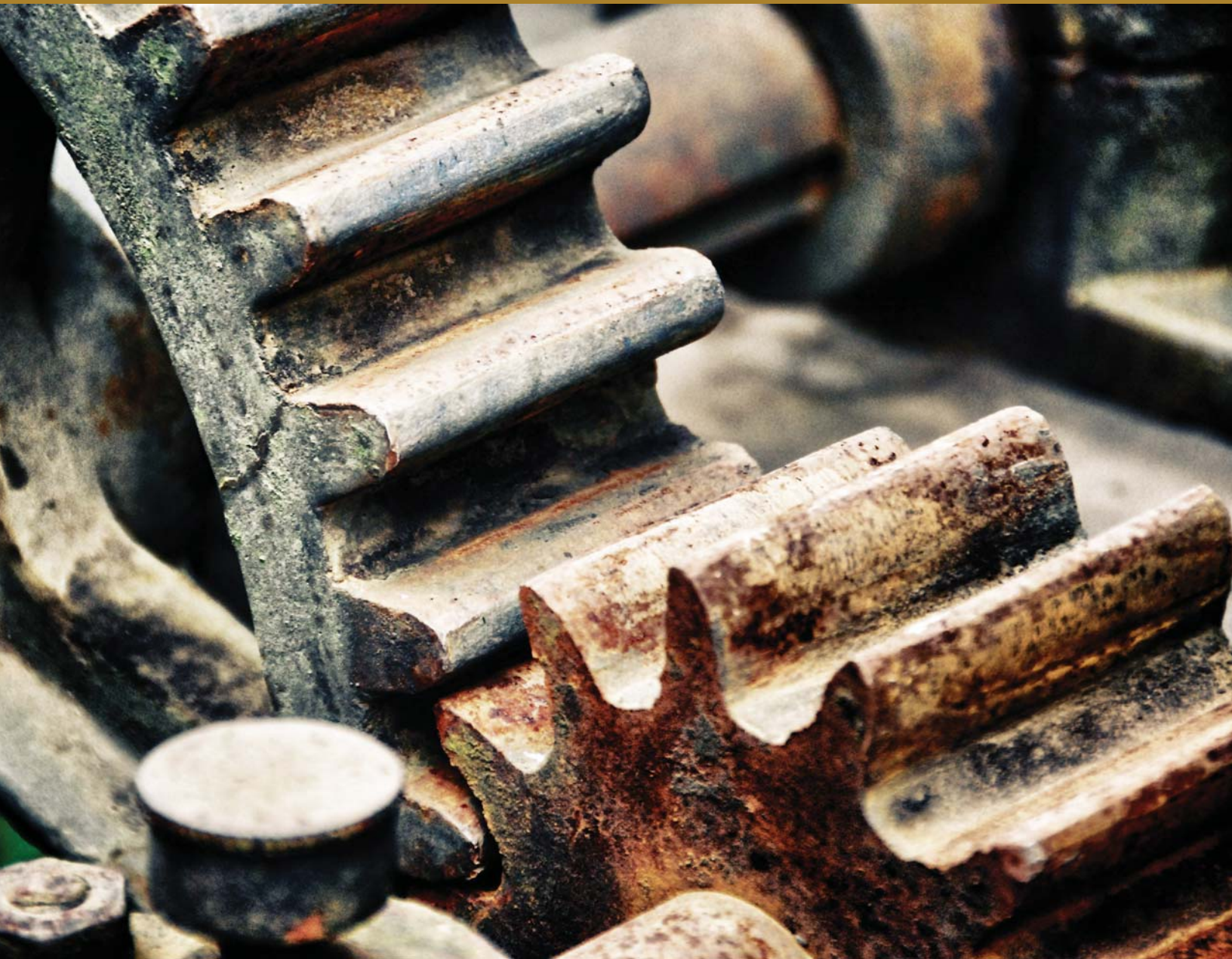


CHRI 2012

FEUDAL FORCES: REFORM UNDERMINED

Failing to Move from Force to Service in South Asian Policing



Commonwealth Human Rights Initiative

working for the practical realisation of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

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Failing to Move from Force to Service in South Asian Policing

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Chapter 1

INTRODUCTION

Police organisations across Commonwealth South Asia, despite functioning in democratic societies with modern constitutions and a prominent Bill of Rights, are feudal and colonial. These countries still have a regime police which function less to serve the rule of law and more to serve the regime in power. Their accountability and their loyalty are to their own hierarchy and importantly the political executive, which provides them patronage. The policing system is clearly in bad shape and in desperate need for reform.

It is not that reform is not happening. However, it is moving at a snail's pace. The stress of reform also remains on infrastructure, technology and modernisation. These factors cannot be undermined; however, in the absence of institutional changes and lack of attention on the basic structure, manpower, deployment, planning and training, the rewards of police modernisation will be difficult to assess.

Feudal Forces: Reform Delayed, brought out every two years, examines the pace of police reform in the Commonwealth South Asian countries of Bangladesh, India, Maldives and Pakistan. In 2007, CHRI published *Feudal Forces: Democratic Nations – Police Accountability in Commonwealth South Asia*. The report delved deeply into the theory of democratic policing and why it is a desirable model for the region. Its examination of policing in South Asia revealed a state of law enforcement wholly unsuitable and devoid of public confidence. Even as some weak attempts have been made to reduce the politicisation of police, increase its accountability, and improve its management, implementation has been poor because governments are reluctant to fully and urgently engage on desperately needed reform.

In 2008, CHRI published *Feudal Forces: Reform Delayed – Moving from Force to Service in South Asian Policing*. The report provided in detail the state and pace of police reforms in Bangladesh, India, Pakistan and Sri Lanka and the concrete steps that can be undertaken to transition policing in the region from a force to a service. In 2010, the report was updated and also included an additional chapter on the Maldives.

This 2012 report looks at the moves made towards reform; analyses reform initiatives to assess whether they uphold human rights standards and further democratic policing. Each country chapter provides recommendations to governments, police and civil society groups on how to further the reform agenda. The report covers a crucial period where political turmoil has been prevalent in the region. Bangladesh has seen continuous strikes called by the opposition. The strikes have resulted in a great deal of political violence as well as police violence. With elections around the corner, no party is seriously considering any reform of the police. In the Maldives, there was an abrupt change of power where the country again witnessed large scale violence. The police has been accused of not being neutral in its response toward curbing the violence. Though independent inquiries have largely given a clean chit to the police, it has lost all credibility amongst the public.

Pakistan, too, has witnessed continuous terror attacks and killings of innocent citizens. Reform of the police during such heightened violence seems like a far cry. The Police Order of 2002 was never really adopted by any province and largely remained on paper. However, once the Order lapsed, provinces have gone as far as reintroducing the Police Act of 1861. The problem of extrajudicial killings and enforced disappearances has also been acute – acute enough to have merited the visit of the United Nations Working Group on Enforced or Involuntary Disappearances to the country. The Working Group in its report criticised the levels of impunity of the law enforcement and also put forth several recommendations to the government to curb the practice as well as bring perpetrators to account.

In India, police reform initiatives continue to be largely state-led with little involvement of civil society or the general public. Despite the intervention of the Supreme Court, there remains deep seated resistance to systemic reform. However, towards the end of 2012, a shocking and brutal incident of gang rape in the capital city of Delhi has completely shattered the police image. The increasing levels of crimes against women and the completely unsuited police response to these crimes have enraged citizens who have come out on the streets demanding

reform. Several reform measures have been put in place. It remains to be seen how sincerely these are implemented. At present, the public pressure on the government for visible implementation is extremely high.

1.1 Colonial Legacy

South Asian governments have largely retained the colonial system of policing left behind by the British rulers. The central government in India has retained the Police Act of 1861. Some states have passed their own Police Acts but these too are largely modelled on the 1861 Act. Bangladesh, too, continues to retain the 1861 Police Act. A Draft Ordinance was introduced in 2008 but there has been no interest shown by political parties to introduce this. Pakistan has a Police Order from 2002 passed under General Musharraf's regime which remains largely ignored and unimplemented. The Maldives only created a police service distinct and separate from its National Security Service in 2004 and eventually enacted a Police Act as late as in August 2008. Regardless of the idiosyncratic tendencies of any particular jurisdiction, there continues to be a strict hierarchical division between officers and the constabulary throughout Commonwealth South Asia. The former are often well educated and relatively well paid, while the latter suffer from incredibly poor working conditions, little prospects of rising up the ranks, few prospects of skill development and pathetic levels of training.

1.2 Independence and its Failed Promise

The experience of colonial oppression deeply influenced constitution making in South Asia. As a result, Bangladesh, India, Pakistan and Sri Lanka included in their Constitutions fundamental rights that enshrined the sovereignty of citizens, acknowledged the paramountcy of law, provided explicit guarantees of civil and political rights, and enumerated social and economic rights. Yet 60 years later, despite such noble proclamations, everyday policing is unable to protect basic fundamental rights of most citizens.

What countries have failed to realise is that democratic countries need democratic policing. It is true that the colonials left behind a police that was structured for the colonies. But that was over 60 years ago. Countries now cannot keep on pointing to the dead carcass of imperialism. If governments are retaining outmoded, outdated police structures, it is also because they are comfortable with it.

Policing across the region still does not reflect the transformed citizen-state relationship that ought to have taken shape post-independence. The notion that a policeman is merely a citizen in uniform providing a lawful service to the population is rarely understood in government or within the police establishment. Policing continues to reflect a feudal-colonial model that remains structurally incapable of assuring that a citizen's constitutional rights are staunchly protected rather than indiscriminately violated. Policing in South Asia does not command the confidence of the public because it is seen as oppressive, unfair and woefully inefficient. Consequently, the police are frequently alienated from the communities they serve and hence have less chance of successfully containing crime, civil unrest and extremist violence. In the absence of an effective state machinery to protect life and liberty everyone is a law unto themselves. The police have fast become an intervention of last resort when they should be the first port of call in any emergency.

If the public are getting a raw deal, the police are too. They have their problems. Some systemic, others to do with outsiders, but a great many brought upon themselves. They too easily allow themselves to be wrongfully used by their political masters and extend too many excuses for doing so. Their unwillingness to face this problem has meant that their operational efficiency has been badly mauled over the years and their chain of command broken and compromised by the unconscionable levels of political interference at every level of policing that has come into play. The service conditions their rank and file has to put up with are evidence of poor leadership.

Common Problems Plaguening Policing Across the Region:

Undue and Illegitimate Political Interference in Policing

There is no dearth of literature, on the extent of the problem of politicisation of the police in the region. Transfers and suspensions are considered to be the two most dangerous weapons frequently used by the politician to bend the police officers down to his will. Frequent and arbitrary transfers, besides “demoralising the police force” and “politicising the personnel”, constitute a practice that is “alien to constitutional democracies”. As a result, “political control” of policing has eroded internal chains of command, obstructed police functioning and ensured that responsibility for wrongdoing is hard to pin on any one body or individual. The “business” of policing today revolves around partisanship, currying political party favours and interests, and influence peddling, entirely overshadowing the real duties of the police. The powers to transfer, appoint and promote police officers are being exploited as weapons and rewards for compliance or not and have come to represent something entirely different from the original intent of basic administration and healthy career growth.

The treatment of law and order problems and the pace of crime investigation is often coloured by this issue. Political interference is one of the most pervasive and insidious problems that undermine the professionalism of police personnel throughout South Asia. The situation makes it incredibly difficult for diligent and honest officers to maintain their integrity and expect to also advance their career.

Commissions set up in Bangladesh, India, Pakistan and Sri Lanka have repeatedly looked at how to remodel policing. Various suggestions were offered to ensure that policing be treated as a bi-partisan subject outside the exclusive ruling party zone. But the resistance to this idea comes from the understanding or rather misunderstanding that the creation of a buffer body between the police and political amounts to interference with the functions of the elected representatives who have primary responsibility of providing safety and security and should therefore have a completely free hand in how they handle the police. This has never been the intention. No police with all its powers to use authorised violence can be completely independent of all executive control. The responsibility of the political executive and the operational responsibility of the police are interlinked spheres. But the control and supervision of the police by the political executive has to be conditioned so that each one’s powers and spheres of responsibility are specifically put down in a way that there is no room for ambivalence or overlap.

It is also commonly argued that the terms “superintendence” and “control” have never been clearly explained in police legislations and this legislative ambiguity is a significant factor in facilitating political manipulation. The precise contours of a police-executive relationship merit clear delineation within legislation, particularly police legislation, so that both the police and the political executive have a clear understanding of the limits of their respective jurisdiction.

Lack of Accountability

A key feature of democratic policing - in line with the checks and balances that characterise democratic systems of governance - is that the police are formally held to account in a variety of ways for their performance as much as for any wrongdoing. They must also be made to bear the consequences. Unfortunately in South Asia, accountability mechanisms are weak and under developed. Illegality and criminality in the police has become routine and entrenched such that impunity, rather than accountability, reigns.

None of the countries in Commonwealth South Asia have what could be described as a transparent and functional accountability mechanism that complies with international good practice.

Internal Accountability: The internal accountability mechanisms of the police have failed. Though the rules differ in each country, generally, dismissal, removal, reduction in rank or pay and forfeiture of service are meted out as punishments. These are time consuming and cumbersome, hence are often forgotten. Even when complaints are taken seriously and inquiries are instituted, the system lacks integrity. The public distrust the police and feel that the department is incapable of conducting inquiries into public complaints in a fair and effective manner.

Independent External Oversight: Human rights institutions or dedicated police complaint bodies constitute one of the most important external mechanisms of ensuring police accountability. However, even though these bodies have been established in almost all the South Asian countries they have failed to impact on police accountability. There may be varying reasons for this but largely they fail because they have been designed with all the structural infirmities, they are seldom allowed to function independent of political control, they function under severe budgetary restrictions, and most importantly, they do not have the requisite powers.

Judiciary: The judiciary provides a strong mechanism for police accountability. In Bangladesh, India as well as Pakistan, the judiciary has played an active role in setting standards that apply to the police adherence to procedure and laying down protective safeguards. Yet, continued custodial violence by the police indicates that perhaps even the judicial response is not strong enough in these countries.

Legislative Oversight: In all Commonwealth South Asian countries, the legislative branch is a relatively weak mechanism of police accountability. When legislators themselves hold criminal records and in certain instances also accused of serious offences, their ability to oversee police functions is severely undermined. As a result, this branch of oversight has generally remained dysfunctional.

Poor Resourcing and Lack of Public Confidence

The conditions and conditioning of the constabulary are unconscionably bad. In addition to the fact that recruitment is often marred by bribery and influence peddling, the officers ultimately employed often fail to reflect the demographic composition of the community being policed. Further, police-to-population ratios are well below international norms because many sanctioned positions remain vacant. Also, it is not uncommon for police personnel to work 24-hour shifts without a rest day or live in sub-standard barracks. These inadequate conditions of the constabulary are exacerbated by antiquated training that does not make them *fit for purpose*. Under these circumstances it is hardly surprising that the police are surly, discontented and unmotivated. The consequent public alienation further isolates the police and continues a vicious cycle of mutual distrust that only gets worse with each passing year.

1.3 Reasons Behind Poor Policing

There is a structural inevitability to poor police performance in South Asia because the system of governance in these countries is largely dysfunctional. The political, economic and social conditions of the region ensure that policing remains bad and that attempts at reform are stymied. With respect to the first issue, the political culture of Commonwealth South Asia is the main reason that policing in the region is unprofessional and suspect. With a regular oscillation between military and democratic rule in some jurisdictions, as well as having constitutions repeatedly rewritten or amended, the constant flux in governance has undermined a consistent approach towards police reform.

Further, corruption runs deep in Bangladesh, India and Pakistan. Police in these three countries have been rated as the most corrupt organisation for the last several years by the Transparency International corruption surveys. This corrosive practice not only compromises the integrity of the police, but its manifestation amongst

the political class, the judiciary and the civil service means that police interaction with each of these sectors is inevitably coloured by the same tarnished brush.

Bad policing also exists due to economic reasons. The tremendous poverty in South Asia means that there is a limited pool of money for many competing needs. As a result, police forces throughout the region are not always provided the basic necessities required to do an effective job. Sometimes this deficiency is a function of mismanagement rather than a shortfall in funds. However, insufficient resources are not due solely to mismanagement of budgets. The per capita spending on policing remains at unimaginably low levels. Overcoming the constraints posed by limited resources is a constant challenge to improving policing.

The social conditions of the region have also had a profoundly negative impact on policing and its ability to reform. The inherently class-oriented and feudal structure of South Asian societies has informed how people treat and view the police. Some want a police that will in all circumstances uphold the law, provide a service and enhance the environment in which human rights can be realised. But there are many others who are quite content with the way the police is because there are favours to be bought, influences to be pedalled, and also because many, particularly within the middle class, like the notion of “tough policing”. Tough policing’ is usually a nice way of saying there is a willingness to go along with illegal policing if it eases the way and so long as it does not impact oneself in a negative manner. Additionally, inadequate educational services means that the average citizen is rarely aware of his/her rights or even what sort of policing they are entitled to. Thus, it is understandable that the public often sends mixed signals about what kind of police service they want. When affected by criminal activity it would like an efficient and aggressive police force. But when victimised by police excess, they profess a desire for policing that is “fair and responsive”. This paradox can only be resolved through education and engagement with policing.

1.4 What is “Democratic Policing”?

In order for South Asian countries to fulfil the promise of independence and cultivate robust democratic institutions, policing in the region must change. Simply put, democratic nations need democratic policing.¹

Democratic policing is a term that has emerged over the past decade to describe the characteristics of policing a democracy, where the police serve the people of the country and not a regime.² Democratic policing means adherence to the rule of law rather than to the whims of public authorities. It also means that police must protect civil rights, from the right of free speech and association to freedom from torture and other forms of abuse. Democratic policing should imply that police are *externally accountable* to government bodies, oversight commissions and the courts. Security needs of its citizens must and should always remain a top priority for democratic policing.

Democratic policing sets out a normative framework for police agencies in a democracy even though the systems and strategies for police in one jurisdiction may be quite different from another. It provides a common frame of reference for civil society, policy-makers, donors and the police.³ A democratic police is characterised by the following: an orientation to serve civic society rather than the state; transparency and accountability runs throughout the organisation; personnel reflect the demographic make-up of the country; the police are insulated from undue political influence; their members have the skills to perform their tasks effectively and efficiently;

1 For a detailed discussion of democratic policing and why it is important, please refer to Chapter 2 of *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, CHRI Report 2005.

2 Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics - Police Accountability in Kenya*, Commonwealth Human Rights Initiative, New Delhi, 2006.

3 Bruce D. and Neild R. (2005), *The police that we want - A handbook for oversight of police in South Africa*, Centre for the Study of Violence and Reconciliation, Johannesburg, at p.15.

and there is professionalism throughout the organisation.⁴ “These values are considered non-negotiable and without all of them, or processes which seek to move the police towards their achievement, police organisations cannot be considered democratic in their structure, culture or performance.”⁵

Democratic policing is about more than simply “maintaining law and order”. It is about establishing and nurturing a healthy relationship with the community-based on mutual respect and understanding. But in order to do this law enforcement agencies throughout Commonwealth South Asia need to change their mindset. The emphasis ought to be on providing a *service* as a means to *uphold* the law, rather than utilising *force* to *impose* the law.

By any objective measure, the police in the region do not come close to meeting this standard. Rather than serving to protect the freedom and integrity of communities, the police are all too frequently accused of excessive use of force, torture, disappearances, extrajudicial executions, failure to follow due process, discriminatory behaviour and corruption. As a result, there is a lot of work to be done before police organisations on the Indian subcontinent are able to transition from a “force” to a “service”.

1.5 Way Forward

In order to separate the police from the political, economic and social conditions that have historically limited progress on this issue, a few critical steps need to be taken. First, there must be a clear understanding of what kind of policing is required by a democracy. Policing in South Asia requires reform of the relationship between police and the political executive, improvement in the management and leadership of police, attitudinal changes of all stakeholders, improvements in provisioning and, most of all, much better internal and external oversight and accountability. These issues have to be considered at the outset and kept at the forefront of any discussion on reform.

Second, it is vital to define the contours of the executive-police relationship. In any democracy the ultimate responsibility for ensuring public safety and security lies with the people’s representatives. The police are implementers. As such, the police and political executive are both bound together in the common endeavour of preventing and investigating crime, maintaining law and order and ensuring that the people have a well functioning essential service that protects life, property and liberty and creates an environment within which citizens – especially those that are most at risk such as women, children, minorities, the aged and disabled can enjoy guaranteed constitutional rights to the fullest.

For policing to work in an efficient and unbiased manner, the powers and responsibilities of each entity involved have to be properly articulated. A careful balance has to be struck between legitimate “supervision” of the police by the political executive and illegitimate interference and influence. Conversely, the police must always remain accountable to elected politicians for upholding the law and to perform its duties in accordance with the law. If this balance is properly struck, then democratic policing will be inevitable. That is why it is so important to carefully define what “superintendence” of the police actually means and to carve out spheres of competence that ensure that the power of the executive is conditioned while the police have operational responsibility.

Third, the management and provisioning of finances, infrastructure and equipment must be suitable and sufficient to ensure exceptional performance. Even if directing more funds to law enforcement is impossible, priorities for its use need to be redefined and actual expenditures examined to ensure optimum utility. This is not presently the case.

⁴ Marenin, O (2005), *Restoring Policing Systems in Conflict Torn Nations, Process, Problems, Prospects*, DCAF, June: <http://www.reliefweb.int/rw/lib.nsf/db900SID/ASAZ-8A5DA8?OpenDocument> as on 11 December 2010.

⁵ *Ibid*, p 29.

Fourth, reform will not succeed unless police have a greater respect for the rule of law and democratic norms. An efficient and well-provisioned police without constitutional values is likely to be a harsher entity than even at present. The entrenched social conditioning of police has to be addressed if sustainable police reform is to be achieved. For instance, law enforcement agencies on the subcontinent rarely reflect the multicultural and multiethnic populations they police. The Sri Lanka Police Service is almost exclusively Sinhalese and is increasingly perceived as siding with that ethnicity.⁶ In addition, there are very few police personnel in India that are Muslim or come from Scheduled Castes/Scheduled Tribes.⁷ Importantly none of the countries in Commonwealth South Asia have sufficiently incorporated women into the police services.⁸ A crucial step would be to recruit more minorities and marginalised groups into the policing fold.

Ideally police reforms need to be done in tandem with reform of the criminal justice system as a whole as well as broader governance reforms. To focus solely on reforming the police while ignoring these other critical sectors will guarantee failure on all fronts. Nevertheless, waiting to solve all is a certain way of solving none. By zeroing in on this one sector, and seeking to right it, tensions will inevitably be created in what is a largely static and feudal system. Reforms in policing can stir a moribund system into action, thus overcoming the inertia that plagues the region.

The police require particular and immediate attention because they are after all the gatekeepers of citizen protection, safety and security, peace and justice. The interplay between the public and the police is usually more immediate, intense and frequent than interactions with the judiciary, bureaucracy or political class. Therefore, if left unchecked and unreformed, policing will continue to undermine security rather than provide it.

The lot of the majority is in desperate need of improvement. Improvements have to go beyond more hardware and equipment. Attention needs to be paid to fair internal management, honest recruitment, adequate training and specialisation but most of all they need the confidence of the public they serve. The politicians for reasons of their own are reluctant to make a start but a deal of the repair work can begin with the leadership taking courage and ownership of the force back into their own hands.

6 Laksiri F (2005), *Police-Civil Relations for Good Governance*, Social Scientists' Association and Olander B.K, Orjuella C., Edrisinha R.(2007), *Review of Development Cooperation between Sri Lanka Police and Swedish National Police Board*, December at p 10.

7 Swami P. (2006), *Bias and the Police*, Frontline, Volume 23, Issue 24, December 2-15, <http://www.hinduonnet.com/fline/fl2324/stories/20061215002503300.htm>, as on 13 November, 2008.

8 Natarajan K (2005), *Status of Women Police in Asia*, at pp. 45-47, in *The Journal for Women and Policing*, Issue No.17: <http://www.auspol-women.asn.au/issue%2017.pdf>, as on 1 December, 2008.

Chapter 2

BANGLADESH

2.1 Background

The promise by the Awami League (AL) to reform the police remains unfulfilled. Despite including it in its election manifesto, the government has shown little interest in meaningful reform. Like elected governments before it, it has cynically used its powers over the police to intimidate its political opposition.

In its defence, Prime Minister Sheikh Hasina's AL-led government stresses it has recruited more police and procured modern equipment to combat terrorism, militancy and crime.⁹ Such measures may have strengthened capacity¹⁰ and improved infrastructure,¹¹ but neither have made the police an accountable service free from political influence, or brought about the attitudinal change necessary for democratic policing.

Human rights abuses by the police are reported to be endemic, including extrajudicial killings, custodial deaths and torture. Most of these excesses proceed unchecked. Although mechanisms exist to investigate abuses by the police, they are generally ineffective. When violations are addressed, they are done so "internally" by the Police Internal Oversight (PIO) Unit, a process inherently liable to bias. While the establishment of the National Human Rights Commission (NHRC) is a significant achievement, its effectiveness remains limited. With its mandate being constrained to requesting reports from the Ministry of Home Affairs (MoHA), the Commission is precluded from actually *investigating* violations by law enforcement agencies. The lack of an effective form of independent review of police misconduct is a glaring omission for any democratic police service.

The Police Reform Programme (PRP) led by the United Nations Development Programme (UNDP), is now in its seventh year of operation. Although it is striving to institutionalise some reform measures within the Bangladesh Police, it continues to face obstacles and stern resistance from the political executive. It has made some progress on changing attitudes and working practices so that the Bangladesh Police interact more harmoniously with the public. Phase II of the programme has seen continued efforts to enhance the impact and reach of model *thanas* (police stations), community policing, gender sensitisation and the development of a strategic plan. However, much work remains. According to the UNDP Midterm Evaluation Report, while middle management own the reform initiatives, there are weaknesses in ownership from the lower ranks, which appear more interested in increased salaries or other pecuniary benefits.¹²

Of course, advocacy aside, neither the PRP nor the Bangladesh Police are in a position to enact legislative reform to address the structural problems underlying poor policing, namely the lack of accountability mechanisms and undue political interference. This requires strong levels of political will, which are sorely lacking in the current government. Given the century-old policing culture and legislative framework and the huge stake of the executive in maintaining control over the police, the challenges to reform are formidable.

9 M. Rahman (2011), "Police reform goes nowhere", *The Daily Star*, 1 October 2011, <http://www.thedailystar.net/newDesign/news-details.php?nid=204695>, as on 15 February 2013.

10 S. Khan (2012), "Why police reform is badly needed", *The Financial Express*, 12 January 2012, http://www.thefinancialexpress-bd.com/more.php?date=2012-01-12&news_id=93600, as on 15 February 2013: Some of these measures involve "introducing special allowance for Special Branch (SB) and Criminal Investigation Department (CID) and opening several wings like tourist police, marine police, and security and protection battalion etc."

11 S. Khan (2012), "Why police reform is badly needed", *The Financial Express*, 12 January 2012, http://www.thefinancialexpress-bd.com/more.php?date=2012-01-12&news_id=93600, as on 15 February 2013: Even these "were far from actual requirements. The whole police department has only 6,000 vehicles – half of which are motorbikes – against a requirement of 20,000. Of the vehicles in hand, the incumbent government bought around 650 double cabin pickups and motorbikes over the last three years."

12 UNDP (2009), "Midterm Evaluation of Progress Towards Outcomes in Governance In Bangladesh", December 2009, p. 24, http://erc.undp.org/unwomen/resources/docs/genderequality/1-206_UNDP_Evaluation%20of%20Governance%20Outcomes%20Final%20report%2017%20December%202009.pdf, as on 18 February 2013. Saferworld (2011), "Baseline Survey on Personal Security and Police Performance in Bangladesh", December 2011, http://prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58, as on 19 February 2013: According to the police perception survey, over three-quarters of police officers are dissatisfied with their salaries and benefits.

2.2 Political Climate

During its rule the AL-led government has made every attempt to crush political dissent and voices.

2.2.1 The War Crimes Tribunal: Justice for Victims or Political Vendetta?

In March 2010, Prime Minister Sheikh Hasina re-established the International Crimes Tribunal originally set up under Bangladesh's International Crimes (Tribunals) Act, 1973. It is in fact a domestic court with the jurisdiction and competence to try and punish any person accused of committing atrocities, including genocide, war crimes and crimes against humanity in Bangladesh and extends to the country's 1971 war of independence.¹³

Since June 2010, eleven opposition politicians were arrested and charged with offences ranging from individual acts of rape and murder to ordering mass executions. Most of those on trial are senior figures in the main opposition parties, Jamaat-e-Islami and the Bangladesh National Party (BNP). Both these parties argue that the Tribunal has exclusively charged members of the Opposition for political reasons and have publicly protested about the matter. Former leader of Jamaat-e-Islami, Abul Kalam Azad,¹⁴ was sentenced to death in absentia in January 2013, while senior leader, Abdul Quader Mollah, was sentenced to life imprisonment one month later.¹⁵

While Bangladesh's commitment to address impunity for violations carried out in 1971 is a positive development, there are numerous concerns about the Tribunal's constitution. The Tribunal dispenses with "technical" rules of evidence, does not mention the burden of proof for conviction and provides for the death penalty. Incidents such as the disappearance of a witness at the courthouse gates in November 2012,¹⁶ as well as the presiding judge's resignation amid criticisms of his conversations with a Belgium-based Bangladeshi lawyer,¹⁷ also raise serious doubts about the Tribunal's workings. These deficiencies must be addressed if the trials are to bring any meaningful justice to victims.

2.2.2 The Constitutional Amendment

In June 2011, the AL-led Parliament passed the Fifteenth Amendment to the Constitution, over an Opposition boycott. Amongst other things, the amendment abolished the provision mandating that elections be held under a neutral, caretaker government, a system established before the 1996 elections.¹⁸ All subsequent elections were to be supervised by an independent electoral commission operating under the government in power. This issue has become a matter of enormous contention; the 18-party opposition alliance, led by the BNP, has repeatedly threatened to boycott the 2013 parliamentary elections unless the government restores the caretaker system, launching a campaign of protests which have become increasingly violent in the lead up to the elections. While the tradition of confrontational politics continues in Bangladesh, attention on necessary police reforms from both sides is wanting.

13 The International Crimes (Tribunals) Act, 1973 was amended by the International Crimes (Tribunals) (Amendment) Act, 2009. By Section 3(1), a tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, *whether before or after the commencement of this Act*, any of the crimes mentioned in subsection (2).

14 *Daily Star* (2013), "Summary of ICT verdict in AbulKalam Azad Case", 22 January 2013, <http://www.thedailystar.net/newDesign/news-details.php?nid=266119>, as on 18 February 2013.

15 *Daily Star* (2013), "QuaderMollah gets LIFE TERM", 6 February 2013, <http://www.thedailystar.net/newDesign/news-details.php?nid=268049>, as on 18 February 2013.

16 *Daily Star* (2012), "Sayedee's Trial: Defence witness 'illegally detained'", 8 November 2012, <http://www.thedailystar.net/newDesign/news-details.php?nid=256647>, as on 18 February 2013.

17 *The Economist* (2012), "Discrepancy in Dhaka", 8 December 2012, <http://www.economist.com/blogs/banyan/2012/12/bangladesh>, as on 18 February 2013.

18 International Crisis Group (2012), "Bangladesh: Back to the Future", 13 June 2012, p. 4, <http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/226-bangladesh-back-to-the-future.pdf>, as on 18 February 2013: The amendment followed a Supreme Court advisory opinion holding that the Constitution allows only popularly elected governments.

2.3 Police Excesses

Soon after the elections in December 2008 that saw a spate of extrajudicial killings and torture by law enforcement agencies, officials in the AL-led government committed to ending such abuses and bringing any official found responsible for such actions to justice.¹⁹ Little change has occurred during the past four years and domestic and international human rights organisations continue to report several extrajudicial killings, enforced disappearances, torture and deaths in custody, which represent the most serious human rights violations in Bangladesh.²⁰

In 2012, the Government of Bangladesh formally requested the Human Rights Forum, Bangladesh (a coalition of civil society organisations) to provide recommendations for the 2013 country report for the Universal Periodic Review (UPR).

Bangladesh's Universal Periodic Review

Bangladesh's first UPR took place on 3 February 2009 in Geneva. The AL government accepted 34 of the 42 recommendations made by other countries.²¹ In connection to policing, it stated that it is "committed to bring an end to all extrajudicial activities by law enforcement agencies, and [to] bring any official found responsible for such actions to justice". In addition, it accepted the recommendation to take steps to devise a national strategy for delivering justice, including the police, the judiciary, civil society and the government. The government will be reviewed by the UPR mechanism for the second time in April/May 2013.

According to the submission by the Human Rights Forum, there were 511 reported instances of extrajudicial killings by law enforcing agencies between January 2009 and April 2012, while 125 enforced disappearances were reported during the same period. Law enforcement agencies have claimed that these incidents are due to political rivalries. Police complicity in mob violence was also severely criticised; almost 307 people were killed in mob beatings and in one case members of law enforcement agencies were alleged to have instigated the violence. There are few investigations into these deaths and, in almost all cases, the state took no action against any of the officers involved.²²

19 UN Human Rights Council (2009), "Report of the Working Group on the Universal Periodic Review", 9 June 2009, p. 4, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/56/PDF/G0913956.pdf?OpenElement>, as on 18 February 2013.

20 Human Rights Watch (2013), "World Report – Bangladesh", <http://www.hrw.org/world-report/2013/country-chapters/bangladesh>, as on 15 February 2013.

21 UN Human Rights Council (2009), "Report of the Working Group on the Universal Periodic Review", 5 October 2009, pp. 16-20, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/162/52/PDF/G0916252.pdf?OpenElement>, as on 18 February 2013.

22 Human Rights Forum, Bangladesh (2013), pp. 1-2, http://www.askbd.org/web/wp-content/uploads/2012/05/List_Issues_submitted_Foreign_Ministry.pdf, as on 18 February 2013.

Continuing Impunity: Abuses by the Rapid Action Battalion

The Rapid Action Battalion (RAB) was formed in March 2004 as a composite force comprising members from the military, police and other law enforcement groups. Members are assigned from their parent organisations, to which they return after serving with the unit. RAB operates under MoHA.

Human Rights Watch and others have documented extrajudicial killings and torture by the RAB for a long period.²³ Since RAB's inception, at least 1,600 people were victims of extrajudicial killings at its hands.²⁴ In press statements, the RAB has claimed that the victims were shot and killed in "crossfire" after their accomplices opened fire on the force. One such case, which attracted significant media and civil society attention, is that of Limon Hossain. A college student, Hossain was reportedly shot in the leg by RAB officers on 23 March 2011 while he was returning home. RAB officials alleged that he was a member of a criminal gang and was injured when RAB officers returned fire after the gang shot at them.²⁵

The government denies that the RAB is implicated in such cases, even where Internal Ministry investigations have found evidence of wrongdoing.²⁶ While the RAB has set up an internal investigative unit, reportedly only a handful of cases were slated for prosecution, mostly for disciplinary issues.²⁷ In the few instances in which the government brought charges, those found guilty generally received administrative punishment.²⁸ A culture of impunity has developed in such an absence of accountability.

Owing to the impunity enjoyed by RAB members for "cross-fire" killings, there are concerns that as officers rotate through the RAB and return to police units, they are importing pernicious practices.²⁹

As with RAB officers, there are very few cases of police officials being prosecuted for misconduct. The major impediment to prosecution is reportedly Section 197 of the *Code of Criminal Procedure*, 1898 (CrPC), which prohibits criminal action being initiated against public officials – including police officers – without governmental approval if the offence is committed while the officer is acting or purporting to act within official capacity.³⁰

2.4 Oversight

2.4.1 Police Internal Oversight

Police internal investigations and discipline are essential to foster an internal culture of accountability, discipline and respect for laws within the police service. In 2007, at the initiative of the then Chief of Police, the Police

23 Human Rights Watch (2011), "Crossfire: Continued Human Rights Abuses by Bangladesh's Rapid Action Battalion", 10 May 2011, <http://www.hrw.org/reports/2011/05/10/crossfire>, as on 18 February 2013; Amnesty International (2011), "Crimes Unseen: Extrajudicial Executions in Bangladesh", <http://www.amnesty.org/en/library/asset/ASA13/005/2011/en/c18ad74b-75fe-4b15-b043-5982eebdb27d/asa130052011en.pdf>, as on 18 February 2013.

24 Human Rights Watch (2013), "World Report 2013", p. 296, <http://www.hrw.org/world-report/2013/country-chapters/bangladesh>, as on 15 February 2013.

25 National Human Rights Commission (2011), "Annual Report 2011", p. 35, <http://www.nhrc.org.bd/PDF/Annual%20Report%202011.pdf>, as on 18 February 2013.

26 HRW World Report 2012, <http://www.hrw.org/reports/2012/01/22/world-report-2012>, released on 22 January 2012. For details on the two MoHA investigations, see A. Alauddin (2010), "Govt investigation proves RAB responsible for Extra Judicial Killings - Arif died from torture, Bappi from direct firing!", 26 November 2010, <http://www.extrajudicialkilling.info/2010/11/blog-post.html>, as on 18 February 2013.

27 US Department of State, Bangladesh Country Report on Human Rights Practices for 2011.

28 Human Rights Watch (2012), "World Report 2012", p. 294, <http://www.hrw.org/reports/2012/01/22/world-report-2012>, as on 18 February 2013.

29 Human Rights Watch (2012), "UPR Submission: Bangladesh", 31 October 2012, <http://www.hrw.org/news/2012/10/31/upr-submission-bangladesh>, as on 18 February 2013.

30 Section 197 of the *Code of Criminal Procedure* states that: "when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government."

Internal Oversight (PIO) Unit was created at the police headquarters to improve police accountability and reduce corruption. The Unit's mandate was to:³¹

- Remove corrupt officials as quickly as possible;
- Crack the police-criminal nexus;
- Restore discipline and the police chain of command;
- Increase police ability and efficiency;
- Build the credibility and image of the police;
- Identify honest, efficient and dynamic officers.

Presently the Unit is headed by an Additional Inspector General of Police (AIG) and is directly accountable to the Inspector General of Police (IGP). Two Additional Superintendents (SP), six Assistant SPs and staff from different ranks work at the PIO under the AIG.³² All units of the Bangladesh Police fall under the surveillance of the PIO. There are three major aspects to the PIO's work: (a) policy and administration, (b) inquiry and implementation and (c) observation and reporting.³³

Unfortunately, the Unit is not an officially recognised organ of the police department. Being the brain child of a former IGP, the Unit under its present leadership appears abandoned. In 2007, the Unit investigated over 17,000 cases of police malpractice. However the numbers since have declined drastically. As of 3 February 2011, the PIO's website reports that it received 124 complaints against the police, 129 suggestions and 84 emails with information for investigation.³⁴

Weak Internal Police Units

Weak, under-resourced or insufficiently independent police internal affairs units fail to investigate potential police wrongdoing appropriately. Impunity can result from such poorly structured and ineffective police internal affairs mechanisms. Most importantly, internal police disciplinary mechanisms can be inadequate, not only because they are poorly structured or under-resourced, but also because, by their very nature, they are susceptible to bias.

2.4.2 The Watchdog Body: National Human Rights Commission

In its first UPR review in 2009, the Government of Bangladesh accepted recommendations to “continue its efforts to develop the work of its national institution for human rights as an effective human rights watchdog...[and to] give powers to the NHRC to effectively protect human rights in accordance with the Paris Principles.”³⁵ While the Commission was established in July 2009 with the *National Human Rights Commission Act, 2009* and some headway was made, considerable reform is still needed if the police are to be effectively held to account.

In accordance with its official mandate, the NHRC serves as the major national human rights watchdog: monitoring the implementation of state obligations to respect the rights of every citizen; addressing specific human rights

31 Bangladesh Police, Police Internal Oversight, <http://www.pio.gov.bd/Objective>, as on 18 February 2013.

32 Bangladesh Police, Police Internal Oversight, <http://www.pio.gov.bd/Organization>, as on 18 February 2013.

33 T. Nasreen (2012), “Oversight Mechanism for Law Enforcement: The Experience of Bangladesh”, p. 296 in Palmer, Berlin and Das, *Global Environment of Policing*, CRC Press, (1st ed.), June 5, 2012.

34 Bangladesh Police, Police Internal Oversight, <http://www.pio.gov.bd/Releases>, as on 18 February 2013.

35 UN Human Rights Council (2009), “Report of the Working Group on the Universal Periodic Review”, 5 October 2009, pp. 16-20, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/162/52/PDF/G0916252.pdf?OpenElement>, as on 18 February 2013.

The International Standards for National Human Rights Institutions are known as the Paris Principles.

complaints through investigation, mediation and conciliation; constitutional litigation where necessary; and more broadly, through raising public awareness.³⁶

In May 2010, the Government of Bangladesh entered into a five-year agreement with UNDP, launching the National Human Rights Commission Capacity Development Project. The project aimed to build the NHRC as an effective and sustainable institution.³⁷ However, as this project is a joint project with the government, its activities need to be in line with the government's comfort level.³⁸

In July 2010, the NHRC was reconstituted, with a full-time chairman, one full-time member and five honorary members. The government did not approve the request for 62 persons, and instead approved a 28-person organogram, who were all directly recruited.³⁹

The first thing the NHRC took on was to develop a five year strategic plan spanning 2010-2015. Through a broad consultative process, the Commission developed its first Strategic Plan, which it is implementing. Four long-term goals were identified in the plan, including:⁴⁰

- i. A human rights culture throughout Bangladesh where the dignity of every person is respected;
- ii. A just society where violence by the state is an episode of the past and officials are held accountable;
- iii. A nation respected internationally for:
 - Its human rights compliance
 - Ratification of all human rights instruments
 - Regular reporting to treaty bodies
 - Open cooperation with UN special mechanisms;
- iv. An NHRC that is credible, apolitical, objective, effective and respected for leading human rights protection throughout the country.

The Plan also identified four focal areas for the five-year period:⁴¹

- i. Institutional development of the Commission;
- ii. Human rights promotion, education and awareness raising;
- iii. Human rights monitoring and investigation;
- iv. Human rights research, reporting and policy development.

36 National Human Rights Commission Act, 2009, Section 12: "Functions of the Commission: (1) The Commission shall perform all or any of the following functions, namely:- (a) to inquire, suo motu or on a petition presented to it by a person affected or any person on his behalf, into complaint of violation of human rights or abetment thereof, by a person, state or government agency or institution or organization... (l) To enquire and investigate into complaint related to the violation or probability of violation of human rights and resolve the issue through mediation and consensus..."

37 UNDP website, http://www.undp.org.bd/projects/proj_detail.php?pid=77, as on 19 February 2013.

38 Asia Forum for Human Rights and Development, (2012), "2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia", p. 25, http://www.forum-asia.org/uploads/books/2012/nov/05033_ANNI%202012.pdf, as on 19 February 2013.

39 CHRI Interviews, Mr Hoque, Deputy Director, Bangladesh NHRC, 5 December 2012.

40 Bangladesh NHRC Strategic Plan 2010-2015, p. 8.

41 Bangladesh NHRC (2011), Strategic Plan 2010-2015, June 2011, pp. 13-15.

NHRC Baseline Survey

In 2011, the Commission undertook a detailed baseline study to determine public attitudes and its awareness of human rights and the Commission's existence and role. The survey threw up interesting results.⁴²

In response to a question asking what the main problems affecting the country were:

- i. 7.5 per cent of respondents blamed the deteriorating law and order situation;
- ii. 4.1 per cent pointed to the lack of access to justice;
- iii. 2.2 per cent pointed to harassment by law enforcement agencies;
- iv. A meagre 1.2 per cent identified extrajudicial killings by law enforcement officials.

Interestingly, despite the negative press the police regularly receive, 33.7 per cent of respondents believed the police service had improved, compared to 28.7 per cent who thought it had worsened.

A worrying revelation of the survey was respondents' refusal to make use of the formal justice system; while 74 per cent did not because of the costs involved, 22 per cent did not owing to the corruption within the police force.

The results of the survey clearly show that the NHRC has a long way ahead before it can achieve the goals it has set for itself.

In 2011, the NHRC received a total of 453 complaints. Of those, 32 related to custodial death/torture, five to arbitrary detention, 52 to enforced disappearance and 11 to extrajudicial killings.⁴³

Though the enactment of the NHRC Act is, in general, a positive development, Section 18 renders it toothless in holding state agents accountable for violations.⁴⁴ Under this provision, the Commission cannot *investigate* allegations of violations committed by "the disciplined forces". It can only demand reports from government agencies.⁴⁵ As indicated above, the problem with such a process is the obvious risk that the MoHA may unduly protect the institution. There is also no specific consequence for the failure of government to provide such a statement. The MoHA is uncooperative in this regard in most cases.³² Only a few cases, made high-profile through media coverage and with the intervention of the judiciary, have seen positive results. In addition to the Limon Hossain case (see above), the case of Abdul Kader is illustrative.

42 Bangladesh NHRC (2011), "Summary Report: Perceptions, Attitudes and Understanding: A Baseline Survey on Human Rights in Bangladesh", 2011.

43 Bangladesh NHRC (2012), Annual Report 2011, p. 31, <http://www.nhrc.org.bd/PDF/Annual%20Report%202011.pdf>, as on 19 February 2013. It is important to note that 233 complaints were categorised as "other complaints", matters brought to the Commission but which were determined to be outside its jurisdiction.

44 National Human Rights Commission Act, 2009, Section 18: "Procedure to be followed in case of disciplined force: (1) notwithstanding any other provision of this Act the Commission suo motu or on the basis of any application may call for report from the Government on the allegation of violation of human rights by the disciplined force or any of its members. (2) If any report is called for under Subsection(1) the Government shall submit the report to the Commission. (3) On receipt of the report under Subsection (2) the Commission (a) if satisfied would not proceed in the matter any further. (b) if deems it necessary may make recommendation to the Government for actions to be taken in the matter..."

45 *Daily Star* (2011), "Realising our rights", December 2011, <http://www.thedailystar.net/forum/2011/December/realising.htm>, as on 19 February 2013: Quoting the NHRC Chairman, Dr. Mizanur Rahman, "On each and every occasion of an extrajudicial killing, we not only went public and made a public criticism of the incident but we immediately wrote to the Ministry of Home Affairs asking them to go for an acceptable, credible investigation, bring the perpetrator to justice and provide us with the investigation report. If we find it okay we accept it, if not, we reject it and ask the Ministry for the formation of a higher level committee and a second investigation." However, see Asia Forum for Human Rights and Development (2012), "2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia", p. 31, http://www.forum-asia.org/uploads/books/2012/nov/05033_ANNI%202012.pdf, as on 19 February 2013: "The NHRC interprets this in a way that they cannot investigate cases on the allegation of disappearances and extrajudicial killings, rather they can only ask for reports from the concerned authority. But a proactive and creative interpretation may put forward that this provision does not impede the NHRC to conduct an investigation."

Police Excesses

On 28 July 2011, a national newspaper reported that Abdul Kader, a student of Dhaka University, was arrested and brutally tortured by police. Kader was picked up by the officer-in-charge (OIC) of Khilgaon Police Station at an intersection on 16 July 2011. Though he explained that he was returning to his student dormitory from a relative's house, the police tortured him in custody, the OIC hacking Kader's left thigh with a cleaver. Kader was kept in police custody for 2 weeks.

The NHRC took up the case suo moto and directed the IGP to investigate the matter and submit a report by August 2011.⁴⁶ The IGP formed an investigation committee, which exonerated Kader of any wrongdoing. The OIC was suspended for his role in the abuse and police headquarters filed departmental proceedings against all police officers involved. Kader filed a case against the OIC on 23 January 2012 for torturing him in custody. At the time of writing, the case was at trial and the OIC is in custody.⁴⁷

In an attempt to improve cooperation from the MoHA, the NHRC met the Home Minister in June 2012. The NHRC submitted a list of 20 cases of alleged violations by law enforcement agencies that it had earlier sent with a request for investigation reports. Some of these cases were pending for over two years. While the MoHA has responded to some complaints, the majority are still pending without any action.⁴⁸

In addition to the aforementioned restrictions on its mandate to investigate human rights violations committed by police officers, there are doubts as to whether the NHRC complies with the Paris Principles. Most of the senior staff members are seconded from the government.⁴⁹ Further, six of the seven members of the Selection Committee are government officials, giving rise to the risk that selection to the NHRC is based on loyalty to the government.⁵⁰ Accordingly, in its Second Cycle UPR report in October 2012, the NHRC recommended that the "Act should be revised to ensure the NHRC's financial and administrative independence".⁵¹

In the meantime, the NHRC is endeavouring to improve the Bangladesh Police's human rights record. It proposed to conduct human rights training for police officers and prepared a Police Training Manual for this purpose. It also recommended that all cases of promotion or advancement of personnel be considered only after the concerned official has received a No Objection Certificate from the NHRC confirming that no valid complaint of a human rights violation was lodged against him or her. At the time of writing, the MoHA was in the process of considering these proposals.⁵²

Since the NHRC is not empowered to investigate allegations of violations committed by "the disciplined forces", there is no effective external oversight mechanism to look into police abuses and misconduct. Without any external oversight, the police are essentially left accountable to only themselves. Especially in cases of extrajudicial killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences. Importantly, external oversight plays a role in

46 Bangladesh NHRC (2012), Annual Report 2011, p. 35, <http://www.nhrc.org.bd/PDF/Annual%20Report%202011.pdf>, as on 19 December 2013.

47 *Daily Star* (2011), "DU Student Framed: Sue Khilgaon OC", 12 December 2011, <http://www.thedailystar.net/newDesign/news-details.php?nid=213821>, as on 19 December 2012.

48 CHRI Interviews, Kazi Reazul Hoque, Full Time Member, Bangladesh NHRC, 4 December 2012.

49 Asia Forum for Human Rights and Development, (2012), "2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia", p. 24, http://www.forum-asia.org/uploads/books/2012/nov/05033_ANNI%202012.pdf, as on 19 February 2013.

50 National Human Rights Commission Act, 2009, Section 7: "(1) To make recommendation on the appointment of the Chairman and Members, a selection Committee shall consist of the following seven Members:- (a) Speaker of the Parliament who shall also be its Chairman (b) Minister, Ministry of Law, Justice and Parliamentary Affairs (c) Minister, Ministry of Home Affairs (d) Chairman, Law Commission (e) Cabinet Secretary, Cabinet Division (f) Two Members of the Parliament, nominated by the Speaker of the Parliament, out of whom one shall belong to the Treasury Bench and the other from the Opposition. (2) The Ministry of Law, Justice and Parliamentary Affairs shall provide the Selection Committee with necessary secretarial assistance for discharging its function."

51 Bangladesh NHRC (2012), "Stakeholder Report, Universal Periodic Review- 2nd Cycle", p. 1, <http://www.nhrc.org.bd/PDF/Stakeholder%20Report%20Universal%20Periodic%20Review.pdf>, as on 19 February 2013.

52 CHRI Interviews, Kazi Reazul Hoque, Full Time Member, Bangladesh NHRC, 4 January 2013.

increasing community trust in the police service. It can thereby increase public-police cooperation and improve the effectiveness of the police service's ability to address crime. With weak and compromised internal oversight mechanisms and the absence of external oversight, it would be fair to say that this is a serious accountability deficit within the Bangladesh police.

2.5 Police Reforms Programme

The Police Reforms Programme (PRP), funded by UNDP, Department of International Development (DFID) and the European Commission, has operated for eight years since it was formally launched. It is a long-term capacity building project that aims to support the transition of Bangladesh police from colonial-era policing to democratic policing. The Programme has a specific focus on the poor and disadvantaged, women and children and on delivering tangible results at the *thana* (police station) level.⁵³

Phase I of the project was approved on 11 January 2005 following the completion of a comprehensive needs assessment report on strengthening the Bangladesh Police in 2003. Initially, the implementation of the project was slow, however it gained momentum after the assumption of office by the Caretaker Government (CTG). A joint mission of UNDP and DFID evaluated the project in 2008 and recommended that the PRP be extended for five to six years. Accordingly, Phase-II was launched in October 2009 and is scheduled to end on 30 September 2014.

The Six Programme Areas of Phase II:

1. Strategic direction and organisational reform;
2. Human resource management and training;
3. Investigation, operations and prosecution;
4. Crime prevention and community policing;
5. Promoting gender-sensitive policing;
6. Information, communications and technology.

Half the anticipated programme period for Phase II is now over. Although more rigorous surveys are needed to draw meaningful conclusions, different studies have revealed a reduction in the crime rate and an improvement in the police's image. According to the 2011 Study into Perceptions of Personal Security and Police Performance in Bangladesh conducted by Saferworld and Mitra & Associates (Saferworld Baseline Survey), most survey respondents (53.6 per cent) reported that the crime situation had improved over the last two years.⁵⁴ Likewise, the Daily Star-Nielsen Opinion Survey published in 2011 suggests that over half the population (55 per cent) believe that law and order had improved over the preceding two years.⁵⁵

The following section charts the progress made in Phase II of the PRP on some of the key programme areas and identifies challenges that still need to be overcome.⁵⁶

53 Police Reform Programme (2009), "Phase II Project Document", p. 7, <http://www.prp.org.bd/downloads/ProjectDocumentPhaseII.pdf> as on 19 February 2013.

54 Saferworld (2011), Baseline Survey on Personal Security and Police Performance in Bangladesh, December 2011, http://prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58, as on 19 February 2013.

55 *Daily Star* (2011), "The Daily Star-Nielsen Opinion Survey: Govt's Two Years' Performance Rating", 6 January 2011, http://www.thedailystar.net/supplements/2011/01/govt's_second_year/index.html, as on 19 February 2013.

56 For an evaluation of all programme areas by the Police Reform Programme, see UNDP (2012) "Midterm Review Report 2012", 10 August 2012, <http://prp.org.bd/downloads/3.3%20PRP%20Mid-Term%20Review%20Report%202012.pdf>, as on 20 February 2013.

2.5.1 Community Policing

Several community policing initiatives preceded the PRP interventions in the area, from the Neighbourhood Watch Campaign in the 1990s to Asia Foundation’s initiatives in 2004. In fact, Asia Foundation launched a new three-year Community-Based Policing Programme with the support of the US Agency for International Development in January 2011.⁵⁷

The following section focuses purely on the PRP’s interventions, which in Phase I, identified community policing as an important component in its attempt to reform the Bangladesh Police.

In addition to the National Strategy on Community Policing, Phase I saw the drafting of the Community Policing Service Manual, which comprehensively set out how community policing is to be carried out at all levels. It envisaged a two-tier framework. On the one hand, the *strategic* function was to be performed by a National Community Policing Advisory Committee to guide policy, a Crime Prevention Centre at headquarters to act as a central research and strategy unit and similar centres at the seven divisions and six metropolitans. On the other hand, the *implementation* function was to be achieved through Community Policing Cells at the district and *thana* levels with Community Policing Forums (CPF) at the grass roots level. The framework is depicted in the following diagram.



Before the National Strategy and Service Manual could be approved, CPFs were created in abundance. Their purpose was to identify local problems, analyse the causes of those problems, develop community action plans and mobilise local resources to respond through wide participation from the community.⁵⁸ However, their formation and initial functioning were deeply flawed. Over 20,000 CPFs were hastily established, often without police officers and their communities having a clear understanding of the objectives, while their formation and subsequent activities were not adequately monitored. “One parliamentarian described them as ‘20,000 rudderless ships’.”⁵⁹

57 Asia Foundation (2011), <http://www.asiafoundation.org/resources/pdfs/TAFHANDOUTBGCOFINAL.pdf>, as on 19 February 2013.

58 Police Reform Programme, “Community Policing: Service Manual”, p. 27, http://www.prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58 as on 19 February 2013.

59 International Crisis Group (2012), “Bangladesh: Back to the Future”, 13 June 2012, p. 22, <http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/226-bangladesh-back-to-the-future.pdf>, as on 18 February 2013.

In addition to the lack of police and community awareness, the CPFs suffered from intense politicisation. Corrupt police officers sold CPF memberships to the highest bidders, resulting in the forums being dominated by ruling party elite. Intermediation between criminals and corrupt police officials was conducted by a group of local people known as *touts*.⁶⁰

Therefore, as Phase I drew to a close, the Bangladesh Police was faced with the difficult task of remedying these defects and establishing a sustainable structure through which community policing could function better. It conceived a two-pronged plan of action.

First, it sought to address the lack of knowledge on community policing and its implementation by the police and the community. Accordingly, during the last two years, it conducted numerous community-police joint consultations, translated the Service Manual and the National Strategy into Bangla and trained hundreds of police officers on community policing.⁶¹

Second, it decided to fund a select number of CPFs directly, to enhance their impact. As stated in its Phase II Project Document, 8,400 CPFs were to be targeted over the next five years (with small direct financial support and training to the police and the CPF members).⁶² Further, support was to be given to the Bangladesh Police to establish Community Policing Units and Community Policing Cells at divisional to *thana* levels to monitor the activities of these 8,400 forums. By the end of 2011, 3,024 CPFs were being funded.⁶³

A Midterm Rapid Assessment Survey commissioned by the PRP and Bangladesh Police conducted in January and February 2012 confirmed that the direct financial support given to the selected CPFs improved their performance compared to those that were not funded. In particular, incidences of criminal activities reduced substantially, overall law and order improved and a congenial people-police relationship developed.⁶⁴

However, the PRP's awareness-raising measures do not appear to have resonated with the community. Two nationally-representative surveys – a public perception survey and a police perception survey – were conducted by Saferworld and Mitra and Associates for Phase II of the PRP. The aim of the surveys was to establish baseline information for the PRP by addressing issues of safety, security and justice in Bangladesh. The public perception survey revealed that less than one per cent of respondents were involved in any joint police-community initiative, very few people were aware of CPFs (7.5 per cent), particularly in rural areas and fewer were aware of any CPF in their area (4.3 per cent).⁶⁵ Given that the survey took place from December 2010 to December 2011, it may not have captured the effects of the PRP's interventions. In any case, the results were more positive with respect to the police, with almost all police perception survey respondents aware of CPFs (92.5 per cent).⁶⁶

Most of the respondents familiar with CPFs considered them to be effective (75 per cent of the population and 85.6 per cent of the police). Of the small percentage of police officers (14.4 per cent) who thought CPFs did not improve community safety, the reasons given were that the forums are not effective (31.4 per cent), the

60 UNDP (2009), "Midterm Evaluation of Progress Towards Outcomes in Governance In Bangladesh", December 2009, http://erc.undp.org/unwomen/resources/docs/genderequality/1-206_UNDP_Evaluation%20of%20Governance%20Outcomes%20Final%20report%2017%20December%202009.pdf, as on 19 February 2013.

61 Police Reform Programme (2012), Annual Report 2011, p. 26, <http://www.prp.org.bd/downloads/Annual%20Report%202011.pdf>, as on 19 February 2013.

62 Police Reform Programme (2009), "Phase II Project Document", p. 19, <http://www.prp.org.bd/downloads/ProjectDocumentPhaseII.pdf> as on 19 February 2013.

63 Police Reform Programme (2012), Annual Report 2011, p. 7, <http://www.prp.org.bd/downloads/Annual%20Report%202011.pdf>, as on 19 February 2013.

64 Police Reform Programme (2012), "Rapid Evaluation of PRP direct Supported CPFs", March 2012, p. 21, <http://prp.org.bd/downloads/Rapid%20Evaluation%20of%20directly%20funded%20CPF.pdf>, as on 19 February 2013.

65 Saferworld (2011), "Baseline Survey on Personal Security and Police Performance in Bangladesh", December 2011, pp. 83-84, http://prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58: as on 19 February 2013.

66 Ibid, p. 84.

forums were for the elite and not inclusive (31.4 per cent), forum members were not clear about their roles and responsibilities (20.3 per cent) and communities remained disinterested (18.6 per cent).⁶⁷

Although these results indicate some progress, it is clear that much work remains to be done, particularly in the field of education. Some effort also needs to be channelled into ensuring that CPFs are inclusive and effective. How this can be achieved is not so clear. According to the UNDP Assessment of Development Results Report for Bangladesh, “no credible strategy has yet been formulated to curb the problems of politicisation and widespread infiltration of touts into community police”.⁶⁸ In addition, the continuing problem of frequent transfers of police officers resulted in their being unable to forge ties with the community, and vice versa.⁶⁹

2.5.2 Promoting Gender-Sensitive Policing

The PRP continued to play a role in promoting gender-sensitive policing in the past two years, focusing on:⁷⁰

- Increasing the representation of women in the Bangladesh police;
- Improving support to victims of gender-related crimes;
- Increasing gender sensitivity.

The under-representation of women in the Bangladesh Police has seriously limited the trust and confidence of women. It has also undermined efforts to fight crime, particularly crimes related to sexual and gender-based violence. In 2009, women represented 1.3 per cent of the Bangladesh Police (whereas the Least Developed Country average was 8.5 per cent).⁷¹ To address the gender imbalance within the organisation, the PRP in Phase II supported the Bangladesh Police to develop a “Women in Policing” Strategy, in which it set a target to increase the number of women to 8 per cent of the service, including in senior positions.⁷² It also conducted awareness-raising campaigns to motivate young women to join the police. The PRP boasts that 2,998 women were recruited between 2008 and 2011 and, in an unprecedented development, a female police officer was promoted to the position of Additional Police Commissioner (in the Dhaka Metropolitan Police).⁷³ Unfortunately, this has only raised the presence of women police to around 4 per cent.⁷⁴ Considerable progress is still required for the composition of the police to represent the society it serves.

More encouraging progress was achieved in the field of Victim Support Centres (VSC).⁷⁵ VSCs are designed to assist vulnerable victims of crime and are staffed by police officers and NGO representatives specially trained to provide support ranging from medical, legal and counselling services together with short-term accommodation.⁷⁶ The country’s first VSC was established in Dhaka in February 2009 and the second in Rangamati in November 2011. In September 2012, the Bangladesh Police, supported by the PRP, started the process of building a third

67 Ibid, p. 84.

68 UNDP (2011), “Assessment of Development Results: Bangladesh”, p. 52, http://web.undp.org/evaluation/documents/ADR/ADR_Reports/Bangladesh/ADR-Bangladesh-2011.pdf, as on 19 February 2013.

69 CHRI Interviews, Henk van Zyl, Project Manager, Police Reform Programme, 13 December 2012.

70 CHRI Interviews, Fawzia Khondker Eva, Gender Expert and Team Leader, Police Reform Programme, 13 March 2012; Police Reform Programme, http://www.prp.org.bd/index.php?option=com_content&view=article&id=61&Itemid=15, as on 19 February 2013.

71 Police Reform Programme (2009), “Phase II Project Document”, p. 13, <http://www.prp.org.bd/downloads/ProjectDocumentPhaseII.pdf>, as on 19 February 2013.

72 At the time of writing this report, the Policy was not available.

73 Police Reform Programme (2012), Annual Report 2011, pp. 6, 29, <http://www.prp.org.bd/downloads/Annual%20Report%202011.pdf>, as on 19 February 2013.

74 CHRI Interviews, Fawzia Khondker Eva, Gender Expert and Team Leader, Police Reform Programme, 13 March 2012; Saferworld (2011), Baseline Survey on Personal Security and Police Performance in Bangladesh, December 2011, p. 19, http://prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58, as on 19 February 2013.

75 Another model of legal services open to women in Bangladesh are “One Stop Crisis Centers” (OCCs) established under the Multi-Sectoral Programme on Violence against Women. Six OCCs were set up where female victims of violence receive medical treatment, police assistance, legal support, psychological counselling, rehabilitation services and shelter. The programme is now in its third phase, which will continue until June 2016.

76 Police Reform Programme, <http://www.prp.org.bd/menuvsc.htm>, as on 19 February 2013.

VSC in Rangpur.⁷⁷ The PRP envisages having one VSC in each of the Divisional Headquarters of the Bangladesh Police. Although the VSCs' work has gradually increased,⁷⁸ according to the Saferworld Baseline Survey, most respondents (71.6 per cent) had not heard of VSCs.⁷⁹ To maximise their impact, the existence of VSCs and the services they offer need to be widely publicised.

To promote gender-sensitive policing, the PRP developed a booklet entitled, "What is Gender?" primarily for use at model *thanas*⁸⁰ and provided gender training to hundreds of police personnel. Notably, it established a group of 96 internal trainers within the Bangladesh Police, which now impart training to their colleagues.⁸¹ In spite of these measures, the Saferworld Baseline Survey indicates that prevailing attitudes amongst male police officers towards female police officers still requires serious attention. Over half (55 per cent) of the male police officers in the survey said that female police officers were not as effective as their male counterparts in preventing crime and disagreed that increasing female police officers made the police service stronger (56.1 per cent).⁸²

2.5.3 Strategic Planning

In December 2012, the Bangladesh Police launched its Strategic Plan for 2012-2014. A seven-member working group comprising senior police officers worked for two years and consulted more than 300 police officers. Having identified the ten priority areas (below), the Institute of Business Administration at the University of Dhaka supported the formulation of the plan through surveying field level officers in August 2011, followed by focus group meetings on each of the themes. Although the PRP boasts that it was "one of the most inclusive strategic planning processes adopted by a law enforcement agency anywhere",⁸³ civil society actors do not appear to be involved.

The Priorities Identified in the Plan:

1. Crime management;
2. Public order management;
3. Traffic enforcement management;
4. Intelligence management;
5. Community policing;
6. Human resources and organisation structure;
7. Logistics and infrastructure management;
8. Training;
9. Information Communication Technology;
10. Service delivery management.

The Plan lists several targets under each priority. The community policing and crime management targets are set out on following page.⁸⁴

77 Police Reform Programme, http://prp.org.bd/downloads/Newsletter_October_2012_PRP.pdf, as on 19 February 2013.

78 For instance, the VSCs in Dhaka and Rangamati provided psychological, legal and medical services to 196 victims (including short-term shelter services to 7 additional victims) in 2011, resulting in an increase of 14 per cent from 2010: Police Reform Programme (2012), Annual Report 2011, pp. 6, 29, <http://www.prp.org.bd/downloads/Annual%20Report%202011.pdf>, as on 19 February 2013.

79 Saferworld (2011), "Baseline Survey on Personal Security and Police Performance in Bangladesh", December 2011, p. 121, http://prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58, as on 19 February 2013.

80 Model *thanas* were established in metropolitan and rural locations to demonstrate how pro-people policing can benefit the community and ensure that their needs and expectations can be met.

81 Police Reform Programme (2012), Annual Report 2011, p. 32, <http://www.prp.org.bd/downloads/Annual%20Report%202011.pdf>, as on 19 February 2013.

82 Saferworld (2011), "Baseline Survey on Personal Security and Police Performance in Bangladesh", December 2011, p. 97, http://prp.org.bd/index.php?option=com_content&view=article&id=71&Itemid=58: as on 19 February 2013.

83 Police Reform Programme (2012), Newsletter October 2012, http://prp.org.bd/downloads/Newsletter_October_2012_PRP.pdf, as on 19 February 2013.

84 Bangladesh Police (2012), "Strategic Plan 2012-2014", pp. 16, 21.

Target	To be coordinated/ implemented by	Timeline
Community policing		
Update and circulate the community police strategy and the community police manual among all stakeholders (police, community members, related organizations etc.) to create awareness and facilitate successful implementation of the philosophy.	DIG (Ops), AI PC, Range DIG, SP	Jun 2013
Prepare Charter of Duties of Community Police Forum (CPF) members and Community Police members:	DIG (Ops)	Jun 2013
Take steps to create awareness and highlight it's benefit to all concerned	DIG (Ops), AI PC, Range DIG, SP	Dec 2014
Establish channels and methods of communication so that CPF members and the community may easily communicate with local police units	DIG (Ops), AI PC, Range DIG, SP	Dec 2013
Take steps to create a post of Community Police Officer in each PS	Addl. DIG (O&M)	Dec 2014
Develop monitoring mechanism to evaluate community Police activities	DIG (Ops), AI PC, SP	Dec 2013

Target	To be Coordinated/ Implemented by	Time line
Crime Management		
Focus on forensic investigation rather than testimony based investigation	DIG (Crime), CID, RAB, All PC, Rly, Range DIG, SP	Dec 2014
Improve crime scene Management and develop Crime scene protection awareness programmes For both police and the citizens	DIG (Crime), CID, All PC, All SP	Dec 2013
Set up Criminal and intelligence data base under the supervision of PHQ, SB, CID and RB	Add, DIG (ICT), CID, SB, RAB	Dec 2013
Avoid unnecessary delay in investigation of cases	DIG (Crime), CID All PC, Rly, SP	Jun 2013
Promote intelligence led pro-active policing	DIG (Crime), CID, All PC, IP, SP	Dec 2014
Develop a prosecution monitoring mechanism to Support trial of cases	DIG (Crime), CID	June 2013
Expedite alamat disposal at different stage of Investigation/ inquiry with the concurrence of court	DIG (Crime) All PC, Range, DIG, SP	Dec 2014
Improve Arrest and Custody Management by developing guidelines	DIG (Crime) All, PC, Range, DIG, SP	Dec 2013
Take steps to reduce fear of crime	DIG(Crime) All PC RAB, IP, SP	Dec 2014
Protect the rights of citizens while discharging duties	DIG (Crime) All PC, RAB, SP	Dec 2014
Impress police officers to use criminal database management System (CDMS)	DIG (Crime) All, PC, Range, DIG, SP	Dec 2014
Ensure that the police officers working in PSs are aware of gender sensitivity issues and serve with proper care and caution	DIG (Crime) All, PC, SP	Dec 2014

It is crucial that targets are sufficiently measurable and specific if they are to provide an effective basis by which to evaluate police performance. While the establishment of monitoring mechanisms (for both prosecution and community policing) are measurable targets with tangible outcomes, targets calling for the police to “take steps to reduce fear of crime”, “take steps to create awareness...” and “protect the rights of citizens while discharging duties” offer scant means for genuine evaluation. Moreover, the use of the phrase, “take steps to...” does not commit the police to particular outcomes and allows for considerable inaction. By contrast, the 2010-2014 Strategic Plan of the South African Police Service, which has crime prevention as one of its broad policing priorities, lists a “4-7 per cent reduction in all levels of serious crime” as a medium-term target. Although targets and indicators for certain issues can be difficult to quantify, it is preferable that they are framed in a manner that commits the police to strive toward tangible results.

Encouragingly, the Plan envisages periodic evaluations of its implementation. It states that, “a Monitoring and Evaluation team will be formed to facilitate its implementation...The team will hold meetings quarterly, may make field visits, share knowledge with field officers and take appropriate steps to ensure the smooth implementation of the Plan.”

With much of the first Strategic Plan (2008-2010) not being implemented, this Plan is reportedly more realistic and achievable.⁸⁵ The PRP’s challenge will be to consolidate and carry forward its progress. This calls for sustainable reform to ensure measures that the Bangladesh Police organisation can independently continue, including meeting operating costs. There are some notable successes in this regard. In the area of VSCs, for instance, a sustainability measure was achieved when, at the end of June 2011, the Bangladesh Police took over the entire operational costs of the Dhaka VSC.⁸⁶ In addition, the various “training-of-trainer” activities entrenched institutional knowledge within the Bangladesh Police. In other areas, however, this was not addressed.

2.5.4 Efforts toward Legislative Reform

As in the case of India and Pakistan, even after gaining independence in 1971 Bangladesh chose to retain the criminal laws left behind by the British. The criminal justice system even today relies on the Police Act, 1861, the Evidence Act, 1872, the *Code of Criminal Procedure*, 1898 and the *Penal Code*, 1860. Although these pieces of legislation are antiquated, efforts to reform them have faced stiff resistance. With the advent of the PRP in 2005, new processes and procedures were put in place for the police, and there are significant technological advancements. Law reform, however, has not kept pace with these advancements. To some extent the newer technologies provide little benefit, as the laws do not support them.

The Arduous Process of Legal Reform

Any change in legislation or introduction of a new law sees a long route. An initial draft is prepared by the Bangladesh Police. This is then submitted to the MoHA for clearance. Consultation with other ministries and departments ensues before the draft is submitted to the Ministry of Law, Justice and Parliamentary Affairs. It is then forwarded to the Council of Advisers for Cabinet approval. Finally, a Bill is tabled in Parliament and must go through the usual committee stages and receive presidential assent before becoming legislation.⁸⁷ This long-winded process facilitates delay.

85 CHRI Interviews, Henk van Zyl, Project Manager, Police Reform Programme, 13 December 2012.

86 Police Reform Programme (2012), Annual Report 2011, p. 6, <http://www.prp.org.bd/downloads/Annau%20Report%202011.pdf>, as on 19 February 2013.

87 CHRI Interviews, Henk van Zyl, Project Manager, Police Reform Programme, 13 December 2012.

The Police Act, 1861

The *Police Act, 1861* is the primary piece of legislation governing the police.⁸⁸ In 2007, under the auspices of the CTG, a group of senior serving and retired police officers and legal experts, with technical assistance from the PRP, drafted the *Police Ordinance, 2007*.

Draft Police Ordinance, 2007

With the input of foreign donors and progressive police officers, the *Draft Police Ordinance, 2007* is a forward-looking document. Although not without its weaknesses, it generally seeks to establish a democratic form of policing in Bangladesh through three main pillars:

- i. Clause 10(2) of the Ordinance vests the superintendence of the police in the hands of the government with the purpose of ensuring that the police functions in accordance with the Constitution and the law. At the same time, to ensure that superintendence does not result in interference in police functioning, it criminalises any unlawful or indirect interference in policing functions such as investigations, law and order maintenance, promotions, transfers and so on. Section 122 states that the penalty for violating this provision is a minimum of six months imprisonment (to a maximum of two years), or the equivalent of 200,000 taka, or both. If promulgated, this severe penalty could radically alter the cost-benefit of engaging in corrupt activity.
- ii. Clause 37 of the Draft Ordinance creates the National Police Commission to recommend the appointment of the police chief, the postings of other high-ranking officials and to guide policy. The Commission would comprise 11 members, including four lawmakers, two each from the ruling party and the Opposition and four non-political independent members. If promulgated, this will result in greater transparency in police functioning.
- iii. To ensure an independent and external oversight body, the Ordinance makes provision for an independent Police Complaint Commission to inquire into “serious” complaints against the police. The Commission could also direct heads of departments to take disciplinary action or register a criminal case against an errant officer. The Commission would comprise a retired judge, a retired police officer, a retired bureaucrat and two independent members from civil society. However a significant weakness of this provision is that it does not establish the Commission as an *investigative* body.

While the Ordinance does a reasonably good job of addressing the deficiencies of the *Police Act, 1861*, several vague and contradictory clauses in the Ordinance potentially reduce police accountability. For example, Clause 145 stipulates that a criminal case cannot be filed against a police officer without permission from a high-ranking police official or the government.

The Ordinance was submitted to the MoHA in June 2007. After being buried in ministry red tape for five years,⁸⁹ the MoHA consulted with other ministries and provided feedback on the Draft in June 2012. Meanwhile, the Bangladesh Police established a *Police Ordinance Review Committee*, which met several times and completed a fresh administrative draft of the Ordinance.⁹⁰ The PRP anticipates that a revised draft will be ready for the MoHA in the course of 2013.⁹¹

88 The *Police Act, 1861* applies everywhere except for the metropolitan cities, where the *Metropolitan Police Acts* govern policing.

89 *Daily Star* (2010), “Whither Draft Police Ordinance, 2007? Police reform cannot brook further delay”, 23 August 2010, <http://www.thedailystar.net/newDesign/news-details.php?nid=151810>, as on 19 February 2013.

90 *Police Reform Programme* (2012), *Annual Report 2011*, p. 12, <http://www.prp.org.bd/downloads/Annual%20Report%202011.pdf>, as on 19 February 2013.

91 CHRI Interviews, Henk van Zyl, Project Manager, *Police Reforms Programme*, 13 December 2012.

Consistent with the current political climate and the strong anti-incumbent tradition in Bangladesh, the Ordinance, like the CTG that drafted it, is viewed with hostility by the present AL-led government. Resistance to its promulgation is also a result of the continuing alliance of vested interests in the civil service and top politicians to oppose such reforms, both of whom want to retain their power over the police.

This political unwillingness to introduce a new law is coupled with apathy amongst civil society stakeholders to engage with the process, perhaps owing to the fact that no public consultations were held while drafting the Ordinance; it was largely championed by the PRP, an external actor.⁹²

Anti-Torture Legislation

Democratic police reform will never be achieved as long as custodial torture is allowed to continue with impunity. Yet, the legal regime in Bangladesh, instead of preventing police torture, facilitates it. The out-dated Evidence Act, 1872 does not acknowledge the various types of forensic evidence that are commonplace in contemporary criminal investigations. As a result, most prosecutions in Bangladesh are still supported by confession-based evidence. Concerned to ensure successful prosecutions, the police are effectively encouraged to engage in coercive tactics to extract confessions. Amending the Evidence Act, 1872 to allow for the use of forensic evidence will therefore have an important impact on police investigations. While unsuccessful reform attempts have a long genesis dating back to the 1990s, the PRP recently pushed for a new set of amendments, which are currently being considered by the Ministry of Law, Justice and Parliamentary Affairs.⁹³

Having signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1998, Bangladesh is obliged to pass domestic legislation that criminalises torture.⁹⁴ International obligation aside, it is the systemic practice of torture at the hands of public servants that demands a rigorous legislative response in the form of anti-torture legislation. Moreover, the Constitution states unconditionally, that no person shall be subjected to torture or any cruel, inhuman or degrading treatment.

Despite this, no serious efforts at introducing an anti-torture law are on the anvil. A draft Private Member Bill aiming to incorporate the provisions of UNCAT into national legislation has been before Parliament since 2009.⁹⁵ The Bill was primarily reviewed by the Private Member's Bill Review Committee led by the former Law Minister. Since then, there has been no debate or discussion on the Bill or pressure from within or outside Parliament to ensure its passage.⁹⁶

92 CHRI Interviews, Rizwan Khair, Director, Institute of Governance Studies, 13 March 2012.

93 UNDP Bangladesh (2012), "Meeting on Amendments to the Code of Criminal Procedure Held", 26 September 2012, <http://www.undp.org.bd/info/events.php?d=3&newsid=1198&t=In%20News>, as on 20 February 2013.

94 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4(1): State parties to "ensure that all acts of torture are offences under its criminal law. The same shall apply to commit torture and to an act by any person which constitutes complicity or participation in torture."

95 On 5 March 2009, MP Saber Hosain Chowdhury submitted the Torture and Death in Custody Prevention Bill to Parliament.

96 The government has also failed to ratify or accede to the Optional Protocol to UNCAT, which mandates State Parties to allow members or experts of independent international and national bodies to conduct regular visits to jails and detention centres to investigate cases of torture. In response to recommendations during the 2009 UPR session to consider ratifying or acceding to the Optional Protocol, the Bangladesh government stated that, "human rights treaties and Optional Protocols are regularly reviewed for possible accession/ratification. This is an on-going process, needing careful consideration, as it entails specific responsibilities, including multiple reporting obligations, on the part of the State Party."

2.6 Recommendations

Government of Bangladesh

1. **Limit political interference in policing:** Presently there is no mechanism/body that oversees police performance and efficiency while at the same time serves as a buffer between the police and the executive. Such a body in the form of a National Police Commission is suggested in the Draft Police Ordinance, 2007. The creation of such a mechanism needs to be prioritised.
2. **Strengthen internal oversight mechanisms.** Internal oversight of the police is weak; it is unsupported by any legislation or regulation and remains under-resourced. The government should consider increasing its funding as well as making the department a permanent aspect of the national police service.
3. **Create a dedicated external oversight body over the police.** Relying solely on internal accountability mechanisms is dangerous. A dedicated external accountability body that is independent and has the necessary powers to bring police to account for wrong-doing is sorely needed.
4. **Enhance the legal independence of the NHRC and its ability to investigate the disciplined forces.** With its mandate limited to requesting reports from the “disciplined forces”, the NHRC is rendered incapable of ensuring police accountability. The National Human Rights Commission Act, 2009 needs to be amended to allow the Commission to investigate serious cases of police abuse, including custodial deaths and sexual offences.
5. **Bring in greater transparency in police functioning:** If the public is to trust policing, then greater transparency surrounding policy setting and decision-making processes must become the norm. If the public are kept informed and involved in policy setting, the targets set for police performance will be more readily achievable.

Bangladesh Police

1. **Strengthen the Police Internal Oversight Unit and review its internal disciplinary procedures.** There is little faith in current police disciplinary procedures, even amongst the police. Increased transparency, shorter resolution time frames and higher standards of professional conduct are critical.
2. **Strengthen the institutional capacity of the Community Policing Forums and increase public awareness of community policing.** While there may be no way to avoid the inclusion of local politicians in some capacity, care should be taken to depoliticise CPFs as much as possible, and to include vulnerable groups, including women and the poor. Public awareness of community policing can be achieved through greater police-public consultations with the community.
3. **Address obstacles to recruiting more women with greater effectiveness, take action to change male attitudes towards female police and disseminate information about Victim Support Centres more widely.** Representation of women at all levels and the provision of gender-sensitive policing and victim support services have the potential to build public confidence in the police, particularly among women.
4. **Ensure reform efforts are sustainable through their institutionalisation.** It is crucial that PRP-assisted reform measures are designed to ensure long-term sustainability so that measures continue beyond the life of the PRP.

Civil Society Organisations

- 1. Involve the community and public at large in the reform process.** Civil society organisations (CSOs) can take a leading role to influence public opinion towards reform for democratic policing by providing information, pointing out harmful trends, facilitating public meetings and mobilising people. It is important that discussions on police reform occur at all levels of society so that ordinary citizens can voice their thoughts and grievances openly, and help to influence policy and legal reform related to policing.
- 2. Campaign and educate on the need for police reforms, and their links to greater human rights protection.** Given the level of dysfunctional policing, it is critical that CSOs inform the average Bangladeshis of their rights and the kind of policing they should expect from law enforcement. Raising public awareness on these issues will inevitably make the police more law-abiding.

Chapter 3
INDIA

3.1 Background

Police reform initiatives in India continue to be largely state-led, with little involvement of civil society or the general public. The government mode of forming endless commissions, committees and missions persists, with scant implementation of recommendations, little diversity beyond police and bureaucratic circles and minimal diligence to avoid unnecessary duplication of reform areas. It continues to remain that information on reform committees and initiatives is still not easily and widely available and must be sought through official information requests.

The Police Act, 1861 is still in force at the central level, in spite of the availability of several alternate drafts for a new police law for the country (the most recent being the draft Model Police Bill, 2006). At the state level, new police legislation continues to be passed, but the scope and tenor of these new police acts are a matter of serious concern. State governments' compliance with the Supreme Court directives for police reform is slow and rife with dilution.

While the overt focus on anti-terror operations and strategies has lessened somewhat since the 2010 report, security concerns and political considerations continue to dominate the official reform landscape. There is little willingness by the government to put sufficient emphasis on human rights protection and strengthened accountability in the police reform trajectory. Further, in several respects, police accountability is destabilised even more through reform. This is amply evident in the tone and tenor of new police laws, the priorities accorded to new commissions on police reform and the lack of commitment to laws related to human rights. It is this enduring imbalance which distorts police reform in India.

This chapter provides a detailed overview of the dominant trends in institutional reform of the police pertaining to the 2006 Supreme Court directives on police reform, with an explicit focus on patterns emerging from new state police acts. It also describes and briefly analyses other significant and emerging reform initiatives.⁹⁷

History of Police Reforms in India: Select Recommendations of Various Committees

National Police Commission Reports (1977-1981)

1st Report	Set up of District Inquiry Authorities (DIAs) in every district. This would be “an independent oversight authority” to look into the large number of complaints made against the police.
2nd Report	A State Security Commission should be set up to help the state government discharge its superintendence responsibilities openly and within the existing legal framework. The Commission should also assist the police in allowing it to carry out its function without undue interference. Police officers should be protected against illegitimate transfer and suspension orders.
3rd Report	A special investigation cell should be created in the police department at the state level to monitor the progress of investigation of cases under the Protection of Civil Rights Act or other atrocities against Scheduled Castes and Tribes.

⁹⁷ A terrible and tragic incident of the gang rape and subsequent death of a young woman in Delhi in December 2012, renewed calls for police reform through public demand. Further details are provided in the body of this chapter, but certainly in Delhi and other major cities of India, there has been a strong show of public opinion and pressure for police reform throughout December 2012 and into early 2013. This public opinion may not be the most nuanced or informed, but there is no denying the unprecedented demand for better policing in terms of response, service delivery and approachability of the police. It remains to be seen whether this demand will be met honestly by government.

4th Report	Senior officers should make surprise visits to police stations to detect persons held in illegal custody and ill treatment of detainees. More holistic police performance indicators should be put in place.
5th Report	Stress on more women in the police force and that they should become an integral part of the police organisation without any distinction in the kind of duties performed by them.
6th Report	Investigation staff should be separated from law and order staff at the police station level in urban areas.
7th Report	A Central Police Committee should be created to advise and monitor the police.
8th Report	Protection available to police officers under Sections 132 and 197 of the Code of Criminal Procedure should be withdrawn. The 8th report also drafted a Model Police Act with a recommendation to replace the 1861 Act.

Ribeiro Committee (1998)

1st Report	Set up a Police Performance and Accountability Commission (PPAC) in every state to oversee police performance. Set up a District Police Complaints Authority to examine complaints of police excesses. Constitute a Police Establishment Board to monitor transfers, promotions and related issues. Chief of Police to be selected from a panel of three names prepared by the Chairman of the UPSC. The DGP to have a fixed tenure of three years and can be removed only on the recommendations of the PPAC. Separate law and order from investigative functions.
2nd Report	Replace the 1861 Act. Implement the recommendations of the NPC regarding recruitment, training and welfare of the constabulary urgently.

Padmanabhaiah Committee (2000)

Increase recruitment of Sub-Inspectors instead of Constables to achieve a ratio of 1:4.

Adopt the philosophy of community policing.

DGP to be chosen from two names recommended by a panel headed by the Chief Justice of the State High Court.

Set up a Police Establishment Board to oversee transfers and promotions. Give a two-year minimum tenure to all officers. Promotions to be subject to completing mandatory training programmes and examinations.

District Police Complaints Authority to be set up to investigate police misconduct. There should be a mandatory judicial inquiry into all cases of rape or death in custody.

Replace the 1861 Act.

3.2 The Supreme Court Judgement

The directives for police reform laid down by the Supreme Court of India in 2006 in its judgement in the *Prakash Singh case* remain the key catalyst for institutional reform of the police in the country.⁹⁸ In its judgement, the Court instructed states and the central government to comply with a set of seven directives that would – if taken in the spirit of the judgment – tackle the major ills that plague policing today. Simply put, these ills relate to: ensuring that the police are insulated from illegitimate political interference; have professionalised internal systems of management based on transparent criteria; and are much more accountable. The Court held that given the “gravity of the problem” and “total uncertainty as to when police reforms would be introduced”, it could not “further wait for governments to take suitable steps for police reforms” and had to issue “appropriate directions for immediate compliance”.⁹⁹

For ease of reference, the directives are enumerated below:

1. **Constitute a State Security Commission (SSC):** to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, (iii) evaluate the performance of the state police. The SSC is to have bipartisan representation and members of civil society to avoid undue political interference.
2. **Fixed Tenure for Director General of Police:** Ensure that the Director General of Police is appointed through a merit-based transparent process and enjoys a minimum tenure of two years. This directive aims at combating arbitrariness in the appointment of the highest ranking police officer.
3. Ensure that other police officers on operational duties (including Superintendents of Police in charge of a district and Station House Officers in charge of a police station) also have a minimum tenure of two years;
4. **Set up a Police Establishment Board:** To decide all transfers, postings, promotions and other service-related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. In effect, the Board is intended to bring these crucial service-related matters largely under police control.
5. **Set up a National Security Commission** at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years.
6. **Set up Independent Police Complaints Authorities** at the state and district levels: The state level Authority will inquire into cases of serious misconduct including incidents involving (i) death (ii) grievous hurt (iii) rape in police custody by police officers of and above the rank of Superintendent of Police. The district level Authority will inquire into cases of serious misconduct including incidents involving: (i) death (ii) grievous hurt (iii) rape in police custody (iv) extortion (v) land/house grabbing (vi) any incident involving serious abuse of authority by police officers of and up to the rank of Deputy Superintendent of Police.
7. **Separate the investigation and law and order functions** of the police: Both investigation and law and order are vital and specific police functions. To encourage specialisation and upgrade overall performance, the Court ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It is felt that this will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court did not specify how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police.

The *Prakash Singh* case is still being heard by the Supreme Court, though the Court itself appears to have de-prioritised hearing the case after 2010 as only a handful of hearings occurred in 2011 and 2012. The Court’s

⁹⁸ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1.

⁹⁹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1, p. 7.

engagement changed significantly in 2011 as new questions arose with regard to the directives concerning fixed tenure for the Director General of Police and key operational ranks. In fact, the constitutional basis¹⁰⁰ of these aspects of the directives is under challenge, and the Court decided to re-open these directives for arguments. This is on-going at present, and depending on the outcome, there could be significant repercussions for the implementation of these directives.

Chronology: <i>Prakash Singh & Others v Union of India & Others</i>	
Date	Supreme Court Hearings, Events and deadlines
30 Jul 1996	Two retired DGPs, Prakash Singh & N K Singh, file a PIL in the Supreme Court.
22 Sep 2006	Supreme Court delivers judgement requiring state and central government to implement its seven directives. Governments have till 3 January 2007 to comply.
11 Jan 2007	Supreme Court Hearing on compliance: Request for extension by states. Six states file separate review petitions. Supreme Court rejects review petitions and orders immediate compliance of directives 2, 3 and 5 while extending deadline for compliance of directives 1, 4, 6 and 7 by three months.
31 Mar 2007	Extension for implementation of directives 1, 4, 6 and 7.
10 Apr 2007	Deadline to file affidavits of compliance.
23 Aug 2007	Prakash Singh files contempt petitions against six states – Gujarat, Punjab, Maharashtra, Karnataka, Tamil Nadu, Uttar Pradesh.
23 Aug 2007	Supreme Court dismisses review petitions filed in January.
14 Dec 2007	Hearing on contempt petitions filed by Prakash Singh. Court makes no ruling on merits and grants a further extension of six weeks to all states and Union Territories to file affidavits of compliance.
13 Mar 2008	Supreme Court hearing and deadline for states to file compliance report.
28 Apr 2008	Supreme Court considers establishing a Monitoring Committee (MC).
16 May 2008	Supreme Court passes an order to set up the MC.
18 Dec 2008	Supreme Court hearing declines to rule on contempt before MC's report.
21 Jul 2009	Supreme Court hearing declines to rule on contempt, CJI states: "Not a single state government is willing to cooperate. What can we do?"
Feb 2010	Supreme Court hearing - Advocate Raju Ramchandran appointed amicus curiae for the Monitoring Committee.
Aug 2010	Monitoring Committee sends its final report to the Court.
8 Nov 2010	Supreme Court issues notice to four states – Maharashtra, Uttar Pradesh, Karnataka and West Bengal for total non-compliance.
6 Dec 2010	Supreme Court gives Maharashtra, Uttar Pradesh, Karnataka and West Bengal four weeks to indicate the time they would require to implement the reforms in a phased manner.
10 Jan 2011	States raise questions regarding Directive 2 on the fixed tenure of the DGP irrespective of superannuation in the Supreme Court.

¹⁰⁰ The Constitution of India contains several Articles which govern and regulate the recruitment, service conditions, tenure of office and dismissal of public servants, including police officers. The Court would like to re-examine the compatibility of the relevant directives with these constitutional provisions.

17 Jan 2011	States continue to raise objections to Directive 2 in the Court.
24 Jan 2011	Supreme Court hearing: Advocate Harish Salve appointed as amicus curiae.
11 Apr 2011	Supreme Court hearing: Solicitor General seeks time for instructions on Directives 2 and 3 regarding tenure and Directive 4 on separation of investigation from law and order.
2012	Not a single effective hearing held.

3.3 State Compliance of the Directives

During the two years since 2010, the trends in the state governments' responses remain the same. It is six years since the Court issued its directives and not a single state can claim to have fully complied with the reform package. The ground level situation presents a grim picture of compliance.

Since 2010, the number of states that have passed new police legislation has moved up from 13 to 14 (Chandigarh is the only Union Territory¹⁰¹ which has enacted a new Police Act).¹⁰² Other states have issued government (executive) orders, but not necessarily for every directive. Consistency in compliance is not the only problem, as with past years, the comment of the (now defunct) Court-appointed Monitoring Committee still holds true: both the orders and the legislations “clearly reflect dilution, in varying degree, of the spirit, if not the letter, of the Court’s directives”.¹⁰³

3.3.1 Moving toward Independent Oversight of the Police: State Security Commissions and Police Complaints Authorities

Two of the Court’s directives involve the creation of new police oversight bodies – State Security Commissions and Police Complaints Authorities. While the two bodies have different oversight functions, there is a distinct similarity between them – in the Court’s scheme, both bodies are designed to enable public participation and involvement in police oversight. Arguably, this key aspect makes these two directives the most groundbreaking in terms of institutional reform. Unfortunately, states have largely diluted the composition and compromised the independence of these bodies in state Police Acts and government orders. As a result, in practice, these bodies are not as representative or independent as they should be to truly impact policing culture.

A quick recap of each body’s oversight functions is provided as a reminder of what they have to contribute to police oversight. The State Security Commission (SSC) is envisaged to serve as a non-partisan, independent body overseeing police performance through broad and objective indicators, facilitating planning for policing, and generally acting as a buffer between the police and the political executive.¹⁰⁴ This is with the larger aim of enabling the police to function autonomously and more efficiently, while adhering to the requirement of accountability to the government. The Court’s directive provided that the SSC be headed by the Chief Minister or Home Minister with the DGP of the state as its ex-officio Secretary. In terms of the numbers and profiles of the other members, the states were given the option to choose between SSC models recommended by the NHRC, the Ribeiro Committee or the Sorabjee Committee. These models are:

101 Chandigarh adopted the Punjab Police Act, 2007 with certain modifications.

102 These are Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Meghalaya, Punjab, Rajasthan, Sikkim, Tripura and Uttarakhand.

103 Justice K. T. Thomas Committee Report, p.11.

104 Broadly, this entails the drafting of annual policing plans, framing police performance indicators and setting objectives and targets for police service delivery.

NHRC	Ribeiro Committee	Sorabjee Committee
Chief Minister/Home Minister as Chairperson	Minister in charge of Police as Chairperson	Minister in charge of Police as Chairperson
Leader of the Opposition in the Lower House	Leader of the Opposition	Leader of the Opposition
Chief Secretary	Chief Secretary	Chief Secretary
		Home Secretary
Judge, sitting or retired, nominated by the Chief Justice of the High Court	Judge, sitting or retired, nominated by the Chief Justice of the High Court	A retired High Court Judge, nominated by the Chief Justice of the High Court
Lok Ayukta or, in his absence, a retired Judge of the High Court to be nominated by the Chief Justice or a Member of the State Human Rights Commission	Three non-political citizens of proven merit and integrity	Five independent members
DGP as Secretary	DGP as Secretary	DGP as Secretary

While formulated at different times by different sources, it is interesting to note that the SSC models are common in that they seek to ensure that State Security Commissions are marked by: i) bipartisan political membership; ii) inclusion of the bureaucracy and judiciary from the highest levels; and iii) inclusion of “non-political” or independent members. The type of policymaking and planning for policing that are required of these Commissions necessitate a balanced mix of members who can contribute technical advice, administrative experience and broad knowledge of policing and public needs. It is particularly positive that the number of independent members grew incrementally from the oldest to the most recent model, with the highest at five independent members suggested by the Sorabjee Committee in 2006.¹⁰⁵ It is important to note that all the three models prescribe an independent and objective panel to short-list the independent members.

In spite of the Court’s clear and comprehensive guidance, it remains that not a single Commission was established in line with the Court’s directives or any of the models provided. Notable trends illustrating this dilution in Police Acts and government orders include:

- Seven states¹⁰⁶ have **not** included the Leader of the Opposition as a member of the State Security Commission in their legislation or government order. This completely extinguishes the bipartisan nature of the Commissions in these states.
- Five states¹⁰⁷ have **not** included a single “non-political” or independent member in the State Security Commission in their legislation or government order. As a result, in these states, the Commissions comprise only government and police members, either serving or retired. Diversity of experience and knowledge is thereby absent in these Commissions. Also, in many Police Acts and government orders, retired police and government officers are designated as the “independent” members. While retired officers are clearly not with the police or administration any longer, truly independent members would be those drawn entirely from outside police/government circles and have the requisite expertise.

105 The Sorabjee Committee is the only one that provided some criteria to guide the selection of independent members: “five non-political persons of proven reputation for integrity and competence from the fields of academia, law, public administration, media or NGOs”, see Section 42(1)(g) of the Model Police Bill, 2006. While even these criteria are not comprehensive enough according to CHRI, it does indicate the diverse fields and kinds of experience that should be drawn from, when selecting the independent members.

106 These are Assam, Bihar, Chhattisgarh, Gujarat, Mizoram, Punjab and Tripura.

107 These are Bihar, Goa, Karnataka, Manipur and Punjab.

- States have also opted out of establishing independent selection panels to shortlist independent members in their Police Acts or government orders – another way in which the independence of oversight bodies is severely weakened in legislation. Only **two** Police Acts – Rajasthan and Sikkim – contain independent panels for the selection of independent members to State Security Commissions.¹⁰⁸ This means that in most of the states, “independent” members of State Security Commissions are appointed at the sole discretion of state governments, or in some cases, through selection panels that comprise entirely of the political executive.¹⁰⁹

Still Struggling for the Right Policy: Security Commissions for Union Territories

Since the 2010 report, there was a policy change regarding State Security Commissions for the Union Territories (UTs). While the Ministry of Home Affairs has attempted to correct the original and flawed 2010 memorandum establishing Security Commissions for the Union Territories, a new memorandum reveals the continued flaws in policymaking. It must be kept in mind that of the seven Union Territories,¹¹⁰ only Delhi and Puducherry have their own legislative assemblies, Chief Ministers and Opposition members. The remaining five are governed by Administrators who are appointed by the centre (as are their police chiefs), and there is no legislature. Even with the choice of several models, these unique circumstances require innovative thinking to design appropriate and representative Security Commissions for these UTs. In a stealthy and surprising move, in January 2011, the Ministry of Home Affairs passed a new memorandum to replace the one of March 2010. According to the 2010 memorandum,¹¹¹ there was to be one Commission with jurisdiction over all the Union Territories, with a diluted composition, no binding powers and no proper selection process for members. Perhaps to make up for setting up only one Commission, an attempt was made to have a representation from all of the Union Territories. The 2011 memorandum creates two Commissions – one for Delhi¹¹² and one for the remaining Union Territories. While this is a slight improvement by providing a dedicated Commission for Delhi, it is still entirely inadequate for the remaining Union Territories. In the single Commission for the remaining Territories, Puducherry is over-represented.¹¹³ Also, while five independent members are included, there is no detail provided in terms of qualifications, criteria, experience, diversity of profiles or whether these members should be representative of all the Union Territories. Further, the 2011 memorandum creates a “Search Committee” to shortlist the independent members for both the Commissions, but there is no information on the members of the Search Committees.

On the ground, State Security Commissions are hardly functioning in any state – in practical terms, this means the Commissions are not even holding meetings. Unfortunately, in this regard, there is not much more to report since the 2010 report. According to the information with CHRI, only two Commissions have met in 2012:

- In Kerala, the State Security Commission convenes regularly. Currently the Commission is drafting police performance indicators.¹¹⁴

108 In Rajasthan, the committee comprises the Chief Minister (Chair), Leader of the Opposition in the state Assembly, the state Home Minister, and the Chair of the Rajasthan State Human Rights Commission (Section 22, Rajasthan Police Act, 2007). In Sikkim, the selection panel has a retired High Court Judge (Chair), Chair of the State Public Service Commission, and Chair of the State Election Commission (Section 41, Sikkim Police Act, 2008).

109 An illustrative example is the selection panel constituted in the Meghalaya Police Act, 2010 which consists of a retired High Court Judge, the Chief Secretary, Principal Secretary and Director General of Police. Even with the presence of the retired High Court Judge, the balance on this panel is heavily tilted in favour of the political executive. The presence of the police chief on the selection panel for a police oversight body is also problematic, considering the DGP is also the Member Secretary of the Commission.

110 The seven Union Territories are Daman and Diu, Dadra and Nagar Haveli, Lakshadweep, Andaman and Nicobar Islands, Chandigarh, Puducherry and Delhi.

111 Unfortunately, of the two memorandums, only the March 2010 memorandum is available on the Ministry’s website at <http://www.mha.nic.in/pdfs/OM-UT110310.pdf>.

112 In the 2011 memorandum, the composition of the SSC for Delhi comprises the Administrator, Chief Minister, Leader of the Opposition, Joint Secretary (UT Division) Ministry of Home Affairs, Delhi Police Commissioner and five independent members.

113 Puducherry’s Chief Minister and Leader of the Opposition are both members, in addition to the Union Home Minister and Union Home Secretary. There is no representation of the Administrators of the other Union Territories. The police chiefs of each Union Territory are ex-officio Secretaries on a rotating basis.

114 An important mandate of Security Commissions is evaluation of the performance of the state police.

- In Delhi, the State Security Commission held its first meeting in May 2012. Discussions centred on the security scenario in the capital. Following a tragic incident of gang rape in December 2012 and ensuing public protests across Delhi, the State Security Commission reportedly met again on 17 January 2013 to discuss measures needed for women’s safety, with specific orders communicated to Delhi Police.¹¹⁵

Considering the paucity of State Security Commissions which are actually meeting and deliberating, there is not much to state in terms of summing up the overall performance, impact or challenges faced by these bodies. There is clearly a total lack of interest or commitment at political levels to activate these Commissions, aside from Kerala and Delhi to an extent. For truly effective State Security Commissions, the bodies need to hold regular meetings, with proper planning and delegation of work. Till this happens, State Security Commissions cannot develop into useful oversight bodies.

3.3.2 Police Accountability: Police Complaints Authorities Six Years On

With State Security Commissions examining police performance and professionalism, Police Complaints Authorities are mechanisms to address police misconduct and abuses, including the most serious of death, torture and rape in police custody.¹¹⁶ The intention behind setting up Police Complaints Authorities was to ensure that a local mechanism specialised in handling a wide ambit of complaints against the police was readily available to the public at large. The long-term goal was to create a change in policing culture by drawing attention to and ensuring accountability for police abuses.

The situation on the ground regarding Police Complaints Authorities is significantly better than that of State Security Commissions in terms of implementation, but similar structural problems impede the functioning of the operational Authorities. To date, six states – Assam, Goa, Haryana, Kerala, Tripura and Uttarakhand and four Union Territories – Chandigarh, Dadra & Nagar Haveli, Daman & Diu¹¹⁷ and Delhi¹¹⁸ – have Authorities which are operational at the ground level. Kerala remains the only state which has Authorities functioning at both the state and district levels. Besides the Authorities of Chandigarh, Delhi, and the district-level Authorities of Kerala, the remaining Authorities have independent offices.¹¹⁹

Similar to State Security Commissions, Police Complaints Authorities are beset by structural weaknesses largely brought on by dilution of the Court’s guidance in state Police Acts or government orders. The composition of the Authorities, particularly to have a diverse and balanced membership, is one aspect that is affected. Generally, within the Police Acts, little attempt was made to ensure that the composition of Police Complaints Authorities is diverse and balanced. Further, the presence of civil society representatives is also not assured.¹²⁰ In addition,

115 Gaurav Vivek Bhatnagar, “Delhi Police told to show zero tolerance in cases of crime against women”, *The Hindu*, 18 January 2013, <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/delhi-police-told-to-show-zero-tolerance-in-cases-of-crime-against-women/article4318395.ece>.

116 The Court prescribed that state-level Authorities would look into complaints against officers of the rank of Superintendent of Police and above and look into only allegations of “serious misconduct” which includes but is not limited to death, grievous hurt and rape in custody. In many states, “arrest or detention without due process of law” has also been added to the category of serious misconduct. At the district level, Authorities are expected to inquire into complaints against police officers of and up to the rank of Deputy Superintendent of Police. In the districts, in addition to the serious misconduct listed above, the Authorities would also look into complaints that include allegations of extortion, land/house grabbing or any “incident involving serious abuse of authority”.

117 The Home Department of the Union Territory Administration of Daman & Diu and Dadra & Nagar Haveli issued a notification in mid-2011 setting up a single Police Complaints Authority for both Union Territories. This is a single-member Authority.

118 The Delhi government issued a resolution in February 2012 stating that till a new Police Act for Delhi is passed, the Delhi Public Grievances Commission will function as the Police Complaints Authority. One government officer has been deputed to the Commission to handle complaints against the police.

119 The Chandigarh Police Complaints Authority is, unfortunately, located in the building of the Union Territory’s Secretariat, and as mentioned, the Delhi Authority operates from the Delhi Public Grievances Commission. Further, the district-level Authorities in Kerala do not have their own offices and function from the offices of the District Collectors.

120 The Court specified that the Chairpersons of state-level Authorities are to be retired High Court or Supreme Court Judges and accordingly, the district-level Authorities are to be chaired by retired District Judges. The other members were to be drawn from “retired civil servants, police officers or officers from any other department or from the civil society”. The Court only provided these details in terms of background. It omitted to mention any qualifications or skills that may be necessary for an eligible candidate.

other persisting and serious deficiencies – inadequate selection processes, lack of independent investigators, lack of Rules of Procedure, and poor legal frameworks, among others – mar their functioning and absolutely decrease their efficiency.

Structural Deficiencies of Police Complaints Authorities

The most glaring observation of the current composition of the operational Authorities is that it is largely dominated by the bureaucracy and the police, serving and retired. This does not bode well for the growth of independent police oversight in India. The presence of serving officers, in particular, as adjudicating members reflects a troubling trend.

Contrary to the Court's directive, Kerala has serving police and government officials as members on its Police Complaints Authorities.¹²¹ Even though Kerala is only one state, the decision to include serving officers on its Complaints Authorities has significant implications for the proportion of serving officers as members of other Police Complaints Authorities in the country. Since Kerala is the only state which has functioning Authorities at the state and district levels, it has the highest number of Authority members across the country.¹²² At the same time, retired police or government officers significantly outnumber civil society or non-government members of the Authorities. This does not come as a surprise, as the legislative framework across the states designed Complaints Authorities in this manner. As a result, there is scant representation of civil society or individuals with non-police/government backgrounds as members on the Authorities.

- Owing to the constitution of Kerala's Complaints Authorities, 61 per cent of the members of Police Complaints Authorities are serving police and government officials. This is undoubtedly the highest number of serving officers as members on a police complaints body in any democracy. Nearly 24 per cent of the membership of currently operational Police Complaints Authorities in India comprises retired police or government officers. Only 8 per cent of the membership of currently operational Authorities comprises civil society members. Retired academics represent 4 per cent, while women account for a meagre 8 per cent. (All the women members represent civil society, women of other profiles and backgrounds were not appointed.)

This also has to be seen against the legislative guidance. Notably, serving government or police officers are not included as members in either the Court's model or in the Model Police Bill, 2006. In fact, one of the grounds for ineligibility as an Authority member in the Model Police Bill is if a person is "serving in any police, military, or allied organisation, or has so served in the twelve months preceding such appointment".¹²³ There are clear reasons why the legal guidance bars serving police officers from being members on bodies which are meant to be independent channels to address the most serious police excesses and violence.

121 The Police Acts of Bihar, Gujarat and Karnataka also include serving government and police officers as members of their Police Complaints Authorities, but none of these states have operationalised their Authorities as yet.

122 The state-level Police Complaints Authority of Kerala has two members who are serving officers, one a serving officer of the rank of Principal Secretary to the government and a serving officer of or above the rank of Additional Director General of Police. At the district level with 14 districts making up the state, the District Collector and the District Superintendent of Police are the only members of the Complaints Authorities.

123 Section 162(c), Draft Model Police Bill, 2006.

A Demand for Fairness and Balance; not Exclusion

CHRI is not questioning the integrity or credibility of serving police and government officers. But it is our firm belief that they should not be included as adjudicating members on Police Complaints Authorities. CHRI absolutely recognises that Police Complaints Authorities will never succeed without the expertise and cooperation of serving police and government officers. However, including serving police officers, particularly as adjudicating members, on what are meant to be independent bodies with the specific mandate to inquire into police excesses defeats a fundamental principle of natural justice: that no one can be a judge in their own case. Also, there is the very important and real issue of public/complainant perception of the Authorities, which is let down when serving police officers are adjudicating members on bodies which are meant to protect the public against police abuse. In terms of retired police and government officers, our concern relates not to their suitability for the job, but to the *imbalance* in the representation of members in terms of their backgrounds, skill sets and experiences. As bodies which are designed to address public complaints, a fair balance needs to be struck between retired government officers and independent civil society members. At present, this balance does not exist, as evidenced above. Based on our research and expertise, CHRI asserts that truly independent oversight requires newer skill sets and a diversity of experiences as well as knowledge, all of which can be brought by members who come from non-government backgrounds.

Establishing an independent oversight body requires an independent selection process to choose the chairs and members. In this respect, the process is just as important as the outcome, as it is only an independent and legitimate process which can identify and choose independent-minded members. All the existing legal guidance provides models of independent selection panels to short list members.

- Of the Police Acts enacted post 2006, only the **Sikkim Police Act, 2008** has adopted an independent selection panel for the selection of all members of its Police Complaints Authority. In other states, with this omission in legislation and government orders, members of Police Complaints Authorities are appointed with a few variations at the sole discretion of the state government.

A key mechanism for truly independent and effective inquiries by Complaints Authorities would be a dedicated team of independent investigators, recruited by the Authorities themselves, to take the lead on the investigative aspects of the inquiries conducted by the Authorities.¹²⁴ The true value of the Authorities' inquiry lies in the preliminary evidence – medico-legal, oral and documentary – that is collected to put forth prima facie grounds of police misconduct. Without their own investigators, Complaints Authorities are compelled to rely on the police for help in collecting evidence, which inevitably brings the independence of the entire inquiry into question.

- Of the functional Authorities, Assam is the **only** state that has appointed independent investigators to carry out its investigations. The investigation team is headed by a retired Deputy Inspector General of Police and assisted by two retired Deputy Superintendents of Police.
- The Police Accountability Commission of Tripura has tried to constitute a team of investigators since 2008, but faced continual resistance from the police department. In February 2012, two Sub-Inspectors from police headquarters were brought on as investigators. But their mode of appointment does not give the Commission full supervision over them. In fact, their supervision mainly rests with police headquarters.¹²⁵

124 Recognising this, the Court emphasised that “the Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization”. The Draft Model Police Bill does not refer specifically to independent investigators, but it includes a provision to the effect which states “members of the Commission shall be assisted by adequate staff with requisite skills, for efficient discharge of their functions of the Commission”.

125 Annual Report 2011, Tripura Police Accountability Commission, p. 5.

This scenario means that almost all Police Complaints Authorities are largely reliant on the police for the collection of evidence, statements and documents as they do not have their own investigative staff. This is of enormous consequence to the independence of Authority inquiries, as the police are either uncooperative or deliberately mislead the process of evidence collection. The appointment of independent investigators for Police Complaints Authorities must be prioritised immediately, to protect the independence and credibility of Authority inquiries.

Both the Court's judgement and the Model Police Bill emphatically state that the recommendations of Police Complaints Authorities are to be **binding**. For oversight bodies such as Complaints Authorities, in addition to the need for extensive inquiry powers, the power to order binding recommendations is absolutely essential for their effectiveness and empowerment. It must be remembered that Complaints Authorities are not courts; their jurisdiction does not extend to definitive pronouncements of innocence or guilt. They are bodies which carry out inquiries which can only provide prima facie grounds of whether enough evidence of misconduct exists to proceed further. But giving them the power of binding recommendations can ensure that those further processes are activated, with some evidence already gathered, properly assessed and on record. Without binding powers, the substance and findings of Authority inquiries can simply be ignored. The necessity for legislative frameworks establishing Complaints Authorities to state that Authority recommendations are binding is crucial.

- Only **four** Police Acts – Assam, Himachal Pradesh, Kerala and Meghalaya – specify that the recommendations of Police Complaints Authorities are binding.

Assistance from the Courts

A recent victory in the Punjab and Haryana High Court has realised binding powers for the Chandigarh Police Complaints Authority. The Chandigarh Authority is established through a 2010 government notification.¹²⁶ This notification states that while the recommendations of the Authority “shall ordinarily be binding”, the Administration can “disagree” with the findings for reasons given in writing.¹²⁷ The notification is then silent on a process to resolve disagreement, which effectively nullifies the Authority's power to make binding recommendations in cases where the Administration disagrees. In October 2011, a public interest litigation (PIL) was filed in the Punjab and Haryana High Court seeking more powers for the Chandigarh PCA. In particular, the petition requested the Court to pass directions to the Chandigarh Police to ensure that the Authority's orders are implemented. During late 2012, the High Court directed the Chandigarh Administration to amend its notification to make all orders passed by the Chandigarh Police Complaints Authority binding on the administration and police. While passing the order, the High Court ruled that the notification passed by the administration was not in conformity with the Supreme Court order and thus **had** to be amended.

At present, there is not a single Police Complaints Authority in India which functions on the basis of **officially** notified Rules of Procedure.

- Four of the operational Police Complaints Authorities – Goa, Haryana, Tripura and Uttarakhand – have drafted a set of Rules of Procedure and forwarded it to their respective governments. The state governments in all three states are still to notify these draft Rules.

Most state governments have reserved the power to frame Rules for the Authorities. In practical terms, this means that the Authorities have functioned for several years without the guidance and standard processes that Rules provide. The absence of Rules is leading to numerous difficulties, constraining the efficiency and service

¹²⁶ Notification, Home Department, Chandigarh Administration, No. 1/1/114-H111(1) 2010, 23 June 2010.

¹²⁷ Notification, Home Department, Chandigarh Administration, No. 1/1/114-H111(1) 2010, 23 June 2010, pp. 2-3.

delivery of the Authority. There is a vital need for strong, clear procedures which not only ensure that the Authorities are efficient and responsive, but also that the Authorities can maximise the use of their powers. The absence of Rules has led to delays in the Authority's inquiries and an inability to effectively respond to police non-cooperation. Well designed Rules of Procedure coupled with the will to enforce a stringent process will address several of these problems. Most importantly, it will strengthen and institutionalise the Authorities' role in police accountability. It is imperative that Rules are framed with no further delay.

The structural problems of Police Complaints Authorities need to be addressed by state governments with immediate effect. These problems prevent the Authorities from acting to their full capability or promise, resulting in inadequate service to complainants and importantly, the inability of the Authorities themselves to properly grow into their role as police oversight bodies in their states.

Police Complaints Authorities: Soldiering on

In spite of the numerous constraints, several Police Complaints Authorities have taken proactive measures that strengthen their accountability role, such as carrying out police station inspections, drafting annual reports and conducting public as well as media outreach activities. These Authorities took these measures entirely on their own initiative. These are very encouraging signs and demonstrate that oversight bodies can still act towards fulfilling their mandates, even in the face of constraint, with the right will and leadership. While these are very positive, the overarching problems of Complaints Authorities continue to plague even these Authorities.

3.4 State Police Laws: Reform or Retrogression

To avoid piecemeal efforts of institutional change, in its 2006 judgement, the Court also advised passing of fresh Police Acts to ensure that the new changes are embedded in legislation.¹²⁸ What the Court really did is to provide a basic framework to guide reform, putting its faith in the legislative and policy wisdom of the central and state governments to deliberate and take reform forward in their contexts.

Since 2010, the number of new state Police Acts passed after the Prakash Singh judgement has gone up only by one, taking the grand total to 14 states and one Union Territory with new police legislation.

	States and UTs	Drafting
1	Uttar Pradesh	Drafting Committee set up; no draft produced as yet
2	West Bengal	Produced Draft Police Bill in 2007; no movement since then
3	Jammu & Kashmir	Drafting Committee set up; Draft Bill reportedly ready and put out in the public domain for comments
4	Manipur	Drafting underway
5	Madhya Pradesh	Draft Bill reportedly ready, but not in the public domain
6	Jharkhand	Drafting underway
7	Orissa	Drafting Committee set up
8	Arunachal Pradesh	Draft Bill ready
9	Delhi	Draft Police Bill, 2010 ready

¹²⁸ The Court expected that the seven directions issued to the Central and state governments and Union Territories would be complied with till the "appropriate legislations" were framed.

10	Andhra Pradesh	Draft Police Bill reportedly ready, but not in the public domain
States and UTs		Bills
1	Tamil Nadu	Tamil Nadu Police Bill, 2008 tabled 14 May 2008; no movement since
2	Goa	Goa Police Bill tabled 27 August 2008; was referred to a Select Committee. Due to the unpopularity of the draft Bill, it was repeatedly stalled from being tabled in the Assembly.
States and UTs		New legislation/amendment bills passed after Prakash Singh
1	Bihar	Bihar Police Act passed 28 March 2007; notified on 31 March 2007
2	Tripura	Tripura Police Act passed 29 March 2007; in force from 7 April 2009
3	Chhattisgarh	Chhattisgarh Police Act passed 20 July 2007; notified on 28 September 2007
4	Assam	Assam Police Act passed 8 August 2007; notified on 18 September 2007
5	Haryana	Haryana Police Act passed 21 March 2007; notified on 2 June 2008
6	Himachal Pradesh	Himachal Pradesh Police Act passed 28 August 2007; Governor's assent 21 September 2007
7	Kerala	Kerala Police Act passed 31 December 2011
8	Karnataka	Karnataka Police (Amendment) Bill passed; in force from 2 June 2012
9	Rajasthan	Rajasthan Police Act passed 21 September 2007; notified on 1 November 2007
10	Sikkim	Sikkim Police Act received Governor's Assent 28 June 2008; notified on 30 July 08
11	Punjab	Punjab Police Act passed December 2007; in force from 20 February 2008
12	Uttarakhand	Uttarakhand Police Act passed 2 January 2008; in force from 4 January 2008
13	Gujarat	Bombay Police (Gujarat Amendment) Act 2007 passed 20 July 2007; notified on 23 March 2008
14	Chandigarh (UT)	The Punjab Police Act, 2007 extended to Chandigarh in March 2010
15	Meghalaya	Meghalaya Police Act passed on 3 December 2010; yet to be notified at the time of writing this report

As CHRI flagged in the 2010 report, the provisions and trends in state Police Acts were causes for grave concern. Unfortunately, the observation from the 2010 report remains relevant: “states that have legislated pretend to obey the Court’s orders but in reality are subverting and diluting them so that they have little corrective value”.¹²⁹

In fact, on close examination of the provisions of the new Police Acts, the extent of subversion and dilution is very worrying. The very maladies the Court’s directives sought to address are being given statutory sanction, evident in new state Police Acts. Further, some Police Acts include provisions on internal security (such as the creation of special security zones) which are not only outside the scope of a Police Act, but also unjustifiably and unnecessarily extend police powers in certain circumstances. Some of the dominant trends include:

- The political executive seeking greater unfettered control over the police, particularly by doing away with checks and balances ordered by the Court.
- The weakening of independent oversight bodies through direct appointments and the reduction of independent members (as evidenced above).

¹²⁹ CHRI, *Feudal Forces: Reform Delayed*, (2010), p. 50.

- The extension of police powers through the creation of special security zones and discretionary appointment of “special police officers” with the same privileges and immunities as police officers.

There is visible evidence of all these trends in state Police Acts. The extent of weakening of the key oversight bodies in the legislation – State Security Commissions and Police Complaints Authorities – is clear. In terms of the other trends:

- The Police Acts of 10 states¹³⁰ enable the state government to unilaterally appoint the Director General of Police in the absence of any independent short-listing and objective criteria. This is in complete contravention of the Court’s directive and of the numerous official recommendations on an appointment process for state police chiefs.
- The Police Acts and government orders of 14 states¹³¹ do not comply with the Court’s directive on a fixed two year tenure for key field-level officers with specific command responsibilities,¹³² in various ways – limiting tenure to one year only, not fixing tenure for the senior ranks of Deputy Inspector and Inspector General of Police, and/or including very broad grounds for premature removal including “for special reasons” or “administrative exigencies” in most cases.
- The Police Acts of Kerala, Haryana, Himachal Pradesh and Punjab allow for the demarcation of “Special Security Zones”.¹³³ It is only four states, but the inherent dangers of the provisions are cause enough for worry even in just these few states. Firstly, with no history of large-scale public disturbance threatening these states, it is perplexing why Kerala, Haryana and Himachal Pradesh even need provision for special security zones. Punjab’s troubled history also, thankfully, seems to be well in the past, and yet the state has chosen to legislate for these zones. In Haryana, Himachal and Punjab, if the state government considers any area of the state to be “threatened by insurgency, terrorist or militant activity”, the government can deem the area a “special security zone”. In Kerala, “high security threats faced by any distinguished or protected person in an area or any important institution or premises situated therein” can prompt the notification of a special security zone. Then, the police are enabled to respond – in Haryana, Himachal and Punjab, the state government is empowered to create “an appropriate police structure” with a “suitable command, control and response system”; in Kerala the government can impose “reasonable restrictions” in terms of movement of people. Notably, and alarmingly, there is no information provided on what powers are allowed, what “control” can entail, and what specific “response”(s) can be meted out. In the three states, the police chief is to lay down standard operating procedures to be followed by the police in these zones, but there is no overall coherent framework which lays down what police powers and response are allowed to guide the standard operating procedures.
- The Police Acts of 10 states¹³⁴ allow for the appointment of Special Police Officers. Special Police Officers originate from the Police Act, 1861 and unfortunately, were retained in the Model Police Bill, 2006.¹³⁵ These are essentially “able-bodied and willing” persons, above the age of 18, recruited to “assist” the state police force. Aside from Assam, Tripura, Sikkim and Punjab,¹³⁶ the other states simply allow the police to appoint Special Police Officers at any time and for no specified reasons. No detail is provided in any Act regarding the specific functions and responsibilities of Special Police Officers, minimum qualifications, method of selection,

130 Bihar, Chandigarh, Haryana, Himachal Pradesh, Karnataka, Kerala, Punjab, Sikkim, Tripura and Uttarakhand.

131 Assam, Bihar, Chandigarh, Chhattisgarh, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Sikkim, Uttarakhand, West Bengal.

132 The ranks specified by the Court were Inspector-General of Police, Deputy Inspector-General of Police, Superintendent of Police and Station House Officer.

133 See Section 83, Kerala Police Act, 2011, Sections 37-42; Haryana Police Act, 2007, Sections 75-76; Himachal Pradesh Police Act, 2007; and Sections 34-35, Punjab Police Act, 2007.

134 Bihar, Punjab, Assam, Himachal Pradesh, Chhattisgarh, Sikkim, Uttarakhand, Haryana, Tripura and Meghalaya.

135 Ironically, the 1861 Act contains more safeguards than the latest post-2006 Police Acts with reference to the appointment of Special Police Officers.

136 The Police Acts of these four states at least state that Special Police Officers are to be appointed in the event that the police cannot properly deal with a situation affecting public peace and security. Even this qualification is too wide and clearly lacking, but it is better than no grounds at all as in the other states.

how long they are to be deputed, limits of their powers, or the extent of their training. But all the Police Acts, without exception, contain a clause stating that Special Police Officers “*have the same powers, privileges and protection and be liable to perform the same duties and responsibilities and be subject to the same authorities as an ordinary Police Officer*”. It is indeed worrying that individuals can be appointed as Special Police Officers with no delineation of their roles, responsibilities or limits, but with all the same powers and protections as police officers (including the use of firearms). The weak enforcement of police accountability in India will no doubt shield Special Police Officers as it does ordinary police officers.¹³⁷

Special Police Officers in Chhattisgarh: An Issue before the Supreme Court

In July 2011, the Supreme Court of India held the functioning of Special Police Officers, in the central Indian state of Chhattisgarh,¹³⁸ in violation of Articles 14 (equality before the law) and 21 (protection of life and personal liberty) of the Constitution of India, precisely owing to the vague and arbitrary nature of their appointments and working. The Government of Chhattisgarh recruited Special Police Officers to aid the state police to face the Maoist insurgency.

Some of the Court’s observations were:

*“Given the number of civil society groups and human rights activists, who have repeatedly been claiming that the appointment of tribal youths as SPOs, sometimes called Koya Commandos, or the Salwa Judum, has led to increasing human rights violations, and further given that NHRC (National Human Rights Commission) itself has found that many instances of looting, arson and violence can be attributed to the SPOs and the security forces, we cannot but apprehend that such incidents are on account of the lack of control, and in fact the lack of ability and moral authority to control, the activities of the SPOs. The appointment of tribal youth as SPOs, who are barely literate, for temporary periods, and armed with firearms, has endangered and will necessarily endanger the human rights of others in the society. In light of the above, we hold that both Article 21 and Article 14 of the Constitution of India have been violated, and will continue to be violated, by the appointment of tribal youth, with very little education, as SPOs engaged in counter-insurgency activities”.*¹³⁹

The Court ordered the immediate disbandment of Special Police Officers in Chhattisgarh, and importantly, the state was asked to ensure that no private group is engaged in counter-insurgency operations. While the state government did disband the Special Police Officers, they were reabsorbed into the Chhattisgarh Auxiliary Armed Force through the *Chhattisgarh Auxiliary Armed Police Act, 2011*. This is clear defiance of the Court’s ruling.

These disturbing trends in Police Acts are of extreme concern. They clearly illustrate the extent of dilution of the Court’s directives at the national level. Challenging state Police Act provisions is also not an easy or straightforward matter, particularly considering that states are entitled to pass legislation on policing matters as they see fit through the legislative process. To an extent, the process can be blamed here, as has been the practice since the first post-2006 Police Acts were passed. States continue to pass Police Acts in a hurry, with little debate

137 In fact, Special Police Officers in the State of Chhattisgarh have been involved in gang-rape and assault of tribal women, dating from 2006 in Sukma district. The victims had tremendous difficulty just in registering their complaints with the police, and persisting through the legal process is proving to be virtually impossible due to the tremendous advantages of the accused officers. Please see: Suvojit Bagchi, “Six years after gang-rape, Sukma women give up on justice”, *The Hindu*, December 2012, <http://www.thehindu.com/todays-paper/six-years-after-gangrape-sukma-women-give-up-on-justice/article4251076.ece>

138 The state of Chhattisgarh is one of intense conflict between state security forces and Maoist (Naxalite) insurgencies, as well as pockets of local resistance movements.

139 *Nandini Sundar & Ors. v State of Chhattisgarh*, 2011 7 SCC 547, paras 59-60.

and no public consultation. The lack of debate, consultation and public awareness are certainly an important factor in allowing these kinds of Police Acts to be passed.¹⁴⁰

In terms of implementation of the Court's directives, the overall direction of police reform in India is extremely worrying. Importantly, the visible dilution of police accountability and checks and balances – whether in terms of weakened oversight, more powers for the police without accountability or unbridled political control over the police – should be a sharp warning signal that reform is going wrong. At present, the public conversation on the Court's directives has not gone beyond non-compliance. There is an urgent need to also examine the “reform” already in place and re-orient larger discussions on the pace and direction of police reform in India, while keeping attention on the serious non-compliance of many states.

3.5 National Police Mission and Micro-Missions

The objectives of the National Police Mission and micro-missions were introduced in the 2010 report. The Government of India set up a National Police Mission (NPM) in October 2005 charged with the responsibility of “creating a new vision for the police” and facilitating the “transformation of the police forces in the country into effective instruments for maintenance of internal security”.¹⁴¹ The NPM's stated objectives are numerous, ranging from pushing the central and state governments toward institutional police reform, bringing about attitudinal changes from a “force psychology” to a “service psychology”, empowering the police to be more effective and responsive, standardising police training and rules and regulations, among many others.¹⁴² Importantly, one of the stated objectives was also to bring in individuals with different expertise and not confine the NPM only to police or bureaucratic circles – an encouraging move to help diversify the debates and recommendations on police reform. While the NPM clearly expresses on its website that it is not replacing the scores of official Commissions and Committees set up on police reform, it is hoped that there will be diligence in ensuring there is no duplication of reform areas which have already been addressed by the past Commissions.

Faced with such a large task, the structure of the NPM was rightly designed to be layered, with an Empowered Steering Group¹⁴³ (ESG) functioning as the main policymaking and agenda-setting body and an Executive Committee (EC)¹⁴⁴ to monitor the implementation of the policies and projects. In September 2007, it was also decided to set up several micro-missions to work towards achieving the NPM's objectives. Consequently, six separate micro-missions were set up:

1. Human Resource Development: To look into issues such as police-population ratio, performance evaluation, training, leadership, police welfare, etc.
2. Community Policing: To deal with ways of improving police interaction with the public.
3. Communication and Technology.
4. Infrastructure including residential buildings, weaponry etc.
5. New Processes: To review ongoing police practices, conduct research on best practices and their applicability to India.
6. Proactive policing and visualising future challenges.

Due to the lack of comprehensive information available publicly on the NPM, in 2012, CHRI submitted a Right to Information request to the Ministry of Home Affairs to seek: i) the number of meetings held by the Empowered

140 Aside from the groundbreaking pre-legislative process adopted in the state of Kerala which was described in the 2010 report, no other state to date has initiated wide public consultation or adequate debate before passing new police legislation.

141 Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, <http://bprd.nic.in/index2.asp?slid=377&sublinkid=159&lang=1> as on 12 December 2010.

142 Please visit the following link for a full list of the NPM's objectives: <http://bprd.nic.in/index2.asp?slid=377&sublinkid=159&lang=1>.

143 The composition of the Empowered Steering Group can be viewed at the following link: <http://bprd.nic.in/index3.asp?sslid=380&subsublinkid=121&lang=1>.

144 To see the composition of the Executive Committee, please visit the following link: <http://bprd.nic.in/index3.asp?sslid=383&subsublinkid=122&lang=1>.

Steering Group (ESG) and the Executive Committee (EC) since the NPM was constituted; ii) a copy of the minutes of every meeting held by the Steering Group and the Executive Committee; iii) a copy of the Ministry's order setting up the six micro-missions; iv) a list of all reports (with annexures) prepared and submitted by the micro-missions. Of these, we received the number of meetings, the minutes of the single ESG meeting and only two EC meetings, a copy of the order creating the micro-missions and no micro-mission reports (we were directed to the appropriate website for the reports).

In terms of the number of meetings, the information we received stated:¹⁴⁵

- The Empowered Steering Group has had one meeting (3/11/2006).
- The Executive Committee has had 10 meetings (one in 2007, seven in 2009, one in 2010, and one in 2011).¹⁴⁶

In practical terms, there does not seem to be any evidence of tangible policy, institutional or legal changes towards better policing which were prompted by the NPM and its components. The frequency of meetings of the two spearheading bodies is not encouraging, particularly considering that the Union Home Secretary announced in 2006 that the Steering Group would meet twice a year to “formulate the broad policy directions” and the Executive Committee would meet “more frequently”.¹⁴⁷ While the EC had a spurt of meetings in 2009, there was only one meeting a year in other years, which is inadequate to sustain a project as broad and wide as the NPM. Also, the minutes of the few meetings of the Steering Group and the Executive Committee read like a collection of individual opinions and does not appear to be cohesive, substantive or tangible discussions of two organising entities with a clear larger vision of the NPM's ultimate aims. In fact, there was a suggestion in the Steering Group's first meeting that there was a need for a “vision document” that “clearly specifies the purpose, tasks, and methodology” of the NPM and importantly, sets out a time frame.¹⁴⁸ The NPM has not yet produced this vision document, which is long overdue.

To date there is not a single project or micro-mission of the National Police Mission which addresses police misconduct and violations of human rights by police. Strengthening police accountability for rampant abuses is clearly not a priority for this significant initiative toward police reform.

Micro-Mission Projects

The six micro-missions also appear to work haphazardly and slowly.¹⁴⁹ Some of the micro-missions have approved projects, which are: a transparent recruitment process (micro-mission 1), soft skill training (micro-mission 2), community counselling centres (micro-mission 2), community policing (micro-mission 2), incident command centre (micro-mission 4), counter terrorism capacity building at police station level in Naxal affected areas (micro-mission 6).¹⁵⁰

Seven projects under these micro-missions were approved. These include: i) transparent recruitment process; ii) soft skill training to police personnel; iii) community counselling centres; iv) police community partnership – overarching model of community policing; v) National Police Information and Convergence Network; vi) Incident Command Centre and vii) Counterterrorism Capacity Building at PS Level in Naxal-Affected Areas.

145 Information received from Assistant Public Information Officer, Bureau of Police Research and Development, Ministry of Home Affairs on 10 October 2012.

146 However copies of minutes of only two meetings were provided to us.

147 Minutes of the first meeting of the Empowered Steering Group of the National Police Mission, 3 November 2006, para 23.

148 Minutes of the first meeting of the Empowered Steering Group of the National Police Mission, 3 November 2006, para 21.

149 To see full lists of the members of each micro-mission of the National Police Mission, Bureau of Police Research and Development, please visit the following link: <http://bprd.nic.in/index2.asp?slid=386&sublinkid=165&lang=1>

150 To read brief reports on the progress of these projects, please visit the following link: <http://bprd.nic.in/index3.asp?sslid=428&subsublinkid=148&lang=1>.

A draft project proposal for each of these projects was submitted.¹⁵¹ Whether MoHA has accepted these or not is uncertain. The draft proposals don't say anything new. They make recommendations which have been known for years and they are being rearticulated. The Mission which originated with the Prime Minister's speech was intended to think big and think "out of the box" to think afresh and give a new impetus to the modernisation programme." This was in 2005. Nothing much has changed since.

3.6 Other Reform Measures and Committees

In addition to the Court's directives and the National Police Mission, there are various other police reform initiatives in the works, ranging from electronic technology for crime tracking to other high-level task forces and committees for police reform. While these initiatives are in their nascent stages, some preliminary information is provided below. All these efforts indicate that there is clearly no paucity of police reform efforts, from different angles, in India. While it is still too early to assess how they will translate into better policing on the ground, it is hoped that they will function with full transparency and actively solicit public support and interest.

3.6.1 Crime and Criminal Tracking Network & Systems

The Crime and Criminal Tracking Network & Systems (CCTNS) is the brainchild of India's former Home Minister, Mr P. Chidambaram. It is an ambitious project which seeks to link all India's police stations, state headquarters and the central police forces through information technology, with the aim of creating a nationwide electronic database focused on crime investigation and "detection of criminals". In fact, "CCTNS will cover approximately 15,000+ police stations in the 35 states and Union Territories and around 6,000 higher officers which includes the Circle Offices, Sub-Divisions, District Headquarters, Range Headquarters, Zonal HQs, and State/UT Police Headquarters".¹⁵² This nationwide database of information will be available in real time to all police stations and organisations. The CCTNS was approved by the Cabinet Committee on Economic Affairs (CCEA) in June 2009, and a budget of Rs. 2,000 crores was approved for it.¹⁵³

As former Home Minister Chidambaram said in 2009:

"The police stations in the country are, today, virtually unconnected islands. Thanks to telephones and wireless, and especially thanks to mobile telephones, there is voice connectivity between the police station and senior police officers, but that is about all. There is no system of data storage, data sharing and accessing data. There is no system under which one police station can talk to another directly. There is no record of crimes or criminals that can be accessed by a Station House Officer, except the manual records relating to that police station. Realising the gross deficiency in connectivity, the Central government is implementing an ambitious scheme called "Crime and Criminal Tracking Network System (CCTNS)". The goals of the system are to facilitate collection, storage, retrieval, analysis, transfer and sharing of data and information at the police station and between the police station and the State Headquarters and the Central Police Organisations".¹⁵⁴

While the MoHA is the sponsoring ministry for CCTNS, the National Crime Records Bureau (NCRB) is the implementation agency at the national level. At state/UT levels the State Crime Records Bureaus (SCRBs) are designated as the nodal cum implementation agencies. A multi-tier governance structure was put in place to ensure appropriate direction and monitoring at all levels.

Preparations and training are in full swing and several states have launched CCTNS as pilot projects. CCTNS will be fully launched in all states and Union Territories by April 2013.

151 <http://bprd.nic.in/index3.asp?sslid=428&subsublinkid=148&lang=1>.

152 National Crime Records Bureau, Ministry of Home Affairs, "CCTNS Newsletter", Volume 1, October-December 2012, p. 1.

153 Please visit the following link: <http://ncrb.nic.in/cctns.htm>.

154 Extract from a lecture delivered in 2009 in New Delhi; please visit the following link: <http://ncrb.nic.in/cctns.htm>.

While it remains to be seen how it will work in practice, the CCTNS's basic purpose is real time exchange, retrieval and availability of information and reports on crime and ongoing police investigations between police stations and the higher offices mentioned. It will also facilitate online monitoring of criminal investigation by senior police officers as well as reduce the maintenance of manual records, thereby saving significant manpower.

In addition to collecting and sharing information on crime investigations, several citizen services are also at CCTNS's core. It will enable some key citizen services to be performed online: "it is expected to simplify the process of registering and tracking petitions and First Information Report (FIR), giving access to general services such as requests for certificates, verifications and permission, registering grievances against police, tracking the progress of a case during trial and access to reports for stolen or recovered vehicles and property through a citizen interface".¹⁵⁵ Some of the specific services include:

- Submission of requests for clearances and permits
- Verification requests for domestic help, tenants, employment
- Downloadable forms and certificates
- Details of stolen/recovered vehicles, arms and properties

There is no question that there is a need to better link police stations not only within states but also across states, and an electronic "real time" medium is ideal for a country as vast as India. The inclusion of key citizen services could address many bottlenecks in service delivery and save citizens' time. But there are also some inherent dangers in such an ambitious project. The arbitrariness of the term "criminal" and the complete lack of clarity of who this refers to is the first danger signal. To make matters worse, the Ministry's own guidelines are cause for concern when they state that one of the CCTNS's aims is increased "operational efficiency" by better tracking of "criminals, suspects, accused, repeat offenders, etc".¹⁵⁶ This reveals that criminals are not confined to those convicted for crimes by the courts, but suspects and accused are also included in the rubric of "criminal". It is unjustifiable that individuals who are only suspected of crimes would be included in the CCTNS, and this raises serious questions on this aspect of the project. No clear information is provided on what precise data and information of each "criminal" will be stored, and thereby, the extent to which personal data will be stored is unknown. The modalities and legalities of sharing and transferring individuals' personal data across states without their consent or knowledge must also be carefully examined. Further, there is no clarity or detail provided on how data of on-going court cases will be uploaded, stored, kept safe and individuals' privacy will not be compromised.

3.6.2 Standard Operating Procedures on Crowd Control

In 2011, the Ministry of Home Affairs constituted a committee of senior bureaucrats and police officers to identify non-lethal measures to deal with large assemblies of people who may demonstrate their angst on the streets. The committee submitted its report recommending specific measures for crowd control. This report was circulated to all police departments in the states in the form of Standard Operating Procedures (SOPs). The SOPs lay down detailed guidance for handling difficult situations and preventing flare-ups. The emphasis of these SOPs is on using non-lethal means to disperse assemblies of people rather than employing lethal means to kill people in the first instance.

Unfortunately the report of Sub-Group 2 leaves very little choice of methods for the police to control crowds. This is worrisome as the current SOPs do not make distinctions between labour agitations, communal mobs and other unlawful assemblies. Lethal means are recommended to control communal mobs in police manuals. The

155 Manan Kumar, "Rs. 2000 crore national terrorist-tracking system to roll out today", *Daily News & Analysis (DNA)*, 1 September 2011, http://www.dnaindia.com/india/report_rs-2000-crore-national-terrorist-tracking-system-to-roll-out-today_1582245.

156 Ministry of Home Affairs, Government of India, "Implementation Guidelines to States", p. 4, <http://ncrb.nic.in/GuidelinesonCCTNS.htm>.

SOPs are silent on communal mobs. Clearly adequate thinking has not gone into the multiple situations where these SOPs will be tested and used.¹⁵⁷

3.6.3 Committee of Directors General of Police on Police Reform

In a surprise move, the Home Minister announced in September 2012 that a nine-member Committee of Directors General of Police has been formed to assess internal security challenges and suggest best practices or Standard Operating Procedures for any aspect of police functioning or operations.¹⁵⁸ The Committee is to be headed by the Chief of the Intelligence Bureau (IB), an unconventional choice for a committee on police reforms. The other members of the Committee are police chiefs of Maharashtra, Tamil Nadu, Assam and Jammu & Kashmir, along with the chiefs of the four central police organisations – Central Bureau of Investigation (CBI), the Central Reserve Police Force (CRPF), the Border Security Force (BSF) and the Bureau of Police Research & Development (BPRD). Since its formation, there has been no reporting from this Committee. To date, there is no information in the public domain on any meetings held, any decisions taken and any improvements suggested or implemented.

3.6.4 Justice Verma Committee on Amendments to Criminal Law

In December 2012, a young woman was gang-raped by six men in an off-duty public bus in Delhi. She was seriously injured and passed away in less than two weeks following the violent assault. Delhi was overcome by large-scale public protests immediately following the report of the incident and widespread public anger against an ineffective and unresponsive police came to the fore. Almost immediately, a three member committee of jurists was appointed by the Ministry of Home Affairs to examine the gaps in criminal law relating to sexual assault.¹⁵⁹ The Committee's Terms of Reference were to *look into possible amendments of the criminal law so as to provide for a quicker trial and enhanced punishment for criminals accused of committing sexual assault of extreme nature against women*. In the course of their deliberations, which included a two-day public hearing in Delhi, the Committee broadened its focus to systemic change for better protection of women, through change in law, policies and reform of institutions. It delivered its final report on 23 January 2013, less than a month after it was constituted, which is record time in the Indian context. In addition to the plethora of recommendations on diverse subjects related to better protection of women, the Committee devoted an entire chapter to police reform. The Committee reinforced the need for full compliance by urging "all states to fully comply with all six Supreme Court directives in the *Prakash Singh* case in order to tackle systemic problems in policing".¹⁶⁰ The Committee also recommended other operational measures such as mandatory registration of all complaints of rape, installing of CCTV cameras in police stations, online registration of crime complaints in a database, training to strengthen scientific investigation and several more. It remains to be seen how far and comprehensively these recommendations will be implemented. At present, the public pressure on the government for visible implementation is extremely high.

3.6.5 Justice Usha Mehra Commission

In addition to the Justice Verma Committee, set up after the gang rape of the young girl in Delhi, the MoHA also constituted the Justice (Retd.) Usha Mehra Commission to inquire into various aspects of the rape, identify lapses by the police and fix responsibility for those lapses. The Commission is also mandated to suggest measures to improve the safety and security of women.¹⁶¹ The Commission is to submit its final report within three months.

157 A full text of the SOPs is available at: <http://xa.yimg.com/kq/groups/20198305/1936611893/name/Police-Crowdcontrol-SOP-RTIdocs-Jul12.pdf.pdf>.

158 *Outlook India*, "Government Forms Committee of DGPs on Police Reforms", 6 September 2012, <http://news.outlookindia.com/items.aspx?artid=774388>.

159 The MoHA notification setting up the Committee is available at: <http://mha.nic.in/pdfs/JS-VermaCommittee-2013.pdf>.

160 Report of Committee on Amendments to Criminal Law, 23 January 2013, p. 320.

161 The order setting up the Commission can be found at: <http://mha.nic.in/pdfs/UshaMehraCommission-2013.pdf>.

3.6.6 Task Force to Review Women's Safety and Delhi Police

In another attempt to respond to public anger following the December 2012 incident in Delhi, the central government constituted a special task force headed by the Union Home Secretary to look into women's safety issues in the national capital. The 13-member task force will review the Delhi Police's functioning on a regular basis as well as continuously review action taken by the police and the Delhi government regarding women's safety. The members of the task force will be Delhi's Chief Secretary, Commissioner of Police, Delhi, Delhi Police's Special Commissioner (Traffic), Special Commissioner (Law & Order) and Chairperson, Delhi Commission for Women. The other members will be Chairperson, New Delhi Municipal Council (NDMC), Transport Commissioner, Government of the National Capital Territory of Delhi (GNCTD), Commissioners of East Delhi Municipal Corporation, North Delhi Municipal Corporation and South Delhi Municipal Corporation, Excise Commissioner, GNCTD and Joint Secretary (UT) in the Home Ministry.

While the task force has the explicit brief to examine women's safety, it comprises almost entirely of male members who have minimal experience of engaging on any issues concerning women.

There seems to be an overflow of police reform bodies in Delhi with potentially overlapping mandates, such as the Justice Usha Mehra Commission, the Task Force and the Delhi Security Commission, all of who are tasked to evaluate the Delhi Police's performance and suggest measures for improvement. Effective communication between these bodies will be imperative to ensure that suggestions and findings are not unnecessarily duplicated.

Decreased Human Rights Protection Appears to be the Priority

The Government of India continues to resist all calls for enacting a strong and effective torture prevention law. The revised Prevention of Torture Bill drafted by the Parliamentary Select Committee in 2010, after wide consultations, is pending with the Ministry of Home Affairs for approval of the amendments since December 2010. In its second Universal Periodic Review before the United Nations Human Rights Council in early 2012, the national report submitted by the government simply states that the recommendations of the Select Committee are "under examination", with no further details on its position or a time frame in which it will adopt the new law.¹⁶² The revised Bill more closely aligns with the United Nations Convention Against Torture than the original government-drafted torture prevention Bill, which is obviously why the government is stonewalling it. In its first Universal Periodic Review at the United Nations, several countries recommended that India enact torture prevention legislation and ratify the Convention Against Torture and this was repeated in India's second review as well.

The government is stalling the enactment of domestic torture prevention legislation in spite of heavy domestic and international pressure, but it quietly and effectively pushed through stringent amendments to the Unlawful Activities Prevention Act in Parliament in 2012. The amendments have not only expanded the offences under the Act, but also limited judicial scrutiny, in spite of known and documented evidence of misuse by security forces and the government.¹⁶³ Clearly, when the government wants legal changes, it acts swiftly and with purpose. But it appears to have vested interests in weakening, rather than strengthening, human rights protections.

¹⁶² National Report, India, A/HRC/WG.6/13/IND/1, March 2012, para 29, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement>.

¹⁶³ Muzamil Jaleel, "A law against liberty", *Indian Express*, as on 12 December 2012, <http://www.indianexpress.com/news/a-law-against-liberty/1043847/0>.

3.7 Recommendations

Government of India

1. **Vigorously pursue the agenda of police reforms.** Police being a state subject, the main responsibility for implementing the reforms lies with states. But the central government can lead by example by complying in letter and spirit with the Apex Court's directives, which it has not done to date. Systemic police reform must be prioritised at the earliest.
2. **Introduce the Draft Model Police Act.** The Model Police Act can be introduced at the centre as well as the Congress-ruled states, and extensive and wide pre-legislative consultation must be ensured. This will give the centre the moral authority to ask state governments to follow suit and it will be able to convince the state governments about its genuineness and commitment to reform.
3. **Ratify the UN Convention Against Torture by passing domestic torture prevention legislation.** The government must stop stonewalling the passage of an effective torture prevention law which is in line with the Convention Against Torture. The revised Prevention of Torture Bill drafted by the Parliamentary Select Committee is already in conformity with the Convention, and much time was wasted in finalising the legislation and tabling it in Parliament. There is a groundswell of informed opinion from important stakeholders who can advise the government on any remaining loopholes in the Committee's draft. The government has no excuses left.
4. **Amend or repeal "security" laws that impinge on citizens' rights.** Apart from pursuing the Supreme Court directives, the Government of India must also amend other legislations that severely impinge on the civil liberties and human rights of citizens. Lasting reform will not be achieved in an atmosphere of a repressive state.
5. **Strengthen the National Police Mission.** The NPM was set up with the objective of enabling the transformation of the police into an effective and responsive agency, with a focus on service delivery and stronger links to the public. It sought to supplement the Supreme Court directives by providing inputs on the vision that must guide the police in its transformation. This is indeed necessary, and the government must ensure the active functioning of the NPM and its micro missions. So far, there is not enough evidence of active and sustained functioning which yields practical results. Greater efforts towards transparency by the NPM will undoubtedly play a huge role in demystifying it, and enabling people to see and understand what it is achieving and working towards. The minutes of the meetings of the bodies of the NPM, and all reports and status of the projects and missions must be made public and regularly updated.

State Governments

1. **Adopt the vision of democratic policing.** This can be achieved by enacting new Police Acts that are designed to ensure that the police at all times act in accordance with the law and transform itself from a force that enforces the law to a service that upholds the law, and no Police Act weakens or encroaches on civil liberties.
2. **Implement the Apex Court's directives in the *Prakash Singh* case without dilution.** State governments must stop diluting the directives in implementation, whether through government orders or Police Acts. It must be realised that these dilutions and distortions are causing great damage to policing and police oversight. The states which have not yet taken steps to implement the directives must do so with no further delay, and ensure their implementation is in full compliance with the Court's directives.

3. **Proactively solicit input from civil society in the pre-legislative stage of new police legislation.** This can be done in the following ways:
 - a. Involve civil society at the drafting stage. This will ensure that the bill which emerges addresses the concerns of the public sufficiently.
 - b. Hold public forums and meetings to receive the public's feedback on the new legislation.
 - c. In accordance with Section 4(1)(c) of the Right to Information Act, 2005 (proactive disclosure), ensure that when draft legislation is presented to the State Assembly it is also put in the public domain and made available for comment.
4. **Proactively solicit input from all ranks on drafting ideal police legislation for the state.** This can be done in the following ways:
 - a. Invite police at all levels to make submissions about the type of police service and police law they would like to be part of.
 - b. Hold focus groups with police at all levels, particularly at the Deputy Superintendent of Police rank and below.
3. **Invest more time and effort into community policing.** International practice suggests that community policing is an effective tool to forge greater public trust in policing, as long as community policing initiatives remain within the rubric of democratic policing.

Government of India and State Governments

1. **Ensure maximum transparency of all reform initiatives.** Whether a committee, task force, or an ambitious project such as the CCTNS, transparency of deliberations, reports, developments, minutes of meetings must be a part of any reform initiative.
2. **Attention needs to be paid to police stations.** Even today, despite all the schemes and reforms that have been implemented, police stations continue to remain the most neglected, especially in rural areas. Governments need to ensure that police stations across the country are provided with the requisite finances, infrastructure, training and personnel required for them to carry out their jobs efficiently.
3. **Improve training facilities.** Governments need to realise that the training given to the police today does not make them fit for their purpose. Training methodologies need to shift from a stress on the physical to imparting soft skills and greater sensitisation towards the law and constitutional values. Provisions need to be made for periodic in-service refresher training.

Civil Society Organisations (CSOs)

1. **Involve the community and public at large in the reform process.** CSOs can take a leading role to influence public opinion towards reform leading to democratic policing by providing information, pointing out harmful trends, facilitating public meetings and mobilising people. It is important that discussions on police reform reach as widely as possible, so ordinary citizens can voice their thoughts and grievances openly, and also to help influence policy and legal reform related to policing.
2. **Campaign and educate on the need for police reforms, and its links to greater human rights protection.** Given the level of dysfunctional policing in India, it is critical that CSOs inform the average Indian what their

rights are, and what type of policing they should expect from law enforcement. Raising public awareness on these issues will inevitably make police more cautious and law abiding.

3. **Conduct social audits of police stations.** A social audit is a means of measuring, understanding, reporting and ultimately improving police performance. It can help narrow the gap between vision and reality.
4. **Engage with police oversight bodies.** As frustrating as it can be due to the ineffectiveness of oversight bodies, CSOs should not give up on engaging with these bodies and helping them to fulfil their mandates, through the proper exercise of their full powers, effective inquiries, comprehensive and regular reporting, and assistance to complainants.

Chapter 4

THE MALDIVES

4.1 Background

Policing has once again emerged as a contentious issue in the island country. Over the past two years, police action has come under considerable criticism for arbitrary action and excesses committed. Ironically, similar concerns lay at the heart of public outcry against the dictatorial regime of President Gayoom almost a decade ago and were an important trigger for the democratic transition of the country. Unfortunately, improvement in policing has not turned out to be as much as people had hoped, or even as much promised, under a democratic system.

There has been no dearth of reform initiatives. In September 2004, the Maldives Police was separated from the military, then known as National Security Service (NSS) and since renamed as the Maldivian National Defence Force (MNDF), and brought under the jurisdiction of the Ministry of Home Affairs.¹⁶⁴ In a bid to respond to growing local unrest and international pressure, former President Gayoom announced a slew of political reforms in 2003 aimed at strengthening rule of law and democracy in the country, and the decision to establish the police as a civilian body was a key component of that process. Subsequently, several other initiatives were undertaken to achieve professional policing, of which the key ones include the introduction of a process of strategic planning, establishment of an external oversight body known as the Police Integrity Commission (PIC) and the introduction of a new Police Act in 2008. The 2008 Constitution together with the Police Act laid down a fairly strong framework of democratic policing. The Maldives Police Service also committed itself to a new vision of policing, one characterised by community service, rule of law, good governance and professionalism.

With time, however, many of these measures have proven to be inadequate at best and flawed at worse. Political developments since last year coupled with the style of policing being followed have exposed the superficial way in which police reform has been both understood and practised.

4.2 Political Context: Return of Highhanded Policing

The transformation of Maldives into a constitutional democracy in 2008 ushered in a new era for the island country. Governed by a dictator since 1978, the democratic transition accompanied by a new Constitution and an exhaustive bill of rights brought with it great hopes of liberty, equality and justice. After a prolonged pro-democracy struggle, Mohamed Nasheed, human rights activist and head of the Maldivian Democratic Party (MDP), became the first democratically-elected President of the country in October 2008.

Four years on, hope has been replaced by deep disillusionment. Much of the enthusiasm that greeted the introduction of a democratic government has since been replaced by scepticism and fear. Rising prices, growing crime particularly violence against women and children, a spate of corruption and nepotism allegations against successive governments, fast spreading drug abuse problem, economic disparities and concerns over freedom of speech have since occupied centre stage. Doubts over the promise of democracy are writ large across the young population. Public protests became a regular feature under the nascent democratic government. Bitter political rivalry and struggle for power ensued, leading ultimately to the exit of Nasheed in February 2012 and swearing in of his Vice President Mohamed Waheed as the new head of state.

In the process, the growth of democratic institutions has suffered a setback. Notable among them is the Maldives Police Service (MPS). At the time of its separation in 2004, the young institution laid down a new vision of policing for itself emphasising service to the people and commitment to rule of law. Realising this vision required putting in place robust arrangements to avoid political control of the police, strong internal and external accountability

¹⁶⁴ For a detailed background to police reforms in the Maldives, see the Chapter 4, Maldives, *Feudal Forces: Reform Delayed*, 2010, Commonwealth Human Rights Initiative, New Delhi, India, pp.59-74.

mechanisms, changes in organisational strategies and amendment of operational procedures in order to enable protection of constitutional rights and freedoms.

These steps, however, have not been taken. As the chapter will demonstrate, the police remain subject to political direction and control. The most blatant manifestation of this has been in the instances of arbitrary arrests and detention of opposition leaders. Under Nasheed's tenure (October 2008 – February 2012), such instances remained notably low. Reports indicate that instances of politically motivated arrests and disappearances were practically zero in 2011.¹⁶⁵ A single incident – the arrest of then opposition MP Abdullah Yameen that was alleged arbitrary was recorded in 2010.¹⁶⁶ But since February 2012 under the new government, such instances have gone up significantly. Opposition MPs and activists are being violently attacked, targeted and arbitrarily detained.¹⁶⁷

The internal operational guidelines of the Maldives Police remain weak, impinging thereby, on effective police functioning. External accountability has not received the desired attention. The PIC mandated to hold the police to account, continues to face serious challenges including shortage of funds and lack of cooperation from both the government and the police department. The country is yet to amend its criminal laws including the Criminal Procedure Code, the Evidence Act and the Penal Code. The existing Penal Code does not reflect the spirit of the present Constitution (the Code which was enforced in 1981 and its last amendment made in 2009, has many parts which are not relevant to the present context). Additionally, inadequate legislations pertaining to evidence and witnesses and the dismissal of forensic evidence by courts remains one of the greatest weakness of the criminal justice system.

That there has been no significant change in police behaviour is supported by the findings of the investigations carried out by the PIC on police conduct during the change of government in early February. The investigations held the police liable of engaging in acts of vandalism against public property and routinely harassing, threatening and inflicting harm on civilians and innocent bystanders while carrying out their duties. Despite public outcry against police brutalities on 8 February, the Maldives Police decided not to conduct any internal departmental inquiry to bring the perpetrators to account.

Police Integrity Commission investigation on police conduct during change of government in the Maldives

The police played a crucial role in the turn of events. Its involvement in the violence that marked the change of government coupled with its conduct in general from 6-8 February was investigated by the Police Integrity Commission, an independent oversight body mandated to work towards ensuring police accountability in the island country. After months of investigation, the Commission released two reports. The first report, released on 5 September 2012, addresses police misconduct in handling of opposition protests on 6-7 February that led to Nasheed's exit. The second report, released on 2 October 2012, deals with the violent manner in which the police dispersed protests organised by Nasheed's supporters on 8 February.

165 Department of State, United States of America, 2011: Human Rights Reports: Maldives, <http://www.state.gov/j/drl/rls/hrrpt/2011/sca/186470.htm>, as on 25 November 2012.

166 Department of State, United States of America, 2010: Human Rights Reports: Maldives, <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154483.htm>, as on 25 November 2012; Also see, Amnesty International, Annual Report: The state of the world's human rights 2011, Maldives, <http://www.amnesty.org/en/region/maldives/report-2011>, as on 25 November 2012.

167 An example of this is the ongoing police investigation in the case of the murder of Dr Afrasheem Ali, Member of Parliament for Ungoofaaru constituency and noted religious scholar. Dr Ali was stabbed to death on the night of 1-2 October 2012 outside his home. Dr Ali was a member of the Progressive Party of the Maldives founded by former President Maumoon Abdul Gayoom. Several MDP activists were taken to custody for the murder but none of them have been charged although their detention continues to be extended every 15 days since their arrest. Only one person arrested after the murder, Mariyam Naifia, has been released so far but the police have given no grounds for her arrest and imposed several restrictions on her personal liberties before her release. See Azra Naseem, "And the Killer is..." *Minivan News*, 28 November 2012, <http://minivannews.com/politics/comment-and-the-killer-is-48045>, as on 1 December 2012.

Both the reports reveal that the police acted unlawfully in several instances. After 22 days of protests, the Commissioner of Police was ordered to withdraw officers from the protest site in order to make way for the Maldivian National Defence Force. Several policemen opposed this and refused to leave the site. The Commission has held the withdrawal decision to be unconstitutional and considers the Commissioner of Police directly responsible for implementing an unlawful order. Though the Commission defended the police officers' refusal to obey the order, the police are guilty for engaging in vandalism on the night of 6-7 February when several policemen joined the opposition protestors.

With regard to police conduct on 8 February, there is a difference of opinion within the PIC on the legality of the police action. According to the then President of the Commission, Ms Shahindha Ismail, the police acted in violation of laid down laws (Constitution of the Maldives and the Police Act 2008) and regulations (Regulation on Assembly; Regulation on the Use of Weapons) in dispersing the crowds on 8 February as the level of threat posed by a gathering of that size did not warrant such a violent intervention. The rest of the Commission members, however, believe that the situation was grave enough to justify this kind of police action and that there was no negligence on the part of senior officers. Ms Ismail also holds that the crowd was dispersed without forewarning by the police. The dissenting note of Ms Ismail has been included at the end of the report. Notably, Ms Ismail has since resigned from the post of President.

Notwithstanding this difference of opinion internally, the Commission unanimously holds individual members of the police responsible for carrying out criminal acts including assault and brutality on protestors and bystanders on 8 February. Several instances of police brutality are listed out in the report. The Commission has decided to investigate all these cases separately and take necessary action. The Commission further recommends that the Ministry of Home Affairs take necessary administrative action against the failure of the police to submit a review of use of force as yet.¹⁶⁸

Additionally, instances of arbitrary detention, torture and manhandling are once again slowly becoming part of standard practice in the island country.¹⁶⁹ According to one account, over 600 people have reportedly been arrested and detained arbitrarily since February 2012 - most of them released after less than 24 hours - the duration after which they need to be brought before a judge.¹⁷⁰ The same account goes on to mention that detainees were compelled to sign pre-written statements in order to confess "violent actions against the police and the destruction of properties", "incitement to violence against the police", and "inciting other people to disrupt the peace in the area".

4.3 Replacing the Police Act 2008: Progress or Regress

On 1 December 2012, a new police bill was introduced in the People's Majlis (parliament). Brought in by Mohamed Nasheed, an independent MP from Kudhufushi, the bill proposes to change the fundamentals of policing by bringing in a number of changes in the police organisation and structure. At the time of writing, the bill had been referred to the National Security Committee of the Majlis for further review.

The driving objective of the 2012 Maldives Police Service Bill¹⁷¹ (hereafter as the 2012 bill) is to insulate police from political interference and establish operational independence. Speaking in favour of the new bill, the

168 Police Integrity Commission, Maldives, *Summary Report on 6 and 7 February 2012 incidents*, http://pic.org.mv/English_Translation_of_Summary_Report_On_Feb_6&7new_events.pdf; and *Summary Report on 8 February 2012 incidents in Male*, http://pic.org.mv/English_Translation_of_Summary_Report_On_Feb_8.pdf, as on 1 December 2012

169 United States Department of States, Country Report on Human Rights Practices for 2011: Maldives, <http://www.state.gov/documents/organization/186680.pdf>, as on 1 December 2012

170 The International Federation for Human Rights (FIDH), *Political Violence in Maldives*, August 2012, p. 5.

171 CHRI facilitated the translation of the Maldives Police Service Bill 2012 to English. Both the Dhivehi and English versions are available on NIPSA (see end note on NIPSA)

Commissioner of Police, Abdulla Riyaz, strongly criticised the previous administration for politicisation of the police through heavy regulations on arrests and investigations.¹⁷² According to him, the existing Police Act 2008 allows too much control to the executive over the police, mainly through appointments.¹⁷³ The new bill will remove all control of the government over the police, he claims.

In an attempt to address the malady of undue political control, the 2012 bill, however, grants complete operational independence to the police. On one hand, accountability of the police to the democratic structures has been completely diluted. The Police Integrity Commission, created under the Police Act 2008 to investigate complaints against police misconduct and violations, is unaccounted for. On the other hand, the police have been vested with enormous powers without adequate safeguards. Together, this will not help create police that will protect citizens rights.

Insufficient Democratic Accountability

Research has established that effective and efficient policing is possible only through multiple levels of police accountability – to the government, to the parliament, to the judiciary and to independent oversight bodies.¹⁷⁴ Together, each such level helps to ensure that police powers are not misused and rule of law upheld. The 2012 bill, however, falls short in many respects. To begin with, executive’s power to hold the police to account for its actions and shaping policing priorities has been completely removed. In a democracy, the police and political executive are both bound together in the common endeavour of preventing and investigating crime, maintaining law and order and ensuring that the people have a well functioning service that protects life, property and liberty.¹⁷⁵ The political executive must be able to craft policy and seek accountability for poor performance or wrongdoing by an essential public service paid for by taxpayer money. At the same time, for policing to work in an efficient, unbiased, responsive manner, the roles, powers and responsibilities of each entity involved has to be properly articulated.

Instead, the 2012 bill seeks to forbid any oversight in order to avoid interference. For instance, the procedure for the appointment of the police chief is restricted within the police service without any independent or bi-partisan vetting.¹⁷⁶ On the other hand, the bill does not lay down a consultative framework for preparing strategic plans for the police. It is the Minister’s responsibility and does not require seeking the chief’s inputs. Efficient, fair and effective policing is possible only when a balance is struck. Neither a police that serves the state nor one that is operationally independent can be efficient.

Further, what is also important for the system of police accountability to work effectively is clear articulation of the role played by every oversight body in law. Here, too, the 2012 bill suffers from lack of clarity. It creates either overlapping or very weak oversight functions. By example, the multi-party parliamentary committee, known as the 241 Committee, is empowered to look into grievances filed against the police administration and review procedures for detention when these are best left to judicial review and/or by independent complaints bodies such as the PIC.¹⁷⁷

172 Interview with the Commissioner of Police, Abdullah Riyaz, 11 December 2012, Male.

173 As per Section 52, Police Act 2008, the President has full control over appointment of the Commissioner of Police from among the high-ranking police officers as well as his dismissal.

174 See Independent Commission on Policing for Northern Ireland, *Report: A New Beginning: Policing in Northern Ireland*, September 1999.

175 Commonwealth Human Rights Initiative, *The Police-Politician Paradigm: The Executive-Police Relationship*, p.1.

176 Chapter 9, Clause 50, Maldives Police Services Bill 2012.

177 Chapter 15, Clause 74 (h) and (j), Maldives Police Services Bill 2012.

Extension of Police Powers without Due Protection of Civil Liberties

The 2012 police bill contains elaborate provisions on police powers. To begin with, procedures for exercise of police powers of arrest, search, stop and detention must not be covered in police legislation. Police laws are meant to regulate policing, lay out the vision of policing, provide a structure for the police organisation, determine the principles of governance for the organisation, define the role and functions of the police, and articulate the relationship between the police, the political executive and the public. It must not go beyond its mandate and give additional powers and discretion to itself. The danger in this lies in the fact that a lot of details are left out as a law itself cannot go into such details but without accompanying regulations, the legal framework remains incomplete and weak. This then becomes the basis for bad policing practice and gives rise to illegalities.

The 2012 police bill is full of such examples of incomplete and weak procedures. Considerable discretion is vested in the police while exercising their powers of arrest, stop, search and detention. The power of arrest without authorisation from the court extends to a wide range of circumstances, not always for serious offences or requiring urgent action.¹⁷⁸ Stop and search powers allows police to enter private homes without the permission of the owner.¹⁷⁹ Safeguards such as recording reasons for arrest or the requirement of independent witnesses during search of private places even without a court order are not followed, thereby leaving ample room for arbitrary action. Moreover, monitoring and supervision of police powers is not adequately addressed in the bill. Details such as ranks of officers authorised to carry out such powers, proper recording of action undertaken, reporting to supervisory officers and consequences in case of negligence and/or misconduct are not specified. Seen together, it allows for the lowest ranks of officers with practically no experience to exercise wide powers with little chance of being pulled up in case of a wrongful action. Such weak provisions will only encourage and facilitate human rights violations.

Undemocratic Organisational Structure

The 2012 bill introduces a radical change in the appointment procedure for the police chief. Under the existing Police Act, the President is vested with the power to appoint the police chief from among the senior most ranking officers (Section 52). But as per the new procedure, the police chief is to be elected by a group of senior police officers from among themselves.¹⁸⁰ Such a practice is completely at odds with constitutional guarantee of fair and just administrative action. It creates an authoritarian organisation where all power rests with the Commissioner. The members of the Executive Service within the police who are to nominate the police chief are themselves appointed on the recommendation of the Commissioner. It will encourage patronage and a culture of winning favours within the organisation and severely compromise the commitment to public service that every police officer must first and foremost be guided by. The organisational unity will be deeply affected by the politics that will surround the nomination procedure. The risk of officers being divided into camps and thus not working together to serve the public is too high. Such an organisational structure does not make for effective policing.

Lack of Public Consultation

One of the greatest weaknesses of the new bill is that it was introduced without much public consultation or without much input from the rank and file. It is unlikely that the National Security Committee to whom the Bill has been referred will consult with community groups or invite suggestions from stakeholders. Community and

¹⁷⁸ Chapter 16, Clause 97, Maldives Police Services Bill 2012.

¹⁷⁹ Chapter 16, Clause 79 read together with 81, Maldives Police Services Bill 2012.

¹⁸⁰ Senior police officers constitute what is termed as the Executive Service. As per Clause 61 and 62, the Executive Service is to consist of senior police officers above the rank of Superintendent appointed by the Minister on the recommendation of the Commissioner. The total membership of the Executive Service is not to exceed 13 persons. As per Clause 51, the vacancy of the Commissioner's post will be announced by the Minister after which members of the Executive Service can apply for the position. They can either submit their own name or support another member's nomination. The nominee who receives majority support shall be appointed as the Commissioner.

civil society participation in the process is essential if the police is going to be effective, efficient and accountable. To gain the lost trust of the public it would have been beneficial for the government to publicise their initiative to redraft police legislation. Widespread consultation and acceptance of a new law will ensure that democratic, intelligence-led policing can carry out its functioning with much better cooperation than it has been able to gain thus far.

This is all the more crucial given the increasingly polarised debates surrounding policing in the country. Fear and distrust of the police run deep among large sections of society. Already, there are concerns among many within civil society that the new police bill will only entrench bad practices that have become the norm in the past few months.¹⁸¹

Overall, under the new bill, the risk of the police becoming a force unto itself is very high. The long-term impact of such a scenario on the regime of fundamental rights, which itself is in a vulnerable state, will be extremely damaging. World over, reform process is guided by making police more citizen-friendly through robust accountability, greater involvement of communities in police planning and professional governance mechanisms. In the attempt at achieving professional policing, the new police leadership would do well to bear these in mind. The principles of policing that are laid down at this critical juncture of the country's history will become the bedrock of policing in the years to come.

4.4 The Maldives Police Service: Reform Initiatives

In our last report, we had noted several measures undertaken by the MPS to achieve an effective transition into a civilian body. Most notable among these included reforming the training syllabus, restructuring and expansion of the department, and above all, formulation of a comprehensive five-year Strategic Plan to guide the transition. Our report had considered these measures as positive steps towards establishing a professional police service. With time, however, these measures have failed to yield results. Moreover, a number of new initiatives were introduced by the police leadership that took charge on 8 February 2012 after the transfer of power. Some of these measures include:¹⁸²

- Reorganisation of the Maldives Police Service from 16 to 11 functional departments with emphasis on cyber crime and terrorism financing.
- Review of the training structure and curriculum.
- Remodelling of the police training academy. The academy has been renamed the Centre for Security and Law Enforcement Studies. The Centre proposes to be a training hub not just for the police but all law enforcement and military personnel.
- Revisiting of internal procedures for operation. The changes are expected to limit political interference in policing matters.
- Changes in the internal disciplinary procedures of the MPS. Complaints against police officers were to be registered with the Professional Standards Directorate (PSD). This will allow the PSD to take up cases on its own, based on information about misconduct.¹⁸³
- Introduction of professional counselling for police officers.
- Development of a media engagement policy.

181 Discussion organised by CHRI in collaboration with the Maldivian Democracy Network around the new police services bill 2012, 12 December 2012, SHE building, Male city, Maldives.

182 Interview with the Maldives Police Service Executive Board, 11 December 2012, Police headquarters, Male, Maldives.

183 "Q&A Police Commissioner Abdulla Riyaz," 3 April 2012, *Minivan News*, <http://minivannews.com/politics/qa-police-commissioner-abdulla-riyaz-34611>, as on 30 November 2012.

- Development of a computerised data sharing network on police custody which connects all the 54 police stations across the country. This network records all information relating to an arrestee from the time of arrest till the time of first production before a magistrate. The network has a live time counter which enables monitoring of the time between arrest and first production.

The emphasis of the new police leadership on developing a professional police for the country is welcome. However, not enough is being done to help develop robust, fair and effective processes and policies necessary for realising democratic, citizen-friendly policing. Key gaps in the approach to police reform are discussed below.

Maldives Police Strategic Plans: Overambitious and Unrepresentative

A key reform measure of the Maldives Police was preparing strategic plans. The process of planning started only two years post the separation. An agreement was entered into with the Western Australia Police in early 2007 to assist the MPS emerge as a professional, responsive and representative institution.¹⁸⁴ A Strategic Focus Unit was set up comprising 12 senior officers from the MPS along with two Australian police officers mandated to identify the key processes, structures and standards necessary to achieve responsive service delivery. The culmination of the process was the drafting of a five-year Strategic Plan, 2007-2011 (hereafter the Plan) which sought to serve as a vision for the future direction of the Maldives Police Service.

The Plan embodied the value of democratic policing to confront the sense of fear that pervaded Maldivian society. Central to the approach to policing were features such as respect for human rights, community responsiveness and improving transparency and accountability within the service. It emphasised community policing as a way to “build and sustain public trust and confidence in the police.”¹⁸⁵ This was clearly reflected in the desired outcomes listed in the Plan namely: to ensure lawful behaviour and community safety; to deal and apprehend offenders in accordance with the law; to provide professional and responsive services; and to achieve good governance.

In the sheer scale of issues covered by the Plan – 54 projects were enlisted for implementation ranging from crime prevention, incident reporting, training, forensics, ethics and integrity, radio communication and community policing – it represented a promising start for a police organisation.

While the approach of community-oriented policing is indeed the right one, the foundational blocks to build this were not given adequate importance. *First*, ambitious targets were laid down, much of which focused on building infrastructure rather than on developing procedures of operation. Of the 54 projects, those that have been implemented include building of a forensic lab. But since Maldives is yet to enact its evidence law in tune with the constitution, a forensic lab is of little use.

Second, building and strengthening a civilian institution requires proper, well thought-out recruitment criteria and an overhaul of the training syllabus. Both these changes took place much later. At the time of its separation from the then National Security Services, the police had less than 300 personnel who were only familiar with a military style of functioning. The immediate focus was expansion of the police service. The target was to increase the strength 10-fold (up to 3000) but due to the shortage of time, quality was compromised.¹⁸⁶ Even school drop-outs were taken into the service. No formal job descriptions delineating the roles and responsibilities of the varied ranks were put in place.¹⁸⁷ As a result, there was no clear allocation of law and order and administrative duties and officers were often engaged in extra administrative tasks that required no police skills or training.

184 Ibid., p. 18.

185 Maldives Police Service Strategic Plan 2007-2011, p.17.

186 Interview with Mohamed Hameed, former Chief Superintendent of Police and also former head of police intelligence, 9 December 2012 and with Abdulla Phairoosch, Assistant Commissioner of Maldives Police Service, 11 December 2012, Male, Maldives.

187 Commissioner and Management Board (2006), *Maldives Police Service: A Review of the Capital Police*, 28 October.

Similarly, training imparted to recruits did not undergo change till much later and remained heavily militarised. The Law Enforcement Training Centre was set up to impart trainings but it continued to use the same training modules as developed for the military till 2007. The result of this was that the MPS was faced with a unique challenge of being overstaffed and yet underutilised and unfit to carry out police functions. This reflects a significant lapse during the initial years of the Maldives police – lack of emphasis on educating members of the police on what the change into a civilian institution implies; how the role of the police was set to change and the vision towards which the change was directed. Not surprising, a sense of uncertainty prevailed among the officers regarding their new mandate.

Lack of Transparency and Local Involvement

As a public authority, it is important for police activity to be open to scrutiny. People must have access to information related to police functioning, formulation of policies and areas of priority for trust to be created. But lack of transparency in the Maldives police remains a huge matter of concern. Information sharing with key stakeholders, civil society and people at large remains very limited. At the time of drafting of the MPS Strategic Plans, there was very little involvement and input from bodies such as the Police Integrity Commission.¹⁸⁸ No input was sought even from across the rank and file of the police. According to a survey on the knowledge level of the plan within police officials,¹⁸⁹ a large number admitted to knowing about the Plan but only one percent stated that they were consulted during its formulation.¹⁹⁰ There is resistance to sharing internal operating procedures such as on arrest and registration of complaints with the Prosecutor General's office despite repeated requests.¹⁹¹

The situation is worse when it comes to sharing information with civil society and the public. Despite a commitment to engaging with the media, in practise, this has not been the case. Journalists often have to pester the police for information.¹⁹² Neither the Police Bill 2012 nor any of the internal guidelines of the Strategic Plans were taken to the public for discussion and debate. There is very little information in the public domain about the various reform programmes of the police.

Moreover, many ongoing reforms, specifically on issues related to the criminal justice system such as juvenile justice, legal aid and community policing are being led by the international community without adequate local involvement. This was shared with CHRI during several meetings with civil society groups who expressed their reservation against donor-led reform processes. But the thinking within the police continues to be resistant to engagement with the public. This is unfortunate because police reforms cannot be carried out in isolation. For the police to serve the community better, it is crucial that the expectations of the public are taken into account.

Poor Internal Accountability

Accountability is a central principle for better policing. Strong internal mechanism to hold the police to account for their behaviour as well as overall performance has to be complemented with effective external oversight bodies. But the current reform discourse reflects a very weak commitment to accountability. The very fact that the new police leadership did not hold an internal inquiry on the police role during 6-8 February is a testimony. Moreover, despite ongoing investigations by the Human Rights Commission of the Maldives and the

188 Discussion on 'Strategic Planning and the Role of Civil Society,' organised by CHRI in collaboration with MDN, 5 September 2011, Male, Maldives.

189 CHRI in collaboration with MDN carried out a study in 2011 on the implementation of the MPS Strategic Plan 2007-2011. As part of the study, two surveys were carried out – one with police personnel and another with select members of the community on their awareness about the Plan goals. 79 police personnel across 11 police stations were interviewed. The findings of the study were published in a report. See *Implementation of the Maldives Police Service Strategic Plan 2007-2011: An Analysis*, Commonwealth Human Rights Initiative, 2011, New Delhi, India.

190 Annexure 1: Police Survey – Questionnaires and Findings, *Implementation of the Maldives Police Service Strategic Plan 2007-2011: An Analysis*, Commonwealth Human Rights Initiative, New Delhi, India, p. 40.

191 Interview with Prosecutor General, Ahmed Muizz, 11 December 2012, Male, Maldives.

192 Discussion organised by CHRI in collaboration with the Maldivian Democracy Network around the new Police Services Bill 2012, 12 December 2012, SHE building, Male city, Maldives.

Police Integrity Commission, the police leadership promoted a policeman against whom allegations were being investigated.¹⁹³ It is the duty of the leadership to look into misconduct and criminal conduct of its own members in order to sustain public trust. Not surprisingly, then, this has further dented public confidence in the police.

At present, the Professional Standards Directorate (PSD) within the Maldives police is responsible for looking into grievances and complaints against the police. But the capacity and role of the PSD remains unclear. Till date, operating procedures and guidelines for the PSD either do not exist or have not been made public. Consequently, there is no clarity on the kinds of complaints handled by the PSD. There is also very little being done to spread awareness within the public about the procedure for filing complaints with the PSD and their rights in the process.

The Police Bill 2012 seeks to address this lacuna in law. Clause 121 mandates the PSD, renamed as the Professional Standards Command (PSC), to look into grievances regarding the police including an act of corruption, an unlawful act, an 'undue, unfair, harsh or oppressive' act and an act of omission. But there are many concerns regarding the role of the PSC. *First*, the bill does not specify who the PSC can receive complaints from. Being an internal unit, it is submitted that members of the police service be also allowed to take their grievances against their service conditions to the PSC. The bill should clearly specify this. *Second*, the composition of the PSC is also not mentioned in the Bill. It is important that the Commissioner not be left solely in charge of the PSC in order to provide a fair medium of grievance redressal for the members of the police service. *Third*, and most importantly, the bill does not distinguish between disciplinary offences and criminal offences. Clause 121 (b) read together with Clause 123 (k) suggests that an oppressive act, or one without due regard to relevant procedure may result only in disciplinary action. It is left to the PSC to decide whether a wrongful action of a police officer, which includes an unlawful act in this bill, requires disciplinary action or criminal indictment. It should be clearly specified that a police officer who commits a criminal offence shall be liable to criminal proceedings in a court.

In receiving complaints from the public against police officers, the function of the PSC will overlap with other independent oversight bodies particularly the Police Integrity Commission and the Human Rights Commission of the Maldives. Lessons from other jurisdictions suggest the need to define in law the relationship between the internal inquiry procedure of the police and the external complaints bodies. Otherwise, in a situation where the findings of the oversight body and internal inquiry differ, there is no clarity on which should take precedence. In principle, the external oversight body has greater potential of being fair because it is independent, more transparent and provides equal opportunities of representation to the complainant and the police. Internal inquiries of the police are invariably closed and give no chance of hearing to the complainant. It is our submission that this lesson be incorporated into this bill and the relationship between the PSC and the PIC be defined.

Absence of a Gender Policy

Gender mainstreaming is now seen as an integral part of police reform and a key to operational effectiveness and institutional credibility. At present, women comprise only eight per cent of the Maldives police.¹⁹⁴ Whilst recruitment criteria have been developed which include educational qualifications, physical assessments and background checks (links with criminal gangs), there is no official policy on increasing the representation of women in the police.

With women accounting for a meagre eight per cent, the MPS is essentially perceived as a masculine, male-dominated institution. Developing a gender policy for the MPS is thus important at this stage. A policy will not only take into account how to increase the number of women in the service, but also retention policies, changes that need to be reflected in the police structure, opportunities available for women officers to rise up the ranks, training and sensitisation.

¹⁹³ Police Integrity Commission, Summary Report on 8 February 2012 incidents in Male, pg. 7

¹⁹⁴ Interview with Abdulla Riyaz, Commissioner of Police, 11 December 2012. The percentage is only a rough estimate and not an accurate figure.

Insufficient and Weak Implementation of Operating Procedures

Not enough has been done to improve the quality of police investigations. While absence of procedural and evidentiary laws is one reason impeding thorough investigations, what is of equal concern are routine violations of existing laws and procedures.¹⁹⁵ Sources dealing with the police on a regular basis reveal that of those procedures that do exist in law, many are not being followed on the ground. For instance, a procedure for the use of handcuffs has been laid down as per which a person in custody may be handcuffed only in the instance of misbehaviour, must be warned before being handcuffed, and should be relieved from the handcuffs after an hour. In practice, though, most productions before the court happen in handcuffs and the detainees remain tied up until they are transported back. A similar procedure is laid down for the use of non-lethal weapons on a detainee. A police officer is to record the parts of body against which the weapon has been used but this is not being followed either.

4.5 Criminal Law Reform

The exercise started in 2004 when the then government commissioned a study under the sponsorship of UNDP to review the criminal justice system in the Maldives. The study was authored by Paul H. Robinson, Professor of Law, University of Pennsylvania, who held that the existing system failed to do justice and wide-ranging reforms were needed in order to ensure justice to the people of Maldives. His report made 65 recommendations on various aspects of criminal justice including the police, criminal procedure, independent judiciary, prosecutors and defense counsel, sentencing and prison.¹⁹⁶

Almost a decade later, many of these reforms are yet to take shape. As of July 2012, as many as 141 items of necessary legislation were identified as pending, including substantive criminal laws, namely the Criminal Procedure Code, the Penal Code and the Evidence Act.¹⁹⁷ Attempts at passing these laws have either been stymied due to deep political divisions in parliament or slow follow-up in the respective committees.¹⁹⁸ The draft penal code has been in parliament since 2007 when it was first submitted. The existing Penal Code was prepared almost 40 years ago whereas the current Evidence Act is a very brief one.

Table:¹⁹⁹

	Pending Bill at Majlis	Submitted to Majlis by		Accepted by Majlis on	Committee Assigned to	Status (as of January 2013)
		Constituency	Member			
1	Criminal Procedure Code	Hulhuhenvyru	Moosa Manik	13 April 2011	National Security Committee	The Committee assigned the reviewing of the bill to a sub-committee which is ongoing is ongoing.
2	Penal Code	Gov-AG*		14 October 2009	7 member Ad-hoc committee	The Committee has completed the first review of the Bill, and to finish reviewing the bill when Majlis reopens in March 2013.

¹⁹⁵ Interview with criminal lawyers, 12 December 2012, Male, Maldives.

¹⁹⁶ Paul H. Robinson, Report on the Criminal Justice System of the Republic of the Maldives, UNDP, July 2004.

¹⁹⁷ Human Rights Committee, Replies from the Government of Maldives to the list of issues to be taken up in connection with the consideration of its initial periodic review, 5 July 2012, p.13.

¹⁹⁸ International Commission of Jurists, Maldives: Securing an Independent Judiciary in the Time of Transition, February 2011, p.30.

¹⁹⁹ Information has been compiled with the help of Maldivian Democracy Network, an independent non-partisan human rights NGO based in Male'.

3	Evidence Act	Gov-AG		10 November 2009	Committee on Independent Institutions	Committee has started work on the bill, have to meet the relevant government authorities.
4	Legal Aid Bill					Not drafted yet. Initiated by UNDP, with their consultant under the Access to Justice Programme. Only in preliminary stages as of date.
5	Juvenile Justice Bill					Has been drafted, and is being reviewed by the AG's Office currently. Aim to present to Majlis this year.
6	Anti-Terrorism Bill ²⁰³	Currently under review with the Attorney General's Office				Not drafted yet, a consultant from UNODC is working with the police on the Bill.
7	Prevention of Torture Bill	Galolhu North	Eva Abdulla	5 April 2011	National Security Committee	Assigned to a sub-committee; work has not yet started.
8	Right to Silence Bill	Kulhuduffushi South	Mohamed Nasheed	3 October 2012	National Security Committee	Sent to Committee; work not yet started.
9	Prison and Parole Act 2012	Gov-AG		6 October 2010	National Security Committee	Passed on 27 December 2012.
10	Freedom of Assembly Bill 2012	Kulhuduffushi South	Mohamed Nasheed	5 April 2012		Passed on 25 December 2012.
11	Domestic Violence Act 2012	DRP		October 2011		Passed on 9 April 2012.

	Not presented to the Majlis
	Passed by the Majlis

*Gov-AG: From Government, drafted by the Attorney General
Note: All information sourced from the People's Majlis Secretariat

²⁰⁰ Relevant legislative provisions on terrorism are currently laid down in the Terrorism Prohibition Act of the Maldives 1990 as well as the first two chapters of the existing Penal Code.

Two important bills were enacted last year – Freedom of Assembly Act 2012,²⁰¹ and the Domestic Violence Act 2012. As these legislations have only just been enacted, CHRI has been unable to assess them in detail. But without first enacting the substantive criminal laws, and through them, the necessary checks and balances, such legislations only increase the risk of expanding police powers without the accompanying accountability. The Domestic Violence Act, for instance, vests the police with additional powers to investigate cases of domestic violence.²⁰² The police can enter the place of crime and arrest perpetrators without a court warrant based on reasonable suspicion to believe a person to be a victim of domestic violence.²⁰³ The police are also empowered to remove the victim from the abusive environment to a shelter. But vesting the police with additional powers without prescribing clear procedures to be followed for arrest or the oversight to be exercised by various authorities at every step will only result in arbitrariness.

Take for example the large-scale arrests that took place following the February unrest and transfer of power. Around 200 people arrested at the time are believed to be facing charges under the Prohibition of Terrorism Act 1990 with the prospect of 10-15 year jail term or banishment. In the absence of the Criminal Procedure Code and the Evidence Act, there is no credible way of assessing the grounds on which these arrests have been carried out. Even if many of these arrestees are eventually released, the action and procedure of the police will not come under the scanner.

A key component of effective policing is to constantly improve the police’s ability to detect crime and criminals but without set procedures and oversight, such evaluations will remain arbitrary and biased. It is absolutely crucial therefore for the substantive laws to be enacted without any further delay. More delay will only result in the strengthening of a policing culture with no regard or understanding of rule of law or citizens rights.

4.6 External Police Oversight Bodies

4.6.1 Human Rights Commission of the Maldives

The **Human Rights Commission of the Maldives** (HRCM) constitutes an important link in the chain of police accountability. Established first in December 2003, it was reconstituted in 2008 as an independent body following the ratification of the 2008 Constitution. This was an important step towards police reform. While under the Constitution, HRCM is mandated with “monitoring and assessing the observance of human rights”,²⁰⁴ the HRCM Act 2006 (passed in 2005 and later amended in 2006) empowers it to investigate complaints alleging infringement of human rights, filed either by a person or a private organization or a representative acting on their behalf; or a government authority; or initiate an investigation on its own.²⁰⁵ In December 2007, the Commission was appointed as the National Preventive Mechanism (NPM) under the Optional Protocol of the Convention Against Torture to serve as an independent monitoring body. Its main purpose was to establish a regular visiting system to places of detention in the Maldives in order to keep a check on torture and other ill-treatment in custody.

201 The Act has invited strong criticism from several quarters. A joint press statement issued by a group of civil society organisations have derided the Act for impinging on fundamental rights such as freedom of expression, freedom of the media and freedom of peaceful assembly. The Maldives Media Council and the Maldives Journalists Association have also expressed concern over the Act. See Press statement, “Expressing concern about the passage of certain bills and decisions made by the 17th People’s Majlis limiting fundamental rights and undermining good governance and democracy,” Maldivian Democracy Network and Transparency Maldives, 2 January 2013.

202 The Act declares various acts of domestic violence as punishable offences including physical abuse, sexual abuse, verbal and psychological abuse, financial or economic restrictions, deliberate impregnation despite medical advice or, deliberate impregnation to restrict freedom from seeking divorce in an abusive marriage, deliberately withholding property of the victim, intimidation, harassment and stalking. Human Rights Commission of the Maldives, Shadow Report to the Human Rights Council, p.10.

203 “Domestic Violence Act incomplete with Family Protection Authority, *Minivan News*, 28 June 2012, <http://minivannews.com/politics/domestic-violence-act-incomplete-without-family-protection-authority-39924>. as on 12 January 2013.

204 Article 192 (3), Constitution of the Republic of Maldives 2008.

205 Section 20, The Human Rights Commission of the Maldives Act 2006.

The performance of the HRCM in holding the police to account is a mixed bag. Its work as the NPM is noteworthy. Since 2008, it has carried out more than 45 visits to various places of detention including prisons, police custodial facilities, juvenile detention centres and psychiatric facilities.²⁰⁶ These visits have brought to light rampant illegal detention in police custody. Detention of suspects in police custody for indefinite periods of time was commonly reported. Torture and degrading treatment of detainees is another concern highlighted through the visits. Since 2010, the Commission has received around 177 complaints of torture and ill-treatment in custody.²⁰⁷ Its monitoring has pointed out several causes leading to, and patterns of, torture in custody, such as insufficient legal standard and safeguards against torture, poor conditions of the detention facilities, absence of separate custodial centres within police stations, weak procedural guidelines of MPS, and a heavily confession-based approach to investigation.

To redress these, the HRCM strongly advocates the passage of the Prevention of Torture Bill which will lay down a clear definition of torture and also provide additional safeguards. The Commission is also assisting the PIC in the development of Minimum Standards for detention centres in order to reduce the space for ill-treatment.

However, its performance in tackling individual cases of police misconduct and criminal conduct is less satisfactory. In 2011, the Commission received a total 625 cases via a toll free number but investigations were initiated in just 21 cases.²⁰⁸ The Commission also came under criticism from across the political spectrum for its delay in concluding the investigations on the February incidents. The Commission initiated investigations into the events following the arrest of Criminal Court Chief Abdullah Mohamed as well as the events of 6-8 February. The three reports were made public only in August 2012. The investigation highlighted gross human rights violations committed by the police including illegal detention (beyond the statutory 24 hour period), failure to inform detainees on the grounds of arrest and rights to a lawyer, torture and degrading treatment, and use of disproportionate and excessive force while controlling the protests.

A major constraint to the Commission's effectiveness is that its findings are not binding on the government. It can only make recommendations to the concerned authorities on the appropriate measures to be taken to check and prevent human rights violations.²⁰⁹ In order to be able to effectively fulfil its mandate of protecting human rights, empowerment of the Commission to ensure follow-up action on its recommendations is essential.

4.6.2 Police Integrity Commission

The Police Integrity Commission serves as an independent, external oversight body over the police. Section 19 of the Police Act 2008 mandates it with the following functions:

- To promote respect for law within police officers;
- To independently investigate unlawful activities occurring within the police and take actions as mentioned in the law;
- To provide the necessary legal protection to police officers to perform their duty;
- To enhance public trust and confidence in relation to police services.

Given the history of unaccountable and repressive policing in the country and deep public angst against police impunity, the importance of the PIC cannot be overstated. From the very outset there was resistance to establishing a strong and effective body. When first set up by President Gayoom in September 2006, the Commission was

206 Human Rights Committee: Replies from the Government of Maldives to the list of issues to be taken up in connection with the consideration of its initial periodic review, 5 July 2012, p. 23.

207 Ibid., p. 21.

208 Ibid, p.145.

209 Article 24, Human Rights Commission Act 2006.

hardly given any power. According to Mohamed Anil, a lawyer who previously worked in the Attorney General's (AG) office, there was a huge tussle between the AG's office and the Home Ministry at the time over the powers of the PIC. Ultimately, President Gayoom went along with the Home Ministry's recommendations which did not support a strong PIC and which is reflected in the Police Act 2008.

Till today, the Commission continues to grapple with a weak mandate and limited resources. The body suffers from lack of credibility in the public eye because it has not been made truly independent. The appointment process of members of the Commission is left at the discretion of the President who is authorised to appoint the members in accordance with the advice of the People's Majlis. There is no requirement for transparency in the process, neither is there any criteria set out for selection of members. This leaves scope for considerable discretion and the danger of members being handpicked by the executive.

Financially, too, the body is dependent on the government. Budget allocations are controlled by the Finance Ministry. Following the appointment of the members in July 2009, the budget allotted to the PIC was withdrawn in early September on the grounds that "the funds were not utilised by the end of August." It then had to make several requests to the Finance Ministry to sanction the funds all over again.

Again, a major factor constraining its effectiveness is that its recommendations are not binding. Section 44 states that the recommendations submitted by the PIC shall be acted on by the Minister or any other party or they may inform of their decision to not initiate action in writing. Without binding powers, it is left to the concerned authority to take further action, rendering the body completely toothless and inconsequential. A glaring testimony to this is the promotion of a police officer even while the PIC was investigating allegations of police brutality against the person during the 8 February incidents.

Weak legal mandate and political apathy aside, the Commission itself has been slow in building its processes and capacity. Till date, it is not clear whether formal rules of procedure from intake of complaints to final disposal have been prescribed. In the absence of these, the procedures are open to variations. It is important to put in places rules that will make the inquiry process quick, easy and accessible to complainants.

These factors are largely responsible for the failure of the Commission to hold the police to account more vigorously. The PIC has so far sent only about 10-12 cases recommending criminal prosecution against police officers.²¹⁰ This is seen as too little at a time when police highhandedness is perceived to be worsening on the streets. In one of the latest examples, the death of a 43-year-old in a motorcycle accident caused furore when leaked CCTV camera footage revealed that the accident was caused by a police officer who hit the speeding motorist with his baton. The family of the victim claimed to have approached the PIC alleging the involvement of the policeman in causing the death but did not receive a response from the Commission till much later.²¹¹

210 Interview with Prosecutor General, Ahmed Muizz, 11 December 2012, Male, Maldives.

211 "No official response from PIC over bystander's death, authorities "elusive and slow" says widow," *Minivan News*, 3 December 2012, <http://minivannews.com/politics/no-response-from-pic-over-bystanders-death-authorities-elusive-and-slow-says-widow-48331>, as on 15 December 2012.

4.7 Recommendations

Government of Maldives

- 1. Implement the Recommendations of the Commission of National Inquiry:** Recognising the deep distrust of the public in the police, the CONI urged the government to take necessary measures to increase effectiveness of the law enforcement bodies in the service of common good. Among these measures include expediting investigations into allegations of police brutalities and acts of intimidation and bringing the perpetrators to account.²¹² This must be pursued vigorously by the government as a first step towards building a professional police service.
- 2. Expedite legal reforms related to criminal justice sector:** The government must ensure that the substantive criminal laws namely the Criminal Code of Procedure, Evidence Act and the Penal Code are enacted by the parliament without any further delay.
- 3. Ensure a balance between political oversight and police independence:** A key component of professional policing is independence from undue political control. As pointed out in the report, this must not be mistaken as complete operational independence for the police. The government must ensure that the police remain accountable to the law and function within the constitutional framework.
- 4. Facilitate a national debate on the Police Bill 2012:** Processes of governance reforms are becoming more and more open and consultative across the world. This must also be ensured in the Maldives. The Police Bill 2012 is largely a police-driven initiative with little input from civil society. An informed citizenry is the best guarantor of accountability. Unless people are empowered to become stakeholders in police reforms, better policing will be hard to realise. The National Security Committee, with which the bill is currently for review, must hold wide consultations with civil society and the public at large on the Bill. Once on the parliament's website, comments should be invited from key stakeholders. Additionally, the committee members must take its provisions to all parts of the country across various islands to ensure that people are aware of the changes being introduced to policing. This will also spread awareness about policing in the country and help build trust in the agency. Through this process, the committee members should engage actively with the media.

Maldives Police Service

- 1. Strengthen internal accountability:** Internal inquiries are an important way of conveying a strong message within the department that violations and misconduct will be dealt with sternly. A culture of greater accountability, and not one of impunity, must be encouraged to achieve better performance, and in turn, reduce crime and violence. The Professional Standards Directorate (PSD) must be strengthened as the internal watchdog. Its mandate, procedures and rules should be clearly specified and made open, transparent and easily accessible to complainants. Effort should also be made to spread awareness about the role of the PSD and the procedure for filing complaints.
- 2. Review internal guidelines and Standard Operating Procedures making them at par with international law and best practices:** Regulations and SOPs on exercise of police powers including arrest, search and seizure, detention and other investigation procedures will not only help clarify the role and duties for police personnel, but also enable people to understand policing better.

²¹² Government of Maldives, Report of the Commission of National Inquiry Maldives, p. 61.

3. **Ensure greater representation of women in the Maldives Police Service:** Towards this goal, a gender policy should be developed laying down ways of making women's representation in the police meaningful and efficient. Key aspects of the policy should include ways of making police stations women-friendly, factors that should determine deployment of women police and a policy of dealing with sexual harassment in work places. The guiding principle of the gender policy should be to give women officers an equal role, involvement and opportunities of growth in policing as their men counterpart.
4. **Make strategic planning a statutory obligation and an inclusive process:** Strategic policing plans are important to strengthen democratic oversight and management. A significant omission in the 2008 Police Act is the requirement of strategic and annual policing plans. This impedes the development of good policing and signals an unfortunate ambiguity of commitment to improving the service in a significant way. The new police law should make it a statutory obligation and also ensure that these plans are placed before the parliament for debate and discussion and made readily accessible to the public.
5. **Greater engagement with civil society:** In order to overcome trust deficit, the Maldives Police must actively engage with civil society in various capacities. Its various programmes, schemes and plans must be actively disseminated via the media. Inputs from experts and civil society must be sought in decision-making, particularly on issues such as standardisation of custodial facilities in line with recognised international standards, training curricula along with legislations that relate to policing and criminal justice sector.

Independent Institutions

Human Rights Commission of the Maldives

1. **Actively pursue timely and proper implementation of own recommendations made to state authorities under its mandate as the NPM:** In its shadow report to the Human Rights Council, the HRCM notes a bleak record of its own recommendations on improving conditions in detention centres. In 2009, a total of 83 recommendations were made, 158 recommendations in 2010, 241 recommendations in 2011 and 482 recommendations in 2012 have been made.²¹³ While there has been a steady increase in recommendations from the Commission, there are many detention centres in which no progress has been made at all. The Commission must step up its lobbying to improve the conditions and facilities at the detention centres.
2. **Increase accessibility and presence in the islands:** In order to facilitate access to justice and fulfil its mandate of working towards reducing violence in society, it is imperative that the Commission explores options for setting up units in the various islands of the country.

Police Integrity Commission

1. **Seek a stronger mandate under law:** At present, the mandate of the Commission is defined in a very broad way in the Police Act 2008. Moreover, its recommendations are not binding on the government. This is not enough if the body is to play an effective role in improving police performance through greater compliance with the law and respect for fundamental rights. As the move to amend the 2008 Police Act unfolds, the PIC should robustly advocate for a stronger legal mandate for itself.
2. **Ensure timely and proper completion of investigations against individual members of the police found guilty of brutalities during 7-8 February 2012:** The PIC recorded 24 individual cases of police brutality related to 7-8 February. Investigations have been completed in 12 of these out of which six have been sent to the Prosecutor General (PG) for prosecution and one in which evidence gathered was insufficient.

²¹³ Human Rights Commission of the Maldives, *Shadow Report on the International Covenant on Civil and Political Rights*, June 2012, p. 29.

Investigations of the remaining cases are ongoing. It is urged that the PIC completes these at the earliest. The PIC should also provide details of those cases that have not been sent to the PG. The public deserves to know the action taken in each case and the grounds for the action. The PIC should also follow up with the PG and ensure action is taken quickly on the cases forwarded, and with the police department where disciplinary action is recommended.

- 3. Invest more in spreading awareness and educating all sectors of the community about the Commission's role, powers and procedures for filing complaint.** Greater public support for the Commission would help build pressure in favour of a stronger legal mandate.
- 4. Actively engage with the media to disseminate its findings into police misconduct:** At present, the PIC suffers from lack of credibility in the eyes of the public. By engaging the media in highlighting its work and pointing out police irregularities, the Commission can spread awareness and knowledge on police powers and citizens rights as well as gain public confidence in itself.
- 5. Develop internal guidelines and rules of procedure for better handling of complaints in a timely, just and efficient manner:** These rules of procedure must be widely disseminated so as to encourage greater reporting by the public and increase complainant satisfaction.

Civil Society

- 1. Monitor the implementation of the CONI report:** The CONI urges state institutions including the Maldives police to take steps towards increasing its effectiveness and overall performance. This provides an opening for local civil society groups to advocate with the government and Maldives Police for democratic and citizen-friendly reforms.
- 2. Monitor the working of MPS closely:** Public pressure by various interest groups plays an active role in ensuring the delivery of public services.

Chapter 5
PAKISTAN

5.1 Background

The possibilities of police reform in Pakistan remain bleak. The political will needed to transform policing into an efficient, accountable and professional “service” continues to be mired in partisan interests. Following the return of civilian rule in 2008, there was renewed hope that the commitment to rule of law and human rights enshrined in the Charter of Democracy²¹⁴ would guide the policies of the newly-formed government led by the Pakistan People’s Party (PPP). The PPP manifesto itself reflected commitment to police reforms in the following words: “the PPP government will embark upon meaningful police reforms aimed at providing security to citizens... creating a crime-free society...foster a professional police force committed to the Constitution and rule of law, and stop the practice of using the police force for political purposes.”

But as the government’s term draws to an end, there is little to show by way of systemic reform of the police. In fact, the past two years (since 2010) have recorded a sharp rise in police abuses and violations. Extrajudicial killings by the police, for instance, have seen an alarming rise. All the time lost over the Police Order 2002 has not pushed the government to initiate a renewed process of drafting a definitive federal police law which incorporates democratic policing standards. In the vacuum, two provinces of Sindh and Balochistan have effectively brought back the Police Act, 1861 and the Punjab government is making amendments to the 2002 Order. Not only is regressing back to colonial-era legislation a tremendous blow to the hope for the democratisation of Pakistan, it sends dangerously mixed signals to police departments about the seriousness and integrity of reform processes.

Some quarters are active in pressing the need for police reform. The higher judiciary has played an increasing role in holding the police to account for procedural failures and human rights violations. Governments are attempting to strengthen police capacity through the upgradation of police stations and the initiation of special welfare schemes for police officers. While such diverse efforts are encouraging and absolutely necessary, bureaucratic tussles and the lack of willingness of the political executive to activate *systemic* reform of the police often defeat or at least challenge these efforts.

Nothing short of a complete overhaul of the policing system is needed in Pakistan. A failure to acknowledge the impact that oppressive policing can have on politics and governance risks repeating the mistakes that have plagued Pakistan since independence. This fact is acknowledged by numerous government-sponsored commissions that were tasked with studying the problems of policing in Pakistan.²¹⁵ These commissions have all fundamentally concluded: better policing requires political will to make it happen.

5.2 Police Order, 2002: Ten Years Later

It is now ten years since the Police Order, 2002 (hereafter the Order) was first promulgated in Pakistan as part of the overall reform agenda of former President Musharraf. Attempting to change a deeply entrenched police system, this Order was a pioneering effort in a Commonwealth South Asian country to incorporate democratic policing norms into a Police Act. The Preamble of the Order seeks to establish a police organisation that functions according to the “Constitution, law, and democratic aspirations of the people”. It mandates the police to be “professional, service-oriented and accountable to the people” through mechanisms and processes designed to limit political interference in police functioning and ensure accountability for performance and misconduct. For instance, the appointment of provincial police chiefs had to be vetted through a bipartisan, independent body known as the National Public Safety Commission (NPSC)²¹⁶ proposed to be set up to oversee police functioning.

214 The Charter of Democracy was signed by Mr Nawaz Sharif of the Pakistan Muslim League and the Late Ms Benazir Bhutto of the Pakistan People’s Party on 14 May 2006. It was an agreement between the two parties outlining measures to end the military rule established in 1999 by General Parvez Musharraf and restoring civilian rule. The text of the Charter is available at: <http://www.stateofpakistan.org/time-to-implement-the-charter-of-democracy-and-bury-the-legacies-of-army-rule>.

215 See History of Police Reforms in *Feudal Forces: Reform Delayed* (2010), Commonwealth Human Rights Initiative, p. 76.

216 Article 85, The Police Order, 2002.

Similarly, independent complaint bodies were mandated to be set up at the federal, provincial and district levels to monitor and keep a check on police performance and foster greater public-police cooperation.²¹⁷

Ten years later, the Order not only remains confined to paper, but is also severely diluted. The amendments introduced in 2004 and 2007 significantly curtailed several of its progressive provisions.²¹⁸ As highlighted in our previous reports, over a period of four years, eight ordinances were promulgated to introduce scores of substantive and hundreds of minor amendments to the original Order. The amendments caused considerable confusion and serious loss of efficiency.

To make matters worse, none of the oversight bodies set up under the Order were made fully functional. The NPSC completed its first tenure in 2010 but was not reappointed since then. Even while functional, the NPSC did not achieve much – it only published one annual report (2006) in its first tenure. Lack of political support aside, experts share that the minutes of the Commission’s meetings reflect lack of interest among the appointed members to work towards improving policing.²¹⁹ The other public safety commissions suffered a similar fate. They were never allowed to function on the ground although in some provinces they were officially set up. The only exception is the National Police Bureau (NPB) which continues to operate till date. The NPB was mandated to carry out research and development functions as assigned to it by the National Police Management Board and the National Public Safety Commission.²²⁰ But even the NPB suffers from lack of support. No police officer wants a posting at NPB as it is not as lucrative as other posts.

The dilution of the Police Order, 2002 is not the end of the story. In fact, it may be that attempts are on to deliberately create confusion over the legal status of the Order, perhaps to dissuade the provinces from adopting it or even a framework in basic conformity with it.

Legal Tussle

The deep resistance to police reforms within the political establishment of Pakistan is best exemplified in the legal tussle over the Police Order, 2002. Ten years since its promulgation, there remains ambiguity about its *tenure* and *jurisdiction*. There are two specific issues that cloud the status of the Police Order, 2002: First, whether it stands expired at the end of 2009 as per the Constitution (Seventeenth) Amendment Act, 2003 (hereon 17th Amendment); and second, whether policing is a federal or provincial subject, determining in turn, the legality of the Police Order as a federal law.

It is commonly believed that the Order expired on 31 December 2009. At the time of its promulgation in 2002, the Order was placed under the Sixth Schedule of the Constitution which included those acts which could not be repealed, altered or amended *without the previous sanction of the President*. The 17th Amendment further stated that of these 35 Acts, those introduced under the Legal Framework Order, 2002 (which includes the Police Order, 2002) were to be omitted after a period of six years (i.e. 31 December 2009). Moreover, the Sixth Schedule itself was omitted in its entirety by the Constitution (Eighteenth) Amendment Act, 2010. This generated an impression that the Police Order, 2002 is no longer in place and that the provinces are free to enact their own legislations.

Experts, however, argue that this is a misinterpretation. According to Afzal Shigri, former Inspector General of Police (Sindh) the omission indicated in the 17th Amendment refers only to the condition requiring the

217 For a full review of the salient features of the Police Order see: *Feudal Forces: Reform Delayed* (2010), Commonwealth Human Rights Initiative, pp. 78-79.

218 A comparative assessment of the impact of amendments made to the Police Order, 2002 is provided in the earlier editions of *Feudal Forces: Reform Delayed*. See Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed* (2008), p. 58.

219 Interview over telephone with Mr Syed Irshad Hussain, Consultant, National Police Bureau, 20 September 2012.

220 Article 162, Police Order, 2002.

President's previous sanction to amend the Act, and not to the entire Order.²²¹ Thus, following the expiry of the six-year period, Parliament can now amend the Police Order, 2002 without the President's prior sanction, and even a Provincial Assembly can make minor amendments to meet any local and special requirements with the approval of the Prime Minister. No Provincial Assembly can change the substantive provisions of the Police Order, 2002, the power for which rests exclusively with Parliament.²²²

Yet, the provinces of Sindh and Balochistan repealed the Police Order 2002 and enacted their own police legislations. This has given rise to debates on whether the federal government has authority to enact a police law which is considered a provincial subject. There exists a deep division on the subject. Experts from within the police, including those associated with drafting the Police Order, 2002, argue strongly in favour of the federal government's jurisdiction over policing, on the basis of two facts: first, that the Police Act, 1861 was itself a federal law; it was accepted as such and was never challenged in the court for being a federal law; and second, a Lahore High Court ruling according to which policing is linked to criminal law over which both federal and provinces have jurisdiction.²²³

But independent experts dismiss the Lahore ruling as baseless and assert that policing is clearly a provincial subject, even more so after the 18th Amendment.²²⁴ According to lawyer and researcher Asad Jamal, the fact that the 18th Amendment omits the entire Sixth Schedule does not in itself mean that the Order stands expired, as Article 270AA allows for continuation of all orders passed during the period.

Lack of Political Ownership

The biggest obstacle to the proper implementation of the Police Order, 2002 is the lack of political ownership. The Police Order, just like General Musharraf's other administrative reforms, was perceived by the provinces as an attempt to diminish the power of the provincial governments and strengthen Musharraf's rule. For instance, in Sindh, otherwise deeply polarised political parties came together in near unanimity in support of repealing the Order. In fact, there is greater willingness to engage on amendments that need to be made to the Police Act, 1861, rather than discuss the Order.²²⁵ Ironically, this reflects an acknowledgement that the 1861 Act needs updating, but yet, the 2002 Order has not been adopted. The fact that a Standing Committee of the Home Department in Sindh is looking at the issue of police reforms also lends credence to this.²²⁶ However, what those changes must be and whether they subscribe to democratic norms and legal standards remains to be seen.

Encouragingly, a few consultations were held between the representatives of the government, police and civil society organisations on the status of the Police Order.²²⁷ But a common refrain in such meetings from the government's side is that the Order neither helped improve police functioning nor did it provide any relief to communities; thus there is no point in continuing with it.

Another concern is the inconsistencies that continue to exist on the ground with the repeal of the Order. For instance, the district police chief continues to be referred as the District Police Officer (DPO), the nomenclature given under the Order and which has no mention under the 1861 Act. Moreover, there remains a legal vacuum

221 "Legal Status of Police Order 2002: The Need for a Uniform Police Law for Pakistan," Paper submitted before Parliament by Afzal Shigri, Former Inspector General of Police, Sindh province, 10 February 2010; also available at: <http://forumpolice reforms.blogspot.in/2012/01/legal-status-of-police-law-in-pakistan.html>, as on 6 July 2012.

222 Ibid.

223 Ibid. See also Tariq Khosa, "Repeal of the Police Act: Sindh steps back to 19th Century," *The News*, 15 July 2011, <http://www.thenews.com.pk/Todays-News-2-57835-Repeal-of-the-Police-Act-Sindh-steps-back-to-19th-Century>, as on 18 July 2011.

224 Interview over telephone with Mr Asad Jamal, lawyer and author of the HRCP report on *Extrajudicial Executions in Pakistan: Killing with Impunity*, based in Lahore, 14 September 2012.

225 Interview over telephone with Mr Babar Bashir, Managing Director, Rozan, 24 September 2012.

226 Ramzan Chandio, "Dewarisation, free hand to police must for peace revival in Karachi," *The Nation*, 17 September 2012, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/17-Sep-2012/dewarisation-free-hand-to-police-must-for-peace-revival-in-karachi>, as on 1 October 2012.

227 Interview, Mr Babar Bashir, op. cit.

regarding policing because of the changes in the local government laws. The Order was closely linked with the Local Government Ordinance (LGO) in terms of the relationship between the district police officer and the Zila Nazim, an elected chief of district administration. Along with the repeal of the Police Order, 2002, the Sindh government also repealed the LGO and promulgated a new Sindh Peoples Government Local Bodies Ordinance, 2012. However, this was challenged in the Supreme Court.²²⁸ It has implications also for the Police Act, and the general sense is that till a judgement by the Court is passed, things are likely to remain in limbo.

Beyond Sindh, the 2002 Order is in a state of suspended animation in other provinces as well. The Balochistan government's decision to repeal the Order and bring back the 1861 Act was challenged in the High Court, resulting in a general sense of wait-and-watch regarding any substantial measure on policing.²²⁹ Similarly, in Khyber Pakhtunkhwa (KP), the Peshawar High Court directed the Deputy Attorney General to give his view and explore the legal position on the jurisdiction of the Provincial Assembly on policing. Nothing has come out of this at the time of writing. Punjab meanwhile, has proposed amendments to the Police Order, the details of which are discussed later, but no action has been taken on these so far.

Lack of a Consultative Process

Apart from the federal-provincial tussle, wide gaps exist between the positions of key stakeholders which has also impeded progress and implementation of the Police Order. At present, the maximum support for the Order comes from the police fraternity. Its most vociferous advocacy has come from retired police chiefs still actively engaged on police reform. On the other hand, the bureaucrats have strongly lobbied for the Police Act, 1861. There is deep resistance within the establishment on the kind of changes proposed under the Police Order, 2002. The District Management Group is wary of losing its control over the police, while strong support exists among the police for the Order as that will free them from unilateral political control to some degree.

These differences are exacerbated by the fact that little effort is made by way of building a consensus. In 2002, the Police Order was passed without a national consensus; a decade later, there seems to be no change. The decision to repeal the Order was taken without consulting police chiefs at worst or ignoring their recommendations at best.²³⁰ No parliamentary debates took place, let alone public consultation. The proposed bill in Balochistan was passed in haste without debate in the legislature. In Sindh, the decision to repeal the Order was taken through an executive order. The most honest and genuine efforts toward police reform are ones that have not just changed laws but also made the entire reform process participatory and consultative. Pre-legislative public consultation is an entrenched part of law-making processes in many countries, and new Police Acts have been crafted after extensive consultation. There are numerous practical strategies which the political executive and the legislature can employ to carry out genuine and widespread consultation, once there is a willingness to be completely transparent.

5.3 Strengthening Police Capacity

Other crucial obstacles to reform are poor infrastructure, inadequate resources and problems in deployment and manpower of police across Pakistan. Lack of operational resources, substandard infrastructure, particularly dilapidated police stations and poor working conditions are reported from police stations across the country.²³¹

228 "Sindh LG Ordinance challenged in Supreme Court," *The Express Tribune*, 8 September 2012, <http://tribune.com.pk/story/433500/sindh-peoples-government-ordinance-challenged-in-supreme-court/>, as on 2 October 2012.

229 "Balochistan Police Act, 2011 challenged in BHC," *Daily Times*, 15 September 2011, http://www.dailytimes.com.pk/default.asp?page=2011\09\15\story_15-9-2011_pg7_20, as on 2 October 2012.

230 "Balochistan Police Act, 2011 challenged in BHC," *Daily Times*, op. cit.

231 FAFEN Police monitoring reports highlight the poor working conditions of the police stations in terms of insufficient vehicles, stationary for registering FIRs, poor hygienic conditions, etc. See FAFEN, *More Resources, Greater Oversight for Police Efficiency*, March 2011; *Police Stations Understaffed in Punjab, KP and Sindh*, May 2011; *Issues afflict police stations, public due to low government oversight*, November 2011.

In terms of human resources, the total strength of the police organizations according to the National Police Bureau is:²³²

Province	Population (Millions)	Police Stations	Police Strength	Budget 2009 (Millions of Rs.)	Population Police Ratio
Punjab	93	637	170,031	43,000	547 per constable
KPK	21	250	55,000	9,677	382
Sindh	36	440	70,133	24,900	514
Balochistan	8	84	46,022	3,500	174
Gilgit Baltistan	2	26	4,662	450 (approx)	400
AJK	5	42	8,373		600
Total	165	1,479	354,221	82,513	

According to the NPB data, the average police-population ratio in Pakistan stands at one police official for every 465 persons. Although this appears at par with the United Nations standard of one official per every 450 persons, the details are bleak. The White Paper, 2011-2012²³³ issued by the Khyber Pakhtunkhwa provincial government puts the sanctioned strength of the KP police at 69,912 whereas the NPB data puts the existing strength at 55,000, a shortage of almost 15,000 personnel. The Free and Fair Election Network (FAFEN) reports point to a significant discrepancy in the occupancy rates of police stations across the four provinces: while Punjab, Sindh and Khyber Pakhtunkhwa were found to be marginally understaffed, Balochistan and Islamabad faced the problem of over occupancy.

Despite growing recognition of the need to augment police capacity, efforts across provinces remain weak and mired in controversy.

The Collateral Damage of Undue Political Control

Since 2005, the Islamabad police has wrestled with illegitimate political interference in recruitment. This has resulted in immense damage to the police department, which itself has resorted to dubious measures to deal with the interference. The Ministry of Interior has been working to influence the process of recruitment in order to get its preferred candidates into the department.²³⁴ Many recruits inducted in 2004 are believed to be at the behest of the Interior Ministry. In 2010, the Ministry once again obstructed the appointment of around 480 constables and 111 Assistant Sub Inspectors selected on merit, and instead put forward its own list of candidates. When the Islamabad police refused to entertain the list, the Ministry imposed a ban on recruitment. While responding to a petition challenging the ban, the Islamabad High Court ordered the recruitment of the selected candidates into the capital's police.²³⁵ The judgement was delivered in May 2012, two years after the candidates first cleared the test. For two years, the capital's police did not fill these posts. To meet the shortfall in manpower, the Islamabad police resorted to measures such as reinstating constables and inspectors suspended for dereliction of duty or misdemeanour, even in criminal matters.²³⁶ Although investigations against these officials continue, these policemen carry out their assigned duties with full pay and perks.

232 Presentation by Mr Syed Irshaad Hussain, Consultant, National Police Bureau at a conference on "Policing in Conflict" organised by CHRI in collaboration with Individual and Center for Peace and Development Initiative, Islamabad, 24-25 November 2011.

233 White Paper, 2011-2012, Government of Khyber Pakhtunkhwa, p.10.

234 "Ministry-police row: Another ban on appointments", *Dawn*, 26 January, <http://archives.dawn.com/archives/128686>, as on 5 September 2012.

235 "Induction in police force: Fighting for two years, selected candidates get justice", *The Express Tribune*, 31 May 2012, <http://tribune.com.pk/story/386594/induction-in-police-force-fighting-for-two-years-selected-candidates-get-justice/>, as on 5 September 2012.

236 "Attrition afflicts Islamabad Police", *Dawn*, 30 April 2012, <http://dawn.com/2012/04/30/attrition-afflicts-islamabad-police/>, as on 6 September 2012.

While shortage of manpower remains a real concern, provincial governments are focusing on strengthening police infrastructure and capacity for which substantial financial commitments have been made over the past four to five years. Across the board, police budgets have recorded a staggering increase. In Sindh, the budgetary allocation for the police recorded a whopping 131 per cent increase – from Rs. 17 billion in the 2007-2008 financial year to Rs. 39 billion in 2012-2013.²³⁷ The Islamabad police budget increased from Rs. 0.6 bn in 2003-04 to Rs. 3.65 billion in 2009-2010 and Rs. 4.13 billion in 2010-2011.²³⁸ The KP government increased the law and order budget by 24 per cent from 2010-2011 to 2012-2013.²³⁹ A sizeable amount of the increased budgets is spent on salaries to incentivise personnel and raise their standard of living. Under the KP government in the police budget for 2012-2013, 82 per cent is designated for salaries with the remaining for operational expenses.

Another focus was on improving police station infrastructure and upgrading police weapons, equipments and transportation. The Punjab police, for instance, is carrying out a project of converting 100 police stations into Model Police Stations for which a budget of Rs. 604.700 million was approved.²⁴⁰ Initiated in response to frequent criticism of shortage of resources impinging on police performance, the Punjab government seeks to invest resources in select stations on an experimental basis, to enable them to deliver to the public's satisfaction. Under the initiative, these stations will be equipped with better transport facilities, investigation kits, and CCTV among other things. As of August 2012, a batch of 45 men and woman officers were certified in a five-day training focusing on legal standards, gender-specific laws and concerns, as well as on stress management and communication skills.²⁴¹

Additionally, governments have come out with special packages to improve police welfare and boost police morale. The KP government approved a compensation package for police personnel killed, incapacitated or seriously injured in the line of duty.²⁴² The package, known as the *shuhada* package, includes cash payments starting from Rs. 3 million from the Constable level to ten million at the IG level for personnel killed “*due to acts of terrorism* either during performance of their official duties or otherwise”. But even here, the police departments were not free of bottlenecks.

5.4 Women in Policing

Efforts towards raising the profile of women in policing date back to the government of former Prime Minister Benazir Bhutto in 1994, who ordered the establishment of the first all-women police station in Rawalpindi.²⁴³ In fact, the creation of all-women police stations and attempts to increase the numbers of women police officers are the key measures taken in response to the growing complaints of police excesses against arrested women and those being investigated. Since 1994, women-only police stations were established in Abbottabad, Peshwar, Lahore, Multan, Karachi and Larkana to facilitate access to justice for women. To date, there are only 17 women police stations across the country staffed by 3,500 women police officers, which constitute only about 0.86 per cent of the total police strength.²⁴⁴ In addition to the low numbers, these police stations have hardly been given the kind of support required for them to function effectively. They are based in cities and unable to reach out to the larger rural population. As with police stations across the country, infrastructure of these stations is marked by dilapidated buildings, shortage of office stationary and transport. Additionally, many of them are not equipped to respond to the needs of working women. In Quetta, for instance, there are stations with no residence facilities

237 “Rs 39.30 bn earmarked for Sindh Police”, *Daily Times*, 12 June 2012, http://www.dailytimes.com.pk/default.asp?page=2012\06\12\story_12-6-2012_pg12_3 as on 6 September 2012.

238 “Poor police performance”, *Dawn*, <http://archives.dawn.com/archives/27744> as on 6 September 2012.

239 White Paper, 2012-2013, Government of Khyber Pakhtunkhwa, p. vi.

240 Punjab Police, Annual Administration Report, 2011, p. 79.

241 “Second phase of model police stations by end of year,” *The News*, 11 August 2012, <http://www.thenews.com.pk/Todays-News-5-125918-Second-phase-of-model-police-stations-by-end-of-year> as on 10 September 2012.

242 White Paper, 2011-2012, Government of Khyber Pakhtunkhwa; see also Notification No. FD (SOSR-II) 4-199/2011, Finance Department (Regulation Wing), Government of Khyber Pakhtunkhwa.

243 Commonwealth Human Rights Initiative, *Police Organization in Pakistan*, 2010, p. 31.

244 Individualland, *Women Police in Pakistan*, Islamabad, May 2012, p. 2.

for women, and apart from Islamabad, there are no day-care facilities in any all-women station or transportation facility for women police.²⁴⁵

These largely cosmetic efforts are underpinned by the real challenges of both the poor understanding of, and lack of willingness to implement, gender-based reforms within the police department. Officially, there is recognition to have more women representation in the police, but there also is a tendency to limit women police to exclusively handle women complainants, victims and suspects. Undoubtedly, there is a need to strengthen the numbers of women police in operational positions as women complainants and victims will naturally feel more comfortable dealing with women. But as in the rest of the region, the need to augment the number of women police is largely seen as a measure to help women, rather than as a measure to improve the police as an organisation and thus strengthen policing. This view leads to policies which relegate women police to tasks regarded as exclusive to women (some of which are necessary) and which is not wrong in principle. However, it has wrongly become the *sole* guiding principle underpinning policies related to women police. In this way, women police are not seen as equals when measured against their male counterparts and are prevented from advancing as police officers.

A Gender Audit done by the NPB and GIZ reveals extremely discouraging patterns which illustrate this:²⁴⁶

- Women's representation in the police remains at 1-2 per cent and mainly at the lower ranking positions. As a result, their voices are seldom raised or heard at the decision-making levels.
- Financial resources allocated to address their needs are limited.
- Collection, sharing and analysis of information on crimes and violence against women within the police organisation remain weak and uncoordinated.
- Awareness and knowledge of Standard Operating Procedures on cases dealing with crime and violence against women are very low.
- Institutional responsibility of Women Police Stations and Gender Crime Cells are unclear.
- Training and capacity building opportunities for the women in the police are unsatisfactory. There were few opportunities for women officers to operate as a team jointly with male colleagues on investigations, conducting raids, sharing experiences, etc.
- Very few women officers are posted in field positions.
- Complaints of sexual harassment within the department are not rare.

Encouragingly, after taking note of these weaknesses, the NPB together with the GIZ is working towards drawing a gender strategy²⁴⁷ for the police including a combination of institutional gender-based reforms, gender-sensitive principles and devising gender action plans for addressing specific crimes. It is encouraging that issues around women in policing, and in parallel, improving policing for women, are being translated into policies and operational benchmarks. It is hoped that adequate research and consultation with women police will go into shaping truly inclusive and egalitarian policies to strengthen not only the number of women in the police but also give them their equal place as officers.

245 Ibid., p. 12.

246 Gender Technical Cooperation and the National Police Bureau, *Gender Audit of Police Organizations: A Trendsetting Practice for Promoting Gender Equality in Pakistan*, Islamabad, June 2010, pp. 17-27.

247 At the time of writing, the strategy has yet to be shared with CHRI.

5.5 Police Excesses and Lack of Accountability

Systems of police accountability include police internal inquiries, legislative oversight, judicial scrutiny and external civilian oversight. The Police Order, 2002 laid out a strong framework for accountability which included a fair, adequate and strong internal disciplinary system, cooperation between internal and external mechanisms of police accountability, at least one independent agency to receive complaints about the police; multiparty oversight over the police by elected representatives in parliaments, legislatures or local councils; and mandatory interaction between the police and the public. Unfortunately these were never strongly implemented. Internal oversight remained weak as the police are never keen to punish their own. The mechanisms for external oversight bodies provided for in the Police Order remained dysfunctional since its promulgation. The judiciary did play a marginal oversight role, but not to the extent required.

With oversight remaining weak police abuses have largely gone unchecked.

Extrajudicial Executions

According to the Human Rights Commission of Pakistan (HRCP) 338 people were killed in police encounters in 2010. This showed an alarming increase of 50 per cent compared to 226 in 2009. Of these, investigations were launched only in 25 cases. The year 2012 saw 350 police encounters across the country in which 403 people were killed.

On 8 June 2011, Sarfaraz Shah, a 22-year-old unarmed man was killed by the Pakistan Rangers in broad daylight on the streets of Karachi. The killing was captured on camera which showed a bleeding Shah begging for mercy before being shot. The video was then aired on many television channels. After widespread public outcry, an anti-terrorism court in Karachi delivered its judgement on 12 August 2011, two months after the incident. The Ranger who shot Sarfaraz was sentenced to death, while the other six accused were given life imprisonment.

Though justice was speedily delivered in this instance, Sarfaraz's case might be a rarity at best as most cases of extrajudicial killings are rarely investigated with the police resisting even the registration of a case against their fellow officers.

Involuntary and Enforced Disappearances

Enforced disappearances have remained among the main areas of concern especially in Sindh and Balochistan. The continuing rise of the number of enforced disappearances demonstrates little political will in Pakistan to address the situation. The National Commission of Inquiry on Enforced Disappearances received 333 new cases in the past year, bringing the total number to 471.²⁴⁸

Undoubtedly, Pakistan has made considerable efforts to address the issue of disappearances, however they remain weak and ineffective.

²⁴⁸ "333 Cases of Missing Persons Reported", *Dawn*, Islamabad, 6 March 2012, <http://www.dawn.com/2012/03/06/333-cases-of-missing-people-reported.html>, as on 7 March 2012.

Judicial Oversight

Judicial oversight is critical to ensure transparent and accountable police functioning. In the last two years courts have gained unprecedented access to individuals secretly detained by the country's security authorities. In several cases, the Supreme Court also took suo moto actions, showing its determined will to tackle the problem. Efforts made by the courts proved to be efficient in a number of cases, where the persons were traced and found, and finally returned to their families. However, in the greater number of cases, the investigations initiated under the orders of the courts remained inconclusive. They failed to result in prosecutions of the named perpetrators, even when evidence was sufficient enough to do so.

Commission of Inquiry For Missing Persons

On the orders of the Supreme Court a Commission of Inquiry for Missing Persons was set up in May 2010.²⁴⁹ The mandate of the Commission was to investigate enforced disappearances throughout the country. The Commission was to be headed by a retired justice of the Supreme Court. The Supreme Court was to periodically observe the functioning of the Commission. Besides preparing a list of the "disappeared," the Commission was meant to fix "responsibility of individuals or organizations" involved in enforced disappearances of persons and suggest means to prevent the recurrence of such incidents.

The Commission received considerable criticism. It failed to inspire confidence amongst family members of victims who felt that it lacked the ability to investigate cases properly.

The Commission's report was presented to the Supreme Court in January 2011, but not made public. Inquiries and efforts led to the discovery of 290 disappeared persons and 78 of them were recovered from the custody of various agencies.

A new Commission of Inquiry for Missing Persons was established by the Federal Ministry of Interior on 1 March 2011, headed by a retired judge and a retired Inspector General of Police. The new commission's terms of reference were to trace the whereabouts of the missing persons that the previous commission was unable to locate. The new commission will also seek to trace the whereabouts of missing persons referred to it by the Supreme Court of Pakistan, human rights organisations, or other non-governmental organisations and individuals. The Commission was also to "fix responsibility on individuals or organizations responsible for enforced disappearance of persons," It was also meant to draw up standard operating procedures for law enforcement and intelligence agencies to record details of the arrest of individuals suspected of being involved in disappearances. However, despite the Commission inquiries and the oversight role of the court, disappearances were on the rise. The largest factor contributing to the phenomenon could be easily attributed to the lack of accountability and the failure to launch a single successful prosecution against any individual or agency charged with causing the disappearance.

The United Nations Working Group on Enforced or Involuntary Disappearances

A delegation of the United Nations Working Group on Enforced or Involuntary Disappearances conducted a 10-day visit to Pakistan in September 2012. During the visit, the Working Group received information on cases of enforced disappearances and studied the measures adopted by the State to prevent and eradicate enforced disappearances, including issues related to truth, justice and reparation for the victims of enforced disappearances.

The Working Group is tasked with two main mandates: i) To deal with cases of enforced disappearances wherein they receive allegations of cases of enforced disappearances and transmit those cases to the states, asking them to take necessary measures to find the concerned person. in this they do not look for individual or

249 "Judicial Commission for missing persons formed," *The Express Tribune*, 4 May 2010, available on <http://tribune.com.pk/story/10686/judicial-commission-for-missing-persons-formed/>, as on 7 March 2012.

state responsibilities but remind the state of its obligations to investigate the case, punish the perpetrators and provide reparations to the victims; ii) Promote the implementation of standards contained in the *Declaration for the Protection of All Persons Against Enforced Disappearances*, adopted by the UN General Assembly in 1992.

During its visit, the Group held a series of meetings with representatives of all sections of civil society including NGOs, activists and lawyers as well as relatives of disappeared persons in all parts of the country. In addition, it met the diplomatic community in Islamabad and the Heads of various United Nations Agencies.

The figures of disappearances communicated to the Group range from less than a hundred to thousands. In Balochistan alone, sources alleged that over 14,000 persons are still missing. Even though the number of officially registered allegations may not be reflective of the reality of the situation, it is still an indication of the existence of the phenomenon.

Family members of those disappeared or the victims themselves that met the Group complained of threat and intimidation. They also lamented, that even when clearly identified by witnesses, the perpetrators were never convicted, and were not even submitted to any effective investigation. This was confirmed by the fact that despite repeated requests, the Group received no information related to convictions of state agents in relation to acts of enforced disappearances.

At the end of their visit the Group laid out a set of preliminary recommendations to the State of Pakistan. These recommendations along with a final report will be presented before the Human Rights Council at one of its sessions in 2013. The list of recommendations basically emphasises that:

- Persons deprived of their liberty shall be held in an officially recognised place of detention and be brought promptly before a judicial authority.
- Strengthen the Commission of Inquiry.
- Investigation against and punishment of perpetrators should be prioritised.
- A comprehensive programme for the protection of victims and witnesses should be put in place.
- A programme of integral reparation should be set up for all victims of enforced disappearances, including not only compensation, but full rehabilitation, satisfaction, restoration of dignity and reputation and guarantees of non-repetition.
- Ratify the International Convention for the Protection of all Persons against Enforced Disappearances, and recognise the competence of the Committee to consider individual and inter-state complaints under Articles 31 and 32.²⁵⁰

It is now to be seen how seriously these recommendations are taken on board by Pakistan and how many people accused of alleged disappearances are brought to book.

Establishment of the National Commission for Human Rights

In May 2012, the Statute of the National Commission on Human Rights as a national human rights institution was adopted by Parliament. The Act envisages a nine-member Commission with the power to inquire into violation of human rights or abetment, negligence of public servants to prevent such violations, act on complaints, intervene in court proceedings on violations by seeking to become a party to the case, visit jails or other places of detention, review factors that endanger human rights, undertake research on human rights issues, spread human rights

²⁵⁰ A full text of the recommendations can be found at: *Enforced Disappearances in Pakistan: UN Working Group's preliminary report & recommendations*, pp. 18-19.

literacy, promote awareness on human rights and submit independent reports to the government on the state of human rights in Pakistan.

As independent oversight bodies, human rights commissions constitute an important link in the chain of police accountability. As part of their overall mandate to promote and protect human rights, they not only investigate complaints against the police, but many commissions around the world are also empowered to advise and recommend ways to improve police performance in terms of compliance with legal standards and protection of human rights.

An important mandate of the human rights commissions is to develop a national plan of action for the promotion and protection of human rights, something not very common for such institutions in the region.²⁵¹

A serious limitation of the Act is the inability of the Commission in Pakistan to investigate complaints involving the armed forces and intelligence agencies. For complaints involving the armed forces, the Commission can seek a report from the federal government. On receiving such a report, the Commission can either choose not to proceed further or it can make recommendations to the government based on the report.²⁵² Further, Section 15 states that “the functions of the commission do not include inquiring into the act of practice of intelligence agencies” and complaints shall be referred to the competent authority concerned. This will leave the legislation to be viewed as a “halfway measure”. With the rising number of extrajudicial killings by the armed forces and intelligence agencies, barring them from the scrutiny and probe of the Human Rights Commission perpetuates the impunity enjoyed by these agencies.

Unfortunately, till date no appointments have been made to the Commission, no names forwarded and the Commission remains largely on paper.

5.6 Meeting International Human Rights Obligations

5.6.1 Ratification of the ICCPR

Pakistan signed the International Covenant on Civil and Political Rights (ICCPR) in 2008 and ratified it with reservations in 2010. In 2011, the government, on instructions from the Prime Minister, withdrew almost all the reservations. Hence, since July 2011, Pakistan has ratified the ICCPR almost completely. Now it remains to be seen what steps Pakistan takes to ensure that all rights provided under the treaty are made enforceable domestically and that the laws and practices in the country are changed accordingly.

5.6.2 Ratification of the UN Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment

Even though it was a delayed move, Pakistan ratified the UN Convention Against Torture (CAT) on 23 June 2010. Pakistan now has to catch up with the developments made in other countries, which include many of her neighbours, relating to the obligations under this instrument.

The most important responsibility that arises from ratifying CAT is to bring the obligations into domestic law. The ratification necessitates passing a specific anti-torture law or amending existing procedural and substantive

²⁵¹ In the Vienna Declaration and Programme of Action, adopted in June 1993, the World Conference on Human Rights recommended to States to consider the desirability of drawing up a national action plan identifying steps whereby States would improve the promotion and protection of human rights. Only a few countries have so far developed such a national plan of action for human rights, with only Nepal and Sri Lanka in South Asia.

²⁵² Section 14, National Commission for Human Rights Act.

laws. With the increased numbers of extrajudicial killings and torture that prevail both in police and military custody, one of the primary obligations of the state will be to determine ways to ensure that torture is gradually eliminated and accountability is guaranteed in all matters relating to police abuse of power. If Pakistan can develop its policing system on the basis of modern policing philosophies and methodologies, the country will take a great leap towards becoming a nation based on the rule of law and democracy.

By ratifying a human rights treaty, a State is legally obliged to bring domestic laws and policies in line with agreed standards. The State is also required to report periodically to the bodies that monitor progress towards compliance with treaty obligations. If effective, this reporting system can significantly reduce persistent human rights violations and ensure regular scrutiny of progress towards true human rights protection.

5.7 Reform Initiatives across Provinces

5.7.1 New Police Acts

Since our last report, unfortunately, systemic reform of the police has taken many steps backward in terms of police legislation. As mentioned, provinces are stonewalling progressive police legislation in different ways. Balochistan has reintroduced the Act under the new name of Balochistan Police Act, 2011 with minor additions, Sindh has simply reinstated the colonial legislation and Punjab is considering amendments to the Police Order, 2002. All these initiatives have serious implications for police accountability.

Reverting to the 1861 Act is problematic on several fronts even after setting aside the issue of whether provinces have the jurisdiction to repeal a federal law, the Police Order, 2002, which has already been discussed.

Sindh and Balochistan provinces have also enacted local government acts which introduced elected local councils at union, district and municipal levels for overall administration under which the district administration rests with the District Council with an elected Chairperson. There is clearly a discrepancy between the police acts and the local government acts, as the former designates the District Magistrate as the chief whereas the latter vests overall administration of a district in the hands of an elected District Council.

Another major concern with the new police acts is that these do not incorporate or greatly dilute measures that would help professionalise the police, insulate it from political interference and increase police accountability. This is true not only in the case of the Police Act, 1861 that was brought back, but even in the amendments proposed to the Police Order, 2002 by the Punjab government. One among many examples is the reduced role of public safety commissions constituted under the original Order to ensure effective and accountable policing. Under the Police Order, 2002, the post of Provincial Police Officer was to be filled from a panel of three officers recommended by the National Public Safety Commission (NPSC), a bipartisan independent body mandated to oversee the functioning of police organisations.²⁵³ Involving the Opposition in appointing police chiefs is a practice adopted by several modern police legislations and is important to maintain neutrality and enable impartiality.

However, the 2006 amendment to the Order abolished the NPSC's role and instead entrusted it to the federal government. This modification is retained under the proposed amendments to the Police Order, 2002 by the Punjab government as well. It leaves the federal government with exclusive control over the appointment, tenure and removal of the head of Punjab police and thereby severely harms the neutrality of the position. Absence of an objective disciplinary system and security of tenure is likely to impede the confidence and professionalism with which the PPO is able to perform his duties. In fact, the proposed amendments abolish the NPSC altogether which, apart from recommending names for appointments across ranks, was also entrusted with other functions

²⁵³ Section 92 (b), Police Order, 2002.

such as overseeing implementation of policing plans, evaluating the delivery of performance targets and making recommendations to modernise laws and procedures for the police. All these functions are necessary for professionalising policing and democratising its governance.

Even at the district level, the posting and tenure of the District Police Officer (DPO) is made susceptible to political interference. Under the Police Order, 2002, the decision of the provincial police officer regarding postings of DPO's was final, whereas this has now changed by making government consent mandatory. With regard to the tenure of the DPOs, their premature transfer could be made by the District Public Safety Commissions on grounds of inefficiency and ineffectiveness after giving the DPO a chance to present his case. This too was shifted to the government under the proposed amendments, leaving ample room for government to transfer any officer who resists its orders. The DPSPC itself is no longer a bipartisan body under the proposed amendments, as representation of Opposition members is not mandatory. This means that the government is likely to appoint its supporters from among the members of the provincial and national assemblies, which negates the guarantee of the body's neutrality. This further means that functions such as determining policing plans and performance evaluations to be performed by the DPSPCC are likely to remain dominated by the will of the political executive.

The problem of political appointments into police services is deeply entrenched across Pakistan. This was even noted by the Supreme Court in its verdict on the Karachi killings, where it was clearly found that politicisation of the police via appointments and transfers deeply hindered their effective functioning. The introduction of public safety commissions under the Police Order, 2002 was one way of addressing this problem and insulating the police from political interference while at the same time not absolving their accountability to the executive. Any attempt at reforming the police must objectively explore mechanisms to ensure neutrality and enhance the accountability of the police.

Reform Initiatives in Frontier Policing

Ironically, policing in the frontier areas of Pakistan, which suffer the most from varied security challenges has seen very little improvement or reform in the past few years. Attempts at reform have been far too few and scattered to make a difference. For instance, in late 2011, the Government of Pakistan decided to transfer control of the federal paramilitary force, the Frontier Corps, Balochistan to the provincial government.²⁵⁴ With this decision, the Ministry of Interior was no longer the governing authority over the force, thereby fulfilling a long-standing demand of the provincial government.²⁵⁵ The decision was taken against the backdrop of rising concerns over human rights violations and excesses committed by the force. The unpopularity of the Frontier Corps is widely known and reported. Deployed first to patrol the border areas and assist law enforcement agencies in Balochistan under the Frontier Corps Ordinance, 1955, the force gradually expanded its role even into the interiors, where they have now become notorious for their rude behaviour, harassment of locals and grave violations of human rights through enforced disappearances and torture.

In the Federally Administered Tribal Areas (FATA), significant administrative reforms were introduced in late 2011, which include amendments to the century-old Frontier Crimes Regulation, 1901 (FCR) that governs administration in the tribal agencies. Till then, the tribal areas were administered by the President through government-appointed "political agents" who were vested with wide powers including power to arrest and detain indefinitely, award punishments and administer justice. There was no provision for appeal against the political agent's decision. Neither the CrPC nor the Pakistan Penal Code applied to FATA. Given its many draconian

254 "FC placed under Balochistan's govt control," *Dawn*, 3 November 2011, <http://dawn.com/2011/11/03/fc-placed-under-balochistan-govts-control/>, as on 25 September 2012.

255 The demand to bring the FCR under the control of the Chief Minister was included in the Balochistan package, known as the Aaghaaz-e-Huqooq-e-Balochistan which were a set of proposal is submitted by the Balochistan government for debate in and approval of the joint sitting of Parliament. The essence of the package was a demand for greater provincial autonomy which included provincial control of the FCR. See Pakistan Institute of Legislative Development and Transparency, *Aaghaaz-e-Huqooq-e-Balochistan Package: An Analysis*, December 2009, p. 11. Please also visit http://www.daily-times.com.pk/default.asp?page=2009\11\25\story_25-11-2009_pg7_29.

features, several civil society groups had demanded a repeal of the FCR. On 25 March 2008, his first speech as Prime Minister, Gilani too promised to repeal the FCR. Owing to strong political opposition, both by KP's ruling party, the Awami National Party and the Pakistan Peoples Party along with the military, which is sceptical of structural changes in the region at a time of insurgency, the reform agenda was substantially diluted.

Finally in August 2011, President Zardari signed the Frontier Crimes (Amendment) Regulations, 2011 which seeks to curtail the powers of government officials to administer justice. No person can now be arbitrarily and indefinitely detained as they will have to be brought before the authorities within 24 hours;²⁵⁶ laws of collective punishment were diluted as women and children below 16 and those above 65 years can no longer be subject to collective punishment; cases must be decided in a fixed time frame and provision of bail is included;²⁵⁷ and people were given the right to appeal through a two tier-system which includes an appellate authority, comprising a commissioner and a judicial additional commissioner, as the first point of appeal followed by a newly created FATA tribunal, accorded the status of a provincial High Court.²⁵⁸

The impact of these amendments remains to be seen. Coming as they have after a century, and 65 years after the birth of Pakistan as a democratic republic, these amendments have evoked a mixed response. While most see it as a small but significant step, concern and doubt are expressed about the practical effect of these amendments. For one, while the FCR reform curtails the political agent's right to detain people indefinitely, the military has wide powers of detention under the almost simultaneously enacted Action (in Aid of Civil Power) Regulation, 2011 for FATA and the Provincially Administered Tribal Areas (PATA), passed in June 2011. This has given rise to the real concern of rights being guaranteed under the FCR amendment but being curbed under the Action in Aid of Civil Power Regulations.²⁵⁹ The political agent still remains the unit of both judicial and executive functions which reduces the scope of effective realisation of rights guaranteed to people. Finally, these concerns notwithstanding, there is also dismay at the slow pace of implementation of these amendments.²⁶⁰ Human rights violations are still rampant. Children below 15 years are languishing in jails.

5.8 Conclusion and Recommendations

Police reforms have clearly seen very little progress in Pakistan. Despite being one of the first in the region to introduce fairly progressive police legislation in 2002, reforms remain mired in party politics. Notwithstanding the reservation against the Police Order being passed by a dictator, very little has been done by the provinces to initiate and/or pursue police reforms with earnest. The legal tussle did bring to the fore the need for reforms and some of its core elements, but most writings were from the retired police official community. The debate is hardly inclusive and remains mired in partisan interests. This may be a reflection of the lack of expertise within civil society, but also points at a crucial limitation of the debate.

256 Section 38.

257 Section 8.

258 Section 22.

259 "Pakistan: undoing a colonial legacy," *The Hindu*, 5 September 2011, <http://www.thehindu.com/opinion/lead/article2427237.ece> as on 30 September 2011.

260 "Govt failed to implement recent reforms in FATA, amendments in FCR after passage of six months," OnePakistan.com, <http://pakistan.onepakistan.com/news/city/islamabad/68847-govt-failed-to-implement-recent-reforms-in-fata-amendments-in-fcr-after-passage-of-six-months.html>, as on 30 September 2012.

Recommendations

Government of Pakistan

1. **Facilitate a national debate on policing:** At a time when the police in Pakistan is struggling to cope with security challenges on several fronts and people's demand for security grows stronger, the federal government's lethargic approach to reform needs to be addressed immediately. Whatever be the exact legal position on the federal government's jurisdiction on policing, there is no doubt about its duty to provide and ensure a safe and secure environment for the citizens of the country. Police reform is the need of the hour but it is equally crucial that the *right kind of reforms* be initiated. Since policing has a direct bearing on the realisation of fundamental rights, poor policing – repressive, unaccountable, politicised and biased – leads to massive violations and infringement of people's rights. It is thus imperative that people's rights are at the heart of any reform initiative. Frequently, in the face of security threats, police reforms are initiated but these often strengthen the very style of policing. This failure lies at the heart of security threats in the first place. As Pakistan looks to strengthen its democratic institutions, it has the opportunity to do things differently from the rest of the region. Following a widely consultative process of reform would help the government gain trust and legitimacy which is severely lacking at present. Specifically, the following steps may be considered:
 - i. *Publish a White Paper on the Police Order, 2002:* Strong modern police legislation is often the first step to police reform. While the Police Order did represent such a beginning in Pakistan, the current confusion about its legal status – whether provinces have authority to repeal the federal law and enact their own legislations – has created a vacuum which is impeding systemic police reform. Amidst the confusion, the federal government's stand remains unclear. While there seems to be little support for the Police Order, 2002 *per se* within the federal government, it is unclear whether this implies lack of support for a uniform police law across Pakistan as well. Through a White Paper, the government can initiate and spearhead a debate on the type of police law needed for Pakistan keeping in mind constitutional safeguards and its international legal obligations. It will help to create awareness among parliamentarians and civil society at large. The transparency of such an approach will assist in building trust and enable the government to gauge public opinion on an important issue.
 - ii. *Commission a study on police reforms:* This can be done through the National Police Bureau or alternatively and preferably through the establishment of an Independent Commission on Police Reforms. In the latter case, the appointment of members should follow a transparent selection with emphasis on diverse representation. The study should look into the entire gamut of policing in the country including police organisations, structure, criteria for appointments, recruitment, transfers and promotion, training and accountability mechanisms, before presenting a set of recommendations for change. The study should take into consideration the recommendations by all previous commissions as well as those of the Police Order, 2002. But this time, the study should proactively seek inputs from civil society and the public at large so as to understand the expectations and concerns of people and feed these into their recommendations. The study should also propose a model police act which can then serve as a reference for all provinces to base their own police laws.
2. **Implement the Police Order 2002 where applicable:** Till the Government of Pakistan takes a stand and proposes a new police law, the Police Order, 2002 should be implemented vigorously in the provinces where it is still applicable, i.e. Punjab and Khyber Pakhtunkwa.
 - i. Initially, the Order must be laid before Parliament for validation according to the Supreme Court's order of 31 July 2009, by which all ordinances protected under the Provisional (Constitution) Order, 2007 were

to be presented to Parliament.²⁶¹ While the Order was laid before the National Assembly in November 2009, it was never passed.

- ii. The amendments introduced in the original Order must be removed as they seriously diluted its purpose. The 2002 Order should be restored in its original form.
 - iii. While provinces must be pressed to implement the various provisions applicable to them, the federal government can take the lead in setting up federal bodies such as the National Police Management Board (Article 160, Police Order, 2002), the Federal Police Complaints Authority (Article 97) and the National Public Safety Commission (Article 85) as mandated by the Order.
 - iv. Despite a change in the police law in 2002 with the introduction of the Order, no new rules of procedure were implemented. Following partition, Pakistan inherited the 1934 Punjab Police Rules which continue to operate across the country. Under the Police Order, 2002, provinces were authorised to make rules to carry the provisions of the Order (Article 112) into effect. No province has yet updated their rules in sync with the new Police Act. This needs to be done immediately to achieve efficiency in police functioning.
5. **Provide all necessary support to the National Commission for Human Rights:** Despite passing the National Commission for Human Rights Act, 2012 in May, no appointments to the Commission were made till the end of the year. The lacuna lies partly in the Act itself which does not set a time limit for setting up the Commission, thus allowing the government enough leeway to delay its constitution. This is unfortunate as the need for a national commission is Pakistan's international obligation and a domestic necessity to protect constitutionally-guaranteed fundamental rights. A good beginning for the Commission will demonstrate the government's resolve towards strengthening democracy, whereas a slow start will only build distrust and further alienate the people.
 6. **In pursuance to ratification of the ICCPR and UNCAT:** The government must pass new laws or amend existing ones to bring all laws and policies in line with the principles under the two treaties.
 7. **Adopt all recommendations suggested by the Working Group on Enforced Disappearances:** The recommendations aim at strengthening the realisation of constitutional rights guaranteed to citizens of Pakistan and must be adopted in entirety.
 8. **Ratify the International Convention for the Protection of All Persons from Enforced Disappearance:** The Convention came into effect on 20 December 2006 with the purpose of preventing and reducing impunity for the crime of enforced disappearances. Given how common this egregious crime is in the country, Pakistan is strongly urged to ratify the International Convention, put in place mechanisms proposed, and implement standards contained in the *Declaration for the Protection of All Persons Against Enforced Disappearances*, adopted by the UN General Assembly in 1992.

Provincial Governments

1. **Abolish the Police Act, 1861:** The century-old colonial police legislation brought back by Sindh and Balochistan needs to be abolished. The Act does not imbibe the ethos of citizen-centric and democratic policing which must be the bedrock of policing in a democracy.
2. **Adopt a consultative process for enacting new police laws:** A strong, modern police legislation is achievable only through a transparent and participatory approach. This can be done in the following ways:

261 Asad Jamal, "Prospects for police reform in Pakistan," NIPSA Newsletter, February 2011, <http://www.nipsa.in/newsletter/newletter-1/february-2011/>.

- i. Involve civil society in the drafting stage through consultations, discussions, seminars and submissions. This will enable people's expectations and concerns to feed into decision-making on an extremely important subject and conversely generate faith and trust in the police.
 - ii. Publicise the draft bill widely, to invite inputs, suggestions and feedback which will help increase awareness as well as a sense of ownership in the public.
 - iii. Seek inputs from police across all ranks on the kind of police service they would like to be part of.
3. **Address the discrepancies that exist between the police laws and local government laws:** At present, in Sindh and Balochistan, there is a lack of clarity on the command system at the district level; while the Police Act, 1861 vests overall administration in the hands of the District Magistrate, the local government legislations introduced elected local councils for overseeing administration. This discrepancy must be addressed immediately. Care must be taken to ensure that parallel centres of control do not emerge in the provinces.
 4. **Issue a Code of Conduct to regulate police practices:** Along with the rules of procedure, provincial governments should issue a Code of Conduct to regulate all aspects of policing including exercise of statutory powers, treatment of detainees, questioning persons, searches conducted and so on. Apart from procedural aspects, the Code must reflect principles and practices flowing from Pakistan's commitment under international law.²⁶² Effort must be made to widely publicise the Code across all ranks within police departments so that the expectations and standard of service are clear to all.

Government of Pakistan/Provincial Governments

1. **Ensure actual release and efficient utilisation of funds allocated to the police:** While increase in police budgets, as noted above in the chapter, is a welcome sign, care should be taken that all bottlenecks in the release of funds are removed. For instance, the Punjab Police Annual Report highlights that only 40 per cent of the allocated funds were released by the finance department during 2011-2012, thereby crippling increased investments in upgrading facilities. Moreover, it was also noted that most of the budgets are used for increased salaries and personnel welfare issues. While this is crucial, it is equally important to invest in upgrading physical infrastructure, particularly at the thana level which serves as the first contact point to the justice system.
2. **Review the laws governing frontier policing:** The legal framework for policing frontier regions, namely FATA and large parts of Balochistan, needs to be brought in line with constitutional safeguards. Concerns with the Frontier Crimes Regulation have been discussed above and must be addressed. In terms of the Levies Force too, the Balochistan Levies Force Act, 2010 vests enormous powers with the Levies without guaranteeing safeguards or ensuring the capability of officers to administer justly. Members are vested with the power to apprehend anyone on "sufficient grounds",²⁶³ to enter and inspect without warrant any public place "on reliable information"²⁶⁴ and to assist in preventing members of the public from exploitation by any person or members of an organised group.²⁶⁵ Such wide provisions leave ample scope for abuse and need to be reviewed against standards of professionalism and accountability.

262 Pakistan has ratified 7 out of 9 core international human rights treaties. For details, see UN Human Rights Council, International Human Rights Treaties, *Ratification, Reservations and Declarations*, at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>. The two treaties yet to be ratified by Pakistan are the International Convention on the Protection of the Right of all Migrant Workers and Members of their Families (1990) and the International Convention for the Protection of all Persons from Enforced Disappearances (2006).

263 Section 7 (k), Balochistan Levies Force Act 2010.

264 Section 7 (m), Balochistan Levies Force Act 2010.

265 Section 7 (p), Balochistan Levies Force Act 2010.

- 3. Explore mechanisms for strengthening cooperation between paramilitary forces and the provincial police:** According to legal requirements, the paramilitary forces such as the Rangers and the Frontier Corps are deployed to assist the police in the prevention and detection of crime²⁶⁶ and superintendence and control over the members of the force is vested in the provincial government.²⁶⁷ But in effect, the provincial government's control over these forces is very weak. Appointments, postings, transfers, promotions are all controlled by the federal government. Provincial governments have minimal oversight over the functioning of these forces, including keeping a check on violations committed and bringing the perpetrators to justice. By law, their role is that of assistance to the police; but often these paramilitary forces become the leading force in security operations as in the case of the Karachi killings last year. The need for paramilitary forces is usually felt at times of severe public order crisis and breakdown of law and order where the police are found to be inadequately trained. But as the law maintains, the police must remain at the forefront of any internal security crisis in a democracy. Governments need to explore ways in which the training and discipline of paramilitary forces can be used in consonance with the police's area knowledge and community ties. In this, emphasis must be laid on the overall control of the civilian government. For instance, in cases of joint operations involving the paramilitary and the police, the ultimate command must rest with the police chief.

Civil Society

- 1. Advocate for a consultative reform process:** As the debate on police laws continues in Pakistan and provinces are in the process of amending their existing police laws, civil society can take the lead in raising awareness among the public. The fact that such crucial laws are being changed without any public debate needs to be highlighted. Moreover, civil society can spearhead campaigns on highlighting the changes in police legislations, their impact on people's rights, and most importantly, the role that people can play in demanding better policing. An informed citizenry is the best guarantor of police accountability. Specifically, civil society can do the following:
 - i) Prepare a brief/paper on components that must inform a good police law. This can then be shared with parliamentarians, media, police and government.
 - ii) Develop a media campaign involving regular columns in the print media and talk shows on television raising issues of concern on policing.
 - iii) Hold focus group discussions to garner inputs and mobilise support for a strong modern police legislation.
- 2. Monitor judicial pronouncements on policing and organise advocacy around it:** Over the past few years, the judiciary in Pakistan has made some important pronouncements on the pathetic state of policing. One such example is the Karachi suo motu case (No 16 of 2011) where it threw light on the deep politicisation of policing in the province. Through close monitoring, civil society can play a critical role in spreading awareness on such judicial pronouncements and push for implementation of corrective measures suggested.

²⁶⁶ Section 7 (a), Pakistan Rangers Ordinance 1959.

²⁶⁷ Section 3 (3), Pakistan Rangers Ordinance 1959.



The Commonwealth Human Rights Initiative (CHRI) and the Friedrich Naumann Foundation (FNF) have worked together on the issue of democratic policing in South Asia for the last few years. This collaboration on police reforms in South Asia (outside India) commenced in March 2007 when a regional conference on police reforms was held in Delhi. Following this conference, CHRI published a report entitled *Feudal Forces: Democratic Nations – Police Accountability in Commonwealth South Asia*. Apart from highlighting the complete lack of public confidence in the police, this report reiterated the dire need for democratic policing in South Asia. The report was followed by in-depth fact-finding missions around the region which ultimately culminated in the publication of *Feudal Forces: Reform Delayed – Moving from Force to Service in South Asian Policing in 2008*.

In 2009, it was jointly decided by CHRI and FNF that another regional conference would be an opportunity to assess interest in the idea of a network that would bring together like-minded organisations and individuals to work on the issue of better policing in South Asia. From 31 October to 1 November 2009, CHRI hosted “Police Reforms in South Asia – Role of Civil Society” where regional and international experts were invited to contribute their ideas on democratic policing in the region. During the conference, a consensus emerged amongst the participants that since experiences on police reform in the region are often similar a Network for Improved Policing in South Asia (NIPSA) would be a useful means for civil society organisations to share knowledge in this regard. Owing to its active work on the issue of police reforms, conference participants agreed that CHRI should serve as NIPSA’s Secretariat.

In its capacity as the Secretariat, CHRI launched a website for NIPSA in 2010 which was then redesigned in 2013. This website consolidates information on police reforms in South Asia and internationally through its rich resources archive, which includes country-specific reports, legislation, and case law for India, Pakistan, Bangladesh and Maldives. The website has a news blast which is updated daily on the most important police reforms events at the moment. There is also an ever-growing multimedia archive which includes video interviews with policing experts throughout the region and infographics which serve to express complex information into simple pictorials for our readership to utilise. An events section keeps our readership up to date on NIPSA members’ activities, and a forum will eventually be phased in which will serve as a digital talking space for our readership. All relevant areas of the website have comment options which allow our readership to lend their voice and opinions, and to hopefully start a conversation in which all will learn.

With the active participation of NIPSA members throughout the region, an e-newsletter surveying police-related issues is circulated every quarter to two thousand recipients. NIPSA also produces fortnightly updates in which topical and current policing issues are critically analysed in less than one-thousand words which keeps our readership current on their understanding of the landscape of police reform in South Asia.

In addition, NIPSA collaborations this past year have seen the launch of country-specific versions of *101 Things You Wanted To Know About The Police But Were Too Afraid To Ask in Pakistan, the Maldives and Bangladesh*. CHRI also worked with the Human Rights Commission of Pakistan to publish a survey of law enforcement in Pakistan entitled, *Police Organisations in Pakistan*.

Building Bridges: The Police and the Public – Experiments with Community Policing in South Asia is a product of the visits throughout the region to learn about the role community policing can play to improve the fractured relationship between the police and the public in South Asia. In particular, this report seeks to further NIPSA’s

objective of educating practitioners and the average citizen on the types of concrete and achievable steps which, if undertaken, could radically improve policing in the subcontinent.

For more information on NIPSA, please consult the website at www.nipsa.in.

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Strategic Initiatives

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN, and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform; reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

Access to Information

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy-makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock on effect on the administration of justice overall.

This report is the third edition of the biennial publication titled Feudal Forces: Reform Delayed aimed at providing greater detail on the current state and pace of police reforms in Bangladesh, India, Pakistan and the Maldives. As noted in the earlier two editions (2008, 2010), police organizations in Commonwealth South Asia, remain essentially feudal in structure and practice – hierarchical, coercive, unaccountable and driven more towards safeguarding the interests of the government-in-power than upholding rule of law. Some reform efforts have been made at achieving professional, efficient, and accountable policing, but, as observed in our earlier reports, implementation has been poor because governments remain reluctant to fully and urgently engage on desperately needed reform.

Worse, the pattern emerging from reform initiatives in the past two years points to deliberate undermining and subversion of the principles of democratic policing. Security concerns and political considerations continue to dominate official reform landscape with little emphasis on human rights protection and strengthened accountability. Instead of moving towards modern, progressive police laws, state and provincial governments are reverting to the 1861 Police Act that allows police to be controlled by the political executive. Accountability mechanisms are not being given the requisite powers, mandate or the independence necessary to be effective. Police powers are being expanded without accompanying safeguards necessary to prevent misuse. Organizational governance remains hierarchical and inefficient. Moreover, reform initiatives remain largely state-led with little involvement of civil society and the general public. Consequently, policing remains far from a citizen-friendly and lawful service befitting of democratic nations.

Through regular and continuous monitoring of reform measures, this series aims at galvanizing an informed debate about democratic policing and its applicability in the region.

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