-link: [https://www.siu.on.ca/en/org\\_chart.php](https://www.siu.on.ca/en/org_chart.php);

<sup>44</sup> See Final report of research findings, Program to enhance the capacity of NGO's and institutions to advocate for implementation of human rights decisions and standards to prevent torture, the European Union's European Instrument for Democracy and Human Rights programme, For the Kyrgyz Republic, p.74;

<sup>45</sup> *Ibid.*

<sup>46</sup> Interview with Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23rd of April, 2020);

apply to respective judicial bodies with the search and seizure order request. Decisive factor relates to *availability* of the *quality* recoding at the respective institutions.

While assessing accessibility of the video and audio evidences one should refer to currently widely accepted standard in international human rights law - according to which prohibition of torture and other ill-treatment actions from police officials can be prevented and effectively investigated if places of detention, interrogation and other investigatory actions is monitored by video and audio recording equipment and such recordings are kept for the reasonable period of time. At the same time, this matter also relates to protection of personal data protection and there is a need to struck proper balance between public interest to prevent and investigate with the protection of the right to privacy and personal life. This is the standard accepted and promoted both by the CPT and UN CAT.<sup>47</sup>

Based on international standards and advocacy at the national level diverse jurisdictions regulate this matter differently. In 2000, the UK introduced additional regulatory framework implementing audio and video recording during the interrogations in light to implementation UN CAT and OPCAT standards.<sup>48</sup> Additional regulations and policies are introduced to regulate video recording at the various premises, as well as in case of body worn video (BWV) recording devices of police officer.

In this regarding very interesting policy was published by IOPC (England and Wales) in 2006 - *Position Statement on Body Worn Video*.<sup>49</sup> Major elements of this policy deserving our attention are the following:

- *In many instances, BWV footage is used to advance a criminal matter – either by providing what effectively is eye-witness footage of incidents where an officer has been present, or through the use of cameras to take statements from people. This reduces lengthy paperwork processes;*
- *Chief officers have a statutory duty to obtain and preserve evidence relating to complaints, conduct matters and DSI matters. BWV footage should be obtained and preserved in line with this duty; Where no complaint, conduct matter or DSI matter has been identified, force policy should allow decisions about retaining BWV footage to be made on a case-by-case basis according to the circumstances. For example, footage may be retained because someone has indicated that they intend to make a complaint or because an injury has been sustained and it is not yet clear how serious the injury is. Such decisions should be kept under review and the footage should not be retained for longer than necessary;*
- *Although BWV may be a useful tool it is not a complete answer. The coverage captured by BWV provides only a limited view of an incident; it shows only one angle; it does not record what might be happening behind the lens or behind the officer who is filming; it does not record smells, feelings of tension or the atmosphere surrounding an incident. ... At worst, the footage could present a positively misleading picture of the whole situation;*
- *From a complaints handling and investigation perspective, initial written accounts are useful because they have the potential to record much more detail, including the officer's perception of the event and how that informed their actions. This information can be pivotal in assessing whether an action was*

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<sup>47</sup> See Monitoring Police Custody - A practical guide, Published in January 2013 by the Association for the Prevention of Torture (APT), p.144: [https://www.apr.ch/content/files\\_res/monitoring-police-custody\\_en.pdf](https://www.apr.ch/content/files_res/monitoring-police-custody_en.pdf);

<sup>48</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p. 1;

<sup>49</sup> See IPCC [former title of the IOPC] position statement on body worn video, 2016, available at the following link: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/Our-Policies/IPCC\\_position\\_statement\\_on\\_body\\_worn\\_video.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/Our-Policies/IPCC_position_statement_on_body_worn_video.pdf);

reasonable. If officers routinely view BWV footage before giving their initial written account there is a risk that statements present merely a commentary on the footage rather than the officer's own perceptions and thought processes. Additionally, there is a risk that watching BWV footage may affect an officer's recollections of an event, consciously or unconsciously.

- If a complaint is made against an officer and BWV footage is available, but they have not yet viewed it, they should not view it until the investigating officer or person locally resolving the complaint is satisfied that they have a sufficient account of the officer's view of what happened. ... The officer should only view the footage before providing their initial account if there is a good policing reason for this – and this reason should be recorded clearly;
- In many circumstances, a complaint will not be received immediately after an incident – the officer involved may have viewed the BWV footage by the time the complaint is received. Where an officer has viewed BWV footage before giving their account of an incident, their account should state that they have viewed the footage. It should also include the reasons for this and, if appropriate, distinguish between what they are saying as their honestly held belief and what is a reflection of what they have viewed on the footage.<sup>50</sup>

Another matter which was interesting for the study is whether independent investigatory bodies have power to carry out covert investigatory activities (phone tapping, etc.).<sup>51</sup> Majority of the studied systems imply same investigatory powers in this regard as other investigatory agencies have within the jurisdiction. No studied agency was identified to be undertaking *technical role itself* in respective covert investigatory action (wiretapping, interception of communication, etc.) and if stated agency require such assistance they apply to respective state authority for assistance. At the same time, as practitioners suggest such investigatory bodies very rarely use covert investigatory actions.<sup>52</sup>

## C. Mechanisms for Receiving Notification/Complaint and Engagement with Victims and Witnesses

Countries and jurisdictions researched have multiple ways of receiving complaint or information which leads to initiation of investigation: *Complaint from individual; Exceptional power given to CSOs to submit a request; Referral of the case from police force, other government agency; Initiation of proceedings on its own initiative based on publicly disseminated information (PONI, SIU, the Norwegian Bureau for the Investigation of Police Affairs, GSOC).*

*PONI (Northern Ireland)* – member of the public can submit complaint in person, in writing or phone. Complaints can also be made directly to police officers who have a duty to report them to PONI. members of the public have one year from an incident in which to make a complaint about it, unless the Police Ombudsman deems the complaint to be grave or exceptional. Agency is required by law to send to police and to any identified police officer a copy of any complaint received;

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<sup>50</sup> *Ibid.*

<sup>51</sup> *PONI* (Northern Ireland), *IOPC* (England and Wales), *PIRC* (Scotland), *GSOC* (Ireland), *BAK* (Austria), *SIU* (Ontario), etc.;

<sup>52</sup> Interviews with Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21st of April, 2020); With Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23rd of April, 2020);

PONI has special office – *Family Liaison Office*, which is engaged with victims and family members in case of serious cases – death or serious injury.<sup>53</sup> Family Liaison Officer continuously provides information to victims and family members and assist them to communicate with the service. In all other cases rather than above stated serious ones, the ‘*complainant update agreement*’<sup>54</sup> is the method by which Investigations Officers will engage with the complainant during the course of investigation. At the commencement of the investigation the Investigations Officer will carefully consider the ‘complainant update agreement’ as part of their investigation strategy. The objectives of the agreement are to ensure adequate information provision to the complainant, enabling an informed involvement in the investigative process. It is the responsibility of the Investigations Officer to ensure meaningful engagement with the complainant from initial contact until the conclusion of the investigation. In practice, the lead Investigations Officer must ensure sufficient information and detail about PONI remit, processes, and the progress of the Investigation is clearly communicated to the complainant.<sup>55</sup>

*IOPC (England, Wales)* – Agency has special informative web-section for potential complainers.<sup>56</sup> Complaint can be submitted in person, online or even by someone else on others behalf directly to IOPC, but is usually first made to the Professional Standards Department (PSD) of the relevant police force. Serious complaints (e.g. assault, fatalities, sexual offences, etc.) must be reported by the PSD to the IOPC. The PSD have the responsibility of recording and investigating complaints from either members of the public, or allegations made from within the Force itself.<sup>57</sup> On complaints from individuals there is no time limit on making a complaint. If more than 12 months have passed between the incident (or latest incident) and the date of your complaint, then the appropriate authority *may* not investigate it. If complaint is made more than 12 months after the incident complainer should explain the reason for the delay.<sup>58</sup> Complaint can be submitted in English as well as in other languages.

It is worth noting here that IOPC has special mechanism called “Super-Complaints” – which was launched in November 2018 and is administered by Her Majesty’s Inspectorate of Constabulary and Fire & Rescue services (HMICFRS). The system allows ‘designated organizations’ (such as charities) to raise broad or systemic issues that could affect public confidence in policing – for example, the handling of domestic abuse cases. Super-complaints are not an alternative way to raise an individual conduct matter. Rather, super-complaints *could prompt action in a particular area of policing* that could lead to a change of standards by the College of Policing, an inspection by HMICFRS or a recommendation to change a practice at one or more forces.<sup>59</sup> Finally it is worth mentioning that IOPC introduced special communication tool “*Silent solution campaign*” – which allows citizens using

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<sup>53</sup> See more information at the following link: <https://www.policeombudsman.org/Information-for-Police-Officers/Information-for-Police-Officers-FAQs/FAQs-Investigations>;

<sup>54</sup> See *Complainant Update Guidance Current Investigations Directorate, November 2014* at the following web-link: <https://www.policeombudsman.org/PONI/files/7c/7cc84e0c-ad6a-4f2f-8d20-12270a849082.pdf>;

<sup>55</sup> *Ibid.*

<sup>56</sup> See respective section on the web-site: <https://www.policeconduct.gov.uk/complaints-and-appeals/make-complaint>;

<sup>57</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, pg. 1;

<sup>58</sup> See more information on the following link: <https://policeconduct.gov.uk/complaints-reviews-and-appeals/frequently-asked-questions>

<sup>59</sup> See more information on the following link: <https://www.policeconduct.gov.uk/complaints-and-appeals/super-complaints-and-working-other-policing-oversight-bodies>



special emergency phone number and by dialing mechanism communicate silently about incident and requested emergency involvement from the side of the agency.<sup>60</sup>

PIRC (Scotland) includes respective guidance for potential complainers on their web-site.<sup>61</sup> Any member of the public from any of the following categories may make a complaint: *the person to whom the alleged act or omission occurred; any other person who claims to be adversely affected by alleged act or omission; any person who claims to have witnessed the alleged act or omission; any person acting on behalf of these listed above.* PIRC provides guidance for families<sup>62</sup> on the role of the agency, as well as have specially designed staff members – PIRC Family Liaison Officers (FLO).<sup>63</sup> The FLOs are appointed to provide continuously two-way flow of information to victims and family members about investigation. PIRC has interesting guidance to victims/family members about interaction with media:

*“There may be media interest surrounding the death and investigation. Questions from the media can be difficult to deal with. However, it is helpful to remember that sometimes the media can play an important role in the investigation. You may not want to speak to the media or you may find that their level of interest is too much to cope with or is insensitive. If you cannot cope with the attention you should speak to the FLO, who may be able to assist in reducing the level of contact you have with the media. It may be appropriate to provide a brief statement to the media to help manage the level of interest surrounding the death. The FLO, in conjunction with the PIRC’s Communication team, can provide guidance and support with this. The FLO may ask you to choose a photograph of the person who died to share with the media. This will avoid the media going to considerable lengths to find images elsewhere and gives you some control over the images used. The FLO will arrange for copies to be made and given to the media, where this has been requested and you consent.”<sup>64</sup>*

GSOC (Ireland) – In addition to actual victim of ill-treatment, direct witnesses to such behavior may also make a complaint to the GSOC. Third party complaints made on behalf of others are accepted providing these are done with permission of the aggrieved party. Complaints should be made within 12 months of the incident in question but the Ombudsman may extend this time limit if it considers that there are good reasons for doing so.<sup>65</sup> Under the *Public Interest Investigation* powers GSOC may investigate matters in relation to the conduct of Gardaí (police force), when it is in the public interest, even if a complaint has not been received. Agency may decide to open such an investigation itself, or may be requested to do so by the Policing Authority or by the Minister for Justice and Equality. The Policing Authority or the Minister may also refer a matter for the Commission to consider whether it should investigate it in the public interest.<sup>66</sup> It is worth noting here that GSOC has separate policy published - *What information can GSOC disclose about its investigations?*<sup>67</sup> – which among other issues also regulate how agency communicates with complainer and what type of information is

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<sup>60</sup> See more info on this matter from 2018-2019 Annual report: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_Impact\\_Report\\_201819.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_Impact_Report_201819.pdf)

<sup>61</sup> See in case of PIRC special brochure: [https://pirc.scot/media/4907/pirc\\_guide\\_for\\_police\\_and\\_staff\\_web.pdf](https://pirc.scot/media/4907/pirc_guide_for_police_and_staff_web.pdf);

<sup>62</sup> See more information on the following link: <https://pirc.scot/investigations/a-guide-for-families-on-the-role-of-the-pirc;>

<sup>63</sup> See special brochure on FLOs: [https://pirc.scot/media/4904/pirc\\_a\\_guide\\_for\\_families\\_web.pdf](https://pirc.scot/media/4904/pirc_a_guide_for_families_web.pdf)

<sup>64</sup> *Ibid.*

<sup>65</sup> See Report On Police Oversight in the Council of Europe Countries, Jonny Byrne, William Priestley, (September 2015), Updated February 2017 by William Priestley, Council of Europe Publishing, p. 31;

<sup>66</sup> See: [https://www.gardaombudsman.ie/about-gsoc/gsoacs-functions/;](https://www.gardaombudsman.ie/about-gsoc/gsoacs-functions/)

<sup>67</sup> See at the following link: <https://www.gardaombudsman.ie/about-gsoc/faqs/what-information-can-gsoc-disclose-about-its-investigations/?download=file&file=3139;>



provided on periodic bases. GSOC also has separate policy instrument regarding victims – *Victims of Crime Charter*.<sup>68</sup> According to this instrument service acknowledges receipt of the complaint within one week. Complainers is given information about relevant support which can be received by other agencies – emotional, legal and other. Information is provided about what type of investigation will be carried. If decision is made not to investigate reasons are communicated with victim. Furthermore, outcome of the investigation and decision about charging is communicated to the victim, as well as other information about important procedural stages during the prosecution and court proceedings.

*The Norwegian Bureau for the Investigation of Police Affairs* receives complaints from victims of ill-treatment, as well as representative of public, lawyers and referrals from police forces. As indicated above investigation can be initiated based on information disseminated by media.<sup>69</sup> The Bureau has legal obligation to keep complainer/victim informed in writing about entire process of investigation and criminal prosecution. *IPCA* (Denmark) provides special guidance to potential complainers in a form of brochure posted on the web-site.<sup>70</sup> Complaint should be made within 6 months of the relevant incident and written, as well as verbal communication is accepted. As in case of above stated agencies after complaint is received a copy is forwarded to the police officer who is complained about. She/he is entitled to comment on the complaint.<sup>71</sup>

*SIU* (Ontario, Canada) as in case of above discussed developed systems treats system of notification/complaints and engagement with complainers comprehensively. All Ontario police services are under a legal obligation to *immediately notify* the SIU of incidents of serious injury, allegations of sexual assault, or death involving their officers. Incidents which fall within its mandate must be reported to the SIU by the police service involved and/or may be reported *by the complainant or any other person*. The SIU is also notified of incidents by complainants themselves or *their families, members of the media, lawyers, coroners and those in the medical profession*.

SIU web-site provides additional guidance regarding accessibility of services for general public, as well as people with disabilities (PWDs).<sup>72</sup> SIU has special – *Affected Persons Program*.<sup>73</sup> In cases of serious crime cases this program provides support services to *complainants*, their *family members* and others, such as *civilian witnesses* who may have been present during the incident. The aim of the Program is to meaningfully respond to the *emotional and practical needs* of those persons impacted by SIU investigations.<sup>74</sup> Affected Persons Coordinator (APC) will liaise with investigators regarding the needs of complainants and/or affected persons in any given case.

The APC will make contact with the affected person(s), either in person or by telephone. Services include: *Crisis response and intervention; Psychological first aid, emotional support; Practical support including information and guidance about mandate of SIU and the investigative process*,

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<sup>68</sup> See text of the policy instrument: <https://www.gardaombudsman.ie/make-a-complaint/before-you-complain/how-we-deal-with-complaints/victims-of-crime/?download=file&file=3158>;

<sup>69</sup> See Annual Report 2018: <http://www.spesialenheten.no/Portals/0/Årsrapporter/Annual%20report%202018.pdf>;

<sup>70</sup> See [http://www.politiklagemyndigheden.dk/media/6447/booklet\\_-\\_do\\_you\\_want\\_to\\_complain\\_about\\_the\\_police.pdf](http://www.politiklagemyndigheden.dk/media/6447/booklet_-_do_you_want_to_complain_about_the_police.pdf);

<sup>71</sup> *Ibid.*

<sup>72</sup> See respective information on the web-site: <https://www.siu.on.ca/en/accessibility.php>; also see special short video - *SIU Notification Process*: <https://www.siu.on.ca/en/video.php?vidid=5>;

<sup>73</sup> See respective information on the web-site: <https://www.siu.on.ca/en/apc.php>;

<sup>74</sup> *Ibid.*

*accessing emergency financial supports, safety planning, funeral funding and planning; Referrals and advocacy: assistance with navigating social and justice systems, accessing relevant community resources, legal and medical support, victim assistance programs; Court support: enhance victim/witness understanding or, and participation in, the criminal court process by providing case specific information, court preparation and orientation, accompaniment, assistance with Victim Impact Statements.* In 2018 SIU Affected Persons Program provided support in 101 cases.<sup>75</sup>

## D. Institutional Settings, Recruitment and Capacity Building of Investigators

Internal structure and governance matters, funding

Core interest of this research is to understand basic principles of internal structural arrangements for the independent investigatory mechanisms. The most successful systems base their operation on management structures, which are based on statutory regulations, as well as experience of institutional development. Researcher's aim was to learn best examples and challenges faced by researched institutions and identify what can be used in our case for future development.

Research first of all showed that different countries and jurisdictions vary with the solutions implied for the institutional arrangements. *In majority* jurisdictions management systems are based *around* top actor(s) appointed by political bodies – ombudsman, commissioner, director (PONI, IOPC, PIRC, SIU). However we can also see systems with collegial bodies playing this role – commission, board, council (e.g. GSOC). Management systems and structural arrangements follow public service culture and regulatory framework of each jurisdiction. One *common underlying element* can be stated for all systems – organizational culture is based on *civil oversight culture* and do not follow traditional models of law enforcement structures.

PONI (Northern Ireland) has internal policy document entitled *Corporate Governance Arrangements (2016)*.<sup>76</sup> This document sets out details of the corporate governance principles for the Office. It provides information on the arrangements which have been established to ensure proper and effective management of the Office's affairs. Principles of governance are: *Openness, Integrity and Accountability*. All staff members and office holders are required to adhere to *the Seven Principles of Public Life (the Nolan Principles)*.<sup>77</sup>

Despite the fact that PONI is formally led by elected Ombudsman, effective corporate governance of the office is based on four key organization roles and respective structures: *the Police Ombudsman operating as Corporation Sole; Chief Executive/Accounting Officer; Senior Management Team; Audit and Risk Committee*. Above stated *Corporate Governance Arrangements* document provides basic

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<sup>75</sup> See further information about this program in 2018 Annual Report, p. 17: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf);

<sup>76</sup> See on the following link of the web-site: <https://www.policeombudsman.org/About-Us/Corporate-Governance>;

<sup>77</sup> *Ibid*. Presented as an Annex A of the document: *Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, Leadership*;

mandate and functions of the stated actors. Ongoing operations (including organizational matters regarding investigation) are led by the *Senior Management Team (SMT)* which includes directors for the following services and chaired by Chief Executive: *Investigation (Current)*, *Investigation (Historic)*, *Corporate Services*, *Information and Legal Services*. The SMT operates as collegial forum to discuss day to day matters, oversees how office plans, sets, communicates and monitors its corporate objectives. The SMT acts as advisory body to the ombudsman. The Investigation (current) directorate consists of three teams, of around 75 staff in total. The teams include the Initial Complaints and Investigations Team, the Core Investigations Team and the Significant Cases Investigation Team. The Significant cases Investigation Team deals with complex or serious matters, including some complaints relating to incidents which occurred more than one year ago. These are complaints deemed by the Police Ombudsman to be grave and exceptional, and relating to incidents which happened outside of the period 1968-1998.

In addition to above stated Corporate Governance Policy, PONI has following internal policies/regulations developed and publicly posted on the web-site: *Code of Ethics*; *Conflict of Interest policy*; *Investigation Manual*; *Investigation of State Related Deaths Policy*; *Witness Policy*; *Fraud Policy*; *Discipline Policy*; *Gifts and Hospitality Policy*; *Whistleblowing Policy*; *Procurement Policy*, etc.<sup>78</sup>

Another institutionally strong system which deserves our attention is IOPC (England and Wales). This agency undergo major institutional reform in 2018<sup>79</sup> and currently operates with the leadership of the *Director General*. The Director General leads the *executive team* and chairs the *Board of the IOPC*, which includes *six non-executive directors*.<sup>80</sup> The Director General is also supported by two Deputy Director Generals – the Deputy Director General (Operations) who leads an operational team including regional directors and a Director for Wales and the Deputy Director General (Strategy and Corporate Services) who is responsible for all of the IOPC’s non-operational functions. By law, the Director General can never have worked for the police. Also, currently none of IOPC executive team, regional directors or the Director for Wales have worked for the police. The Executive Team of the IOPC consists of: *The Director General*; *Deputy Director General, Operations*; *Deputy Director General, Strategy and Corporate Services*; *Director, Strategy and Impact*; *Director, People (HR)*.<sup>81</sup> IOPC has around 80 investigators, plus administrators, caseworkers and lawyers.

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<sup>78</sup> See respective documents at the following link: <https://www.policeombudsman.org/About-Us/Publications/Policy-and-corporate-governance-documents>;

<sup>79</sup> For more information on this reform please see the following link: <https://policeconduct.gov.uk/becoming-iopc>;

<sup>80</sup> Current Directors are: Senior Independent Director, who is retired from public service; other directors currently work for local governances, non-profit organizations, business, former manager of probationary service, etc. See more information about current leadership and their role: <https://www.policeconduct.gov.uk/who-we-are/our-people>;

<sup>81</sup> *Ibid.*

As in case of PONI, in addition to statutory regulations, IOPC has wide range of internal policies, which are publicly posted on its web-site.<sup>82</sup> Policies relate to *Investigation*<sup>83</sup>, *Communication*<sup>84</sup>, *Working with other agencies*.<sup>85</sup>

PIRC (Scotland) is led by the Commissioner. The *Executive Team* consists of the Commissioner and Director of Operations.<sup>86</sup> The Executive Team is supported by the *Heads of Department Group: Head of Reviews and Policy, Head of Investigations and Head of HR and Corporate Services*. PIRC web-site includes chart of the organization.<sup>87</sup> According to the chart Investigations direction is led by the head and includes: *Senior investigators, Deputy Senior Investigators, Investigators, Technical Investigator, Trainee Investigators and Admin Team*.<sup>88</sup>

PIRC as well has number of policy documents publicly available.<sup>89</sup> Policies relate to *inter alia* following matters: *Freedom of Information; Records Management; Data Protection; Data Protection Policy, Recruitment and Selection Policy, Unacceptable Actions Policy*. Among these documents particularly unique is *Unacceptable Actions Policy*.<sup>90</sup> According to the policy: “*This policy sets out the Police Investigations and Review Commissioner’s (PIRC) approach to the relatively few people whose actions or behavior we consider unacceptable.*” The policy aims: “*To make it clear to all individuals, both at initial contact and throughout their dealings with our office, what the PIRC can or cannot do in relation to their request. In doing so, we aim to be open and not raise hopes or expectations that we cannot meet.*”

GSOC (Ireland) is led by three commissioners (One Chairperson and two commissioners).<sup>91</sup> Corporal governance is based on the statutory instruments and *GSOC Corporate Governance Assurance Agreement 2018 – 2020*.<sup>92</sup> According to this instrument at least one of three members of the commission must be a man and at least one must be a women. The members of the Commission are responsible collectively for leading and directing GSOC. The Chairperson has a function to manage and control generally the officers, administration and business of the organization.

*The Norwegian Bureau for the Investigation of Police Affairs* is relatively small institution which includes up to 40 staff members (majority investigators, rest lawyers, phycologists and administrative staff). Bureau is led by the *Director* and 3 *Heads of Regional Investigatory Divisions*.<sup>93</sup>

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<sup>82</sup> See respective policies on the following link of the web-site: <https://www.policeconduct.gov.uk/who-we-are/accountability-and-performance/our-policies>;

<sup>83</sup> Matters include: *Disciplinary responsibility against police officer who left the service; On reopening investigation; Our position on police use of body-worn video; Review of the IPCC's work in investigating deaths; etc.*

<sup>84</sup> Matters include: *Engaging with us on social media; Publication Policy; Policy on naming police officers and police staff; IOPC and National Police Chiefs Council media protocol; Translation and interpretation policy;*

<sup>85</sup> Variety of MoUs and other related documents;

<sup>86</sup> See following link from the web-site: <https://pirc.scot/about-us/who-we-are/>;

<sup>87</sup> See at the following link: <https://pirc.scot/media/4962/pirc-structure-aug-19.pdf>;

<sup>88</sup> Ibid. Also see: <https://pirc.scot/about-us/our-organisation/>;

<sup>89</sup> See the following link: <https://pirc.scot/publications/?cat=our%20business&category=policies%20and%20procedures>;

<sup>90</sup> See text of the policy at the following link:

<https://pirc.scot/publications/?cat=our%20business&category=policies%20and%20procedures>;

<sup>91</sup> See at the following link: <https://www.gardaombudsman.ie/about-gsoc/ombudsman-commissioners/>;

<sup>92</sup> See at the following link: <https://www.gardaombudsman.ie/about-gsoc/gsoc-administration/>; also see

<https://www.gardaombudsman.ie/about-gsoc/gsoc-administration/?download=file&file=2545>;

<sup>93</sup> See at the following link: <http://www.spesialenheten.no/English/Information/Aboutus.aspx>;

*The Danish Independent Police Complaints Authority's (IPCA) organizational structure is based on the leading role by the Police Complaints Council and Chief Executive.*<sup>94</sup> The Police Complaints Council is the supreme governing body of the Authority and consists of a Chair, who must be a High Court judge, an attorney, a professor of jurisprudence and two representatives of the general public. The Chief Executive is in charge of the day-to-day operations of the Police Complaints Authority, which must be managed in accordance with the directions and guidelines issued by the Police Complaints Council. The Police Complaints Authority also has several investigators as well as legal and administrative staff.<sup>95</sup>

*Committee P (Belgium) – has Investigation Department P as operational arm to perform its inspection inquiries and certain investigations into complaints.*<sup>96</sup> Investigation Department P is headed by a *Director-General*, assisted by *two deputies*. They are appointed by Standing Committee P for a renewable five-year term. In this connection, the Director-General, the two Deputy Directors-General and the members of Investigation Department P hold the title of 'judicial police officer, assistant of the public prosecutor'. The Director-General leads this department under the collegiate authority, management and supervision of Standing Committee P. *Investigation Department* has up to 60 members of the staff – all of them bear the title of 'commissioner-auditor', regardless of their level or grade. The seconded members are also appointed for a renewable five-year term.<sup>97</sup>

SIU (Ontario, Canada) – is led by the *Director* and consist up to 90 staff members, which include fifteen *lead Civilian investigators*.<sup>98</sup> In addition to full time investigator, SIU has “*as-needed*” *investigators* (up to 40) engaged in different regions of the large land territory province of Ontario which are called for assistance in case permanent staff member are not available to be at the scene of investigation on time. Part time investigators are usually retired investigators. As indicate above SIU director has ultimate power to lay charges against person after investigation is completed. The SIU is also supported by: *Deputy Director; Executive Officer; Counsel, Business Operations Manager; Investigative Managers; Affected Persons Manager; Forensic Identification Managers; Communications Coordinator; Outreach Coordinator; Training Coordinator; and an administrative staff composed of transcribers; central registry clerk; budget and inventory clerks; information technology analyst and administrative assistants.*<sup>99</sup> Like in case of above discussed mechanisms, SIU has set of internal policies which are based on statutory regulations and their own practice and standards of work<sup>100</sup>: *Conflicts of Interest Policy; Workplace Discrimination and Harassment Prevention; Use of Non-Sexist Language, Office Protocol Policy (standards of office work); Complaints policy (on SIU staff performance), etc.*

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<sup>94</sup> See link from the following link from the agency's web-site: <http://www.politiklagemyndigheden.dk/english/independent-police-complaints-authority>; Also see: <https://ipcan.org/members/the-danish-independent-police-complaints-authority>;

<sup>95</sup> *Ibid.*

<sup>96</sup> See English language brochure published by the Committee P: <https://comitep.be/document/download/INFORMATION%20BROCHURE%20Comit %20P.pdf>;

<sup>97</sup> *Ibid.*

<sup>98</sup> See more information on the SIU web-site: [https://www.siu.on.ca/en/org\\_chart.php](https://www.siu.on.ca/en/org_chart.php); also Interview with Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23rd of April, 2020);

<sup>99</sup> *Ibid.* Also see SIU Organizational Chart – Annual report 2018-2019, p. 59: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf)

<sup>100</sup> Materials obtained from Deputy State Inspector of Georgia;



During the research of the operation of independent investigatory mechanisms number of instances of *usage of IT technology* were identified. Aim of such IT tools are support management processes, as well as collect and analyze data. One of such technology is in case of PONI – *Police Ombudsman’s Case Handling System*.<sup>101</sup> Various institutions have other IT tools for investigation, forensic and other expert examination, as well as data analyses.<sup>102</sup> IOPC (England and Wales) and GSOC (Ireland) do report in their annual reports and strategies about efforts to further improve IT resources of the institution. IOPC’s Annual report refers to *Transforming of institution’s ICT*: “We are committed to providing the best digital technology for our people. We completed a large programme of work during 2018/19 as part of our ICT transformation, allocating new kit for staff across all our offices, enabling them to work flexibly. Working with new ICT partners, we introduced different systems for managing voice and video calls, email services and digital collaboration.”<sup>103</sup>

In addition to institutional arrangements, present research aimed to see *how systems are funded*. In majority of mechanisms studied funding is allocated and provided by the respective executive government agencies. PONI (Northern Ireland) funding comes from Department of Justice<sup>104</sup>; IOPC (England and Wales) is funded by the Home Office<sup>105</sup>; Norwegian Bureau’s budget is approved by Ministry of Justice; SU’s (Sweden) budget is fixed by the Government and is separate from the budget of other police units; SIU (Ontario Canada) is funded by the Ministry of the Attorney General<sup>106</sup>. Such model is *not seen per se* as problematic by practitioners<sup>107</sup> and can be understood to be dictated by the governance culture of the specific jurisdiction. During the research no system was identified having any statutory rule regarding prohibition of decrease of funding of the institution in comparison to previous year without institution’s agreement. *Almost no system* studied indicated example of usage of funding tool as potential political/interests pressure on the mechanisms. One exception is PONI – despite the fact that its work on *current cases* is accepted positively by the law enforcement bodies at large, major controversy relates to *Historic Investigations* (events of violent acts by police during the second half of the 20<sup>th</sup> Century called as “The Troubles”<sup>108</sup>) and as funding of these two types of investigation are provided by different streams, the latest one periodically is effected by delays or cuts<sup>109</sup>. In case of more fragile democracies successful independent investigatory bodies are directly funded by the national parliaments (*Jamaica*) and international organizations (*Guatemala*).

While further analyses of details of funding of such institutions can be continued in future, at this stage we can indicate that *large part of the budgets of the institutions are spent on the salaries of the staff* (and majority of staff are investigators). Information available from 2013 suggests that in case of IOPC

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<sup>101</sup> See respective info on the following link: <https://www.policeombudsman.org/PONI/files/06/06442f1c-039c-49f8-8555-1199dec1a5c0.pdf>

<sup>102</sup> See interesting video from PONI: <https://www.policeombudsman.org/Video-Audio/Video/An-introduction-to-the-Police-Ombudsman-s-Office>; also see relevant video in case of SIU: The Evidence: <https://www.siu.on.ca/en/video.php?vidid=8>; Going to the Scene: <https://www.siu.on.ca/en/video.php?vidid=6>;

<sup>103</sup> See IOPC’s Annual Report and Statement of Accounts 2018-2019, p.27: Also see GSOC Strategy 2017-2020, 3.2 *Improve Efficiency*; 3. *Take Advantage of Technology*: <https://www.gardaombudsman.ie/about-gsoc/gsoc-administration/?download=file&file=3098>;

<sup>104</sup> 2019/20 budget is £9.29m;

<sup>105</sup> 2019/20 IOPC will receive revenue funding of £64.145m;

<sup>106</sup> Canada annual expenditure for fiscal year ending March 21, 2019 was about \$10,161,280 (Canadian Dollar)

<sup>107</sup> Interview with Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23<sup>rd</sup> of April, 2020);

<sup>108</sup> For more information see the following link: <https://www.britannica.com/event/The-Troubles-Northern-Ireland-history>;

<sup>109</sup> Interview with Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21<sup>st</sup> of April, 2020);



(by that time institution was called IPCC) cost for the average independent investigation was in range from £45,000 to £300,000.<sup>110</sup>

### Recruitment practices, backgrounds and requirements

While studying institutional characteristics above, we have identified the basic *underlying element* – organizational culture is based on *civil oversight culture* and do not follow traditional law enforcement structures. This principle is further enforced in case of recruitment of the staff for such institutions. *In majority* of cases ombudsmen, inspectors, commission members and Directors of researched institutions are either legally barred to be former police officers or by practice not chosen from this group. Aim of this restriction is to ensure independence of the institution and preserve perception of such independence among wider public. Diverse practice exists regarding recruitment of individual investigators and other staff members.

At the outset it should be mentioned that independent and merit based selection process of investigations at researched institutions constitute important international human rights obligation as interpreted often by CPT, as well as UN CAT. In recent report published by CPT in regards to independent investigatory mechanism (IAIACAP) of Cyprus we can find the following assessment:

*“As regards its independence - although the IAIACAP is not linked, hierarchically or institutionally, to the Cyprus Police – the selection process of its members is neither open nor transparent, as all five members are appointed by the Ministerial Council. More importantly, the pool of criminal investigators upon whose services it depends mainly consists of former police officers. The CPT would like to recall that, in order for the investigation of complaints about police ill-treatment to enjoy public confidence and be effective, the police complaints mechanism must be, and must be seen to be, fully independent and impartial. The practice of employing former police officers to investigate allegations against their ex-colleagues is problematic in this respect. To put it in the words of the IAIACAP’s former President, “[i]t would appear that the majority of criminal investigators have not shed the syndrome that they are no longer members of the police force but criminal investigators [for the IAIACAP].”<sup>111</sup>*

*PONI* (Northern Ireland) staff includes retired *police officers and civilian lawyers*. The police force was under a temporary special measure where hiring had to be 50/50 from the minority/majority groups. That changed only recently when they reached 30% from the minority group.<sup>112</sup> For the last decade 25-30% of investigating staff in *PONI* were former police officers and none of these officers previously worked in Northern Ireland (major reason is due to Historic Investigations).<sup>113</sup> Although

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<sup>110</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p.1;

<sup>111</sup> See Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, 26 April 2018, available at the following link: <https://rm.coe.int/16807bf7b4>; See similar challenge regarding Czech Republic’s respective agency - See Investigation of Ill-treatment by the Police in Europe, Comparative Study of Seven EU Countries, Hungarian Helsinki Committee, 2017, p.50;

<sup>112</sup> See Final report of research findings, Program to enhance the capacity of NGO’s and institutions to advocate for implementation of human rights decisions and standards to prevent torture, the European Union’s European Instrument for Democracy and Human Rights programme, For the Kyrgyz Republic, p.80;

<sup>113</sup> See Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p.6;

PONI realizes the benefits of having former police officers act as its investigators, it is slowly moving away from the practice to improve its independence.

The Agency has developed *Program to Train Investigators (internship)* and new cadre of *civilian investigators* are trained and joining PONI.<sup>114</sup> Appointments of investigators and other staff members at the PONI are made in accordance with the *Civil Service Commissioners' Recruitment Code*, which requires appointment to be on merit on the basis of fair and open competition, but also includes the circumstances when appointments may otherwise be made.<sup>115</sup> The officials are appointments with open ended contracts. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the *Civil Service Compensation Scheme*.<sup>116</sup> PONI investigators wear orange jackets to distinguish themselves from the police.

IOPC (England and Wales) follows PONI experience and though the Director General and executive team members are not agency does *employ former police officers* (about 30-35% of staff) or police civilians. In case of hiring former police officers IOPC *takes measures to minimise the potential effects of bias* by, for instance, ensuring that ex-police officer staff are not on investigations concerning their own former force.<sup>117</sup>

As in case of PONI, IOPC have created *Trainee Investigator* through which they enroll young professionals into *12-18 months program* aiming to develop skills knowledge and expertise through both formal and on-the-job training (as a member of one investigative teams, trainee will take part in interviews, collect and analyze evidence, attend post-mortems, and prepare materials for court or inquest proceedings). At the end of the program successful participants will be accredited investigators and be appointed to a permanent investigator role.<sup>118</sup>

IOPC web-site provides good amount of information about recruitment opportunities. Also, description is given to various *investigation positions*:<sup>119</sup>

- *Trainee investigator*: to apply for the program candidate needs at least 2:2 or equivalent degree *in any discipline* “together with an analytical mind, the drive to discover the right answers and the resilience to handle investigations diplomatically and objectively.”
- *Investigator*: In addition to above stated graduate of the trainee investigation program, anyone who has some investigatory experience, or a background in an inspection, regulatory, enforcement or similar role are eligible to apply;

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<sup>114</sup> See Final report of research findings, Program to enhance the capacity of NGO's and institutions to advocate for implementation of human rights decisions and standards to prevent torture, the European Union's European Instrument for Democracy and Human Rights programme, For the Kyrgyz Republic, p.21;

<sup>115</sup> See 2019 Annual report: <https://www.policeombudsman.org/PONI/files/04/048d82dd-0255-414f-8af4-b47b692e9cc1.pdf>; Also see more information about work of the *Civil Service Commissioners* at the following link: [www.nicscommissioners.org](http://www.nicscommissioners.org);

<sup>116</sup> *Ibid.*

<sup>117</sup> See Investigation of Ill-treatment by the Police in Europe, Comparative Study of Seven EU Countries, Hungarian Helsinki Committee, 2017, p.64;

<sup>118</sup> See more information on the following link: <https://policeconduct.gov.uk/who-we-are/working-us/investigative-roles>;

<sup>119</sup> See respective information on the following link: <https://policeconduct.gov.uk/who-we-are/working-us>; Also see the following link which also includes informative short videos for each position: <https://policeconduct.gov.uk/who-we-are/working-us/investigative-roles>;

- *Lead investigator*: Needed relevant experience of undertaking investigations in any sector, such as social work, the probation services, local authority enforcement or regulatory services, fraud or criminal justice, as well as experience working in the public eye; In addition to acting as investigator, lead investigator drafts and agrees the terms of reference for investigations, and report to an Operations Team Leader on their progress, highlighting potential risks and resourcing requirements. As lead is expected to be in charge of communication with complainants, families and other interested parties, she/he is expected to be confident and personable communicator, with the ability to stay calm and focused under pressure. Future lead investigator is expected to have analytical skills, which could have being gained in a areas such as social services, trading standards, risk, audit, probation or enforcement. Candidate is required to be degree educated to at least 2.2. level or equivalent;
- *Operations Team leader*<sup>120</sup>: Major function is managing team of investigative staff, which involves coaching staff, solving problems, managing their performance and in exceptional circumstances conducting complex investigative actions. According to the web-site: “*If you have the strategic understanding, resilience and investigative ability to lead our teams in a series of high-profile investigations, this is an outstanding opportunity to develop your management career and influence social justice. You’ll need previous experience in team leadership and conducting investigations in areas such as social services, trading standards, risk, audit, probation or enforcement. You’ll preferably have at least a 2:2 degree, or equivalent.*”
- *Operations manager*: Mandate includes coordinating operation of various investigative and other services to ensure performance, productivity, quality and consistency. Strong analytical and leadership skills are required. Managing complex processes is required background for this position. At least 2:2 degree or equivalent is required.

Recruitment process for above positions include initial review of the application, phone interview, attendance of the assessment center for the final interview<sup>121</sup>. IOPC web-site also includes online self-assessment tool, which allows any potential candidate to match her/his basic motivations and expectations reality of work at the service before applying.<sup>122</sup>

PIRC (Scotland) employs mix of staff drawn from police and non-police backgrounds. In 2019, 60% of the PIRC's staff did not have previous experience as police officers while the remaining 40% did hold this experience. Currently, 54% of staff within the Investigations Team previously served with one of the former eight Scottish legacy forces. The remaining 46% of the Investigations Team comprises staff drawn from a variety of investigatory backgrounds, including recruits from the Fire and Rescue Service, the former UK Borders Agency, Trading Standards and the Armed Services.<sup>123</sup>

<sup>120</sup> See very good video of current Operations Team Leader: <https://youtu.be/BENmukOUKTw>;

<sup>121</sup> See more information provided in the FAQ section: <https://policeconduct.gov.uk/who-we-are/working-us/investigative-roles/frequently-asked-question-investigation-roles>;

<sup>122</sup> See respective online tool at the following link: <https://policeconduct.gov.uk/who-we-are/working-us/investigative-roles/self-assessment-tool>;

<sup>123</sup> See Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 25 October 2018, 11 October 2019, available at the following link: <https://rm.coe.int/1680982a3e>, para 26;

PIRC has *Recruitment and Selection Policy*, which is publicly available and provides basic principles of merit based selection procedure.<sup>124</sup>

SIU (Ontario, Canada), as in case of above discussed jurisdictions, has mix background investigators. Out of current 15 lead investigators 8 have no previous policing experience. Their investigative skills and knowledge comes from having worked in areas such as national security and intelligence, immigration, the legal profession, workplace health and safety, and professional regulation. In addition to this, a total of 40 regional investigators and 10 forensic investigators are stationed across the province and deployed on an as-needed basis.<sup>125</sup> Investigators are formally called “peace officers” and police officers under investigation “subject officers”. Former police officers who are employed at the SIU are *statutorily prohibited* ever to be involved in investigation of subject from police station or other institution where she/her was previously employed.

SIU like above discussed PONI and IOPC aims to ensure that institution prepares its future investigators and will not rely too much on former police officers - Trainee program, which is considered to be successful in contributing new, *civil investigators* to the service.<sup>126</sup> Recruitment of investigators are conducted in accordance to public service recruitment procedure. In addition, some key staff members go through *Employment Screening Risk Assessment (ESRA)*, which includes Enhanced security screening (which includes a Criminal Record (CPIC) check, local Police Record check, OPP investigation check and a Credit check) and must receive clearance prior to filling this position. After joining service investigators attend a *five week* in-class orientation before participating in a *six-month coaching program*.<sup>127</sup>

As indicated above, SIU includes various professionals engaged in investigation. During the research the following requirements were identified for *investigator* at the SIU:<sup>128</sup>

- *Knowledge:* Ability to gain and use current knowledge in the areas of investigation methods, techniques and procedures to conduct investigations by gathering and evaluating evidence at scenes, locating and interviewing and/or interrogating witnesses, organizing specialized assistance such as technical experts or use of special equipment; Use of force principles, theories and practices, powers of arrest and powers of police; Court proceedings and rules of evidence; Legislation and regulations (Canada Evidence Act, Police Services Act, Criminal Code of Canada, Ontario Evidence Act); Basic theories to determine investigation requirements by identifying likely and potential sources of evidence, providing direction to police personnel at scenes, and to provide testimony in legal proceedings; Business/police record keeping and ensuring proper documentation and interim storage of records and evidence; Evaluate evidence by examining records and determining irregularities and potential significance to investigation; knowledge of operation and maintenance of investigative equipment to gather evidence.

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<sup>124</sup> See text of the policy on the following link: <https://pirc.scot/media/4655/recruitment-selection-policy.pdf>;

<sup>125</sup> See informative video about SIU investigators: <https://www.siu.on.ca/en/video.php?vidid=7>;

<sup>126</sup> See Interview with Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23rd of April, 2020);

<sup>127</sup> See SIU Annual report 2018-2019, p.19: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf); ;

<sup>128</sup> Materials obtained from Deputy State Inspector of Georgia; Here report provides extracts for illustrative purposes, for detailed study please see full text of the job description.

- *Skills*: Common sense, analytical and reasoning skills to carry out investigations, identify and interpret evidence, examine scene, records and interview witnesses, identifying need for necessary equipment or special assistance such as the Coroner's Office; Analytical and evaluative skills to assist in determining whether there are reasonable grounds to believe that criminal acts occurred; Reasoning skills; Communication skills to: present evidence in court and at inquests, conveying evidence, observations and technical information relating to investigation findings and the application of legislation/policy; write Crown briefs, reports on evidence gathered during investigation; deliver lectures across the province in matters dealing with investigative techniques; Interpersonal skills; Demonstrated understanding of the need to be sympathetic, tolerant, patient, and sensitive to the needs all persons involved in the in the investigative process and to the public and communities given the genesis of the SIU. Ability to work under supervision and follow direction;
- *Freedom of Action*: “Work is carried out within the context of this Units procedural controls for the conduct of investigations (ministry/government policies, guidelines, directives or established practices or procedures) and legislation/regulations related to investigation (e.g. Police Services Act, Criminal Code, Canada Evidence Act, Youth Criminal Justice Act). Work requires exercising considerable latitude in: determining investigation requirements (including identification and interviewing of witnesses, use of special/technical services); determining direction of investigations including identifying relevance of evidence and tests/research required to support or refute interpretations/theories of evidence, providing direction on what is required to support interpretations; recommending most appropriate follow-up warranted by evidence (e.g. criminal prosecution). Work is reviewed through standard reporting processes by supervisor for overall adherence to policy, timeliness and compliance/quality in conducting investigations. Work requires adhering to those policies and referring exceptions to policies to the Supervisor.”

Present research has looked towards the issue of *remuneration policies* for investigators and other staff members. While this matter requires more in-deep analyses, the following characteristics were identified:

- *PONI* (Northern Ireland): the Police Ombudsman is remunerated in line with *judicial salary scales*. Judicial scales are based on the work and recommendations of the Senior Salaries Review Board (SSRB). The Chief Executive and Senior Director of Investigation are remunerated as senior civil servants. The remuneration of other members of the Senior Management Team and staff within the Office is set within the Northern Ireland Civil Service (NICS) pay structures. The Senior Civil Service (SCS) remuneration arrangements are based on a system of pay scales for each SCS grade containing a number of pay points from minima to maxima allowing progression towards the maxima on performance. *PONI* does not make *bonus payments* in respect to staff performance. The level of remuneration varies according to the post that is held. The range of remuneration on a full time equivalent basis within the Office is £20,692 to £137,685. The median rate of remuneration of staff in the Office is £32,221.<sup>129</sup>

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<sup>129</sup> See Annual 2018-2019 report: See 2019 Annual report: <https://www.policeombudsman.org/PONI/files/04/048d82dd-0255-414f-8af4-b47b692e9cc1.pdf>;



- *IOPC (England and Wales)*: Office operate 14 grade system backed by an analytical job evaluation scheme. Any change in their pay policy or pay remit require formal approval from the Human Resources and Remuneration Committee (of Home Office); IOPC follows *Civil Service Pay Guidance* produced by the Cabinet Office and HR Treasury. Remuneration for directors adheres to the work and recommendations of the Senior Salaries Review Body. Bonuses are not payable to the Director General and other senior managers.<sup>130</sup>

Present research also looked at the matters of *professional ethics of investigators* and other staff members hired by the independent investigatory bodies, as well as *disciplinary/complaint mechanisms* elaborated for this purposes:

- *PONI* – as a part of the internal policy instruments PONI has its own *Code of Ethics*.<sup>131</sup> According to Code of Ethics:
  - “*Police Ombudsman staff are required to carry out their duties in accordance with this Code of Ethics and be aware that, in appropriate circumstances, a breach could lead to a criminal investigation by police or a discipline investigation by the Office of the Police Ombudsman.*”
  - *Where the Code of Ethics conflicts with Police Ombudsman instructions, policy, guidelines or procedures, staff must comply with the provisions of the Code.*”

Code of Ethics provides respective ethical standards in regards to: *professional duty; ethics during investigatory actions; privacy and confidentiality; treatment of detainees; equality; integrity; fitness for work; accountability*. The Code of Ethics sets out the *minimum standards* of behavior and failure to comply with it may constitute a breach of *Disciplinary Policy and Procedures* of PONI and may result in the initiation of disciplinary action.

- *IOPC* – as in case of PONI, IOPC also has its own *Code of Conduct for IOPC Employees*.<sup>132</sup> In accordance to the Code: “*The IOPC’s principal operational statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. As we are the independent guardians of the system, the public’s perception of and trust in how we conduct ourselves as public servants is essential.*” The code is a comprehensive document and covers the following matters: *IOPC values; Standards of behavior; Accountability; Valuing diversity; Integrity (conflicts of Interest); Representing the IOPC externally (contact with media, contact with parliamentarians); Outside the work (social media, other employment, political activities); Breaches of the code of conduct (conflict of work, Employee involvement and management direction)*.

<sup>130</sup> See 2018-2019 Annual Report and Statement of Accounts: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_annual\\_report\\_and\\_accounts\\_2018-19.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_annual_report_and_accounts_2018-19.pdf);

<sup>131</sup> See the Police Ombudsman for Northern Ireland Code of Ethics at the following link: <https://www.policeombudsman.org/PONI/files/4e/4e945199-fa39-4327-a0d9-9ca425f3aa4c.pdf>

<sup>132</sup> See text of the Code of Conduct at the following link: [https://www.whatdotheyknow.com/request/619871/response/1483838/attach/3/1008033%20IOPC%20Code%20of%20Conduct.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/619871/response/1483838/attach/3/1008033%20IOPC%20Code%20of%20Conduct.pdf?cookie_passthrough=1);



IOPC also provides guidance to any interested actors about the way to provide complaint about work of the agency and its staff members.<sup>133</sup> The formal complaint consideration procedure with regard to the IOPC staff is regulated by *the Independent Police Complaints Commission (staff conduct) Regulation (2004)*.<sup>134</sup> Furthermore, IOPC has relevant internal policy instrument – *Disciplinary and Dismissal Procedure (September 2009)*<sup>135</sup>, according to which:

- *“Management will apply the formal disciplinary process in instances where it is alleged that standards of behavior do not meet the levels required and when training or informal counselling have been unsuccessful or are not appropriate”;*
- *Application of disciplinary procedures to employees below director level is a matter for line managers or the director (in case of direct subordination to director);*
- *Policy provide principles of the process: non-discrimination; separation of staff members who will be responsible for investigation of misconduct and who will conduct the disciplinary hearing; no disciplinary action before employee has been given details for the alleged misconduct, the evidence and opportunity to state his her answers to the allegations; right of employees to be accompanied by a union representative for entire process; No dismissal of employee except in the case of gross misconduct; expedited process as much as possible; right to appeal given to employee; all meetings, hearing and action plans fully document and kept confidential by parties involved;*
- *IOPC may suspend any staff member whom a serious complaint (gross misconduct) has been made if it is of the opinion that it is necessary to do so: for the efficient carrying out the IOPC’s function or in the public interest;*
- *Special role given to line managers – to identify possible misconduct as early as possible and facilitate avoidance of the act; First stage – information action carried out by the manager and documented: Policy provides detailed guidance how informal meeting should be carried out; Outcomes of the informal meeting has no disciplinary sanction force, however results are documented and kept “live” for 6 months; Second stage (in case of need) – formal action: management investigation. Management investigation is conducted obligatory in cases when manager determines that the matter:*
  - *amounts to an allegation of misconduct or gross misconduct, which requires a management investigation under IOPC Disciplinary and Dismissal Policy; and/or*
  - *amounts to a ‘serious complaint’ under the Staff Conduct regulations. A complaint is a serious complaint if it would, if proved, be likely to result in the person involved being dismissed or required to resign;*

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<sup>133</sup> See more information at the following link:

[http://www.ipcc.gov.uk/sites/default/files/Documents/Complaint\\_forms/Feedback\\_and\\_Complaints\\_Policy.pdf](http://www.ipcc.gov.uk/sites/default/files/Documents/Complaint_forms/Feedback_and_Complaints_Policy.pdf);

<sup>134</sup> Available at the following link: <http://www.legislation.gov.uk/ukxi/2004/660/made>;

<sup>135</sup> See IPCC Disciplinary and Dismissal Procedure applied by IOPC, provided by IOPC FOIA officer;

*Outcome of the completed investigation: drop the matter; arrange a disciplinary hearing;*

- *Policy provides detailed regulation regarding disciplinary hearing: hearing procedure; legal advice; disciplinary panel; attendance; witness testimony; decision making following a hearing. Policy also provides detailed regulations of disciplinary sanctions as well as appeal procedure.*
- *GSOC<sup>136</sup> – GSOC investigators and other staff members are considered as civil servants and they need to adhere to standards and behavior as provided by *Civil Service Code of Standards and Behavior*.<sup>137</sup> This document sets out the standards required by all civil servants in the discharge of their duties. The Code specifies that civil servants must maintain high standards of service in all of their dealings with the public. Based on this instrument GSOC has developed its own *Code of Ethics*.<sup>138</sup> The Code regulate the following matters: *Equality and Respect; Independence and Building Confidence; Integrity; Presentation and Personal Behavior; GSOC Investigations and Operations; Criminal Conviction.**

GSOC internal complaint consideration process, which might lead to disciplinary action against staff member, is developed based on *Civil Service Disciplinary Code* applicable to all public servants.<sup>139</sup> In case of GSOC complaint against staff members and disciplinary action is handled by line managers. However, anyone unhappy with the conduct of a designated officer in the context of a criminal investigation, they may also write to the Minister for Justice and Equality. The minister has a power to ask Chief Justice to invite judge to inquire into the conduct of a designated officer. On completing the inquiry, the appointed judge shall report its results to the Minister who shall forward a copy of the report to the GSOC for such action as it considers appropriate in the circumstances. In addition to above stated *Civil Service Disciplinary Code* procedures, the following rules are set for complaint consideration at the GSOC:

- All complaints must be in writing (verbal complaint must be followed with completed form). Receipt of the complaint is acknowledged;
- Complaint form is forwarded to the Manager in the relevant area/unit within 10 working days. Corporate Services records when the complaint has been forwarded to the relevant Manager and will retain a copy of the complaint;
- The Manager will deal with the complaint, including corresponding with the complainant, within the designated timeframe. The Manager will inform Corporate Services when the complaint has been dealt with and closed.

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<sup>136</sup> More information can be found on the following link: <https://www.gardaombudsman.ie/about-gsoc/customer-service/>;

<sup>137</sup> See Civil Service Code of Standards and Behavior (2004) at the following link:

<https://circulars.gov.ie/pdf/circular/finance/2004/26.pdf>;

<sup>138</sup> See at the following link: <https://www.gardaombudsman.ie/about-gsoc/customer-service/>;

<sup>139</sup> See *Civil Service Disciplinary Code* (2016) at the following link: <https://circulars.gov.ie/pdf/circular/per/2016/19.pdf>;

- *SIU* – SIU investigators and other staff members are considered to be Ontario civil servants and employment related issues, including disciplinary responsibility matters are governed by the *Public Service Act of Ontario*<sup>140</sup>. This system is deferent in case of police officers of the province whose labor relationship matters re governed by Police Services Act.<sup>141</sup> The *Public Service Act* along other matters provide standards related to: *Conflict of Interests; appointment of Ethics Executive in the respective public body; Penalty for violating conflict of interest rules: disciplinary measures, including suspension or dismissal; Rules regarding engaging in political activity.*

The Act includes separate part (VI) related to *Disclosing and Investigating Wrongdoing*. According to which “wrongdoing” means *inter-alia*:

- “*an act or omission of a public servant, a minister or parliamentary assistant that creates a grave danger to the life, health or safety of persons or to the environment, where the danger is unreasonable having regard to his or her duties, powers and functions and any other relevant circumstance*”;
- “*gross mismanagement by a public servant, a minister or parliamentary assistant in the work of the public service of Ontario*”.

The Act includes detailed rules obliging public servants to *disclose wrongdoing* and set specific rules for respective officials in this regard. Disclosure might happen to *Integrity Commissioner* in specific cases provided by the Act, which itself can carry out investigation of the action.

In addition to above stated act, SIU investigators and other staff members behaviors is covered by *Ontario Regulation 381/07 Conflict of Interest Rules for Public Servants (Ministry) and Former Public Servants (Ministry)*.<sup>142</sup> Please note that SIU staff members are considered to be employed by the relevant ministry of the province. The act covers such issues as: *Benefiting itself, spouse or children; Accepting gifts; disclosing confidential information; giving preferential treatment; hiring family members; engaging in business; Duty to declare certain financial interests; prohibition on certain purchases; rules for former public servants, etc.*

*Conflict of interest rules* are further regulated by the internal policy instrument of the SIU – *General Policy 001, Conflict of Interest – Public Service of Ontario Act*.<sup>143</sup> Provided policy includes rules related to conflict of interest based on above stated statutory instruments. According to the policy:

- *A public servant who contravenes a conflict of interest rule applicable to him or her or who contravenes a direction (as provided by the statutory act) is subject to disciplinary measures, including suspension and dismissal;*
- *The “ethics executive” for SIU members is the Deputy Attorney General;*

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<sup>140</sup> See act at the following link: <https://www.ontario.ca/laws/statute/06p35#BK72>;

<sup>141</sup> Additional communication with Mr. Ian Scott (26<sup>th</sup> of May, 2020);

<sup>142</sup> Available in the materials provided by the Deputy State Inspector;

<sup>143</sup> Available in materials provided by the Deputy State Inspector;

- *A supervisor of a public servant may request that the public servant's ethics executive determine a question about the application of conflict of interest rules to the public servant;*
- *A public servant or former public servant shall comply with a direction of the ethics executive or the Conflict of Interest Commissioner.*

### In-Office Trainings and other Capacity building initiatives

Research has looked at the matter of in-office training possibilities for investigators and other staff members of the independent investigatory mechanisms. Countries and systems studied do *take advantage of general training and capacity building possibilities* present in the country and provided to other investigatory bodies and professionals. However, agencies from developed systems *do provide their own in-house trainings and other capacity building services* (in addition to trainee preparatory programs discussed above). At the same time, research could not identify availability of any special training centers created under the existing agencies.

- *PONI (Northern Ireland): Annual report provides information about periodic training activities which cover diverse topics: Collecting Electronic and Digital Evidence; Forensic Awareness and Exhibit Management; Disclosure Training Employment Law Update; Regulatory Investigatory Powers Act (RIPA); Coaching; IT systems and applications. In addition to in-house trainings, PONI cooperates with Police authorities to ensure opportunity for its investigators to undergo trainings in areas of Search Training, Road Traffic Investigations, etc. Furthermore, agency, based on its own internal expertise is developing small (“bitesize”) modules which will be used for future investigators and newly joined professionals.*<sup>144</sup>
- *GSOC (Ireland): Agency has its own Learning and Development Manager (L&D Manager) which is in charge of organizing on-going training, up-skilling development activities. Apart from planning and implementing their own internal training programme, GSOC staff have also been able to avail of the suite of programmes centrally operated by the One Learning Shared Service under the Civil Service Renewal Plan 2014. In 2018, the L&D Unit facilitated 26 different training courses or programmes for GSOC staff, 15 of which were provided by the One Learning Framework. Out of the 95 staff (including three Commissioners), 73 attended one or more of these courses. Trainings included: Children First awareness training; Designated Liaison Person (DLP) training; Investigative Interviewing training; Injury Photography training; Data Protection training for Data Controllers; ITIL Foundation training course; SharePoint 2013 Site Owner training; GSOC's line managers completed programmes for Executive Leadership and Management Development in 2018. In addition, a number of GSOC staff pursued educational and training courses on their own time and in accordance with the refund of fees scheme.*<sup>145</sup>
- *SIU (Ontario, Canada): Agency annually conducts trainings and other learning opportunities. 2018 annual report suggests that during the year SIU staff participated in learning and*

<sup>144</sup> See Annual 2018-2019 report: See 2019 Annual report: <https://www.policeombudsman.org/PONI/files/04/048d82dd-0255-414f-8af4-b47b692e9cc1.pdf>;

<sup>145</sup> See GSOC Annual Report 2018: <https://www.gardaombudsman.ie/publications/statutory-reports/?download=file&file=3161>

development initiatives totaling more than 5,300 hours, with over 85% of this training devoted to the investigative staff. SIU also sends its staff members at the various courses organized by *Ontario Police College* and *Canadian Police College* seen to be the best national training facilities for the criminal justice practitioners (as a minimum to attend the following course: *Criminal Investigation Training and Education; Sexual Assault Investigation; P.E.A.C.E. Model of Investigative Interviewing; Investigative Interviewing Techniques; and Homicide Investigation course*). In addition, SIU provides in-house trainings for investigators which include Peer Case Reviews, technical and technologically-based presentations (firearms familiarization, GPS / AVL software overviews, etc.) as well as specifically targeted health and safety initiatives (Introduction to Mental Health First Aid, Naloxone training, etc.). 2018-2019 Training expenditures of the SIU were 3.14% of the SIU's final budget.<sup>146</sup>

## E. Accountability, measuring impact and public communication

### Principle of independence

Major aim of the work of the independent investigatory bodies is to fight against impunity in law enforcement agencies. Therefore, accountability of the stated institutions is very important principle of operation. While ensuring accountability it is important that respective agency has proper independence provided by law and perceived as such in practice. As indicated above, mandate, structure and procedural powers of such institutions are defined by the national governments based on legal systems, cultures and needs. However, observance of principle of independence, efficiency and accountability is an obligation deriving from international human rights law. Therefore, while studying individual countries and jurisdictions respective reports from CPT and UN CAT and UN HRC are our primary source of reference. While matter of independence of such investigatory bodies deserves more comprehensive study and analyses within the scope of this research we can identify the following elements regarding countries and jurisdictions often cited in this paper.

As indicated above, one of the most efficient and independent investigatory body in Europe is PONI. Foundational elements of independence is provided by Good Friday Agreement 1998 and subsequently adopted statutory acts. We can further refer to strong stance of the PONI vis a vis to police institutions as described above. Public trust and acceptance among communities in Northern Ireland is another strong foundation for independence of the stated institution.<sup>147</sup> However, as suggested by various reports and information provided by practitioners since the creation of this institution till present days it faced waves of pressure from political institutions and law enforcement agencies mainly caused by conflicting interests associated with investigation of “historic cases”.<sup>148</sup> In 2011, the Police Ombudsman resigned after it was revealed that the Police Service of Northern Ireland was evaluating

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<sup>146</sup> See SIU Annual report 2018: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf);

<sup>147</sup> Interview with Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21<sup>st</sup> of April, 2020); Also see Final report of research findings, Program to enhance the capacity of NGO's and institutions to advocate for implementation of human rights decisions and standards to prevent torture, the European Union's European Instrument for Democracy and Human Rights programme, For the Kyrgyz Republic, p.21;

<sup>148</sup> *Ibid.*



reports before they were released to the public. The Police Service also has considerable influence over the interaction between police officers and the Ombudsman, often first debriefing officers on what to say.<sup>149</sup> One of the problematic matters regarding independence and efficiency of the PONI currently faces is influence on funding from UK government, as well as pending judicial dispute regarding publication of the investigation results.

Challenges faced by the Scottish system and criticized by the CPT was already mentioned above. Furthermore, based on CPT criticism Sweden relatively recently also went into the process of reforming its system with the aim to provide more independence not only from statutory perspective, but also the way system is persevered by stakeholders.<sup>150</sup> Similar concerns about lack of perception of independence of actual investigations is expressed by the CPT in case of the *Federal Bureau of Anticorruption (BAK)* in Austria.<sup>151</sup>

Experience of Canada with regard to gradually creating independent investigatory bodies across various provinces is also interesting for us to mention. In addition to SIU operating in Ontario, similar independent investigatory bodies were created in many other provinces of the country (British Columbia, Nova Scotia, Quebec, etc.).<sup>152</sup>

#### Accountability systems and impact measurement

Independent investigatory mechanisms are statutory accountable to respective legislative or executive institutions. This is usually enforced by submitting *annual reports* to respective institutions and publicly disseminated them. At the same time, experience of various countries and jurisdictions show *additional tools* which are employed to make sure proper accountability is ensured and outreach activity conducted vis a vis to other government bodies, police institutions, as well as professional groups and wider public. While reviewing various reports and analyses produced for the studied systems researcher tried to identify which tools are used to *measure impact* of the work for such mechanisms. Among systems researched, *IOPC* arguably has the most diverse and impressive tools in this regard.<sup>153</sup>

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<sup>149</sup> See Investigative Mechanisms for State Acts of Torture and Abuse, Memo, p.4; available at: [www.justiceinitiative.org](http://www.justiceinitiative.org); also see *Police Ombudsman Must Go Says NGOs*, The British Irish Rights Watch, Press Release, 2013, <http://www.rwuk.org/new/wp-content/uploads/2013/01/OPONI-press-release-20-oct-2011.pdf>.

<sup>150</sup> See Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 May 2015, 17 February 2016, CPT, available at: <https://rm.coe.int/1680697f60>; also see Response of the Swedish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Sweden from 18 to 28 May 2015, 9 June 2016, CPT, available at: <https://rm.coe.int/1680697f61>;

<sup>151</sup> See Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014, 6 November 2015, CPT, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680653ec7>;

<sup>152</sup> See Concluding Observations on the seventh periodic report of Canada, UN CAT, 21 December 2018, available at: [http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsglSZMQd1BoEakgym8DLjip%2ftVZwAcP32UhceoEv6s9EFDnHa%2ffIXxFR9KNVY4qkr3X7%2faP5eVqCmw6nDLJyD3dA5iGzIWJ0XfsLEbi0yIvz](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsglSZMQd1BoEakgym8DLjip%2ftVZwAcP32UhceoEv6s9EFDnHa%2ffIXxFR9KNVY4qkr3X7%2faP5eVqCmw6nDLJyD3dA5iGzIWJ0XfsLEbi0yIvz;);

<sup>153</sup> See respective separate section on IOPC's web-site: <https://www.policeconduct.gov.uk/who-we-are/accountability-and-performance>;



During the research, recent annual reports of the following institutions were analyzed: *PONI* (Northern Ireland),<sup>154</sup> *IOPC* (England and Wales),<sup>155</sup> *PIRC* (Scotland),<sup>156</sup> *GSOC* (Ireland),<sup>157</sup> *the Norwegian Bureau for the Investigation of Police Affairs*,<sup>158</sup> *SIU* (Ontario, Canada).<sup>159</sup> All reports vary in level of formality, details and target audiences. However, the following common, as well as unique characteristics can be highlighted:

- Majority of the Annual reports *are formally submitted* either to national Parliaments or respective ministries of the executive government;
- *PONI's* and *IOPC's* reports stand out to be presenting at the outset clear set of *risks* which by the time of reporting are effecting efficient and independent operation of the institutions. In case of *PONI* risks are: a) *lack of appropriate budget allocations*; b) *possible high staff turnover for the historic investigation unit*; c) *judicial challenge of the ability of the office to publish investigation results*. Risks in case of *IOPC* are: a) *Introduction of legislative changes*; b) *Compliance with GDPR standards*; c) *potential for significant rise in pension contributions for staff*; d) *Insufficient ICT resources*; e) *Risk of ineffective information assurance processes*;
- Major statistics of the year with identification of the major trends and impact of the organization's work. Almost all report analyzed have impressive visual representation of the data;
- Almost all reports analyzed include either *case studies* based on individual investigations or *short summaries of actual cases* investigated;
- Some of the formal reports submitted to the legislative or executive bodies include financial reports and Audit conclusions;
- Selected number of reports include complex business plan/strategy implementation objectives, measurements and impact/results analyses.

Studied annual reports do present summary analyses of the impact of work of institutions during the reporting period. At the same time, various institutions studied imply other tools for impact analyses.

One of the best examples of measuring impact of the work of the institutions is *statutory and ad hoc reviews* of the work of the investigatory bodies. Such reviews are known to be mandated by the statutory rules and might be part of periodic annual review or represent *ad hoc* initiatives from the side of legislative or other government bodies. One of the examples of such review can be found in case of *PONI*, which undergoes statutory review process at least once every five years and submits a report to the secretary of the State of Northern Ireland. Report is publicly available and covers legislative

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<sup>154</sup> See 2019 Annual report: <https://www.policeombudsman.org/PONI/files/04/048d82dd-0255-414f-8af4-b47b692e9cc1.pdf>;

<sup>155</sup> See 2018-2019 Annual Report and Statement of Accounts: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_annual\\_report\\_and\\_accounts\\_2018-19.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_annual_report_and_accounts_2018-19.pdf);

<sup>156</sup> See Commissioner's Annual Report 2018-2019: <https://pirc.scot/media/5058/pirc-commissioner-report-2018-19-single-pages.pdf>;

<sup>157</sup> See Garda Síochána Ombudsman Commission 2018 Annual Report: <https://www.gardaombudsman.ie/publications/statutory-reports/?download=file&file=3161>;

<sup>158</sup> See 2018 annual report: <http://www.spesialenheten.no/Portals/0/Årsrapporter/Annual%20report%202018.pdf>

<sup>159</sup> See SIU Annual report 2018: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf)

framework and all aspects of work of the agency by providing detailed sets of recommendations.<sup>160</sup> Another example can be found in case of SIU – during its more than 20 years of history SIU undergone numerous external reviews and subsequent reports which examined issues of SIU - police co-operation, limited resources and operational effectiveness. In several cases these reports have played a significant role in shaping the organization today.<sup>161</sup> One of the most interesting *ad hoc* reports in this regard is 2017 *Report of the Independent Police Oversight Review conducted by a Judge of the Court of Appeals of Ontario*.<sup>162</sup>

One of the best *impact measurement tools* used by the studied systems is maintenance of *business plans and/or development strategies*, as well as usage of *qualitative and quantitative and statistical data*.

In case of PONI – institution is statutorily required to produce *annual corporate/business plan* together with the Annual report. Annual report includes specific impact measurement indicators and reports on status of implementation. Current Annual Corporate/Business plan set out the following four key aims: *Delivering Excellence in Investigations; Maintain Impartiality and Independence in Dealing with Complaints; Develop and Implement Standards for the services we provide; and Focus Efforts in Improving Policing*.<sup>163</sup> As we can see from the Annual report specific targets are measured in comparison to last annual report results.<sup>164</sup> In addition to reporting on specific indicators PONI's annual report provides information about major trends by *using statistical data* (for each area of jurisdiction of the office) for the reporting period: *“The Office received 2,627 complaints during 2018/19, representing an increase of 2% if compared to 2017/18 when 2,561 complaints were received. This halted a trend, originating in 2013/14, in which the Office had experienced year on year reductions in the numbers of complaints received against police officers”*<sup>165</sup> Furthermore, report provides detailed information about individual categories of cases.

IOPC (England and Wales) also has well developed system of impact measurement. Currently institution has Strategic Plan 2018-2022<sup>166</sup>, which includes the following priorities with the respective list of concrete actions: *To work with others to improve the police complaints system; To improve policing by identifying and sharing learning from our work; To improve confidence in police accountability; To be an efficient and effective organisation*. In addition to Annual report, which provides information and analyses of impact of work, IOPC publishes separate *Annual Impact Report*.<sup>167</sup> Report is comprehensive and provide user friendly and detailed information (worth

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<sup>160</sup> See example of the report: <https://www.policeombudsman.org/PONI/files/33/3334bb9d-7a5f-4122-b031-718235e8ad20.pdf>

<sup>161</sup> See [https://www.siu.on.ca/en/special\\_reports.php](https://www.siu.on.ca/en/special_reports.php);

<sup>162</sup> See report at the following link: [https://www.siu.on.ca/pdfs/report\\_of\\_the\\_independent\\_police\\_oversight\\_review.pdf](https://www.siu.on.ca/pdfs/report_of_the_independent_police_oversight_review.pdf)

<sup>163</sup> See PONI's Annual Report & Accounts for the year ended 31 March, 2019, p. 9, at the following link: <https://www.policeombudsman.org/PONI/files/04/048d82dd-0255-414f-8af4-b47b692e9cc1.pdf>; Also see similar PICR (Scotland) Business Plan 2019–20, Independent & Effective Investigations & Reviews available at the following link: <https://pirc.scot/media/4875/pirc-business-plan-2019-20.pdf>; and Strategic Plan 2019–22 Independent & Effective Investigations & Reviews, available at the following link: [https://pirc.scot/media/4839/pirc\\_strategic-plan\\_2019\\_single-pages.pdf](https://pirc.scot/media/4839/pirc_strategic-plan_2019_single-pages.pdf)

<sup>164</sup> *Ibid.* also see Report on Independent Investigations of Police Violence, Richard Costidell, Esme Crofton, Eleanor Healy-Birt, Jahan Meeran and Lana Neil, Human Rights Law Clinic 2013-2014, University of Bristol, p.6;

<sup>165</sup> *Ibid.*, p.12;

<sup>166</sup> See: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_Strategic\\_plan\\_2018.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_Strategic_plan_2018.pdf)

<sup>167</sup> See Making a difference Impact report 2018/19 (*This report covers the period 8 January 2018 to 31 March 2019, outlining our impact since the date we were established. Performance data is for the period 1 April 2018 to 31 March 2019;*

mentioning impressive infographics used in the report).<sup>168</sup> The IOPC tracks implementation of the above stated strategic priorities and reports on state of achievements on monthly bases by posting publicly on its web-site.<sup>169</sup> Finally, as in case of PONI, IOPC uses to major statistical data in their annual and other reports and refers to major trends.

As indicated above, research shows that independent investigatory mechanisms are considered to be *civil oversight* agencies,<sup>170</sup> as they usually include human resources (especially top managers) which do not have direct connection with law enforcement bodies, as well as institutionally aim to have bigger accountability obligation towards the public than traditional law enforcements. Therefore, it is well understood to be a usual practice to have pro-active outreach towards government institutions and public about details of investigation per individual case, as well as about major trends and challenges. Thus, researched countries and systems are characterized to have additional (as above stated annual reports do have such information as well) tools which they use to inform public about process and outcomes of investigations. Agencies vary in regards standards of publication of names and other personal information in their reports.<sup>171</sup>

- *Investigation summaries and learning recommendations - IOPC (England and Wales)*<sup>172</sup> – the web-resource includes anonymized investigative summaries for the most cases IOPC investigates. These briefly explain the circumstances that prompted the investigation, the evidence gathered and conclusions. Where appropriate briefs also provide information on outcome of the investigation;
- *Investigation reports – GSOC (Ireland)*<sup>173</sup> – Source includes anonymized information on individual investigations. As GSOC has limited ability to edit and publish all investigations they use *public interest test* to select and publish;
- *Status of SIU cases*<sup>174</sup> and *SIU Director's reports*<sup>175</sup> (Ontario, Canada) – SIU has unique online data-base which includes information about pending investigations. At the end of the investigation Director decides to lay a criminal charge against police officer or close the file without any charges being laid. Director reports the results of the investigation to the Attorney General. The report includes a detailed narrative and reasons for the decision. The SIU does not post any reports dealing with investigations of a sexual nature;

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[https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_Impact\\_Report\\_201819.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_Impact_Report_201819.pdf)

<sup>168</sup> *Ibid.*, p.6 - *Our work and impact at a glance*;

<sup>169</sup> See Outcomes dashboard YTD February 2020: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/outcomes-framework/outcomes\\_framework\\_IOPC\\_latest.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/outcomes-framework/outcomes_framework_IOPC_latest.pdf)

<sup>170</sup> See Background Report Policing the Police, Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies, By Prof. Dr. Monica den Boer, VU University Amsterdam, The Netherlands, Prof. Dr. Roel Fernhout, Radboud University Nijmegen, The Netherlands, Presented at the workshop: Improving the Role of the Police in Asia and Europe, Delhi, India, 3-4 December 2008, p. 4;

<sup>171</sup> As an example see interesting separate policy of GSOC (Ireland) - *What information can GSOC disclose about its investigations?*: <https://www.gardaombudsman.ie/about-gsoc/faqs/what-information-can-gsoc-disclose-about-its-investigations/?download=file&file=3139>

<sup>172</sup> See at the following link of the web-site: <https://www.policeconduct.gov.uk/investigations/investigation-summaries-and-learning-recommendations>

<sup>173</sup> See at the following link of the web-site: <https://www.gardaombudsman.ie/publications/investigation-reports/>;

<sup>174</sup> See at the following link of the web-site: [https://www.siu.on.ca/en/case\\_status.php](https://www.siu.on.ca/en/case_status.php);

<sup>175</sup> See at the following link of the web-site: [https://www.siu.on.ca/en/directors\\_reports.php](https://www.siu.on.ca/en/directors_reports.php);

- *Thematic and learning resource* – addition to above stated reports and updates various bodies researched produce periodic thematic reports and publications which are used to reach out to police, other government agencies and wider audience with the aim to improve violations prevention and educate wider public: *IOPC (England and Wales): Learning the lessons – Focus*<sup>176</sup>, *Oversight Bulletin*<sup>177</sup>; *PIRC: Learning point.*<sup>178</sup>

All researched investigative bodies use extensively *statistical data for the measurement of the impact*. Availability of reliable and comprehensive data in the area of torture, ill-treatment and other police misconduct, as well as investigations of stated acts, is part of the obligation provided by the international human rights treaties.<sup>179</sup> Furthermore, it is important to note that when number of complaints or referrals are low it might mean either a low level of trust and awareness about institution or lack of cooperation from law enforcement bodies which hinder complaints to be reaching respective mechanisms.<sup>180</sup>

While analyzing statistical reports provided by the researched institutions the following major elements are seen to be top priority for majority of them: # of complaint received; % of increase/decrease; # complaints/cases diverted by respective agencies; % of increase/decrease; # of completed investigations; length of proceedings and # of results based on investigation sub-categories (charge, disciplinary action, etc.). At the same time, taking into account specific context of the jurisdiction additional statistical data are prioritized and presented separately: *Annual death statistics*<sup>181</sup> - *IOPC (England and Wales)*; *Firearms and non-firearms cases, death in custody*<sup>182</sup> – *PIRC (Scotland)*; *Driving offences, Sexual assaults*<sup>183</sup> – *SIU (Ontario, Canada)*; *Traffic incidents*<sup>184</sup> – *IPCA (Denmark)*.

*In majority of cases* statistical data is presented in above discussed annual reports, impact reports and strategy implementation reports. However, several organizations have separate sections on their web-sites where comprehensive statistical data can be found collected, analysed and presented monthly, on quarterly and annually.<sup>185</sup>

<sup>176</sup> See <https://policeconduct.gov.uk/research-and-learning/learning-and-recommendations/focus>; also as an example see couple of the additions: *Access to the police complaints system*:

[https://policeconduct.gov.uk/sites/default/files/Documents/Focus/Focus\\_17\\_February2020.pdf](https://policeconduct.gov.uk/sites/default/files/Documents/Focus/Focus_17_February2020.pdf); *Quality of investigations* - [https://policeconduct.gov.uk/sites/default/files/Documents/Focus/Focus\\_December\\_2016.pdf](https://policeconduct.gov.uk/sites/default/files/Documents/Focus/Focus_December_2016.pdf);

<sup>177</sup> Done on quarterly bases. See as an example one addition:

[https://policeconduct.gov.uk/sites/default/files/Documents/OversightBulletin/Oversight\\_bulletin\\_quarter\\_one\\_201920.pdf](https://policeconduct.gov.uk/sites/default/files/Documents/OversightBulletin/Oversight_bulletin_quarter_one_201920.pdf)

<sup>178</sup> See couple of additions as example: <https://pirc.scot/media/5150/learning-point-issue-16-april-2020.pdf> and

<https://pirc.scot/media/5025/learning-point-issue-15-september-2019-web.pdf>;

<sup>179</sup> See Investigation of Ill-treatment by the Police in Europe, Comparative Study of Seven EU Countries, Hungarian Helsinki Committee, 2017, p.50;

<sup>180</sup> Interview with Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23<sup>rd</sup> of April, 2020);

<sup>181</sup> See Statistics section on the web-site: <https://www.policeconduct.gov.uk/research-and-learning/statistics>

<sup>182</sup> See statistical date on p. 28 of the Annual report: <https://pirc.scot/media/5058/pirc-commissioner-report-2018-19-single-pages.pdf>;

<sup>183</sup> See SIU Annual Report, 2018, p.21: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf)

<sup>184</sup> See <https://ipcan.org/members/the-danish-independent-police-complaints-authority/>;

<sup>185</sup> *Ibid.* Also see respective section on the web-site of the GSOC (Ireland):

<https://www.gardaombudsman.ie/publications/statistics/>; See web-section of the SIU (Ontario, Canada) which includes data from 1990: [https://www.siu.on.ca/en/report\\_occurrences.php](https://www.siu.on.ca/en/report_occurrences.php); also see example of quarterly report produced by PONI (Ireland): <https://www.policeombudsman.org/PONI/files/06/06442f1c-039c-49f8-8555-1199dec1a5c0.pdf>

Collection of the statistical data is based on official information available at the respective offices, on quantitative researches, as well as confidential forms used for the complainants. As indicated above, PONI (North Ireland) is using electronic solution - *Police Ombudsman's Case Handling System (CHS)* to collect, analyses data and produce statistical reports.<sup>186</sup>

Individual mechanisms periodically (annually, quarterly) provide statistical information about outcomes of their actions. We can see detailed data which is relevant to specific systems indicating results of investigation conducted by the mechanisms themselves *and* results of upholding or rejecting complaint/appeal on investigation/inquiry conducted by police agencies. The following *examples* can be presented here:

- *IOPC*<sup>187</sup> – In 2018-2019 agency received total 4,097 referrals from police forces, which was 7% increase in comparison to previous reporting period. 687 investigations were initiated and 717 completed during this period. During this period total 3,001 *appeals* (on action conducted by police institutions) were received. *Appeals upheld during 2018-2019 were 37 %*; We can also refer to statistical data available for 2014/2015 here and indicate that during that period 4108 *appeals* have being received and 39% *were upheld*.<sup>188</sup>
- *PONI*<sup>189</sup> - The number of complaints received by PONI during 2017/18 decreased by 9% from the previous year to fewer than 2,600 *complaints*. One-third (33%) of complaints dealt with by the Office were *subject to a full investigation*. In 24% of these *complaints*, the Office *found evidence to substantiate all or part of the complaint*, or identified another concern during the investigation. On 6 *occasions* during the year, the PONI recommended that the Director of Public Prosecutions should prosecute an officer. PONI recommended on 197 *occasions* that a police officer should receive a discipline or a performance action;
- *GSOC*<sup>190</sup> – In 2008 GSOC received 1,921 complaints, which contained 2,944 allegations. 38 *referrals* from the Garda Síochána (police force in Republic of Ireland) of matters where it appears “*the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person*”. 17 *files* were referred to the prosecutorial authorities, resulting in 4 *directions for prosecution*, 9 *directions for no prosecution* and 4 decisions pending. 74 *sanctions* were imposed by the Garda Commissioner on individual gardaí following complaints to and/or investigations by GSOC.

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<sup>186</sup> See respective info on the following link: <https://www.policeombudsman.org/PONI/files/06/06442f1c-039c-49f8-8555-1199dec1a5c0.pdf>

<sup>187</sup> See 2018-2019 Annual Report and Statement of Accounts: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_annual\\_report\\_and\\_accounts\\_2018-19.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_annual_report_and_accounts_2018-19.pdf); See also <https://www.policeconduct.gov.uk/research-and-learning/statistics>;

<sup>188</sup> See Investigation of Ill-treatment by the Police in Europe, Comparative Study of Seven EU Countries, Hungarian Helsinki Committee, 2017, p.64;

<sup>189</sup> Annual Statistical Bulletin of the Police Ombudsman for Northern Ireland, 2017/18, available at: <https://www.policeombudsman.org/PONI/files/dc/dcd7bf2f-612c-4c74-bd9a-64136d896632.pdf>;

<sup>190</sup> See Garda Síochána Ombudsman Commission 2018 Annual Report: <https://www.gardaombudsman.ie/publications/statutory-reports/?download=file&file=3161>;



- *SIU*<sup>191</sup> - In 2018 SIU opened investigation into 382 cases. During this year the SIU issued 518 news releases regarding outcomes of the cases: 119 News releases were issued in the early stages of an investigation; 244 News releases were issued in cases where the evidence did not satisfy the Director that there were reasonable grounds to lay charges; 136 News releases were issued for cases terminated by memo (case falls outside the mandate of the agency); 15 News releases were issued in cases where charges were laid; 4 News releases were issued in instances not case-related (e.g. annual report, library series, etc.). Furthermore, low % of charge in SIU is general practice and was up to 4% during 2008-2013 years.<sup>192</sup>

## Public Communication (PR)

As it was indicated above, major element of the accountability system for independent investigatory mechanisms is proper public communication using variety of tools and mechanisms. Each strong mechanism discussed in this paper arguably has strong PR specialists and respective units. We can see from web-sites of the institutions and their annual reports major policies and objectives regarding PR and outreach towards the public. Research tools are applied to measure public trust as well as awareness. Above part on accountability already reviewed set of publications (*Thematic and learning resource*), which are produced by the mechanisms with the aim to inform public and various stakeholders. Additionally, specific media products are developed to inform public pro-actively about operation of the institution. While such activities are carried out by almost all organizations researched we can signal out three most illustrative examples:

- *IOPC (England and Wales)* – Regularly undertakes surveys of members of the public to assess their perceptions and awareness of the police, the police complaints system, and the IOPC. Their public *perceptions tracker* collects this data allowing them to track performance throughout the year. In 2018/19, IOPC ran six surveys at regular intervals among adults in England and Wales. The penultimate survey included sample boosts for respondents from the following groups: 18–24 year olds; people from a black and minority ethnic (BME) background; LGBT+ respondents; people with a disability.<sup>193</sup> Furthermore, IOPC has separate policy: *Engaging with us on social media*.<sup>194</sup> IOPC produces periodic *podcast* and *blogs*<sup>195</sup> on variety of topics related to the institution’s mandate, as well as *short videos*.<sup>196</sup>

<sup>191</sup> See SIU Annual report 2018: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf)

<sup>192</sup> Interview with Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23rd of April, 2020);

<sup>193</sup> See 2018-2019 Annual Report and Statement of Accounts: [https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_annual\\_report\\_and\\_accounts\\_2018-19.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_annual_report_and_accounts_2018-19.pdf)

<sup>194</sup> See on the following link from the web-site: <https://policeconduct.gov.uk/who-we-are/accountability-and-performance/our-service-standards/engaging-us-social-media>

<sup>195</sup> See on the following link from the web-site: <https://www.policeconduct.gov.uk/news/our-podcasts-and-blogs;>

<sup>196</sup> See various videos: On the IOPC's independence - <https://www.youtube.com/watch?v=vj2dHNUeCLw>; on how learning will be at the heart of the IOPC's work - <https://www.youtube.com/watch?v=ilEnE5evOIQ&t=2s>; on improving the work we do - <https://www.youtube.com/watch?v=-QtD0COpwJU>; on the need for the IOPC to engage with the police and public - <https://www.youtube.com/watch?v=MeEeATFaK10>;

- *PONI (Northern Ireland)* – Office develops and publishes *Annual Report on Public Awareness*.<sup>197</sup> Report is based on statistical analyses which presents the findings from the Police Ombudsman’s module in the Northern Ireland Life and Times (NILT) Survey. The results from the survey are used to monitor public awareness and confidence in the PONI. The results are used by the Office to measure its performance against three targets in its Balanced Scorecard, in the “To enhance knowledge and understanding of the complaints system amongst key stakeholders” section. Furthermore, PONI is very active in engaging with traditional media and on social network platforms.<sup>198</sup>
- *SIU (Ontario, Canada)* – SIU is very active in public communication. The SIU has developed a comprehensive *Communications Program* which aims to foster effective communications with the media while also respecting the integrity of SIU’s investigations and the important privacy interests of those involved.<sup>199</sup> Agency has pre-defined *outreach efforts aims* published on its web-site<sup>200</sup>: *Increase awareness of the SIU, its mandate, and the investigative process; Correct misperceptions; Raise confidence in the integrity of the SIU and police services in Ontario; Develop and strengthen stakeholder networks for greater communication; Raise willingness to report incidents and for cooperation (both police and civilians); Encourage constructive scrutiny of its operations; Increase opportunities for corporate learning and improvement.* Furthermore, SIU defines its target community groups for outreach: *Ethnic and immigrant communities; Students (high school, college & university); Youth groups; Neighbourhood associations & community centres; Social service providers to the homeless; mentally ill and youth; Advocacy groups working to reduce crime; Legal Aid Clinics; First Nations organizations.* Organization has special outreach programs for Kids and Students<sup>201</sup> as well as produces variety of short videos<sup>202</sup> aiming to inform wider public.

### Cooperation with CSOs and at inter-state level

As independent investigatory bodies are considered as *civil oversight* mechanisms it is crucially important to have communication and coordination with CSOs at the national and community level and engage in cooperation with international organizations and other similar institutions across borders.

Arguably all institutions researched have open and cooperative engagement with local CSOs – NGOs working in the area of advocacy against torture and other ill-treatment, as well as service provider CSOs (legal aid, counseling and other rehabilitation services for victims of crimes). In addition, as indicated above independent investigatory mechanisms engage constructively with professional

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<sup>197</sup> See Annual report on public awareness of the Police Complaints System in Northern Ireland, 2018/19 available at the following link: <https://www.policeombudsman.org/getmedia/9a42270f-7fe8-4409-a5f7-ecfc975ecd0d/Annual-report-on-public-awareness-of-the-police-complaints-system-in-Northern-Ireland-2018.pdf>;

<sup>198</sup> See interesting short video about mandate and work of the PONI: <https://www.policeombudsman.org/Video-Audio/Video/An-introduction-to-the-Police-Ombudsman-s-Office>;

<sup>199</sup> See further information on the following link from the web-site: [https://www.siu.on.ca/en/media\\_centre.php](https://www.siu.on.ca/en/media_centre.php);

<sup>200</sup> See at the following link from the web-site: <https://www.siu.on.ca/en/outreach.php>;

<sup>201</sup> See the SIU Annual report 2018: [https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf), p. 11;

<sup>202</sup> See at the following link: [https://www.siu.on.ca/en/siu\\_videos.php](https://www.siu.on.ca/en/siu_videos.php);

unions of police and other professionals. Indeed, as suggested by professionals, such unions usually act in contradiction with effective enforcement of the mandate of research institutions,<sup>203</sup> however policy of engagement from the side of institutions themselves is continuously upheld.

In addition to individual collaborations, *IOPC* (England and Wales) and *SIU* (Ontario, Canada) have examples of more organized engagement with CSOs and other groups. *IOPC* has established *External Stakeholder Reference Group*, which brings together a range of external statutory and non-statutory stakeholders – for example, representatives from charity and campaigning organizations, policing organizations and the Home Office. The Group provides challenge and constructive feedback on *IOPC*'s performance and key projects, and acts as an informal sounding board to discuss specific pieces of work and themes. This groups meets average three times per year.<sup>204</sup> Furthermore, as indicated above *IOPC* has Supper-complaint mechanisms which allows “designated organizations” (such as charities) to raise broad or systemic issue with the agency.

In Ontario, Canada in 2002 *SIU* established *Director's Resource Committee (DRC)* in order to give voice to Ontario's communities about the work of the *SIU*. Through the *DRC*, the *SIU* Director gains input and feedback on various policy matters within the *SIU* and is apprised of trends and issues as perceived by community members. The *DRC* is comprised of community representatives from various ethnic and community groups.<sup>205</sup>

In case states which have federal or regional territorial arrangement we can observe collaboration and existence of networks of local independent investigatory mechanisms (e.g. Canada). While bilateral and cross-border cooperation between various states and jurisdictions is evident, we can identify two examples of international networks which are topic specific and researched institutions are engaged in: *The Independent Police Complaints Authorities' Network (IPCAN)* - an informal network of exchange and cooperation amongst independent structures in charge of external control of security forces. These bodies, mainly from European Union member states, receive and process complaints against public security forces, and sometimes, against private ones as well. Currently *IPCAN* brings together 22 members,<sup>206</sup> Another example of network with a bit wider mandate it - *European Partners against Corruption (EPAC) network* – was launched in November 2004 and made up of institutions, from European Union and Council of Europe member states, that are responsible for police monitoring and preventing and combating corruption.<sup>207</sup>

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<sup>203</sup> Interviews with Mr. Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ), Belfast, Northern Ireland, UK (21st of April, 2020); With Mr. Ian Scott, Former Director of Special Investigatory Unit, Ontario, Canada (23rd of April, 2020);

<sup>204</sup> More information can be found in 2018-2019 Annual Report and Accounts:

[https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC\\_annual\\_report\\_and\\_accounts\\_2018-19.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_annual_report_and_accounts_2018-19.pdf)

<sup>205</sup> See for more information: <https://www.siu.on.ca/en/drc.php>; also see *SIU* Annual Report 2018, p.7:

[https://www.siu.on.ca/pdfs/ar\\_2018\\_pdf.pdf](https://www.siu.on.ca/pdfs/ar_2018_pdf.pdf)

<sup>206</sup> More information about network and its members can be found here: <https://ipcan.org>;

<sup>207</sup> More information about this network can be found here: <https://www.epac-eacn.org>;

## Conclusions and General recommendations

Research of independent investigatory mechanisms in European countries showed diverse experience of various jurisdictions. While one can identify strong democracies and law enforcement systems across the continent, taking into account policing context and history, not many countries have a models of *independent* and *efficient* mechanisms which can be considered useful to study taking into account aim of the study – facilitate future institutional and functional development of the Georgian SIS. Fulfillment of international human rights obligations and challenges faced by countries in this regard should be seen as a starting point while looking at the best examples. Second factor is public trust and perception of independence and efficiency. Arguably the most developed systems, which gave this study opportunity to learn much are found in the UK (Northern Ireland, England and Wales, Scotland), as well as in the Republic of Ireland, Canada (Ontario), Norway, Denmark and Sweden. Study does not conclude that other European jurisdictions do not provide source for reflection. Vice versa, future studies in this regard should be encouraged to understand achievements and challenges faced other European jurisdictions and successful systems in other parts of the world (Jamaica, South African Republic, Guatemala).

*Based on information and analyses provided in this report the following general recommendations can be provided to SIS for future consideration:*

- *Mandate and jurisdiction* – Dialogue should be initiated vis a vis to Parliament and investigatory agencies to consider possibility to extend mandate of the SIS to include not only existing criminal law violations (crimes), but also other serious crimes, as well as grave violations of ethical codes, which might lead to disciplinary responsibility. Mandate might include direct consideration of complaints and/or *appeal* possibility (overseeing disciplinary inquiry at the respective agencies); Additional power to issue general policy instruments from the side of SIS should be further explored based on its practice and mandate;
- *Interaction with prosecution and other investigatory bodies* – Effectiveness of current system of prosecutorial supervision (in light to pending reform in Georgia on status of investigators and prosecutors) should be further studied aimed to ensure independent and efficient functioning of SIS; Right of SIS to appeal non-initiation of the criminal prosecution should be further developed; Development of the cooperation MoUs with other investigatory bodies should be considered;
- *Effective investigatory tools* – In-house capacity to conduct forensic and other needed expert examinations will be beneficial to developed; SIS is advised to initiate reform of the national legislation and regulatory framework regulating rules on processing, managing and making accessible to SIS (and other investigatory bodies) video/audio data necessary for the investigation. SIS can consider issuing its guidance on usage of BWV recordings in the process of investigation;
- *Complaints and engagement with Victims/Witnesses* – Power to initiate investigation based on public interest test should be further strengthened; SIS should consider initiation of discussion on legislative reform to allow *Supper-Complaint* type of system in Georgia; Special in-house

service (based on *Family Liaison office or Affected Persons Program*) will be beneficial to be developed to enhance communication and support for victims, family members and witnesses;

- *Institutional development – Civil oversight culture* should be further mainstreamed in governance of the SIS; Internal governance policy and strategic development mechanism should be further developed and proper impact measurement tools integrated into it; Based on examples provided in this research, in addition to existing national legislation and regulations, separate publicly accessible policies are advisable to be developed, which will support effective operation of the institution; Effectiveness of current governance structure at the top and middle level should be further evaluated based on annual performance; Introduction of executive team/SMT should be considered. Also, SIS should consider possible advantages of advocating introduction of IOPC's example of board of directors model in its governance system;
- *Recruitment and capacity building of investigators* – structure of investigation units of researched institutions will be useful to consider; Investigators recruitment policy (with development phases) will be useful to elaborate aiming to identify development strategy for training and recruiting new (*civilian*) investigators; Introduction of Trainee program will be an asset for institutional development; Functions/types and job description of investigators and relevant manager staff should be further developed based on best examples referenced in this report;
- *Accountability and impact measurement* – Elaboration of the comprehensive development plan, implementation of which will be measured by proper indicators at the annual and quarterly bases should be considered as a priority for SIS. In addition, separate *impact report* development should be considered; Reporting on ongoing investigations using IT technology (online database) should be considered; Usefulness of introduction of periodic reporting on “completed” investigations in a form of case briefs, SIS updates or summary information in annual/quarterly report should be considered.
- *Public Communication and interaction with CSOs/international organizations* – well-defined public communication and awareness raising strategy and policy instruments (including on social media) will be useful to develop; Periodic in-house and outsourced public opinion measurement tools should be introduced; Examples of more institutionalized communication/cooperation with CSOs should be considered.

Finally, general recommendation for future development of the SIS is to look deeper into best systems studied here, which might include study trip possibility to the UK and intensive dialogue with SIU (Ontario, Canada) with the aim to exchange experiences. SIS should inquire about possibility of joining *The Independent Police Complaints Authorities' Network (IPCAN)*, as well as initiating new initiative - “Tbilisi Conference” which can be conducted annually and bring representatives of such agencies from around the globe to discuss best practices and challenges faced by independent investigatory mechanisms at the national, regional and global level.