

IN SAFE HANDS: POLICE ACCOUNTABILITY KEY TO ALLOWING SPACE FOR CIVIL SOCIETY

Background paper for Working Session Three

Police can increase civil society space

Professional, effective, rights-respecting and accountable police are vital for the effective and free operation of civil society. The police are responsible for maintaining law and order, protecting and supporting freedom of expression and ensuring the environment that civil society operates within functions effectively. The operation of the police can assist, or hinder, civil society. For example, whether the police protect or undermine basic rights such as the right to freedom of association, or the right to political protest, will directly impact on the ease with which civil society works, and the effectiveness that it has.

Police can suppress civil society space

Where police are not accountable, they can be used as a tool to suppress and reduce civil society space. Civil society often monitors and documents human rights violations by the police, and uses domestic and international mechanisms to pressure police and governments to comply with international human rights standards. This work can put members of civil society at odds with the state, and the police. This can result in risk to activists' life and liberty at the hands of authoritarian and repressive regimes. Members of civil society have been the victims of extrajudicial executions, disappearances, death threats, detention and harassment at the hands of the police or other state agents¹.

Civil society vital for community

Professional policing requires the consent and support of the community being policed, so public participation in policing is essential. This is a key dimension of accountability for a democratic police organisation. However, in many parts of the Commonwealth, police organisations have come to serve governments or political parties before they attend to the needs of the community. For this reason, it is important that individuals and groups engage in making the police more accountable.

Civil society plays a vital role in this context. Broadly, civil society includes NGOs, media, academics and other community sector groups. Marginalised people and communities usually struggle to get their concerns addressed by government agencies such as the police. Experience indicates that civil society organisations can help get the concerns of poor, marginalised and vulnerable groups addressed by both policy-makers and police managers. In countries where police accountability is limited or weak, such organisations can play a meaningful role in bringing attention and change to unsatisfactory police practices. They can demand transparency in the working of police organisations and hold them accountable.

A lack of police accountability means personal risk to civil society members, and suppression of space for civil society to operate within. The following cases illustrate the limiting impact that insufficient police accountability can have.

Belize

Michael Flores, a politician and radio talk show host, has been an outspoken critic of police brutality in his country. A high-ranking police officer publicly stated that he would do something to both Michael and his wife, Antoinette, a practicing human rights lawyer, if Michael did not stop making critical comments about the police. In January 2003, the police in Belize charged the couple with drug related offences. The Human Rights Commission of Belize, a local NGO, stated the charges were intended solely to silence opponents of police brutality². The Director of Public Prosecutions dismissed the charge against Antoinette in May 2004, eighteen months after the incident. Michael is still facing trial.

¹ Amnesty International, *Human rights defenders in Americas*: <http://web.amnesty.org/pages/hrd-index-eng> as on 17 March 2005.

² <http://www.state.gov/g/drl/rls/hrrpt/2003/27886.htm>

Malaysia

In response to around two hundred people gathering to demand reforms to the police force, police sprayed the protestors with a water cannon containing chemical irritants. The protestors were gathering peacefully, and were calling for an end to police corruption and brutality, while supporting the creation of a newly formed royal commission into police reform. 17 people were also arrested, and later released without charge.

Swaziland

In 2003, various heads of state converged on Mbabane for a Commonwealth conference, providing civil society with an opportunity to engage with foreign policy makers. Activists secured a court order authorising them to hand over a petition at the conference. However, police prevented the demonstrators from handing over the petition. A police commander reportedly told union leaders, "Your court order does not matter, because the bottom line is you are not going there."³

Accountable police: a positive relationship

Civil society organisations that monitor police abuses of power can find it difficult to build constructive working relationships with police services. In particular, human rights organisations and police often have a long history of antagonism, and this can be a serious impediment to constructive exchange and collaboration. However, the more accountable a police service, the more accessible it is for civil society, and the more chance there is for civil society to build a constructive relationship that benefits both the police and the community. Examples of beneficial programs include where NGOs have assisted to redraft legislation and policy, or where they have participated in experiments with community policing partnerships.

Police accountability: too important to neglect, too urgent to delay

While certain Commonwealth bodies (including Law Ministers and the Commonwealth Expert Group on Development and Democracy) have recognized the importance of policing within the Commonwealth context, CHOGM 2005 presents an opportunity for the Commonwealth to take decisive action on police accountability. The Commonwealth Heads of Government have the opportunity, for instance, to send a strong message that:

- Democratic policing is crucial to realising democracy and development.
- Civil society has an integral role as an agent for bringing change to dangerous police practices.
- Police accountability is paramount to allow the effective operation of civil society.
- Commonwealth Principles on Policing, drawn from its core principles and international standards must be developed.

Please note: The Commonwealth Human Rights Initiative's 2005 report to CHOGM – on police accountability – will be launched by the Commonwealth Secretary General Don McKinnon in Malta on Tuesday 22nd November 2005. The Minister for Justice, Malta, will also speak at the launch. The launch will be held in the Lounge of the La Vallette Resort, Dragonara Rd, St Julians, from 4pm. The report can also be downloaded from CHRI's website: www.humanrightsinitiative.org

³ _____ (2003) "A monarch too married to the past", *Independent Online*, 12 October, http://www.iol.co.za/index.php?set_id=1&click_id=68&art_id=qw106595210460S262 as on 17 March 2005

Annex:

Police Accountability: the Commonwealth Africa region

14th and 15th October 2005, Accra, Ghana

CONCLUDING STATEMENT AND RECOMMENDATIONS

Introduction

On 14th and 15th October 2005, a meeting was held in Ghana to discuss police accountability in the Africa region, facilitated by the Commonwealth Human Rights Initiative.

Civil society organizations, civilian oversight bodies and police officials participated in the meeting, as well as a representative of the Commonwealth Secretariat as observer. The following Commonwealth countries were represented at the meeting: Ghana, South Africa, Kenya, Uganda, Tanzania, Sierra Leone, Malawi, Nigeria, UK, India and Australia.

The meeting was timed to be held prior to the Commonwealth Law Ministers Meeting in Accra to be held on 17th to 21st October 2005. As well as discussing a variety of strategies and mechanisms to encourage accountability within the police, discussions included the requirements for a legal framework to ensure democratic policing.

We, the participants of the Police Accountability meeting:

Note the central role played by police in society, particularly in the pursuit of peace and security, as well as in the furtherance of democracy, development and good governance.

Note that the police play a key role in society in the protection and upholding of human rights, particularly democratic rights and freedoms.

Recognize that, despite the existence in the Commonwealth of examples of best practices in democratic policing and accountability to citizens, in too many countries police continue to function under outdated legal frameworks which cannot deliver accountable policing.

Acknowledge that policing is a difficult job and that the police face many challenges and often have to deliver their services under poor conditions.

Note that across Commonwealth countries there are numerous and widespread examples of abuse of power and violations of the rights of citizens by the police.

Recognize that mechanisms are needed to prevent police abuse of power and provide recourse should it occur.

Further recognize that at the heart of police reform is the development and strengthening of mechanisms to keep police accountable.

Affirm that police accountability includes both internal disciplinary systems within the police service, and external accountability to the three pillars of state (executive, judiciary, legislative), civilian oversight bodies and to the community that the police serve.

Considering these points, the participants:

Acknowledge the value placed by the Commonwealth on human rights, good governance and democracy, and the principles of the rule of law and accountability.

Acknowledge the interest taken by Commonwealth Law Ministers at their previous meetings in issues related to human rights generally, and in particular in the role of the police in realizing such rights.

Note that at their 2002 meeting, Law Ministers “asked the Commonwealth Secretariat to assist in the training of national agencies, such as the police, to entrench respect for human rights in all their operations.”

Further note that in response to this request, a pilot project has been implemented by the Human Rights Unit of the Commonwealth Secretariat which involves the development of a human rights training manual for police in West Africa.

Further note the priority placed on policing by other Commonwealth bodies such as the Commonwealth Expert Group on Development and Democracy which recommended in 2003 that Commonwealth governments should commit to: “A police force that responds to the law for its operations and the government for its administration”

Note the report, *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, and support its recommendations to the Commonwealth.

Participants of the Police Accountability meeting make the following recommendations to the Commonwealth Law Ministers, that they:

Prioritize early police reforms that strive to realize democratic policing as integral to achieving good governance and rule of law;

Mandate the Commonwealth Secretariat to work with member governments to implement the recommendation of the Commonwealth Expert Group on Development and Democracy that member governments should commit to ensuring “A police force that responds to the law for its operations and the government for its administration”.

Recommend that the Commonwealth pursue the development of democratic and human rights based policing in all countries of the Commonwealth.

Reform Police Acts in their countries where necessary to ensure that Acts incorporate and further the principles of democratic policing, eliminate impunity, and abide by international human rights and policing standards.

Address the issue of police reform holistically within the context of reform of criminal justice systems.

Ensure that other domestic laws, rules and regulations are conducive to democratic, accountable policing. Security and anti-terror legislation, for instance must protect civil liberties and human rights.

Pass legislation that can assist in the development of democratic, accountable and transparent policing, such as right to information laws.

Establish effective bodies to oversee the police, and ensure they have adequate resources, mandate and independence to function properly. These include National Human Rights Commissions, public complaints bodies and police service commissions.

Mandate the Commonwealth Secretariat to provide greater technical assistance to National Human Rights Commissions and other bodies to increase their capacity to provide oversight over the police.

Participants of the Police Accountability meeting make the following additional recommendations to the Commonwealth, that it:

Engage with issues related to policing, to further democracy and development and adherence to the Commonwealth Harare Principles.

Develop Commonwealth Principles on Policing based on democratic principles and international standards.

Support member countries' efforts to reform the police and develop a service based on democratic principles.

Develop a Commonwealth Association of Police Officers to share experiences and provide peer assistance and support.

Support regional efforts towards better policing, such as the development of the African Policing Oversight Forum (APCOF).