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Policing in a Democratic Constitution

Cover Page Footnote

Michael Wasco is an independent international legal expert who has provided technical support for constitution making programs in South Sudan, Sudan and most recently, Libya. Originally a trial lawyer from Chicago, Michael has also held key positions at the United Nations and the US State Department. Michael holds degrees from Michigan State University, the Chicago Kent College of Law, and the Johns Hopkins School for Advanced International Studies.

Policing in a Democratic Constitution

MICHAEL WASCO

I. INTRODUCTION

Most constitutions contain provisions relating to or impacting policing. Separate from the armed forces and intelligence services, the police are the state's internal security apparatus, and codifying issues related to policing within a constitution can ensure efficient service delivery and human rights protections.

Originating from the Libyan constitution making process, this paper provides a taxonomy of options for constitution drafters and scholars. More so than other issues, such as separation of powers or human rights protections generally, policing sections are very country specific. While not advocating for specific best practices, the work gives ample justifications for certain policing principles and concepts, particularly regarding due process and gender matters. In any case, local constitution drafters will need to consider a wide breadth of options for what to include on policing and what to leave to legislative bodies.

The constitutions in some countries, such as South Africa, Brazil, the Dominican Republic, Fiji, Kenya, and Nigeria, contain significant detail regarding the policing principles, mandates, and governance. In many other states, the constitution contains very limited detail and defers to national legislation for police formation and oversight. Many factors contribute to these variations, including the security status of the country, the context of the democratic transition, and the chosen overall government structure.

Generally, modern constitutional representative democracies require police to serve and protect civilians. The current social movements in the United States addressing mistreatment of people of color and militarization of the police highlight the challenges of managing and training police. Constitution drafters must grapple with complex issues like the potential for misuse of force, the politicization of police, and the relationship between the police and the military. These themes are borne out around the world with constitutional language options as diverse as the States themselves.

A. Scope and Content

This paper analyzes how constitutional provisions may define, govern, or impact police forces. After defining the issue in section two, section three addresses the overall mandate of a nation's police. To which general principles is it beholden? Section four discusses the governance of the police. How do the police function? What is its relationship to other institutions and security sectors? Section five is a deeper analysis of policing in federal and decentralized states. Section six addresses due process and human rights options. Section seven offers some additional constitutional design choices, including gender considerations, integration of the militias, and emergency powers. Section eight gives some final contextual considerations. And finally, section nine offers a table of examples summarizing missions and mandate structures for several countries.

Each section provides country specific examples and conditions drafters might consider when choosing language and content.

For example, one choice in defining the **mandate and mission** of the police, is to ensure that it is of a civilian nature, one that is separate from the national military. The police serve and protect civilians, but they also must adhere to international **principles** regarding impartiality and professionalism. Countries recovering from conflict need to restore trust in police and security. Constitution making processes can be used to shift perception from fearing security forces as dispensers of political oppression to viewing them as fellow civilians assigned to serve and protect.

Constitutional provisions on the **governing** of the police force include provisions on the appointment and removal of police commissioners or other high level officers. Some constitutions detail which authorities have command and control over the police and which have monitoring and oversight of police activities. Police actions cut across many constitutionally constructed institutions, such as the judiciary and many constitutions include provisions on how the police interact and relate to other institutions. Accordingly, the level of detail in how the police are managed may be related to the level of **decentralization** in the overall government structure, but not always.

In addition to numerous cross cutting **human rights** issues, recent trends in conflict recovery and democratization have led to **additional constitution design** options relating to policing, such as the utility of gender considerations. Sections on funding, the effect of states of emergency or international armed conflict, codes of conduct/restrictions on the police in their capacity as actors within the state's security sector, and provisions for the integration of militias into the police force may be particularly desirable for countries in democratic transition.

B. Advantages and Risks

In many cases, when constitution making or constitutional reform processes are taking place, a country is recovering from an undemocratic regime where the police were a source of corruption, political partiality, ethnic prejudice, and systemic abuses. Constitutional provisions organizing and describing the police not only serve as legal rules to be judicially enforced, but also as expressions of democratic values and principles. The more detail contained in these provisions, the more transparency in the state security apparatus. Civilians and lawyers can use the provisions as an advocacy tool to hold the police accountable and for reform when issues or abuses arise.

Still, many countries hesitate to incorporate too much detail about police in the constitution, choosing instead to defer to local legislation and regulations as the primary legal framework governing the police and local security. Modern constitutions have become lengthy, inaccessible documents, and countries may choose to leave policing to local legislations simply for the sake of brevity. Depending on a country's governmental structure and capacity, local authorities may be better equipped for organizing internal security systems. If a constitution provides too much direction for the police, drafters may run the risk of depleting the autonomy of a civilian led security force.

As importantly, constitution making can be an opportunity to create trust in the state and its security apparatus. In many countries, the police enjoy a certain degree of secrecy in carrying out investigations. This lack of transparency is often conducive to corrupt practices or undue political influence. Constitutional provisions that prohibit the police force from acting in a partisan manner or from favoring a particular political party may be beneficial in curbing corruption between politicians and members of the police. Likewise, constitutional provisions that provide for civilian oversight can also reduce the perception of corruption. Creating constitutional transparency in police hiring practices, procedures for processing complaints, and issuance of disciplinary decisions can also increase public trust in the police.

Human rights abuses are another common challenge in policing. It can be advantageous to address due process, codes of conduct, and use of force in a constitution as this personalizes the document for the wider civilian population. In transition or developing countries, addressing these most basic fears can create faith and understanding in constitutional democracy.

II. WHAT IS THE ISSUE?

In all modern forms of democracy, the enforcement of the rule of law is essential. The current role and nature of policing is relatively recent historically. In early democracies, civilians were responsible for maintaining order among themselves. Constables and justices of the peace were not employees of any official institutions. In England, these local law enforcement officers evolved into “shire reeves,” or sheriffs, employed by the municipalities. As populations became more urban and civil unrest more common, professional law enforcement officers inevitably became an arm of the government. Taken to the extreme, police have been tools for government oppression and not protectors of civilians thus its incorporation into modern democratic constitutions.

The constitution making process can be used to restore faith in the state’s security sector. Often, in transition countries civilians continue to perceive police as a threat. The former regime may have been ripe with corruption and rampant in persecution of certain segments of the population. Policing provisions in constitutions can be transformative as they are trying to create and/or reform institutions to overcome the brutality and partiality of the former regime.

Today, policing represents a wide range of services and responsibilities, and constitution makers have many options for addressing the challenges of law enforcement and resolving issues of past regimes. Modern policing has been defined as “the function of that branch of the administrative machinery of government which is charged with the preservation of public order and tranquility, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crimes.”¹ Primarily, the police serve as the state’s internal security apparatus, most often at the most local levels, charged with maintaining internal public law and order.

¹ *What Is Police?*, *Black's Law Online Legal Dictionary* (2nd ed. 2017).

Although many countries leave the details of policing to more local legislation, circumstances surrounding a country's recovery from conflict or transition from a non-democratic form of rule may make regulation of the police in the supreme law of the land desirable. Addressing the police in the constitution provides consistent and transparent rule of law. If the police function in a manner consistent with the constitution, and the constitution is consistent with international treaties and norms, then the operation of a police force is consistent with international legal standards and human rights protections. In addition, defining the relationship between the police and other security forces can create clarity and prevent conflicts with the state's other actors.

Thus, constitutions can be transformative in addressing both the overall governing structure of the police, as well as the underlying principles and mandate of the individual officers. Some states have provided great detail in how officers and leadership are appointed, disciplined and dismissed. Regarding the underlying principles, many options suggested below are available for detailing the role and motivations of the police, and their relationship to the civilians and other institutions.

III. MISSION, MANDATE, AND PRINCIPLES OF THE POLICE

The mission and/or mandate of the police defines where the police fit within the state's security sector and how that position affects its operation. Codifying a clear mandate and mission for the police within the constitution provides an accountability mechanism at the highest level. The principles of the police provide guidelines for the daily interaction between the civilians and the police. Holding police accountable to internationally accepted ethical standards can restore trust and establish more efficiently run law enforcement. Defining the principles of a police force in the constitution is an opportunity to define the principles and moral fabric of the democratic state more generally.

Here, the options run the gamut from very broad statements to specific enforceable principles and policies. However, in most countries, the constitution establishes the armed forces and the police force as two separate entities, often in a chapter outlining the security sector. Some countries have addressed the police in a public service chapter (e.g., Malaysia). Generally, the mission of the police force is to maintain public order; prevent, combat, and investigate crimes, and ensure compliance with the law (as seen in Brazil and Bolivia). Drafters can build a bridge between citizens and law enforcement by emphasizing the civilian nature of the police. Establishing trust in security officers is particularly critical in countries emerging from oppressive regimes, where previous security forces carried out abuses at the direction of the state.

A. Subordinate to Civilian Authority

The police are not military, and the constitution can emphasize how the police are subordinate to civilian command. Some states, such as South Africa, established a civilian secretariat to provide civilian oversight over the police (article 208). Separating the police from military and central government can help mend the relationship between civilians and security, which may have been exploited by the previous regime.

In Colombia where extreme violence and corruption from drug trafficking was of particular concern, the constitution describes a public force consisting of the Armed Forces and the National Police, exclusively (article 216). Colombia further describes the police mandate:

Colombia Constitution Article 218 (1991, as revised 2005)

The law will determine the organization of the Police corps. The National Police is a permanent armed body of a civilian nature responsible to the national community and whose primary purpose is the maintenance of the conditions necessary for the exercise of public rights and freedoms and to insure that the inhabitants of Colombia may live together in peace. The law will determine the career, benefits, and disciplinary regime that pertain to it.

Here Colombia emphasizes the civilian nature of the police, further distancing it from the Armed Forces. Similarly in Macedonia and South Africa:

Macedonia Constitution Article 97 (1991, as revised, 2011)

The bodies of state administration in the fields of defense and the police are to be headed by civilians who have been civilians for at least three years before their election to these offices.

South Africa Constitution Article 208 (1996, as revised 2012)

A civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing.

In addition to being subordinate to civilian command, effective police forces should be professional, trained, detached from politics (non-partisan), and under a single command (Mark 2010). In several countries, constitutional provisions expressly prescribe these mandates to the police force (e.g. Bolivia, Dominican Republic, Nigeria). Constitutional provisions can also organize the police force as the exclusive security entity within the state, meaning that it is the only organization with jurisdiction over infractions provided in the law. Codifying the mission and mandate of the police within the constitution can also increase the effectiveness of the police. Impartial, professional police are more likely to obtain cooperation from the public in the investigation of crimes.

B. Specific Principles

As policing evolved, the need for a defining set of principles became necessary to curb abuses. Today, constitution makers can consult an array of internationally accepted philosophies on policing. In forming the British metropolitan police in the early 19th century, Great Britain began implementing basic principles for policing currently known as “Peel’s 9 Principles of Policing.” The principles of Sir Robert Peel include maintaining impartiality, and the use of physical force only as a last resort, and only proportionally.² The United Nations has also

² Sir Robert Peel’s Principles of Law Enforcement, 1829: <http://www.civitas.org.uk/research/crime/facts-comments/principles-of-good-policing/>

incorporated suggestions for effective policing in numerous instruments including the Office of the United Nations High Commissioner for Human Rights, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN General Assembly, Code of Conduct for Law Enforcement Officials.

Articulating principles in the constitution may also help in the recruitment and efficacy of the departments. Officers know what they are signing up for and feel pride and unity within their respective units. With the United Nation's guidelines and Peel's principles as a foundation, some issues constitutions contemplate include:

- Professionalism,
- Monopoly over Policing Functions at the National Level,
- Singular and Unified Command, and
- Respect for Human Rights.

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.

2. To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.

3. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.

4. To recognise always that the extent to which the co-operation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives.

5. To seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour, and by ready offering of individual sacrifice in protecting and preserving life.

6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

8. To recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary, of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.

9. To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

1. Professionalism

Constitutional provisions may also require that the police force be a professional corps, ensuring that being a member of the police is a public service career and that the police force consists of trained and qualified individuals. Such a categorization can also infuse the job with a sense of pride and respect. For example, the Dominican Republic Constitution (article 255) ascribes the National Police as an “armed corps, technical, professional and of a policing nature”.

2. Monopoly over Policing Functions at the National Level

Constitutional provisions may also explicitly create the national or federal police as the only legitimate, lawful police force in the state. This prevents non-state militia and other armed groups from claiming authority or acting in the capacity of state police. This is also referred to as creating a monopoly over the right to police.

Many countries are particularly susceptible to the formation of voluntary militias and other non-state actors as vigilantes in the guise of protecting the peace. For example, Nigeria established the Nigeria Police Force and specifically prohibits the formation of any other such police force (article 214).

3. Singular and Unified Command

Similarly, and for the same purpose, constitutional provisions can provide that the police force acts under a single and unified command.

Bolivia Constitution Article 251(I) (2009)

[The Bolivian Police] shall carry out the police function in a comprehensive, indivisible manner and under a single command, pursuant to the Organic Law of the Bolivian Police and the other laws of the State.

4. Respect for Human Rights

In addition to due process requirements, refrain from torture, and other specific human rights protections discussed later, constitutions can instill faith in the police department by calling for a general respect for human rights by the police as an overall general principle.

East Timor Constitution Article 147(2) (2002)

The prevention of crime shall be undertaken with due respect for human rights.

El Salvador Constitution Article 152 (1983, as revised, 2003)

[. . .] The National Civil Police shall be charged with the functions of urban police and rural police, which guarantee order, security and public tranquility, as well as collaboration in the investigation of crime, and all the proceeding in accordance with the law and with strict respect for Human Rights.

IV. GOVERNANCE OF THE POLICE

Governance provisions of the police in constitutions are wide ranging. Most constitutions delegate details regarding the formation and governance of the police to national legislation. This parallels the trend of more decentralized governments, however, as discussed below, management of police forces is not necessarily a direct reflection of the level of government decentralization. Generally speaking, constitutional provisions can provide a limited outline of the organizational structure and management of the police in order to create transparency and legitimacy. For example, Nigeria's constitution describes the various leadership positions within the police, how they are appointed, and their basic responsibilities (article 215).

When addressing the overall structure of the police force or forces within the constitution, the primary challenge is how to maintain the desired autonomy of the police while establishing accountability at the highest political level. The police should be free from political influence in determining whom and when to investigate. At the same time, the formation of the police should allow for general public accountability and the reflection of public values. Stable democracies require an independent and accountable police force which reflects and can relate to the general population.

Police governance issues constitutions have considered include:

- Appointment and removal of the officers and leadership
- Overall command and control
- Ethnic quotas or power sharing arrangements
- Independent oversight commissions

A. Appointment and Removal

Constitutions often contain sections detailing the process and/or authority for appointment, removal, promotion, and demotion of police personnel. Some assign these responsibilities to a national police council or commission or to the head or chief of the police force. Another option is giving the president or head of state the authority to appoint and remove officials in the police force (e.g. Dominican Republic, Afghanistan). Certain methods may be more compatible with certain types of executive government structures.

Nepal's 2015 constitution established a true parliamentary system assigning police to various levels of government including the "Nepal Police" and "Armed Police Force" at the federal level, in addition to police at the provincial and municipal levels (articles 268). Operation, supervision and coordination of Nepal Police and provincial police are provided by federal law, however, the constitution forms the "Public Service Commission" which is tasked with conducting the written examinations for the recruitment of police officers (article 243). In addition, consultation with the Public Service Commission is required before the promotion of officers within the police (article 243). The president appoints the chairperson of the Public Service

Commission and the members of the Commission are selected through a complex appointment process (article 242).

In true presidential systems, one option is for the president or head of state to be involved in the process but for other institutions to provide checks and balances. For example, Bolivia's constitution grants the president the power to designate and substitute the General Commander of the Bolivian Police and to propose promotions for the General of the Police to the Pluri-National Legislative Assembly. The constitution then provides for a check on executive powers by granting the legislature the power to ratify promotions by the executive branch to this position (article 160). In a similar manner, Nigeria's constitution provides that the president may only remove a person holding an office within the Nigeria Police Council or Police Service Commission with the support of a two-thirds senate majority. It also requires that appointment by the President of the Inspector General of the Police be on the advice of the Nigeria Police Council (article 157).

Accordingly, there are options for the appointment, removal, and selection of police officers and leadership. Giving the executive too much authority in the appointment of officers politicizes and threatens the autonomy of the officers at the most local level but creates accountability at the highest level. Forming intermediary commissions and checks and balances may insulate the police from direct political influence but is costly, time consuming, and bureaucratic. The chosen methods should allow for merit based promotion while at the same time impartial accountability for the officers and leadership.

B. Command and Control

“Command and control” is the ability to determine force strength of the police service, direct the police, and form additional security apparatuses. Command and control in these respects may be shared between the executive and legislative branches. For example, the Dominican Republic constitution grants the legislature the power to form additional public security forces such as a special presidential guard upon the request of the president. It also sets forth the burden that must be met to do so. The constitution specifies that any such security force will be subordinated to the competent and appropriate authority as defined by law. In so doing, the constitution ensures that all police forces operate according to the rule of law (articles 128, 261).

One option for ensuring independence in the command and control of the police is the establishment of police commissions and police commissioners. In most cases police commissions are not directly addressed in constitutions but are derived from local government initiatives. However, smaller countries have assigned the command and control of the police exclusively to a police commissioner appointed by the president (e.g. Fiji, article 129). With oversight from a central government Minister, the Fiji constitution gives the commissioner almost exclusive authority for staffing and deployment decisions. Such an arrangement may not be ideal in larger countries where mayors and governors may wish to maintain some control over local policing.

Nigeria's constitution calls for an “Inspector-General of Police” and a “Commissioner of Police” for each state in the Federation (article 215).

Nigeria Constitution Article 215 (2) (1999)

The Nigeria Police Force shall be under the command of the Inspector-General of Police and contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.

Accordingly, orders, directives, and instructions to perform or carry out the police duties flows from the Inspector-General of Police through the chain of command to the most local officers. The Nigerian system also calls for strict penalties for those who fail to follow directives (article 215).

C. Ethnic Quotas or Power Sharing Agreements

Regarding the overall make-up of the police force, diverse post-conflict states may wish to require that the members of the police reflect the state's ethnic diversity. In this respect, ethnic, tribal, or other quotas may be imposed at the national and/or local levels. In some states, such as Burundi, such quotas are the outcome of a specific power-sharing arrangement agreed upon in a peace agreement.

Burundi Constitution Article 130 (2005)

The President of the Republic, after consultation with the two Vice-Presidents of the Republic, sees to it that the Minister given the charge of the Force of National Defense is not of the same ethnicity as the Minister responsible for the National Police.

Such agreements are based on the basic conflict prevention premise of inclusion. Those left out of the system can be far more dangerous than those without formal responsibilities. In addition, ensuring a diverse police force will facilitate the relationships between the police and the diverse civilian population. For example, Kosovo's constitution states the following:

Kosovo Constitution Article 128 (2008)

2. The Police shall be professional and reflect the ethnic diversity of the population of the Republic of Kosovo... 4. The Police of the Republic of Kosovo shall have a unified chain of command throughout the Republic of Kosovo with police stations corresponding to municipal boundaries. The Kosovo Police shall facilitate cooperation with municipal authorities and community leaders through the establishment of Local Councils as provided by law. Ethnic composition of the police within a municipality shall reflect the ethnic composition of the population within the respective municipality to the highest extent possible.

D. Independent Commissions

More sophisticated and advanced police systems may assign inspection, audit, and evaluation to non-police bodies, such as an independent ministry, council, or commission. Other examples of such bodies include national public security boards, inspectorates, non-departmental complaint boards, human rights structures, and special or standing committees of the parliament. Monitoring and oversight of the police can be undertaken at the national and/or

provincial levels. Constitutional provisions have provided direction on the formation of the commissions and assigned them to oversee police force operations, respond to complaints of corruption, and provide reports to the government. Additionally, in some states, such as Ethiopia, the legislature has oversight role to investigate the police forces in the event of alleged human rights violations (article 55). In addition to these mechanisms or independently, constitutions may also call for civilian monitoring and reporting mechanisms, whereby police officials and community representatives coordinate evaluations of police operations (OECD, 2007).

Provisions establishing a commission or council may be included in the section on independent commissions and institutions or in the section dedicated to the armed forces and/or national security and defense. The level of detail provided in constitutions about the composition, mandate, and function of each monitoring and oversight mechanism varies from state to state. In some countries, such as Malaysia, the constitution establishes a commission and then details its jurisdiction, functions, and composition (article 140). In most other countries, the constitution simply establishes the mechanisms and leaves the details of their functioning to legislation.

Nigeria Constitution Article 153.1(1)-(m) (1999)

There shall be established for the Federation the following bodies, namely: [. . .]

(l) Nigeria Police Council . . . ; (m) Police Service Commission.

South Africa Constitution Article 206 (1996, as revised, 2012)

3. Each province is entitled-

- a. to monitor police conduct;
- b. to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
- c. to promote good relations between the police and the community;
- d. to assess the effectiveness of visible policing; and to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.

5. In order to perform the functions set out in subsection (3), a province-

- a. may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and

- b. must make recommendations to the Cabinet member responsible for policing.

6. On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.

V. POLICING IN FEDERAL AND DECENTRALIZED STATES

Decentralization in the governance context means the transfer of political, administrative, and fiscal authority from the central government to provincial and/or local units (USAID, 2009).

Decentralized state structure typically includes a central government, provincial governments (sometimes referred to as states or regions), and local governments (sometimes called municipalities). In decentralized states, authority over public services, such as the police services, are frequently transferred from the central or national level to the provincial or local level.

The degree of decentralization - that is - the degree to which different levels of government can establish and maintain a police force, is a key consideration in drafting provisions related to the police. Should a country wish to provide more detail in the constitution on the overall structure and governance of the police, the first step is to determine the level of decentralization and if there are to be multiple layers of policing (federal, state, local), how those levels interact with each other. The level of decentralization of the police does not necessarily reflect the level of decentralization of the overall government.

The rationale for a fragmented police force paralleling a truly decentralized government structure is twofold. First, for countries recovering from conflict or regime change, citizens may harbor deep resentment and mistrust of the federal authorities. Second, implicit in constitutional democracies is the idea that local problems are best managed at the local level. To address these two issues, countries may wish to divide the police into separate units at the federal, provincial/regional, and local levels. This system is not without its challenges. First, there should be uniform standards for recruitment, management, and policies across all of the departments. Second, these systems tend to require a higher number of overall police officers, which may be duplicating efforts across jurisdictions. And related, it has to be determined how information and evidence is shared across and among the agencies.

In a true federal system, authority is divided but shared between the central government and the more local levels. Federalism is a constitutional mechanism for dividing power between different levels of government, such that federated units can enjoy substantial, constitutionally guaranteed autonomy over certain policy areas while sharing power in accordance with agreed rules over other policy areas. Thus, federalism combines partial self-government with partial shared government.³

Even among similarly decentralized states and federations, policing structures may vary. This makes sense as federalism and decentralization did not evolve with the governing of the police in mind. For example, smaller decentralized states, such as East Timor, simply state that the law shall determine the rules and regulations for the police and other security forces (article 147).⁴ In larger decentralized states, or quasi-federations, the constitution may provide that the police be structured at one or more levels of government. South Africa, for example, assigns police at the national, provincial, and local levels (articles 205 and 207).

Variations can even be seen within countries, such as Switzerland and Spain. In Spain, the constitution allows for Catalonia and the Basque Country to have their own police forces while other regions rely on the central force (section 149). Switzerland also maintains an asymmetrical level of policing among cantons and municipalities. Federal responsibilities are mostly limited to

³ Federalism is a complex concept, for more on decentralization and federalism see *Federalism (International IDEA Constitution-Building Primer, May 2015)*.

⁴ See also; Dominican Republic Constitution article 256, and Belgium Constitution article 184.

terrorism and organized crime. Uniformed police only exist in the canton levels and maintaining order and investigation of crimes is entirely distributed to cantons (article 57). Cantons can themselves further devolve policing powers to municipalities, which is the case in a majority, but not all of the cantons.

In any case, the capacity of the most local institutions is one consideration in determining the level of decentralization of a police force. In some post-conflict states, certain populations or localities lack adequate security due to an overly centralized security sector. Thus, decentralizing the police force may enable greater provisions of security to all parts of the state and to all populations. In this respect, police service is based on local needs and local dynamics and is not subject to excessively bureaucratic central government policies. For instance, Liberia's reform assessment determined that the security forces were too centralized and that decentralization should extend the reach of the police, prosecutors, and other security and justice services outside the capital. Therefore it established County Security Councils to implement the state's security policies at the local level (International Peace Institute, 2012).

In other cases, fear of a return to dictatorship may call for limiting the central government's; and particularly the executive branch's power over the local security sector. Most recently in the Libya constitution making process, the drafters were very interested in outlining a detailed structure for a decentralized police force. Drafters should also consider context, culture, and ethnic breakdowns. In some cases, a strong, centrally governed police force may prevent minority oppression in localities with warring tribal factions. In other cases, local police of the same background of the constituents can bridge the gap between the civilians and the security sector.

A. State and federal police relationships

Once the number and type of police departments are determined, the constitution can provide guidance on jurisdictional authority and the internal relationship between the center and localities. Policing powers refer to the competencies of police given by the constitution and the ability of the civilian authorities to establish, instruct, and monitor a police force (Coginta, 2011). Constitutions can allocate competencies/powers to the various levels of government detailed in the examples below.

1. Federal Policing Powers

Responsibilities for police at the federal or central level are usually limited to the maintenance of the public order in the case of major external shocks, intelligence gathering, and management of evidence and data at the national level.

One of the challenges in decentralized policing is defining and resolving jurisdictional issues among the different levels of the police. In some states, the central government retains power over the national, central, and/or federal police services. In most states, this power is often held concurrently with state or provincial level governments, meaning that both levels of government may make laws and exercise control over the police in their respective jurisdictions or concerning specific issues. Concurrent powers often create the need for a dispute resolution mechanisms because they create overlap between the central government's powers and the local governments' powers. The constitution may clarify which level of government takes priority in the event of a

conflict. Countries have two options for resolving disputes over concurrent powers where provincial and central government laws conflict: (1) provincial laws take priority over the central government law; or (2) central government laws take priority over the provincial law. Ideally, the federal constitution is the supreme law of the land, meaning that the states may not make laws that contradict the federal constitution.

In some federal systems, maintaining public order may also be considered a federal responsibility by the constitution or by law. India's constitution allows the union to deploy "any armed force in any state in aid of the civil power" according to the union list of competencies. According to one of the "Emergency Provisions," it is the "duty of the union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this constitution" (article 355). If there is a breakdown of the constitutional machinery in any state, then the central government assumes all functions of the state government.

2. Provincial or Regional Policing Powers

In most constitutions, provincial and/or local governments are granted varying degrees of authority over police in their respective jurisdictions. In some states, such as South Africa, the constitution further requires that national policing policy be informed by provincial needs (articles 205 and 206). Other states assign power explicitly to the regional level (e.g. Iraq). Proponents of more balanced systems where provinces and cantons have increased police responsibilities argue that such arrangements prevent meddling by the central government in local affairs.

As mentioned above, Switzerland vests the administration of justice in the member cantons but the penal code and criminal procedure is left to the federal level (article 123). Many constitutions, particularly in federations, provide lists of responsibilities for each level or branch of government. These lists are a way to assign police powers and oversight to the state and federal levels. India's constitution lists responsibilities for the union (federal) and the states, and for "concurrent" powers. In this system, the power to organize the police is assigned to the states, but criminal procedure is left to the concurrent powers list (article 246). In practice, this means that both the state legislature and the federal legislature can make laws regarding the police, but when a conflict arises, the union law controls (article 257).

3. Local Policing Powers

Some constitutions set forth the powers of local or municipal governments with respect to policing. The clearest example may be Colombia:

Colombia Constitution Article 315(2) (1991, as revised 2005)

The following are powers of the mayor: [. . .] 2. To protect the public order in the municipality, in accordance with the law and the instructions and orders that the mayor may receive from the President of the Republic and the respective governor. The mayor is the highest police authority of the municipality. The National Police will promptly and diligently execute the orders given to it by the mayor through the channel of the respective commander.

In federal state structures, constitutional provisions related to local police powers may establish a mechanism for coordination among the different levels of government and their respective police authorities. Concerned with possible jurisdictional conflicts or confusion, the South Africa constitution established a specific committee to address this issue:

South Africa Constitution Article 206(8) (1996, as revised, 2012)

A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective coordination of the police service and effective co-operation among the spheres of government.

Still another consideration when assigning police power is the nature of the crimes and services the police can be expected to encounter. For example, the prevention of potentially cross-jurisdictional crimes, such as nationwide gangs, or drug trafficking, require cooperation among local law enforcement and between local law enforcement and the center. Similarly, delegation of police powers should consider access to resources such as forensic labs and evidence storage.

B. Funding

Policing in decentralized and federal states also impacts the funding of the police, and several countries have incorporated funding structures within constitutions. The power to determine wages and benefits of police is in most cases is left to the legislative branch to manage, and this is the most common approach:

Colombia Constitution Article 150(19)(e) (1991, as revised 2005)

It is the responsibility of Congress to enact laws. Through them, it exercises the following functions: [. . .] 19. To enact general rules that specify the objectives and criteria to which the Government must be subjected for the following purposes: [. . .] To establish the system of wage and benefits concerning public servants, members of the National Congress, and the Police Force [. . .].

Nigeria Constitution Article 84(1) (1999)

There shall be paid to the holders of the offices mentioned in this section such remuneration, salaries and allowances as may be prescribed by the National Assembly, but not exceeding the amount as shall have been determined by the Revenue Mobilization Allocation and Fiscal Commission.

1. Potential Sources

Additionally, in some countries, the constitution specifies the source of funding for the police. This often consists of a consolidated fund used for other public services provided by the state.

Nigeria Constitution Article 84 (1999)

[. . .] 2. The remuneration, salaries and allowances payable to the holders of the offices so mentioned shall be a charge upon the Consolidated Revenue Fund of the Federation.
3. The remuneration and salaries payable to the holders of the said offices and their conditions of service, other than allowances, shall not be altered to their disadvantage after their appointment.

4. The offices aforesaid are the offices of [. . .] the Nigeria Police Council and the Police Service Commission.

2. Access to Expenditure Information

In situations where funding of the police does not come directly from the central government, constitutional provisions may grant the executive the power to access information on expenditures in the public sector, including the police force. Such provisions provide for accountability at the highest level while maintaining autonomy at the local level.

Bolivia Constitution Article 321(V) (2009)

The Executive Organ, through the Ministry of the relevant branch, shall have direct access to the information concerning the expenses that are budgeted and spent in every public sector. This access shall include information on the expenses budgeted and spent by the Bolivian Armed Forces and Police.

VI. HUMAN RIGHTS AND DUE PROCESS

Should a country wish to emphasize human rights protections related to policing, numerous international instruments provide guidance. Although police are primarily in place to enforce the law and provide internal security, constitutional provisions can also lay the foundation for ensuring that the police themselves adhere to human rights legal norms. In addition to the policing principles addressed above, codifying specific human rights protections related to policing in constitutions can mend the fissures formed by oppressive security forces of a previous regime.

International legal standards can be used to draft language on several specific human rights issues. Common accepted practice is to use international treaties to ensure that the relationship between the police and civilians at the most local level is consistent with international law. Detailed human rights provisions can create confidence in the citizenry of the constitutional process, democracy, and the rule of law generally.

Often in countries emerging from conflict, civilians have little or no interest in the content of their country's future constitution. Their primary concerns are food, water, and shelter. From their perspective, whether or not their country has a bicameral system or a single parliamentary chamber is irrelevant and is not seen as impacting their daily lives. However, in these cases, safety and security are priorities. If civilians observe a constitutional process taking their well-being into consideration through the codification of basic protections, they may be more likely to participate in the constitution making process themselves.

A. International and Regional Standards

Several international and regional instruments identify human rights and set forth obligations of states to protect and promote those rights. Almost every country has taken steps to ratify the United Nations treaties related to the police and human rights.⁵ Treaties which may be used to inform human rights language within police and security sector chapters include but are not limited to:

⁵ e.g. at least 185 countries have taken steps to ratify the United Nations International Covenant on Civil and Political Rights. <http://indicators.ohchr.org/>

- The UN Universal Declaration of Human Rights
- The UN International Covenant on Civil and Political Rights
- The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The UN Code of Conduct for Law Enforcement Officials
- The UN Basic Principles on the Use of Force
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment
- Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
- Declaration on the Protection of All Persons from Enforced Disappearances

These obligations and standards provide guidance on code of conduct, due process, police, restrictions on the use of force, and treatment of prisoners and detained persons.

1. Code of Conduct

The UN Code of Conduct for Law Enforcement Officials provides standards and guidelines for the daily work of police officers. It provides that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. Furthermore, the Code of Conduct provides that law enforcement officials shall only use force when strictly necessary and to the extent required for them to carry out their duties. It prohibits torture or other cruel, inhuman, or degrading treatment or punishment as well as corruption. The Code also requires that matters of a confidential nature in the possession of law enforcement officials be kept confidential unless the performance of duty or the needs of justice strictly require otherwise. Additionally, the Code of Conduct obligates law enforcement officials to protect the health of persons in their custody and to secure medical attention immediately when it is required. Finally, the Code of Conduct requires law enforcement officials to respect the law and to prevent and oppose any violations thereof. Regarding accountability, the Code of Conduct details processes for reporting any violations to the superior authorities.

2. Due Process

Due process guarantees that a government may not deprive any person of his or her life, liberty, or property without a fair trial and other legal rights as enumerated by law. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, provides for the rights of persons deprived of liberty both as a result of convictions and as a result of detention without conviction. The 2010 International Convention for the Protection of All Persons from Enforced Disappearance requires proper training for all law enforcement personnel involved in custody or treatment of persons deprived of their liberty. Several additional UN documents provide standards and guidelines for other due process related issues, including the Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions and the Declaration on the Protection of All Persons from Enforced Disappearances.

Many constitutions use these treaties to inform language on due process, for example:

Bolivia Constitution Article 22(II) (2009)

The imposition of measures depriving the liberty of adolescents shall be avoided. Every adolescent who is deprived of liberty shall receive preferential treatment on the part of

the judicial, administrative and police authorities. They shall assure at all times respect for the dignity of the adolescent and their anonymity. The detention shall be carried out in premises distinct from those assigned to adults, taking into account the needs of his or her age.

Basic Law for the Federal Republic of Germany Article 104(2) (1949, as revised, 2012) [. . .] The police may hold no one in custody on their own authority beyond the end of the day following the arrest. Details shall be regulated by a law.

Guatemala Constitution Articles 8, 13 (1985, as revised 1993)

8. All detained [persons] must be informed immediately of their rights in a form that will be understandable, especially [of the right] to use a defender, who may be present at all police and judicial diligences. The detained [person] cannot be obligated to testify except before a competent judicial authority.

13. The police authorities may not present [,] of office, before the media of social communication, any person who has not been previously investigated by a competent tribunal.

3. Use of Force

The UN Basic Principles on the Use of Force set forth international standards for when and to what degree law enforcement officers may use force. These principles urge states to equip law enforcement personnel with non-lethal weapons and ammunition in an effort to restrain the capacity to inflict lethal force. Police officers are to use non-lethal force before resorting to lethal force or firearms. Force and firearms are only to be used when other means prove ineffective and cannot achieve the intended result. Additionally, the Basic Principles set forth guidelines for law enforcement officials in policing assemblies and policing persons in custody or detention. The Basic Principles also require states to ensure that law enforcement officials have the proper training, are subjected to screening processes, and have the appropriate moral, psychological, and physical qualities for the effective exercise of their duties.

4. Torture and Cruel, Inhuman, or Degrading Treatment

The United Nations as well as several regional instruments affirm the right of every person to be free from all forms of torture and inhuman treatment. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the primary international instrument providing standards for the prevention of torture. The African Charter on Human and Peoples' Rights is a regional example which broadly affirms that all forms of exploitation and degradation are prohibited, though it does not define what types of behavior fall into this category.

B. Specific Human Rights Provisions

Aside from the human rights protections stressed in chapters dealing specifically with the police and security, several other constitution sections may indirectly touch on human rights issues related to policing.

1. *Freedom of Assembly*

The police often play an important role in supporting the handling of peaceful demonstrations. Thus, constitutional provisions supporting freedom of assembly and association can reference the police. Chile provides a good example:

Chile Constitution Article 19(13) (1908, as amended, 2012)

The right to assemble peacefully without prior permission and without weapons. Meetings at squares, streets and other places of public use are ruled by the general provisions [concerning] the police.

In addition, some constitutions provide that the right to peacefully assemble may be restricted for members of the police; perhaps to maintain the appearance of political impartiality of the police force. Armenia for example:

Armenia Constitution Article 29 (1995, as revised, 2005)

Everyone shall have the right to the freedom of a peaceful and unarmed assembly. Restrictions on exercising those rights by the servicemen in the armed forces, police, national security, prosecutor's office, judges and members of the Constitutional Court may be prescribed only by law.

2. *Freedom of Association*

Similarly, constitutional human rights provisions protecting the right for freedom of association have also recently begun referencing the police. More specifically, some constitutions expressly provide that members of the police do not have the right to form associations. Alternatively, constitutional provisions may permit the restrictions of police officer's right to freely associate.

Colombia Constitution Article 39 (1991, as revised 2005)

Members of the police force do not have the right to form associations.

Armenia Constitution Article 28 (1995, as revised, 2005)

The rights to set up parties and trade unions and join them may be restricted in a manner prescribed by law for the servicemen of the armed forces, police, national security, prosecutor's office, as well as judges and members of the Constitutional Court.

Macedonia Constitution Article 37 (1991, as revised, 2011)

In order to exercise their economic and social rights, citizens have the right to establish trade unions. Trade unions can constitute confederations and become members of international trade union organizations. The law may restrict the conditions for the exercise of the right to trade union organization in the armed forces, the police and administrative bodies.

3. *Suffrage*

Very few states have taken the political independence of the police to the extreme by restricting the right of the police to vote. Such language conflicts with voting rights. The Dominican Republic is one example:

Dominican Republic Constitution Article 208 (2010)

The members of the Armed Forces and of the National Police, or those who have lost their rights of citizenship or are found suspended in regards to those rights, do not have the right of suffrage.

VI. ADDITIONAL DESIGN CHOICES

A. *Gender Considerations*

Since the ratification of UN Security Council Resolution 1325, it has been widely understood that increasing the number of women within the security sector makes for a more effective police force.⁶ Many studies have concluded that having women police officers improves police response to violence against women, reduces police brutality and excessive force, and strengthens community policing reforms (DCAF, 2011). Diverse police forces can assimilate easier with the civilians they are tasked with protecting. For these reasons and others, many recent constitutions have addressed the specific issue of women within the police.

1. *International Standards*

Numerous international legal instruments require that states respect, protect and fulfill women's right to gender equality. In particular, the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and now several UN Security Council Resolutions contain binding obligations and guidelines for member nations with respect to women within the security sector. UNSCR 1325 invites states to incorporate materials on the protection, rights, and particular needs of women in national training programs from military and civilian police. Article 7 of CEDAW requires the States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the state and to ensure women the right to hold public office, perform public functions, and be eligible for election to all publicly elected bodies.

2. *Gender Equality and Non-Discrimination*

Constitutional provisions that guarantee equal rights to men and women in all domains of society may enable gender integration in the security forces.⁷ Most countries now include gender equality and equity as a broadly applicable principle in the constitution. Some countries even expressly require gender equality within the police service (e.g. Ecuador). Additionally,

⁶ At the time of this publication 60 countries have implemented UNSCR 1325 National Action Plans on women peace and security.

⁷ Challenges may arise in the implementation of such provisions, particularly where local traditions or practices assign differing societal roles for men and women. See, DCAF 2011.

because the police service is often within the broader public service, constitutional provisions may establish gender equity as one of the bases for eligibility in the public service. Finally, in most states, the constitution prohibits discrimination on the basis of gender. In line with this practice, Libya's 2011 Constitutional Declaration provides that Libyans, "shall be equal before the law, enjoy equal civil and political rights, have the same opportunities in all areas and be subject to the same public duties and obligations, without distinction on the grounds of . . . gender" (article 6).

Ecuador is another good example:

Ecuador Constitution Article 160 (2008)

Members of the Armed Forces and the National Police Force shall be subject to specific laws governing their rights and obligations and subject to their system of advancement and promotions based on merit and gender equity criteria. Their job security and professional development shall be guaranteed.

3. *Quotas*

Quotas are one way to ensure women's inclusion in the security forces, though this is frequently accomplished through legislation, internal police regulations, or national policies rather than constitutional provisions. In Sierra Leone, for instance, the Sierra Leone Police set a quota of 30% for female officers (UNDP 2007). In rebuilding the Liberian National Police following the end of the fourteen-year-long conflict, the United Nations Mission in Liberia established a 20% quota for women's inclusion in the police and armed forces. To meet this quota, the Liberian National Police established a Female Recruitment Programme. The program faced challenges primarily due to the educational disparities among men and women recruits. To overcome this challenge, the program selected 150 women to attend classes and receive a high school diploma. In return, they agreed to serve in the National Police force for a certain number of years.

4. *Gender Violence*

Constitutional provisions may expressly condemn or require the criminalization of gender-related violence, such as gang violence, rape, and child abuse. The Constitution of the Dominican Republic, for instance, condemns gender violence in all its forms, and requires the state to adopt measures necessary to prevent, sanction, and eradicate violence against women (article 42). Outside of the constitution, integrating gender in the police training curriculum and including women in the police force may enhance the ability of the police to effectively prevent and investigate gender-related violence.

B. Integrating Militia Members into the Police

Often countries involved in constitution making or reform processes are simultaneously involved in peace processes (e.g. Libya). Peace accords for post-conflict states often include security sector reform programs to restructure the armed forces—including the military and the police—into unified, professional, and lawful national forces. In many cases, this process is outlined in a peace agreement and then implemented through national legislation, policies, or

decrees. Because of its transitional nature and to ensure consistency some permanent constitutions expressly address security sector reform or the accompanying integration process, as described briefly below.

1. *Integration of Security Forces*

Post-conflict security sector reform programs often provide for the integration of ex-combatants, or members of former armed groups or militias, into newly integrated and reformed security forces, including local police. Integration processes are frequently coupled with formal reintegration procedures, whereby former combatants are assimilated back into civilian life. To be integrated into the new security forces, ex-combatants often must go through a selection or vetting process. In some states, challenges arise with ex-combatants who are ineligible or otherwise not selected through the integration process to join the new military. Challenges may also arise where the reintegration program is inadequate or where there is a lack of civilian opportunities. In these instances, some states have used the police force as an alternative option for integration. Integrating ex-combatants into the police often requires additional training. There is also a risk that it may result in the politicization or perceived politicization of the police.

2. *Politicization of the Police*

As seen peripherally in the previous sections, most constitution drafters will be concerned with the entanglement of the police with the State's political forces. One need only look to Korea, Great Britain and Pakistan for recent examples of police forces exercising political will. This is particularly challenging when assimilating politically motivated militias into the police. When the police become a tool for incumbent regimes, they shift away from civilian oriented policing.

Impartiality is critical to avoid subjecting certain groups to unjust persecution and purely political arrests. Constitutional provisions can restrict police officials from participating in politics or occupying political positions. Much like barring judges from political aspirations, some constitutions do the same with police leadership. For instance, the Colombian constitution (article 197) provides that no one who has held the position of the Director General of the Police in the year preceding the election may be elected to occupy the post of President of the Republic. The Bolivia Constitution (article 123) provides a similar provision to ensure that the incentive structure for police leadership is not corrupted by political ambitions. Drafters can anticipate this issue and address it directly in constitutional provisions.

3. *Constitutional Options*

Constitutions do not typically address the specific issue of integrating militia members into the police force. They may, however, address integration of the security forces by calling for the creation of a unified police force and a unified military force within transition chapters. In these cases, the details of integration are often left to subsequent legislation or executive orders. In South Africa, for instance, the Interim Constitution set the foundation for a unified police force while a subsequent white paper detailed the process for integration. The integration process enabled ANC/MK members to join the South African Police Service (Knight 2009).

Constitutional provisions may also indirectly address the issue by prohibiting the formation of private or unregulated militia. Likewise, constitutional provisions may ban political parties from maintaining separate militia.

Gabon Constitution Article 1(22) (1991, as revised, 1997)

[T]he defense of the nation and the safeguard of public order shall be essentially assured by the national defense and security forces. In consequence, no person, no group of persons may constitute itself in private militia or paramilitary grouping; the national defense and security forces are at the service of the State.

Kenya Constitution Article 91(2)(c) (2010) A political party shall not . . . establish or maintain a paramilitary force, militia, or similar organization.

Mozambique Constitution Article 52(3) (2004, as revised, 2007)

Armed associations of a military or paramilitary nature, as well as associations that promote violence, racism, xenophobia or pursue aims that are against the law, shall be prohibited.

Guatemala Constitution Article 245 (1985, as revised, 1993)

The organization and functioning of armed groups unregulated by the laws of the Republic and its regulations is punishable.

C. National Disasters, States of Emergency and International Armed Conflict

Constitution drafters can also provide for special circumstance when the police must take on additional duties or when they must be subsumed by the armed forces or military. Frequently, police are subordinated to, or supplemented by, the armed forces in times of national disasters, states of emergency, and international armed conflict. Constitutional provisions may also describe the coordination and relationship between the armed forces and the police force in certain situations. Finally, constitutional provisions may allow the police at the provincial or local levels to call on the assistance of the national or federal police or armed forces in times of emergency or to restore public security or order when the provincial or local police are unable to do so.

Dominican Republic Constitution Article 252 (2010)

The defense of the Nation is the responsibility of the Armed Forces. As such: [. . .]
2. They can, as well, intervene when so ordered by the President of the Republic in programs destined to promote the social and economic development of the country, to mitigate situations of public disaster and calamity, and to assist as auxiliary of the National Police to maintain or reestablish the public order in exceptional cases.

Bolivia Constitution Article 254 (2009)

In the event of international war, the forces of the Bolivian Police shall be subordinated to the Commander in Chief of the Armed Forces for the time that the conflict lasts.

Hungary Constitution Article 50(1) (2011)

The Hungarian Defense Forces may be involved in a state of emergency if the use of the police and national security services is insufficient.

VII. CONTEXTUAL CONSIDERATIONS

As stated, stable societies with functioning institutions at all levels of government, particularly federations, often wish to have the organization and mission of the police left to legislation (e.g. Austria). On the contrary, countries recovering from dictatorship or significant oppression may wish to frame the mission and principles of the police in the supreme law of the land. Since the three branches of government and various other institutions are established in the constitution, it makes sense to outline where the police fit regarding the enforcement of the rule of law.

Constitutional provisions often address the relationship between the police and other sectors, namely the judicial sector. This is because the functions of the police and the judicial sector overlap in several important areas, such as in the investigation and prosecution of crime. Relevant actors may include the prosecution service, judges, lawyers, probation officials, and oversight authorities.

Some countries subject police to other sectors very simply and succinctly, for example:

El Salvador Constitution Article 193(3) (1983, as revised, 2003)

It corresponds to the Attorney General . . . [t]o direct the investigation of crime with the collaboration of the National Civil Police in the manner determined by law.

Italy Constitution Article 109 (1947, as revised, 2012)

The legal authorities have direct use of the judicial police.

Spain Constitution Article 126 (1978, as revised, 2011)

The judicial police shall report to the judges, the courts and the Public Prosecutor when discharging their duties of crime investigation and the discovery and arrest of offenders, under the terms to be laid down by the law.

Policing touches on many aspects of constitutional democracies and the stronger the related institutions such as the judiciary, the more efficient and effective the police can be in service delivery. Recently in countries like Libya, Sudan, and South Sudan, mistrust is extensive across ethnic and tribal lines. These challenges combined with the fact that the citizens have never experienced the concepts of constitutional democracy make provisions on cross institutional checks on the police desirable.

In addition to the traditional government institutions countries transitioning from conflict or oppressive regimes may wish to stand up independent commissions or other quasi-governmental offices for the oversight of the police.

In South Africa the President appoints a commissioner to run the police. The 2012 updated constitution weaves the governing and monitoring of the police seamlessly through many sections culminating in an entire chapter on the police. The police are introduced in a chapter on security services (article 199). The chapter on the police tasks an executive cabinet member as the overseer of police activity in conjunction and in collaboration with provincial leadership (article 206). Article 206 also calls for an independent police complaint body to investigate and reports of police misconduct. To further ensure smooth integration with all branches of government:

South Africa Constitution Article 206(8) (2012)

A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective coordination of the police service and effective co-operation among the spheres of government.

In addition, article 208 establishes a “civilian secretariat” for the police service.

Other contextual issues to contemplate include federal investigative units and how they relate to and work with the police. Central governments usually always have their information police at the federal or central levels. India establishes the “Central Bureau of Intelligence and Investigation” in the constitution under the list of union responsibilities (article 246).

IX. EXAMPLES

Country Examples of Basic Principles and Structure

Country	Mission Structure and Principles	Appointment and Removal	Command and Control
Bolivia	The Bolivian Police, as a public force, has the specific mission to defend the society and conserve public order, and to assure compliance with the law in the entire territory of Bolivia.	The President has the power to designate and substitute the General Commander of the Bolivian police and to propose promotions for the General of the Police to the Pluri-National Legislative Assembly. The Legislature has the power to ratify the promotions.	The Bolivian Police Force is subordinate to the President of the State, through the intermediary of the Minister of Government. The military police and firemen, auxiliary forces and the Army reserves, together with the civilian police, are under the control of the Governors of the

			State, Federal District and Territories.
South Africa	The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.	A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.	A provincial executive is responsible for policing functions-vested in it by this Chapter; assigned to it in terms of national legislation; and allocated to it in the national policing policy. National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
Dominican Republic	The National Police has as its mission: <ol style="list-style-type: none"> 1. To safeguard the security of the citizenry 2. To prevent and control crimes 3. To prosecute and investigate the penal infractions, under the legal direction of the competent authority 4. To maintain the public order to protect the free exercise of the rights of persons and of peaceful coexistence in accordance with 	The Head of State appoints or dismisses the members of the military and police jurisdictions.	The President of the republic directs the internal and foreign policy, the civil and military administration, and is the supreme authority of the Armed Forces, of the National Police and the other security bodies of the State.

	the Constitution and the laws.		
El Salvador	Members of the National Civil Police may not belong to political parties nor opt for popularly elected positions.	The following are the powers and obligations of the President of the Republic: to annually fix a reasonable number of troops for the Armed Force and National Civil Police.	The following are the powers and obligations of the President of the Republic: ...to organize, lead and maintain the National Civil Police to preserve peace, tranquility, order, and public security, in the urban realm as well as in the rural, with strict attachment to respect for Human Rights and under the direction of civil authorities...
Ethiopia	If the conduct of the police forces infringes upon human rights and the nation's security, [the Peoples' House of Representatives] shall carry out investigations and take necessary measures.	The Federal Government shall establish and administer national defense and public security forces as well as a <i>federal</i> police force. Each State shall establish and administer a <i>state</i> police force, and to maintain public order and peace within the State.	The House of Peoples' Representatives shall determine the organization of national defense, public security, and a national police force.
East Timor	The police shall defend the democratic legality and guarantee the internal security of the citizens, and shall be strictly non-	The law shall determine the rules and regulations for the police and other security forces.	The law shall determine the rules and regulations for the police and other security forces.

	<p>partisan. The prevention of crime shall be undertaken with due respect for human rights.</p>		
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