

TOWARDS A SUCCESSFUL REFORM?

PROPOSALS FOR AN
ORGANIC LAW TO HELP
BRING ABOUT
COMPREHENSIVE REFORM
OF THE NATIONAL POLICE
IN THE DOMINICAN
REPUBLIC

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in 2012 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Copyright Amnesty International Publications 2012

Index: AMR 27/016/2012
Original Language: Spanish
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

**AMNESTY
INTERNATIONAL**



CONTENTS

Introduction	4
Positive aspects of the previous draft law.....	5
Problematic aspects that need to be amended	5
<i>The absence of a supervisory authority close to the National Police.....</i>	6
<i>The lack of effective accountability mechanisms.....</i>	6
<i>The powers and functions of the police are not clearly defined</i>	7
<i>The basic principles governing police work are inadequate</i>	7
<i>Not all the weapons available to the police are properly defined and their use is not regulated in accordance with international standards</i>	8
<i>Unjustified use of lethal force when no lives are in danger.....</i>	8
<i>The civil and criminal liability of the National Police as an institution is not established ...</i>	8
<i>Police courts: a step backward</i>	9
<i>Inadequate protection of the rights of police officers who are subject to disciplinary procedures.....</i>	10
Recommendations	11

INTRODUCTION

According to internationally accepted principles, bodies responsible for law enforcement must:

- Be representative of the community as a whole and respond to its needs.
- Use their powers, including the use of lethal force, in accordance with the principles of proportionality, necessity and legality.
- Be accountable to society as a whole through the establishment of an effective system of internal controls as well as mechanisms through which other state institutions and civil society can monitor their actions.
- Guarantee the rights of their own members.

However, there is a widely held view within the Dominican Republic that the National Police fails to comply with many of these principles. There are currently many factors limiting the effectiveness of this institution and contributing to the ongoing high level of public distrust of the police. In particular, the fact that many police officers are corrupt and that abuses and human rights violations (especially killings, torture and other forms of ill-treatment) are all too frequently committed by members of the institution undermines the state's ability to protect human rights and guarantee public security.

There is therefore public consensus that a root and branch reform of the National Police is necessary in order to turn it into an institution that fully complies with its mandate to protect by observing international law, the Constitution and domestic legislation.

Previous reform attempts have not been very productive in terms of improving the effectiveness of the police or preventing them from committing human rights violations, mainly because they have failed to introduce the components required to improve the way in which police officers and the institution itself are held accountable before the law, the state and the public.

Adopting the *Ley Orgánica de la Policía Nacional*, Organic Law on the National Police, is a crucial step for embarking on the much needed comprehensive and effective reform of the National Police.

With this document, Amnesty International is therefore seeking to contribute to the process of police reform in the Dominican Republic at a time when a new draft of the Organic Law on the National Police is being drawn up.

In particular, the document analyzes the previous bill (which was approved by the Senate at first reading) in order to not only identify its positive aspects but, above all, to draw attention to problematic aspects of the proposed law which, if not amended, could be detrimental to the police reform process.

POSITIVE ASPECTS OF THE PREVIOUS DRAFT LAW

The proposed Organic Law on the National Police introduced by the previous government made significant progress in some areas, including the following:

- The duty to obey orders from above is subject to the principle of legality (article 15.6);
- Police officers are obliged to obey their superiors “as long as the orders or actions to which they give rise do not constitute manifestly illicit or illegal acts” (article 15.5);
- The establishment of a *Dirección Central de Policía Comunitaria*, Central Office of Community Police (article 61), with a specific mandate to gradually implement “programmes designed to transform the whole police force into an institution that is directed towards serving the community”;
- Banning members of the National Police from carrying or having weapons other than those allocated to them for the performance of their duties (article 85);
- The maintenance of a ballistics register for all the weapons allocated to members of the National Police (article 87);
- The halting of automatic promotion on grounds of seniority. Discipline and performance appraisal are also included in the criteria to be met in order to be promoted. If an officer does not meet the criteria required to be promoted to a certain rank within the time limit established, he or she will be retired or discharged from the police (article 136).

PROBLEMATIC ASPECTS THAT NEED TO BE AMENDED

Many aspects of the draft law introduced by the previous government raise doubts about its ability to trigger a genuine comprehensive reform of the National Police. In particular, it fails to include adequate mechanisms for ensuring accountability within the institution. It does not provide for effective controls by other institutions or establish a solid framework for preventing abuses and human rights violations. It also fails to point out that the police service, as an institution, is civilly liable for crimes committed by its members.

The draft law introduced by the previous government only provides a general outline of police structure. A more detailed breakdown is to be provided in the implementing regulation. Given

that regulations are administrative acts issued by the President of the Republic (article 128 of the Constitution), it is particularly worrying that many aspects of the reform are not submitted to the legislature for analysis and approval. While it is true that not everything can be regulated in law, in order to ensure that the police are effectively monitored, it is important to establish a legal framework for the work of the police and its supervisory bodies that is sufficiently precise.

THE ABSENCE OF A SUPERVISORY AUTHORITY CLOSE TO THE NATIONAL POLICE

The draft law presented by the previous government clearly states that the President of the Republic has responsibility for supervising the National Police while organizationally it is attached to the Ministry of the Interior and Police (**articles 18-19**). This provision further limits the system for making the police accountable for their actions. Given the vast number and complexity of the duties and responsibilities of the President of the Republic, the latter would clearly not be in a position to exert strict control over the operation and conduct of the National Police. Making the National Police directly subordinate to the President rather than the Ministry of the Interior and Police therefore means that the mechanisms for supervising it remain weak.

While it is true that the country's Constitution stipulates that the National Police comes under the authority of the President of the Republic (article 255), article 128(1) (e) clearly states that the President can command the National Police and the Armed Forces himself "*or through the relevant ministry*". Since the Ministry of the Interior and Police is the relevant ministry in the case of public security, making the National Police organizationally answerable to it in law (giving specific details of the Ministry's duties and oversight mechanisms) would be perfectly legitimate and constitutional.

THE LACK OF EFFECTIVE ACCOUNTABILITY MECHANISMS

The draft law contains no rules at all relating to authority, supervision, control and accountability.

In particular, it fails to set out any of the basic components of police accountability, namely:

- *Individual officers* at all levels of the hierarchy must be personally accountable to their supervisors for their own conduct. Their conduct must comply with domestic legislation and professional codes of ethics and discipline. All officials must be held accountable before the courts for any criminal behaviour;
- *Senior officials* must be held accountable for supervising and exercising discipline over the individuals under their command through the submission of reports;
- The *police, as a body*, should account to society as a whole concerning the success of its efforts to maintain order and ensure public safety. As an organization, it should account to independent supervisory bodies that have been established by law and are open to public scrutiny (including by democratically elected representatives, NGOs and the media).

The draft law also fails to specify the responsibilities of supervisors, in particular those relating to the supervision of individual officials, the supervision of their operations and the need to inform their own superiors in the command chain about their own work and that of their subordinates – including with regard to the correct use of discretionary powers.

Although the draft law institutes two internal control bodies (the *Inspectoría General de la Policía Nacional*, General Inspectorate of the National Police, and the *Dirección Central de Asuntos Internos*, Central Office for Internal Affairs, **articles 44-46**), their authority, duties and powers are not described with sufficient clarity. It also fails to establish clear mechanisms for ensuring that these bodies fulfill their function or to create an independent and clear system for receiving complaints from the public about the conduct of police officers.

During the 2009 universal periodic review carried out by the Human Rights Council, the Dominican Republic expressed its willingness to implement the recommendation calling on it to “establish an independent oversight body to investigate complaints of police abuse and human rights violations”. Setting up an independent body of this kind would considerably strengthen the system through which the police can be held accountable by society.

THE POWERS AND FUNCTIONS OF THE POLICE ARE NOT CLEARLY DEFINED

Other than their powers with regard to the use of force (which are regulated in **articles 15 and 89**), the draft law introduced by the previous government does not mention what powers have been granted to the police or specify any guidelines regarding the use of such powers. For example, such powers might include the powers of arrest and detention, the power to conduct searches and inquiries, and the power to carry out criminal investigations.

Although other laws may provide details concerning the powers of the police, it is essential for the Organic Law on the police to spell out those powers as accurately as possible,

From the way in which **article 16** is worded, the functions of the police are geared more towards ensuring security than protecting the lives and physical integrity of individuals, including their rights and freedoms. This represents a backward step compared to the wording of the current *Ley Institucional de la Policía Nacional 96-04*, Institutional Law on the National Police 96-04 (**article 25**).

THE BASIC PRINCIPLES GOVERNING POLICE WORK ARE INADEQUATE

Some of the basic principles are formulated well in **article 15** but other essential ones, such as the principles of necessity and proportionality, are missing. In the draft law, the principle of proportionality is only referred to in relation to the use of force, whereas it should apply to everything the police do.

The principle of necessity refers to the need to select – from all the means available for achieving an objective – the one which implies the least restriction on human rights.

The principle of proportionality means that there is an obligation to weigh up the benefits of the law enforcement action (in other words, the “value”/importance of the objective) compared to the consequences of the action, and to refrain from acting if the negative consequences of doing so (in terms of human rights) outweigh the importance of the objective.

NOT ALL THE WEAPONS AVAILABLE TO THE POLICE ARE PROPERLY DEFINED AND THEIR USE IS NOT REGULATED IN ACCORDANCE WITH INTERNATIONAL STANDARDS

According to **article 88**, “special weapons should be kept in the weapons stores of the

National Police to be used when circumstances so require”.

This formulation is problematic, especially because it does not specify what is meant by “special weapons” or indicate whether there is some legal text (a law or regulation) establishing the circumstances in which such special weapons could be used.

Some limits are established in the current Institutional Law on the police, such as the fact that special weapons may only be used by personnel who have been specifically trained to use them and only in exceptional circumstances (**article 30**, Law 96-04), but these have disappeared from the draft law submitted by the previous government.

The formulation of article 88 is not based on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990). The discretion the police have to use special weapons is therefore enormously widened.

UNJUSTIFIED USE OF LETHAL FORCE WHEN THERE ARE NO LIVES IN DANGER

By comparison with the current Institutional Law on the police (96-04), it is positive that the guiding principles contained in **article 89** of the draft organic law apply to the use of any kind of force and not just firearms.

However, there are still some concerns. In particular, the formulation of point 2 is too broad.

Point 2(c) states that the use of firearms is authorized in order to prevent the commission of a serious act that may entail a serious threat to state security. It is not clear what constitutes a threat to state security – and this does not appear to be defined in Dominican law, thus being left to the discretion of the public authority. Under the principle of proportionality, a person’s life may only be put at risk through the use of a potentially lethal weapon (firearm) in order to protect or safeguard something of equal importance, namely another life.

According to point 2(d), the use of firearms is authorized “when in the middle of detaining someone, the latter poses a danger and puts up resistance”. The level of danger is not specified. According to international standards and when applying the principle of proportionality, firearms can only be used if the person poses a danger to the life of another person.

Given that point 7 refers back to point 2, the aforementioned concerns also affect the use of firearms in the dispersal of demonstrations.

THE CIVIL AND CRIMINAL LIABILITY OF THE NATIONAL POLICE AS AN INSTITUTION IS NOT ESTABLISHED

Like the current Institutional Law on the police, the draft organic law introduced by the previous government persists in only recognizing the criminal liability of members of the National Police as individuals (**article 146**). Nowhere does it establish the liability of superior officers or the civil liability of either the police as an institution or of the state for human rights violations committed by police officers in the course of their duties or when exercising the authority vested in them by virtue of their position.

The consequence of this shortcoming in the draft law is that it perpetuates the current system in which the National Police and the Dominican state fail to admit responsibility for the actions of police officers. The senior ranks of the National Police and most officials from relevant state bodies claim that abuses and human rights violations are the work of a few corrupt or unprofessional officers who are immediately dismissed and brought to justice. However, given the scale and seriousness of the human rights violations committed by police officers every year, the National Police and the state have a duty to acknowledge the magnitude of the problem and take effective measures to reduce the number of police killings and eradicate torture, ill-treatment and other abusive practices.

One of the main consequences of this evasion of responsibility is that the victims of abuses and human rights violations at the hands of members of the National Police are unable to claim compensation. If an officer cannot afford to comply with a court order calling for the payment of compensation, then it is not paid. Neither the National Police as an institution nor the state see themselves as being responsible for civil damages arising from the unlawful actions of police officers on active service or as being jointly and severally liable for paying compensation to the victims or their families.

POLICE COURTS: A STEP BACKWARD

The formulation of **articles 164 and 165** of the draft organic law on the National Police presented by the previous government is extremely worrying. These articles seem to reintroduce a police court system running parallel to that of the ordinary courts to deal with disciplinary and criminal offences committed by members of the National Police. If this interpretation is correct, it would be a step backward since the criminal jurisdiction of the *Tribunales de Justicia Policial*, Police Courts of Justice, was abolished as a result of the entry into force of the Code of Criminal Procedure in September 2004, which transferred responsibility for trying all offences committed by the security forces to the ordinary civilian courts.

It is extremely important for the ordinary courts to retain sole jurisdiction over criminal offences committed by members of the police and all branches of the security forces, in other words, to ensure respect for the principle of equality before the law and the right to due process which are guaranteed in the Dominican Constitution (**articles 39, 68 and 69**) and the international and regional human rights treaties to which the Dominican Republic is a party.

According to article 165 of the draft law, the members of the police courts would be appointed and removed by the President of the Republic. The police courts would therefore be under the control of the executive and would not have the independence that is guaranteed to the judiciary in the Constitution. As a consequence, if killings and other offences that involve human rights violations were to be tried in a separate police court system, the international standards that require human rights violations to be investigated and prosecuted independently and impartially would not be guaranteed.

There are also doubts about whether a parallel system of police jurisdiction can ensure the transparency that is required in legal proceedings and the right for victims of police abuses to be able to take part in proceedings.

The lack of independence in investigations of offences committed by members of the National Police, especially human rights violations, is also demonstrated by the fact that the

current draft organic law fails to refer to the provision contained in the current Institutional Law on the police (Law 96-04, article 62) concerning the need for independent outside investigations to be carried out by prosecutors into offences allegedly committed by police officers. Under the current draft organic law, those responsible for investigating acts that constitute crimes, offences or misdemeanours would be bodies with judicial police functions.

Bearing in mind that complaints concerning human rights violations committed by the police are extremely frequent in the Dominican Republic, the establishment of this parallel system of criminal justice for members of the police and the exclusion of the *Ministerio Público*, Public Prosecution Service, from investigations would seriously damage the human rights protection system in the Dominican Republic.

Article 257 of the Dominican Constitution, which states that “the police court system only has jurisdiction in respect of those police offences envisaged in legislation on the subject”, should therefore be interpreted narrowly so that the police court system only has responsibility for disciplinary offences committed by members of the National Police. Offences of a criminal nature should remain under the jurisdiction of the *Tribunales de la República*, national courts, and the investigation of such cases should be carried out under the direction of the Public Prosecution Service.

INADEQUATE PROTECTION OF THE RIGHTS OF POLICE OFFICERS WHO ARE SUBJECT TO DISCIPLINARY PROCEDURES

The section of the draft organic law concerning the disciplinary system (**articles 166-180**) makes no mention of any of the essential guarantees for police officers facing disciplinary procedures that are contained in the current Institutional Law on the police, namely the principle of due process and the guarantee of the right to defence (articles 69 and 70, law 96-04).

RECOMMENDATIONS

The institution that exercises oversight over the National Police

- Clearly establish that the National Police will be organizationally answerable to the Ministry of the Interior and Police;
- Give specific details in the law of the supervisory functions that the Ministry of the Interior and Police has over the National Police, thereby ensuring appropriate oversight of the police by the executive and at the same time that the police are operationally independent, objective, neutral and impartial in their day-to-day work;
- Subject the National Police to an effective system of external oversight by other institutions (Ombudsman, the judiciary).

Accountability

- Specify the essential components of police accountability (referred to on page 6);
- Specify the responsibilities supervisors have, especially those relating to the supervision of individual officers, the supervision of operations and the duty to report on their own work and that of their subordinates, including reporting to their own superiors in the command chain concerning the correct use of discretionary powers;
- State in detail the authority, duties and powers of the *Inspectoría General*, General Inspectorate, (article 44) and the *Dirección Central de Asuntos Internos*, Central Office for Internal Affairs, (article 46) and establish clear mechanisms for ensuring that those bodies perform their duties (for example, by subjecting them to monitoring by the National Congress or the Ombudsman);
- Establish a clear independent system for receiving complaints from the public regarding the conduct of police officers;
- Retain the requirement that the General Inspector of the National Police should submit six-monthly reports to the Ombudsman's Office, as stated in the current Institutional Law on the police (Law 96-04, article 13), so that this important independent monitoring mechanism is safeguarded.
- Clearly establish that if, in the course of conducting an investigation, the General Inspectorate or Central Office for Internal Affairs finds that a criminal offence has been committed, they should notify the Public Prosecution Service so that it can carry out an investigation and bring a criminal prosecution on behalf of society, in accordance with the provisions of article 169 of the Constitution;
- Set up an independent oversight body that is responsible for investigating complaints of abuses and human rights violations carried out by the police, as the Government of the Dominican Republic agreed to do during the universal periodic review conducted by the United Nations.

Police powers and functions

- Regulate, within the Organic Law on the National Police, all of the powers attributed to the National Police, including when and for what purposes they can be used, the guiding principles applicable to each power, the procedures and restrictions that govern the use of the different powers, and the mechanisms established for monitoring their use (compulsory reporting to one's immediate superior, judicial oversight, etc.);
- Their primary functions should include "to safeguard people's lives and physical and moral integrity" and "to protect and guarantee the free exercise of the rights and freedoms of people throughout the country through the maintenance of public order and safety".

The basic principles governing police work

- Include the principles of necessity and proportionality as guiding principles for all police powers (for example, those relating to arrest and detention and the conduct of searches, inquiries and criminal investigations);
- Draw up regulations to govern not only the use of force (currently mentioned in article 15.10) but also all other police powers.

Firearms

- Establish in the Organic Law or in an implementing regulation that the Public Prosecution Service and the Ombudsman should have access to the ballistics register and institute mechanisms to ensure that the register is monitored (for example, by the General Inspectorate of the National Police or the Ombudsman) in order to ensure that it is properly maintained and kept up-to-date;
- Specify the type of special weapons available and the circumstances in which they can be used. Specify that the National Police Chief may authorize the use of special weapons in accordance with the criteria established in the Law for doing so (**article 41.13**).

Use of force

- Specify the situations in which the use of firearms is authorized so that it is clear that they can only be used to protect the life of another person;
- Incorporate into the Organic Law in their entirety the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the United Nations in 1990.

The liability of higher-ranking officials, the National Police and the state

- Clearly establish the liability of higher-ranking officials, namely that commanders and other senior officers should be held criminally liable whenever those under their command, authority or effective control have committed a crime or are suspected of having done so, or when commanders or senior officers knew or ought to have known that the subordinates concerned were committing such a crime or planning to do so and failed to adopt all the necessary and reasonable means at their disposal to prevent or punish its commission or to bring the matter to the attention of the relevant authorities so that it could be investigated and prosecuted;

- Establish in the Organic Law that the police as an institution and the state are civilly liable for human rights violations committed by police officers in the course of their duties or when exercising the authority vested in them by virtue of their position;
- Establish in the Organic Law the principle that the National Police and the state have joint and several liability so that court orders regarding the payment of compensation to victims of human rights violations committed by police officers can be enforced.

Police courts

- Ensure that the jurisdiction of the police courts is reserved solely for disciplinary offences committed by members of the National Police;
- Clearly establish in the Organic Law that offences of a criminal nature, including human rights violations, should be investigated independently and impartially under the leadership of the Public Prosecution Service and remain under the jurisdiction of the *Tribunales de la República*, national courts.

The disciplinary system

- Include an explicit reference to due process and guarantee the right to defence so that the fundamental rights of any members of the National Police facing disciplinary proceedings are safeguarded.

AMNESTY
INTERNATIONAL



www.amnesty.org