

FEUDAL FORCES: REFORM DELAYED

Moving 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

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work, and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network.* These professionals can steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policymakers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

International Advisory Commission: Sam Okudzeto – Chairperson. Members: Alison Duxbury, B.G. Verghese, Neville Linton, Yash Ghai, Zohra Yusuf and Maja Daruwala.

Executive Committee (India): B.G. Verghese – Chairperson. Members: A.P. Shah, Bhagwan Das, B. K. Chandrashekar, Kamal Kumar, Nitin Desai, Harivansh, Poonam Muttreja, Ruma Pal, Sanjoy Hazarika, Wajahat Habibullah and Maja Daruwala – Director.

Executive Committee (Ghana): Sam Okudzeto – Chairperson. Members: Anna Bossman, B. G. Verghese, Emile Short, Neville Linton and Maja Daruwala – Director.

Executive Committee (UK): Neville Linton – Chairperson. Members: Claire Martin, Derek Ingram, Frances D'Souza, Joe Silva, Meenakshi Dhar, Sally-Ann Wilson and Syed Sharfuddin.

* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association.

ISBN: 81 - 88205 - 90 - 7



© Commonwealth Human Rights Initiative, 2010.

Material from this report may be used, duly acknowledging the source.

CHRI New Delhi Office

B-117, 1st Floor,
Sarvodaya Enclave,
New Delhi – 110017, INDIA
T +91 (0)11 4318 0200
F +91 (0)11 2686 4688
info@humanrightsinitiative.org

CHRI London Office

Institute of Commonwealth Studies
School of Advanced Study,
University of London,
2nd Floor, South Block, Senate House,
Malet Street, London WC1E 7HU
T +44 (0)207 862 8857
F +44 (0)207 862 8820
chri@sas.ac.uk

CHRI Accra Office

House No. 9, Samora Machel Street
Asylum Down,
Opposite Beverly Hills Hotel,
Near Trust Towers, Accra, Ghana
T +233 (0)302 971170
F +233 (0)302 244819
chri@humanrightsinitiative.org

www.humanrightsinitiative.org

FEUDAL FORCES: REFORM DELAYED

**MOVING FROM FORCE TO SERVICE
IN SOUTH ASIAN POLICING**

**Researched and Written by:
Devyani Srivastava, Sumant Balakrishnan, Navaz Kotwal**





ACKNOWLEDGEMENTS

CHRI's work across the Commonwealth on issues of police reform aims at building knowledge and catalysing accountability-focused reform. In South Asia, its work began in earnest with the publication of *Feudal Forces: Democratic Nations – Police Accountability in Commonwealth South Asia* in 2007 that sought to enhance interest in, and understanding of, democratic policing and police accountability. Subsequent to the report, a number of activities were held in South Asia aimed at strengthening regional and local networks working on police reform and policing issues, as well as increasing awareness of human right violations by the police, policing practices, accountability and police reform processes in the region. This process culminated in the publication of *Feudal Forces: Reform Delayed – Moving from Force to Service in South Asian Policing* in 2008. Building on the momentum generated by the previous work, this report seeks to take the issue of police reforms in the region forward, in order to press on the urgency of the matter.

The report is funded by Friedrich-Naumann-Stiftung für die Freiheit and is the result of the work carried out by CHRI staff and other external collaborators.

CHRI would like to thank the various people who provided assistance during its visits to countries in the region. In Pakistan, CHRI is grateful to lawyer Asad Jamal for his help in the legal clarification on the status of police reforms in Pakistan.

In Bangladesh, CHRI was assisted by Zakir Hussain of Nagorik Uddyog and Sara Hossain of Bangladesh Legal Aid and Service Trust (BLAST) to hold a joint training workshop on the role of police and citizens rights from 28-30 August 2010, in Dhaka. The discussions during the workshop contributed to the research on police reforms in Bangladesh. Additionally, Mr Mohamed Nurul Huda, former Inspector General of Police, and Dr Kumar Koirala, Police Reforms Programme (PRP), were exceptionally helpful in providing details on the history of police reform and the progress of PRP in Bangladesh.

CHRI benefited greatly in the Maldives, by meetings held with Ahmed Irfan, Maldivian Democracy Network, and Dr Hala Hameed, Member, Police Integrity Commission. Additionally, the Maldives Police Service was helpful in making some of their documents available to CHRI that were useful while writing of the Maldives chapter.

In Sri Lanka, CHRI was fortunate to secure the cooperation of three key partners in the region. Kishali Pinto Jayawardena, Law and Society Trust, was particularly helpful in assisting with legal clarifications involved in this chapter. Special thanks must also be made to J.C. Weliamuna, Transparency International – Sri Lanka, and Basil Fernando, Asian Human Rights Commission, for their assistance.

CHRI staff was instrumental in putting this report together. Devyani Srivastava, Sumant Balakrishnan and Navaz Kotwal were the principal researchers and authors. Additional assistance was provided by Garima Mohan and Natalia Shibli. The report was designed and laid out by Ashwanikumar Saini.

CHRI would particularly like to thank Friedrich-Naumann-Stiftung für die Freiheit for their financial assistance and Katrin Bannach for her continuing support and encouragement towards the Police Reform South Asia Programme.



CONTENTS

ABBREVIATIONS	6
CHAPTER 1 - INTRODUCTION	9
CHAPTER 2 - BANGLADESH	17
2.1 Background	
2.2 Police Reforms: The Past, the Present and the Future	
2.3 Police Reform Programme	
2.4 Draft Police Ordinance, 2007	
2.5 Recommendations	
CHAPTER 3 - INDIA	37
3.1 Background	
3.2 Police Reform: Initiatives and Resistance	
3.3 State Compliance of the Directives	
3.4 Toward Democratic Policing: Replacing the 1861 Act	
3.5 National Police Mission and Micro-Missions	
3.6 Reforms in the Face of Insurgency	
3.7 Lost Opportunity for Reform: The Prevention of Torture Bill	
3.8 Special Laws: Unchecked Powers	
3.9 Recommendations	
CHAPTER 4 - MALDIVES	59
4.1 Background	
4.2 The Maldives Police Service: Reform from Within	
4.3 The Police Act, 2008	
4.4 The Human Rights Commission of the Maldives	
4.5 Future Prospects	
4.6 Recommendations	
CHAPTER 5 - PAKISTAN	74
5.1 Background	
5.2 The Government of Pakistan: Status of the Police Order, 2002	
5.3 Provincial Governments: Status of Police Reforms	
5.4 Future Prospects	
5.5 Recommendations	
CHAPTER 6 - SRI LANKA	93
6.1 Background	
6.2 Post-War Challenges and Continuing Impunity	
6.3 Post-War Sri Lankan Police	
6.4 Is International Pressure Working?	
6.5 Recommendations	



ABBREVIATIONS

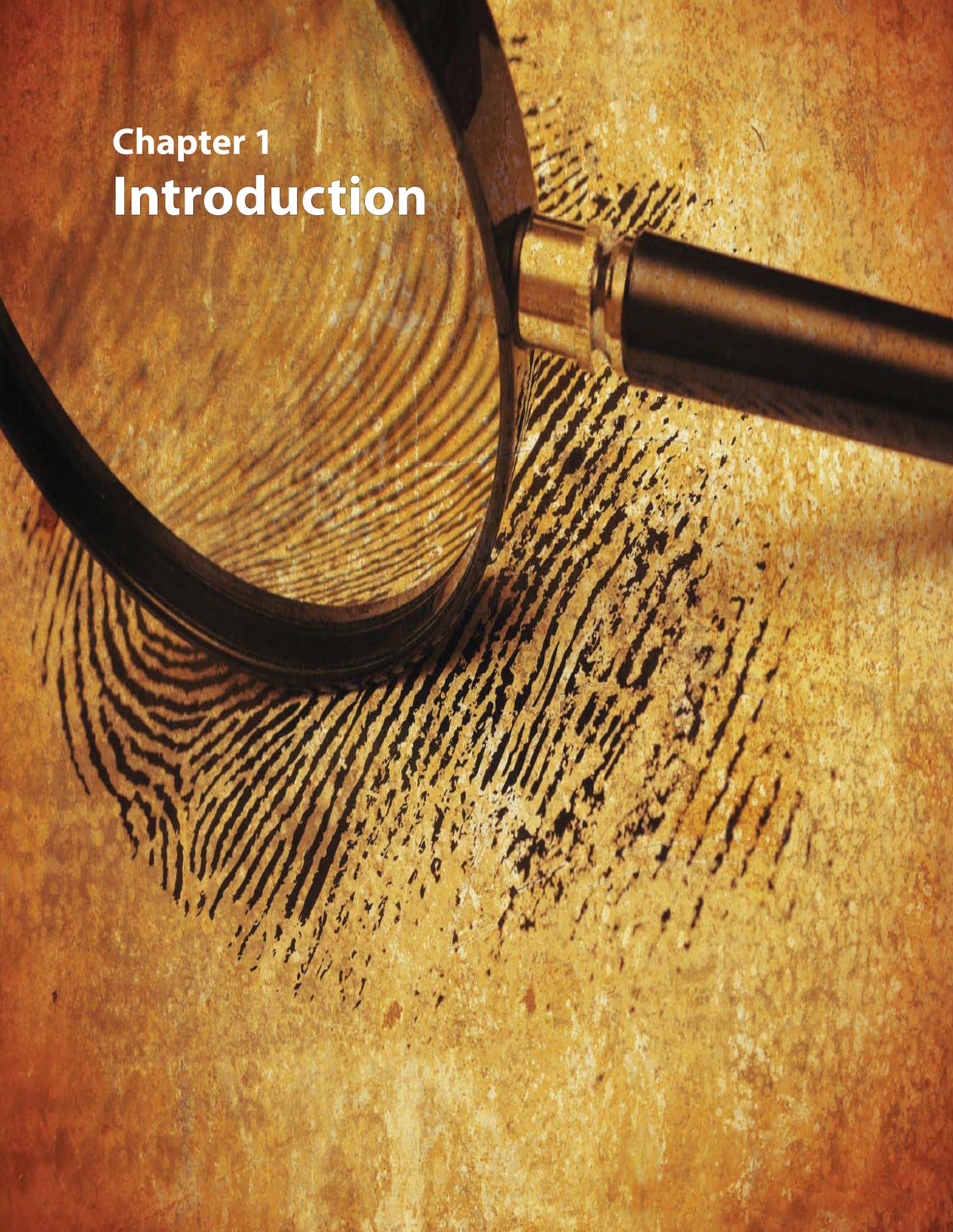
ACP	Assistant Commissioner of Police (Maldives)
ADB	Asian Development Fund
AFSPA	Armed Forces Special Powers Act (India)
AL	Awami League
BLF	Balochistan Levies Force Act
BNP	Bangla National Party
CAG	Comptroller and Auditor General
CAO	Chief Adviser's Office
CBP	Community based Policing
CC	Constitution Council (Sri Lanka)
CCPO	Capital City Police Officer (Pakistan)
COI	Commission of Inquiry (Sri Lanka)
CP	Community Policing
CPC	Crime Prevention Committees
CPF	Community Policing Forums
CPLC	Citizen Police Liaison Committees (Pakistan)
CSO	Civil Society Organizations
CSPSA	Chhattisgarh Special Public Security Act
CTG	Caretaker Government
DFID	Department for International Development
DGP	Director General of Police (India)
DMP	Dhaka Metropolitan Police
DPPA	Draft Punjab Police Act
DPSC	District Public Safety Commissions (Pakistan)
DPSGCC	District Public Safety and Police Complaints Commission (Pakistan)
DPO	District Police Officer (Pakistan)
DRP	Dhivehi Rayyithunge Party DGP
DSP	District Superintendent of Police (India)
EC	European Commission
EU	European Union
FCR	Frontier Crimes Regulation (Pakistan)
GoSL	Government of Sri Lanka
GSP+	Generalised System of Preferences (Sri Lanka)
HRCM	Human Rights Commission of Maldives
HRCP	Human Rights Commission of Pakistan
IAWP	International Association of Women Police
IDP	Internally Displaced Persons
IGP	Inspector General of Police (Bangladesh, India, Pakistan, Sri Lanka)
IIGEP	International Independent Group of Eminent Persons (Sri Lanka)
KCOCA	Karnataka Control of Organized Crime Act



LLRC	Lessons Learnt and Reconciliation Commission (Sri Lanka)
LTTE	Liberation Tigers of Tamil Eelam
MC	Monitoring Committee (India)
MCOCA	Maharashtra Control of Organized Crime Act
MDN	Maldivian Democracy Network
MDP	Maldivian Democratic Party
MISA	Maintenance of Internal Security Act (India)
MNA	Members of National Assembly (Pakistan)
MOHA	Ministry of Home Affairs (Bangladesh)
MPA	Members of Provincial Assembly (Pakistan)
MPF	Modernization of Police Force
MPS	Maldives Police Service
NHRC	National Human Rights Commission (India)
NHMP	National Highways and Motorway Police
NPB	National Police Bureau (Pakistan)
NPC	National Police Commission (India, Sri Lanka, Bangladesh)
NPM	National Police Mission (India)
NPMB	National Police Management Board (Pakistan)
NPSC	National Public Safety Commission (Pakistan)
NSC	National Security Commission (India)
NSG	National Security Guard (India)
NSS	National Security Service (Maldives)
PADC	Police Act Drafting Committee
PCA	Police Complaints Authority (India, Pakistan)
PCC	Police Complaints Commission
PCID	Police Complaints Investigation Division (Sri Lanka)
PEB	Police Establishment Board (India)
PIC	Police Integrity Commission
PIL	Public Interest Litigation
POTA	Prevention of Terrorist Activities (India)
PPP	Pakistan Peoples Party
PPO	Provincial Police Officer (Pakistan)
PPSPCC	Provincial Public Safety and Police Complaints Commission (Pakistan)
PRP	Police Reform Programme
PTP	Prosecution of Torture Perpetrators Unit (Sri Lanka)
RAB	Rapid Action Battalion
SIU	Special Investigation Unit (Sri Lanka)
SLP	Sri Lanka Police
SOD	Special Operations Department (Maldives)
SOPs	Standard Operating Procedures
SP	Superintendent of Police (Bangladesh)
SPO	Special Police Officer (Pakistan)



SRE	Security Related Expenditure (India)
SSC	State Security Commission (India)
STF	Special Task Force (Sri Lanka)
TADA	Terrorist and Disruptive Activities (Prevention) Act (India)
TNSM	Tehreek-e-Nifaz-e-Shariat-Mohammad
UAPA	Unlawful Activities Prevention Act (India)
UNCAT	United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UNDP	United Nations Development Programme
UPA	United Progressive Alliance (India)
UPR	Universal Periodic Review
UPSC	Union Public Service Commission (India)



Chapter 1
Introduction



The state of policing throughout Commonwealth South Asia is abysmal. At the end of 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 wholly unsuitable state of law enforcement, devoid of public confidence. Even as some weak attempts have been made to reduce the politicisation of the 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 the state and pace of police reforms in Bangladesh, India, Pakistan, the Maldives and Sri Lanka in detail, and the concrete steps that can be undertaken to transition policing in the region from a force to a service. Besides having an additional chapter on the Maldives, the present report is an update of the 2008 *Feudal Forces* report. It is published at an important time. Elections were held in Bangladesh in December 2008, and a democratically elected government came into power, replacing the Caretaker Government which was in power for almost two years. Sri Lanka won its two-decade war against the LTTE. The Maldives held its first multi-party democratic elections that saw the defeat of President Maumoon Abdul Gayoom, in power since 1978. This, along with its share of implications on policing, definitely raised the hopes of police reform gaining momentum. India and Pakistan on the other hand, have experienced terrible forms of violence. Pakistan has been torn by internal strife and conflict, and India has seen some of the worst terrorist attacks and extremist violence. Reform measures in these two countries have thus been geared towards giving police more arms and ammunition, introducing new legislations and amending existing ones, curtailing civilian rights, and enhancing policing powers.

In the wake of all these developments this update of *Feudal Forces: Reform Delayed* captures the pace of reforms, the obstacles that are coming in the way and how the so-called War on Terror is likely to affect the reform movement.

1.1 Colonial Legacy

When the British Empire first began wielding more control and influence on its colonies in South Asia, it styled policing after the militaristic Irish Constabulary rather than the more civilian London Metropolitan model. Colonial rule required that the government of the day own the police. The police had to be a force that could quell any rebelliousness in the population. So it had to be extremely hierarchical and strictly disciplined and militaristic. White officers from within the power elite had to rule with an iron hand over less trusted “coloureds”, and finally native men who were stereotyped as less intelligent and essentially untrustworthy occupied the bottom rungs of the force, with no hope of ever rising through the ranks to positions of responsibility. The primary function of the police was the maintenance of law and order. Prevention and detection of crime was almost an adjunct function and intelligence gathering was prioritised as a means of keeping the rulers informed. This formula was suitable for a small number of foreigners ruling over a vast heterogeneous population.

Though this model has no relevance today, South Asian governments have largely retained the colonial structure of policing. 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. Sri Lanka continues to use Police Ordinance No.16 of 1865. Pakistan has a Police Order from 2002 passed under Musharraf’s regime. Progressive but largely ignored and unimplemented, the Order lapsed in December 2009. The Maldives only created a police force that was 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.

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 the basic fundamental rights of most citizens.

Countries have failed to realise that democracies 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 cannot continue to point to the dead carcass of imperialism, repeating that they can do nothing to change it. If we continue to retain an outmoded, outdated structure, it is because we 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 public's confidence because it is seen as oppressive, unfair and woefully inefficient. Consequently, the police are frequently alienated from the communities they serve and have poor chances 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 himself. The police have rapidly become an intervention of last resort when they should be the first port of call in any emergency.

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

Across the region several common problems plague policing:

First, a culture of impunity exists for wrongful acts perpetrated by the police. Abuse of power, bias, corruption, illegal methods and excessive use of force are, even when well documented, left unattended and unpunished. Common abuses include: extrajudicial killings (otherwise known as “encounter deaths”); the widespread use of torture as a premier method of investigation; unjustified arrests; refusal to register First Information Reports; detentions beyond permissible statutory time limits; reluctance to accept complaints or investigate them; and tampering of evidence.

Second, there is very little effective oversight or review of police conduct. Linked to the issue of impunity, having such mechanisms in place, greatly enhances the likelihood that the police will behave lawfully. However, 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. 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, and hence ignored. Even when complaints are taken seriously and inquiries are instituted, the system lacks integrity. The public distrusts the police and believes that it is incapable of conducting inquiries into public complaints in a fair and effective manner.



Independent civilian oversight, human rights institutions, and most importantly, the courts, constitute the most important external mechanisms to ensure police accountability. However, even though these bodies are established in almost all South Asian countries none of them function viably. The courts on the other hand, have passed strictures in many cases of defective or inadequate police investigation, custodial violence and death, as well as illegal arrest and detention. The most serious challenge facing the courts, however, is the issue of sanction. Courts cannot take cognisance of a complaint without the sanction of the concerned government. This practice prevails across Commonwealth South Asia and has increasingly become the main cause of police impunity. People also lack the courage to complain against police officers, while involvement in court cases is considered time-consuming and costly, thus inhibiting the common man to approach the courts. Further, parliamentary oversight is practically non-existent in the region. Legislatures should constantly be overseeing the effectiveness of policing, but in fact spend little time examining the issue of police performance.

Third, illegitimate political interference in all aspects of police administration is endemic throughout the region. It is not uncommon for transfers, promotions and issues of tenure to be dictated by considerations other than fairness or merit. Consequently, 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 careers.

Commissions set up in Bangladesh, India, Pakistan and Sri Lanka have repeatedly studied how to remodel policing. Various suggestions were offered to ensure that policing is treated as a bipartisan subject outside the exclusive ruling party zone. But resistance to this idea comes from the understanding, or rather the misunderstanding, that the creation of a buffer body between the police and the political executive amounts to interference with the functioning of elected representatives who have the primary responsibility to provide safety and security; and they should therefore have a completely free hand on how to handle the police. This was never 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 must be conditioned so that each one's powers and spheres of responsibility are specifically organised, such that there is no room for ambivalence or overlap.

Fourth, the police suffer from a serious lack of resources. Despite increasing budgetary allocations, financial resources for law enforcement are poorly deployed and managed. As a result, police officers at the thana (police station) are often deprived of the basic necessities required to do their jobs with any level of efficacy.

Fifth, 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 substandard barracks. These inadequate conditions of the constabulary are exacerbated by antiquated training that does not make them fit for the 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 the 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, Pakistan and Sri Lanka. The Maldives police force has just emerged, so little can be said on this issue. But police in Bangladesh, India and Pakistan have been rated as the most corrupt organisations by 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 within 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 owing to economic reasons. The tremendous poverty in South Asia means that there is a limited pool of money for several competing needs. As a result, police forces throughout the region are not always provided the basic necessities required to perform effectively. Sometimes this deficiency is a function of mismanagement rather than a result of a shortfall in funds. However, insufficient resources are not caused solely by 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 uphold the law in all circumstances, provide good services, and enhance the environment in which they can realise our human rights. But there are many others who are quite content with the way the police performs, because there are favours to be bought, influence to be pedalled and also because many, within the middle class particularly, like the notion of “tough policing”. “Tough policing” is usually a polite way of saying there is a willingness to go along with illegal policing if it eases the way, as long as it does not impact on you personally in a negative way. Additionally, inadequate educational services means that the average citizen is rarely aware of their rights or even what sort of policing they are entitled to. Thus, it is understandable that the public often sends mixed signals about what type of police service it wants. When affected by criminal activity, it would prefer 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 “Democratic Policing” Means

For South Asian countries to fulfil their promises at independence and cultivate robust democratic institutions, policing in the region must change. Simply put, democratic nations need democratic policing.¹

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

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, written by Janine Rauch, edited by Maja Daruwala and Clare Doube.

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.



Democratic policing sets out a normative framework for police agencies in a democracy, even though the systems and strategies for the police in one jurisdiction may be quite different from those in another. It provides a common frame of reference for civil society, policymakers, donors and the police.³ A democratic police force 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; 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 these criteria, police organisations cannot be considered democratic in their structure, culture or performance.”⁵

Democratic policing is about so much more than simply “maintaining law and order”. It is about establishing and nurturing a healthy relationship between the police and 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 mindsets. The emphasis ought to be on providing a service as a means to uphold the law, rather than to use force to impose the law.

By any objective measure the police in the region do not come anywhere near meeting these standards. 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, immense work needs to be done before police organisations on the Indian subcontinent are able to transition from a “force” to a “service”.

1.5 The Way Forward

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 the police and the political executive, improvement in the management and leadership of the police, attitudinal changes of all stakeholders, improvements in provisioning and, most of all, far 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 the implementers. As such, the police and the political executive are both bound together in the common endeavour to prevent and investigate crime, maintain law and order and ensure 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 has to be articulated appropriately. There is a difference between legitimate “supervision” of the police by the political executive and illegitimate interference and influence in police working. Conversely, the police must always remain accountable to elected politicians to uphold the law and perform its duties in accordance with the law. If this balance is properly maintained, then democratic policing will become inevitable. That is why it is so

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, p. 15.

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.

important to define “superintendence” of the police carefully, stating explicitly what it actually means and to carve out spheres of competence to 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 the case presently.

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 force without constitutional values is likely to be a harsher entity than even at present. The police’s entrenched social conditioning 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 incorporated a sufficient number of 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, along with 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 its 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 consequences of inaction on this issue are significant. The years 2009 and 2010 were marked with suicide attacks in Pakistan, killing hundreds and injuring many more. Bangladesh has developed a reputation as the prime transit route for trafficking heroin to Europe from South-East Asia.⁹ India has been unable to control the ongoing violence taking place in Naxal-affected areas¹⁰ and has also suffered several high-profile terrorist attacks. Additionally, thousands of people continue to “disappear” in Sri Lanka, with little expectation that those responsible will be caught.¹¹

Compromised physical security, whether in the form of a high-profile terrorist attack or everyday bad policing, continues to expand the schism between the public and the police.

-
- 6 Laksiri F. (2005), *Police-Civil Relations for Good Governance*, Social Scientists’ Association; and Olander B.K., Orjuella C. and Edrisinha R.(2007), *Review of Development Cooperation between Sri Lanka Police and Swedish National Police Board*, December, p. 10.
 - 7 Swami P. (2006), “Bias and the Police”, *Frontline*, Volume 23, Issue No. 24, 2-15 December: <http://www.hinduonnet.com/fline/fl2324/stories/20061215002503300.htm>, as on 13 November 2008.
 - 8 Natarajan K. (2005), “Status of Women Police in Asia”, pp. 45-47, *The Journal for Women and Policing*, Issue No.17: <http://www.auspol-women.asn.au/issue%2017.pdf>, as on 1 December 2008.
 - 9 Bangladesh News (2008), “Bangladesh Transit Route for Heroine Trafficking”, 7 March: <http://www.bangladeshnews.com.bd/2008/03/07/bangladesh-transit-route-for-heroin-trafficking/>, as on 17 September 2008.
 - 10 Human Rights Watch (2008), *Being Neutral is Our Biggest Crime*, 14 July: http://www.hrw.org/sites/default/files/reports/india0708_1.pdf, as on 17 October 2008.
 - 11 Human Rights Watch (2008), *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, Volume 20, No.2(c): <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0>, as on 12 November 2008.



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

This publication provides concrete measures that can be undertaken to improve policing services in each jurisdiction. It is CHRI's firm belief that true reform will occur only when informed public opinion creates the requisite political will to change traditional patterns of conduct. Publications such as this along with consistent long-term advocacy on the issue are intended to inform and catalyse the much needed reforms.

Police reforms are too important to neglect and too urgent to delay. Reform must happen or the gains of democracy will be lost sooner than we know.

Chapter 2

Bangladesh



2.1 Background

The December 2008 elections in Bangladesh ended a two-year military-enforced State of Emergency. The Caretaker Government (CTG) had remained in power much longer than anyone expected. The reason being that the system was so corrupt, it would have been impossible to promptly hold a free and transparent election in Bangladesh. Only after purging the electoral roll of over 12.7 million illegitimate names and issuing photo identity cards to all eligible voters, was the CTG in a position, in December 2008, to hold the cleanest and most transparent election in Bangladesh's history.¹²

Democratic governance was restored. The formation of the Awami League-led government generated hopes for strengthening governance and democratic reforms in the country. There was also the hope that the country would initiate moves to mend its reputation as one of the most corrupt and politicised countries in the world.¹³

However, that was unlikely to happen. It was crucial that the Emergency ended and elections took place. This was an essential precondition for the country's stability. But the end of Emergency rule and elections alone do not result in a democracy. Both the major parties – the Awami League and the Bangla National Party (BNP) remain opposed to the reforms necessary to institutionalise democracy. Both parties have over the years inherited a longstanding culture of impunity that no government has been willing to tackle.

The performance of any organisation depends on the principles on which it is founded and the tempered actions of its officers. Brutal violations over the years have given these principles a violent burial. This has resulted in a corrupt, inefficient and biased police force acting as agents of the political executive rather than as instruments of a democratic state. Successive governments have “used” the police to achieve political ends, and a weak force so heavily reliant on its political masters, has not been able to withstand this gradual but complete politicisation. The force is marked with a reputation of applying the law selectively against opponents, whether political or personal, at the behest of persons of influence. Impunity reigns supreme and reform appears to be a distant reality.

2.2 Police Reforms: The Past, the Present and the Future

From 1971, when Bangladesh gained independence, police reform has received the lowest priority from every successive government. From the Partition in 1947 till the Liberation War of 1971, Bangladesh was called East Pakistan and was a part of the Pakistan nation. It therefore shared a common history with Pakistan on several issues, including that of police reform, till 27 March 1971, when it became an independent nation. (Refer to the chapter on Pakistan for more details.)

Even after achieving independence, Bangladesh continued to struggle with an unprofessional and deeply dysfunctional police force and political instability. Irrespective of which political party or military-backed government was in power, police forces in Bangladesh acquired a reputation for wielding heavy-handed tactics when carrying out their duties.

Many committees and commissions were formed since 1971 to diagnose the police force's problems and formulate specific recommendations. But, as pointed out by a former Inspector-General of Police (IGP): “These initiatives have been fruitful to the extent that the reports were compiled, but unfortunately the recommendations they carried have not been implemented. Scarce resources, mixed incentives and vested interests prevented the reform

12 AFP (2008), “Bangladesh Voter's List Eliminates all Ghost Names”, 25 December, <http://www.google.com/hostednews/afp/article/ALeqM5jTYGbEHjDVC-SIY4PEhksmFYuq-Q>, as on 25 December 2008.

13 Bangladesh was ranked as the most corrupt country in the world in 2005 (http://news.bbc.co.uk/1/hi/world/south_asia/4353334.stm), and often figures in the top ten (http://www.ti-bangladesh.org/index.php?page_id=216). Also, the anti-graft campaign started by the Caretaker Government yielded no results. Investigators were not prepared, nor were they trained in the relevant anti-corruption laws. In most graft cases, procedural requirements were not followed. Several cases became weak long before they reached court. There were lapses in the laws and technicalities, which made it easier for the top suspects to escape custody.

agenda from being implemented.”¹⁴ Perhaps the most glaring manifestation of poor working conditions of law enforcing agencies was the Bangladesh Rifles mutiny in February 2009 over better pay and working conditions.

History of Police Reforms in Bangladesh

- In 1971, after gaining independence from Pakistan, the police force became the Bangladesh Police, and the Dhaka Metropolitan Police (DMP) was established on 1 February 1976.
- In 1977, a committee was formed to study police training. This committee was headed by a retired IGP, M. A. Kabir. However, the recommendations of the committee were largely ignored, though some were approved by the government.
- In 1986, another committee was formed headed by Additional IGP, Toieb Uddin Ahmed. On the basis of its recommendations, the strength of the Bangladesh Police was increased and their logistical support was subsequently enhanced.
- The 1988 committee was headed by Justice Aminul Islam. According to its recommendations, the post of Additional IGP was created and specialised police units, police stations and investigation centres were established, while the strength of the police force was also increased.
- In early 2003, the Bangladesh office of the United Nations Development Programme (UNDP) held critical discussions and negotiations at both formal and informal levels with the Bangladesh Police. A Joint Government of Bangladesh-UNDP Human Security Mission, initiated its needs assessment and project formulation work in September 2003.
- “Towards Police Reform in Bangladesh – Needs Assessment Report 2003,” advocated a Police Reform Programme (PRP) aimed at improving the efficiency and effectiveness of the Bangladesh Police.
- The PRP was designed to be implemented over a nine-year period with the full cooperation of the Ministry of Home Affairs (MoHA) and the Bangladesh Police, and was funded by UNDP, the Department for International Development (DFID) and other partner organisations. Phase 1 was launched for the period 2006-2009.
- With the assistance of the PRP, the Bangladesh Police under the CTG put together the Draft Police Ordinance, 2007. The Ordinance sought to update police legislation by creating accountability mechanisms, limiting illegitimate political interference and professionalising law enforcement. The military-backed Caretaker Government resuscitated the UN-sponsored Police Reform Programme. During the two-year State of Emergency, between January 2007 and December 2008, the military clamped down on politicisation and temporarily permitted the CTG to make progress on a number of reforms stalled under the previous government, including police reform.
- During Phase I (2004-2009), eleven model *thanas* were established by the PRP. Model *thanas* are operated with enhanced resources, improved infrastructure, and a pro-people police operating for them on the basis of predetermined standard operating procedures.
- Phase II of the PRP was initiated in 2010 and will run till 2014. The military-backed CTG was slow to effect substantive police reforms and as such a new Police Act did not see the light of day. The Police Reform Programme with substantial donor involvement is in its second phase and may gather momentum, subject to the political will of the government

14 Shahjahan, ASM (2006), Police Reform: A Bangladesh Concept, Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms, p. 40.

2.2.1 Reforms under the Caretaker Government

Under the Caretaker Government (CTG) that assumed power on 11 January 2007 with the explicit purpose of facilitating a free and fair election, there was initially a sense of hope for better, more accountable governance. The anti-graft campaign was launched but remained largely unsuccessful for several reasons. Significant institutional reforms to the Electoral Commission, Public Service Commission and the Anti-Corruption Commission were introduced.

The most noteworthy reform however was the separation of the judiciary from the executive. In November 2007, the Chief Adviser to the CTG of Bangladesh, Dr Fakhruddin Ahmed, announced the birth of the two separate magistracies – judicial and executive – and the Code of Criminal Procedure (Amendment) Ordinance came into effect on the same day by separating the judiciary from the executive.

Four resolutions were passed by the CTG. These included: the Judicial Service Commission Rule, 2007; the Bangladesh Judicial Service Pay Commission Rule, 2007; the Bangladesh Judicial Service (Service Constitution, Composition, Recruitment, Suspension, Dismissal and Removal) Rules, 2007; and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules, 2007. With this separation it was hoped that police functioning would become less politicised. However it remains uncertain as to what extent this separation has been operationalised.

Independence of the Judiciary and its Impact on Police Functioning

Over the years, the lower judiciary in Bangladesh became subservient to the executive and was amenable to its pressures and influences. The judiciary, which acts as an important and essential check on executive powers, thus lacked independence. This impacted heavily on the police's functioning. Magistrates were expected to perform both judicial and executive functions. As part of their judicial functions, they recorded witness statements, granted or rejected bail and conducted criminal trials. They also played the important function of oversight, through receiving reports from the police of registrations of criminal cases, monitoring investigations, ensuring remands at proper stages, and expeditious disposal of the cases. Under their executive duties, these same magistrates issued arrest and search warrants, ordered the police to disperse crowds, and passed detention orders under the Special Powers Act, 1974.

Judicial independence is an important precondition for the transparent and accountable administration of justice. A judiciary beholden to the executive not only denies citizens access to justice, but also results in flagrant violation of fundamental rights. Magistrates were known to have frequently used their executive powers at the instance of the executive. Arrest warrants were issued, warrant-less arrests sanctioned, police remands granted, public gatherings restricted and bail orders granted or rejected, at the convenience of the executive. This overt abuse of executive power was commonplace under various different regimes.

In 1999, the Bangladesh Supreme Court in a landmark judgement in *Secretary, Ministry of Finance v Masdar Hossain* (popularly known as the Masdar Judgement)¹⁵ re-affirmed the constitutional mandate for the independence of the judiciary and laid down a road map to achieve the separation of the judiciary from the executive with respect to the lower courts. Till as late as 2007, the judgement remained largely unimplemented.

BNP and the Awami League (AL) first included the separation of the judiciary in their agenda during the Anti-Ershad Movement. Both the AL and the BNP delayed the process during their tenures. It was only in November 2007 that the CTG decided to give effect to this separation.

15 20 BLD (2000) AD 141.



In relation to police reform, the CTG resuscitated the UN-sponsored Police Reform Programme (PRP) scuttled by the BNP-led government. The government, for instance, drafted the Police Ordinance, 2007 to replace the Police Act of 1861 that sought to make the police more accountable, professional and responsive to the needs of the community. However, it failed to promulgate the Ordinance during its tenure. It is rumoured that the head of the CTG buckled under bureaucratic pressure and disbanded the Draft Ordinance.

Despite several progressive reform measures, the CTG's two-year rule was marked by a number of well-documented allegations that government forces and the police were involved in cases of torture and extrajudicial executions. According to Odhikar's Report on Bangladesh (2007), 64 people were killed in alleged police encounters and another 94 by the Rapid Action Battalion (RAB) that year.¹⁶ In their 2008 report, Odhikar states that 59 people fell prey to extrajudicial killings by the police, and another 68 by the RAB.¹⁷

2.2.2 Reforms under the Present Awami League-led Government

The formation of the Awami League-led government following elections in December 2008 generated hopes for speedier implementation of police reforms. In its election manifesto, the party committed itself to police reform. The manifesto stated: "In order to provide security to every citizen of the country, police and other law and order enforcing agencies will be kept above political influence. These forces will be modernised to meet the demands of the time. Necessary steps will be taken to increase their remuneration and other welfare facilities including accommodation." Unfortunately, the government has shown little interest in overhauling the country's antiquated system of policing or repealing the 1861 Police Act and replacing it with the Ordinance that promises significant changes for transforming the police into a professional, accountable and efficient service. Recent remarks made by Additional Secretary, Ministry of Home Affairs (MoHA), calling the Ordinance unrealistic and impracticable suggest that it is unlikely to be passed any time in the near future.¹⁸ Without executive support for a new law, any interim remedial measure will prove inadequate. In the absence of a law imbuing the principles of democratic policing, reform will not be sustainable.

The human rights record of the police under the Awami League-led government has not been one they could boast of. According to the Odhikar Human Rights Report, 2009, the police were responsible for 75 of a total 154 extrajudicial killings by law enforcing agencies in 2009.¹⁹ But the Bangladesh Police is not the only law enforcement agency with a poor track record when it comes to safeguarding the rule of law and performing its duties using minimal violence. The Rapid Action Battalion (RAB) is a relatively new law enforcement agency in Bangladesh, and it has the reputation of using aggressive methods. RAB was created in June 2004, and was based on the Armed Police Battalions (Amendment) Act, 2003. It is a composite force drawing personnel from the police and the paramilitary and armed forces, and currently has 12 battalions across the country. RAB's main functions include crime control, confiscation of illegal arms, arrest of wanted criminals, controlling women and child trafficking, and money laundering. Compared to the police, RAB members are well trained, well paid and well equipped.²⁰

16 Odhikar (2007), Human Rights Concerns: Odhikar Report on Bangladesh, Dhaka, p. 18.

17 Odhikar (2008), Human Rights Report: Odhikar Report on Bangladesh, Dhaka, p. 38: <http://newsfrombangladesh.net/dbimages241473-0-Odhikar%20annual%20human%20rights%20report%202008.doc>, as on 20 March 2009.

18 The Daily Star (2010), "Whither Police Draft Ordinance, 2007?", 23 August: <http://www.thedailystar.net/newDesign/news-detail.s.php?nid=151810>, as on 10 November 2010.

19 Odhikar (2009), Human Rights Report 2009, Bangladesh, p. 17.

20 Institute of Governance Studies BRAC University (2006), The State of Governance in Bangladesh 2006: Knowledge, Perceptions, Reality (Dhaka), p. 67: http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf, as on 23 October 2008.

Excesses by the Rapid Action Battalion

The Rapid Action Battalion (RAB) has been accused of human rights abuses and using excessive force. During the RAB-led Operation Clean Heart in 2002-2003, 45,000 citizens were arrested and 60 killed in an attempt to address epidemic crime levels. The criticism towards RAB was so pointed in the aftermath of the operation that the government passed an ordinance precluding prosecutions of RAB officers for human rights violations committed during this period.²¹

Although RAB is often seen as a separate entity from the Bangladesh Police, the truth is that it is still considered a part of the policing apparatus. As a result, despite the fact that there is a special Director General for RAB, it still falls under the ultimate jurisdiction of the Inspector-General of Police (IGP). This means that if disciplinary action is taken against a RAB officer, he can ultimately appeal to the IGP even though the consequences of his misconduct are found under the Armed Police Battalions (Amendment) Act and not under any police-specific legislation.²²

Security forces including RAB, the military and police frequently employed severe physical and psychological abuse during arrests and interrogations. According to figures provided by human rights organisations, the use of such techniques initially declined in 2008 but increased during the year. Abuse comprised threats, beatings and the use of electric shock. As many as 68 people were tortured by security forces. The government rarely charged, convicted or punished those responsible, and a climate of impunity permitted such abuses by RAB, the police and military to continue.

Addressing Impunity: Bangladesh War Crimes Tribunal

The process of treating a festering sore on the body politic of Bangladesh gained momentum with the election of the Awami League-led alliance to power after independence. Several Bangladeshis (Bangla citizens), particularly those who served in the erstwhile government were accused of committing murder, rape, arson, looting and abetting the crimes committed by Pakistani forces during the conflict that eventually led to the emergence of Bangladesh as an independent nation.²³ Although preparations were made to try these alleged “war criminals” as early as in 1973, with the enactment of the International Crimes (Tribunal) Act the process of formally investigating and trying them did not take off owing to lack of political will in successive governments. The war criminals have remained free for almost four decades without any accountability for their actions that are often described as constituting genocide in Bangladesh.

In 2009, the Awami League-led government breathed life into the process of holding the alleged war criminals accountable by incorporating amendments to the International Crimes (Tribunal) Act to bring it in line with international best practice standards enshrined in the Rome Statute of the International Criminal Court. A three-member tribunal was set up in 2010 to try the alleged war criminals. A panel of retired police officers was formed to investigate the war crimes. Another panel of eminent lawyers was constituted to prosecute the alleged perpetrators in accordance with internationally recognised fair trial standards. The United Nations recently offered technical assistance to Bangladesh to try its first ever war crimes case.²⁴

21 Ibid.

22 The Daily Star (2005), “RAB Empowered to Try its Members in Court Martial Style”, 7 September: <http://www.thedailystar.net/2005/09/07/d5090701044.htm>, as on 1 December 2010.

23 Ahamed S. (2010), “The Curious Case of the 195 War Criminals”, Forum, Vol. 3 Issue 5, The Daily Star, March 2010: <http://www.thedailystar.net/forum/2010/may/curious.htm>, as on 8 December, 2010.

24 BDNews24.com (2010), War Crimes Trial Work Begins, 26 March: <http://www.bdnews24.com/details.php?id=156712&cid=2>, as on 8 December 2010; The Daily Star (2009), “UN to Help War Crime Trial Planning”, 8 April: http://www.thedailystar.net/newDesign/latest_news.php?nid=16144, as on 8 December 2010.

Bangladesh will be required to perform a tough balancing act to meet the aspirations of the bereaved families seeking justice while ensuring that the investigation and prosecution processes are in tune with international standards and above reproach. These trials will demonstrate the government's commitment to end impunity for individuals accused of committing crimes against humanity.

2.2.3 Reform from Within

Notwithstanding the lack of political will towards police reforms, police officials themselves are more amenable to reform. Several senior officials and the top leadership are often at the forefront in advocating reforms. In one such impassioned plea, a former Inspector-General commented: "The establishment has to realise and appreciate that politicisation of the police, its unaccountability to the people and its outdated managerial practices largely result from lack of professionalism and accountability within the organisation. Political misuse of the police has been the direct result of internal organisational problems and poor performance."²⁵ Further signs of the commitment to police reforms by the top leadership are seen in the drafting of several strategic documents by the Bangladesh Police along with the PRP such as the Strategic Plan, 2008-2010, Community Policing Strategy and Crime Prevention Strategy.²⁶

Court Oversight

Illegal arrest and detention and extrajudicial killings form the bane of policing in almost all South Asian countries, including Bangladesh. Civil society has been extremely vocal on this issue and has even taken the matter before the courts to gain relief or to make courts take a stand on the matter. In response to the much abused power of arrest, the High Court Division of the Supreme Court of Bangladesh provided elaborate guidelines in the form of 15 directives to be followed by law enforcement agencies and magistrates on arrest without warrant, detention, remand and treatment of suspects.²⁷ In its judgement, the Court also directed that the legislature consider amending Sections 54, 167, 176 and 202 of the Code of Criminal Procedure dealing with the powers and functions of police and magistrates.²⁸

Subsequently, in *Saifuzzaman v State and Others*,²⁹ the Court issued guidelines to be followed by the government, magistrates and police in respect of arbitrary arrest, detention, investigation and treatment of suspects. Extrajudicial killings in Bangladesh both by the police and RAB are a cause for considerable concern. The High Court in November 2010 taking suo motu cognisance of the matter issued a notice asking the government for an explanation.

The courts thus continue to play a watchful role on activities and excesses of law enforcement agencies.

25 Huda M.N. (2009), "Dithering on Police Reforms", *The Daily Star*, 30 October : <http://www.thedailystar.net/newDesign/news-details.php?nid=111839>, as on 31 October 2010.

26 Considerable interest also prevails among the media and civil society towards police reform. CHRI organised a discussion on police reforms in Dhaka in August 2010 in collaboration with local partners. The discussion attracted massive participation and wide-scale media coverage. These factors reflect a compelling interest on police reforms in the country, and it is the responsibility of donor agencies to catalyse this interest by way of deepening the pressure on government for speedier implementation of police reforms.

27 Bangladesh Legal Aid and Services Trust v Bangladesh 55 (2003) DLR (HCD), 363.

28 Khan A. H. and Osman K. A. (2010). "Ensuring Effective Policing: Bangladesh High Court's Guidelines on Arrest without Warrant," NIPSA E-Newsletter, May 2010: http://www.nipsa.in/index.php?option=com_content&view=article&id=92&Itemid=88, as on 6 December 2010.

29 56 (2004) DLR (HCD) 324.

2.3 Police Reform Programme

The Police Reform Programme funded by UNDP, DFID and the European Commission has completed five years since it was formally launched. The main aim of the programme is to “shift Bangladesh police from an operationally reactive, command and control focused, law enforcement and public order agency to a consultative, community oriented, professional police service with an emphasis on crime prevention.”³⁰ Although donor driven, the programme was able to consolidate support for reform from within the police force and succeeded in effecting some positive changes. Different studies have revealed a reduction in crime rate while the image of the police has also improved.³¹ But other structural changes necessary for consolidating and furthering these positive changes, such as replacing the Police Act, 1861 with the Police Ordinance, 2007 is yet to occur. Without this the programme will fail to realise its full potential.

Starting 2010, the programme entered into its second phase, which is to last till 2014. The programme can be considered as the first serious police reform initiative in Bangladesh. The UNDP Bangladesh Country Office was involved in critical discussions and negotiations at both formal and informal levels with the key stakeholders of the security and criminal justice sector in Bangladesh, particularly with the Bangladesh Police. UNDP put together a “Needs Assessment Report” in 2004 and concluded that: “An accountable, transparent and efficient policing service in Bangladesh is essential for the safety and well-being of all citizens, national stability and longer-term growth and development, particularly the creation of a secure environment which is conducive to consumer and investor confidence.”³² The Police Reform Programme (PRP) was created from this assessment.

The PRP’s objective is “to develop a safer and more secure environment based on respect for human rights and equitable access to justice through police reform, which is more responsive to the needs of poor and vulnerable people including women.”³³ By working in conjunction with the Bangladesh Police, the PRP seeks to professionalise the service through capacity building as well as advocate for policy reform in order to improve its efficiency and effectiveness. The key components of the PRP include:

1. Crime Prevention
2. Investigations, Operations and Prosecutions
3. Human Resource Management and Training
4. Strategy and Oversight
5. Programme Management
6. Human Trafficking.³⁴

The PRP acknowledges that the police cannot solve these problems in isolation and it needs the support of the Ministry of Home Affairs, the Government of Bangladesh, civil society, the media and the community at large. To that end, the PRP works closely with these different stakeholders in the above areas.

At the end of Phase 1, the PRP boasts of several important achievements, both at policy reform and capacity building. Some of the major achievements are listed below.

30 Police Reform Programme, Bangladesh (2007), “Training Need to Learning Approach: A Training Strategy for the Bangladesh Police”, p. 39: <http://www.prp.org.bd/downloads/TrainingNeed.pdf>, as on 1 December 2010.

31 Saferworld (2010), “Security Provision in Bangladesh”, March: <http://www.saferworld.org.uk/downloads/pubdocs/Security%20provision%20in%20Bangladesh%20exec%20sum%20English.pdf>, as on 1 December 2010.

32 UNDP (2004), “Needs Assessment Report 2003: Towards Police Reform in Bangladesh”, p. 2: <http://www.prp.org.bd/NeedAssesment/Contents.html>, as on 1 December 2010.

33 Police Reform Programme (2008), “Police Services in Selected Model and Non-Model Thanas (Dhaka)”, p. 1: <http://www.prp.org.bd>, as on 21 October 2009.

34 Police Reform Programme (2008), Bangladesh Police, Ministry of Home Affairs: <http://www.prp.org.bd/index.htm>, as on 12 September 2008.

Table 1: PRP Phase 1 – 2005-2009

	Achievements	Key Features
1	CRIME PREVENTION	
i	Development of National Crime Prevention and Community Safety Strategy, 2009 ³⁵	<ul style="list-style-type: none"> • Develop a compendium of crime prevention and community safety projects • Develop early intervention programmes such as drug awareness, protection against sexual assaults and development of sports activities in order to ensure the productive development of young persons • Adopt Neighbourhood Watch Schemes • Develop victim support programmes to avoid repeated victimisation • CP (Community Policing) a working philosophy rather than a technique • Four key steps to implement CP include: <ul style="list-style-type: none"> – Identify the need for CP – Identify the need for a partnership – Define the aim and objectives of CP – Develop a plan • Develop a two-tiered framework to carry out the job • 11 Model <i>thanas</i> refurbished with enhanced infrastructural facilities • Information and communication technology training given to 126 police officers • Established at Police Headquarters • Mandated to coordinate with NGOs and donors on community policing and crime prevention strategies • Focus on capacity building of policewomen • 193 women became members of the International Association of Women Police
ii	Community Policing Service Manual ³⁶	
iii	Refurbishment of Model <i>Thanas</i>	
iv	Establishment of Crime Prevention Center	
v	Bangladesh Police Women’s Network	
2	INVESTIGATION, OPERATION AND PROSECUTION	
vi	Establishment of Criminal Intelligence Unit	<ul style="list-style-type: none"> • Established at the Criminal Investigation Department • Two Forensic Facilities established in Dhaka and Chittagong • Model <i>thanas</i> equipped with advanced analytical equipment, fingerprint and camera packs
vii	Forensic Support	
3	HR MANAGEMENT AND TRAINING	
viii	Development of the Training Strategy “From Training Need to Learning Approach” for the Bangladesh Police, 2007	<ul style="list-style-type: none"> • Key emphasis on “learning” and not “training” • Broad training themes identified include crime prevention, forensics, police prosecutions, leadership, management, supervision, strategic planning, research and policy development • Mandated to develop an integrated approach to training • Chaired by the Secretary, MoHA
ix	National Police Training Board	
4	STRATEGY AND OVERSIGHT	
x	Strategic Plan, 2008-2010 ³⁷	<ul style="list-style-type: none"> • Five key strategic areas are: <ul style="list-style-type: none"> – Organisational reform – Community policing – Capacity building of training institutions – Gender sensitisation – Computerisation • Discussed below (Section 2.4) • Guidelines to manage Police Information Management Strategy • Proposed setting up of a Bangladesh Police Information Management Division (yet to be approved by MoHA)
xi	Police Ordinance, 2007	
xii	Bangladesh Police Information	
5	PROGRAMME MANAGEMENT	
xiii	Project Review and Evaluation	<ul style="list-style-type: none"> • Public Attitude Baseline Survey, 2006 • Public Attitude Follow-Up Survey, 2008 • Qualitative Impact Study, 2008
6	ANTI-TRAFFICKING OF HUMAN BEINGS	
xiv	Establishment of Trafficking in Human Beings (THB) Unit at Police Headquarters	<ul style="list-style-type: none"> • Part of the Criminal Investigation Department • Staffed by nine trained officers • VSC established at Tejgaon Women’s Police Barrack, Dhaka • Staffed by both police officers and NGO representatives
xv	Victim Support Centres (VSC)	



The programme as shown above undoubtedly has had an impact on policing and reform. For instance, many of the Victim Support Centres although understaffed and under-resourced are significant first steps that need to be lauded. Clearly, the real test lies in implementation, and in that, an assessment of some of their key components such as the model thanas, community policing and gender sensitization, hold tremendous promise for democratic policing in the country. These have been examined below.

2.3.1 Model *Thanas*

A recurring theme of police reform discussions throughout South Asia is the issue of resources for the police. Money to invest in policing has always been scant. In addition to a range of other difficulties, the lack of financial resources has severely compromised the functioning of thanas (police stations) throughout Bangladesh. This is disturbing, since *thanas* serve as the foundation of any democratic police service. Mr A.S.M. Shahjahan, former IGP of Bangladesh and leading advocate for police reform, has stated the following about *thanas*:

The lowest but most visible stratum of the police system is the police station or the *thana*. In police-related matters, people first come to the *thana*. Thus, the best way to measure the effectiveness of the police in the performance of their function is by evaluating the efficiency of the *thana*. In the same vein, as the *thana* is the smallest unit of the police organisation, its state is representative of the situation of the entire police organisation.

There are three types of thanas: metropolitan, district, and upazilla. The metropolitan *thana* is guided by the Metropolitan Police Act, while the other thanas are guided by the Police Regulation of Bengal and the Police Act. Nevertheless, their activities are the same. Some *thanas* have their own premises, others do not. In some places *thanas* operate from rented premises and in others they are temporarily lodged in improvised government/private accommodation. Often, the party in power declares the establishment of a *thana* in an area as a way of catering to public demands and gaining political advantage.³⁸

The PRP seeks to address the consequences of this funding shortfall by directing resources to the creation of model *thanas* in various districts throughout Bangladesh. The aim of the model *thanas* is to: “Integrate and showcase the best practices in policing by fostering an environment that facilitates prevention of crime, provides equitable access to justice and engages the police and public in a meaningful partnership to effectively address community concerns and improve the quality of life of citizens.”³⁹ This is done by adopting pro-people, service-oriented policing. Standard Operating Procedures (SOPs) will be developed for the model *thanas* through workshops that are held at each model *thana*.⁴⁰ The philosophy underpinning model *thanas* is to ultimately reform the police at the most basic level. The organisational strategy of model *thanas* focuses on committing the requisite funds needed to improve delivery of police services. There are 11 model *thanas* functioning presently.⁴¹ Another six

35 Police Reform Programme, (2009), National Crime Prevention and Community Safety Strategy of Bangladesh, <http://www.prp.org.bd/Menudownloads.htm>, as on 21 September 2008.

36 Police Reform Programme (2008), Bangladesh Police, Community Policing Service Manual: <http://www.prp.org.bd/Menudownloads.htm>, as on 21 December 2009.

37 Police Reform Programme (2008), Strategic Plan: 2008-2010 : <http://www.prp.org.bd/Menudownloads.htm>, as on 21 December 2009.

38 Shahjahan A.S.M. (2003), Strengthening Police Reforms, Strengthening the Criminal Justice System, p. 41: <http://www.adb.org/Documents/Books/Strengthening-Criminal-Justice-system/chap03.pdf>, as on 20 July 2008.

39 Police Reform Programme (2008): <http://www.prp.org.bd>, as on 1 December 2009.

40 Institute of Governance Studies, BRAC University (2008), The State of Governance in Bangladesh 2007: Expectations, Commitments, Challenges (Dhaka), p. 45: [http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/SOG_2007%20\(without%20annex\).pdf](http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/SOG_2007%20(without%20annex).pdf), as on 12 October 2008.

41 Model thanas are located at: Dhanmondi Thana, DMP, Dhaka; Uttara Thana, DMP, Dhaka; Narayanganj Sadar Thana, Narayanganj; Narsingdi Sadar Thana, Narsingdi; Bhaluka Thana, Mymensingh; Panchlailsh Thana, CMP, Chittagong; Patenga Thana, CMP, Chittagong;

new ones are being constructed, with modern facilities and are likely to be opened shortly.⁴² In Phase-II, 18 more *thanas* have been planned for conversion into model *thanas*.⁴³

While there is no question that PRP investment in the model *thanas* has resulted in better equipped *thanas*, the critical question is: “Have the increased resources translated into better policing?” Several empirical studies conducted by the PRP such as the Interim Evaluation Report on the Model *Thanas* (2007), Police Services in Selected Model and Non-Model *Thanas* (2008), and most recently the Public Attitude Follow-Up Survey (2009) appear to suggest that they have.

The latest survey was conducted in late 2008 in seven out of 11 model *thanas*, four non-model, and two comparison ones. The key finding of the survey is that the model *thanas* have improved the image of the police substantially, both among the elite respondents of the community as well as the general public. The opinion of the elites is that the “model *thana* has improved the communication between the police and the community, the police has become more efficient...and cases are being processed swiftly.”⁴⁴ The opinion voiced by the local communities is equally positive. Notably, “the poor men as well as the women are generally treated well by the concerned police officers in the model *thana*. They are surprised to find that they are even requested to sit in front of the officer in the service delivery centre of the *thana*. Services are provided quite systematically and police also help them with the drafting of the necessary documents. There are no middlemen (dalals) in the *thana* any longer who, in the past, used to function as conduits between the service recipients and corrupt police officials.”⁴⁵ There are other notable provisions and achievements of model *thanas*:

- Occurrence of crime was relatively less in model *thanas* than in comparison ones, particularly serious crime involving murder and drugs
- About 61 per cent of the respondents were satisfied with police responses (filing complaints, the process of recording statements) in model *thanas* compared to 30 per cent in the comparison *thanas*
- Nearly 27 per cent of the victims faced difficulties in filing First Information Reports (FIRs) or complaints in model *thanas* compared to 44 per cent in the comparison ones
- There was a 38 per cent reported decrease in corruption
- According to police respondents, the routine monitoring of criminals (44 per cent), prompt action for investigation (31 per cent) and prompt apprehension of criminals (28 per cent) were higher in model *thanas* than in the comparison ones, which stood at 33 per cent, 24 per cent and 19 per cent respectively.

Senior police respondents, however, highlighted several problems faced by the model *thanas*. Lack of resources and shortage of funds, they believe, severely hamper the provision of better services as intended.⁴⁶ In the absence of a permanent space to hold the Open House Day, for instance, there is a possibility of the Officer in Charge of the *thana* manipulating the process by inviting only those whom he chooses to. Above all, interference faced by the police in discharging their responsibilities remains a prickling issue. Nearly two-thirds (64 per cent) of the police respondents reported that they faced political and social pressures and interference by political leaders while discharging their responsibilities. The reported interference was 55 per cent in model *thanas*, 75 per cent

Feni Sadar Thana, Feni; Comilla Sadar Thana, Comilla; Chandpur Sadar Thana, Chandpur; and Kotwali Thana, Jessore.

42 These *thanas* will be located at Kotiadi Thana, Kishoregonaj; Gangachara Thana, Rangpur; Bahuball Thana, Habiganj; Sonagachi Thana, Feni; Damurhuda Thana, Chuadanga; and Hathazari Thana, Chittagong.

43 These *thanas* will be in the six ranges: Dhaka, Chittagong, Sylhet, Khulna, Barisal and Rajshahi.

44 Police Reform Programme (2009), Public Attitude Follow Up Survey, Final Report, p. 105: <http://www.prp.org.bd/downloads/FollowupSurvey.pdf>, as on 12 November 2010.

45 Ibid., p. 106.

46 Ibid., p. 108.



in non-model ones and 71 per cent in comparison thanas (p. 76). The most prominent interference comes from political leaders followed by local pressure groups, social elites and senior officers.

It appears that the model thanas are an improvement to the normal ones, but the failure in substantial improvements suggests that there are systemic impediments that can only be resolved through an attempt to change attitudes. While the investments in infrastructure obviously improve the working conditions of police personnel and increase their capacity to provide better service delivery, that in itself will not reform police behaviour. Salma Ali, Executive Director of Bangladesh National Women Lawyers' Association, suggests that while considerable emphasis was put on improving the infrastructure of the model *thanas*, relatively little discussion was centred on changing policing attitudes, privacy, dignity, body language, creating a friendly environment for women and children, ensuring ease of access to services, and working out a plan to include the other stakeholders in the process of reform at the station level.⁴⁷ The PRP is correct when it states that added resources and changing attitudes must take place in tandem if the initiative of the model *thanas* is to succeed.⁴⁸ It remains to be seen if the model *thanas* can achieve these objectives in the long term.

2.3.2 Gender and Policing

A long-standing issue in South Asia has been the abysmal dearth of women police personnel in the officer cadres as well as the constabulary. In this regard, Bangladesh is no different from its regional neighbours, and has a significant shortage of female officers. The PRP has acknowledged the need for greater female representation in the police ranks. It seeks to recruit at least 3,000 women police officers by the end of 2010.⁴⁹ In fact, apart from greater recruitment, the Bangladesh Police is placing considerable emphasis on gender sensitisation that is reflected in its Strategic Plan, 2008-2010. The Plan seeks to enhance gender sensitisation by implementing special procedures and guidelines on the treatment and handling of women suspects, complainants and witnesses. These have already been drafted by the police.

Another significant development is the establishment of the Bangladesh Police Women's Network jointly launched by the PRP and the Bangladesh Police in November 2008. The Network seeks to provide leadership to achieve the national and global women's development objectives through capacity building and professional skill development of policewomen. A total of 193 women police from Bangladesh have become members of the International Association of Women Police (IAWP).⁵⁰ It also held a divisional consultation in July in Rajshahi police line to discuss the problems faced by women officers and constables.⁵¹

Such initiatives are beginning to bear fruit, but mainly in the model *thanas* where the presence of women police was recorded to be much higher while filing complaints than in other *thanas* and rural areas.⁵² Moreover, although there has been some improvement in the general attitude of the police towards women complainants and victims, the fear and discomfort felt by women while approaching a police station to file a complaint continue to persist. However, even in this respect, the feeling of ease was higher in model *thanas* than in the others.⁵³ Police behaviour and their attitude while arresting women have not shown much improvement, with at least half the respondents

47 Isis International (2008), *More Grounds to be Gained: Sexual Harassment Policies in Bangladesh*, 7 August: http://www.isiswomen.org/index.php?option=com_content&task=view&id=1288&Itemid=1, as on 21 October 2010.

48 Police Reforms Programme (2009), Interview with Hubert Staberhofer: <http://www.prp.org.bd>, as on 12 November 2010.

49 Bangladesh Police, Strategic Plan 2008-2010, p. 13: <http://www.prp.org.bd/downloads/strategic%20plan.pdf>, as on 14 November 2010.

50 Ibid., p. 12.

51 UNDP (2010), Divisional Consultation on Women Police Network held in Rajshahi, 18 September: <http://www.undp.org.bd/info/even ts.php?newsid=622&t=In%20News>, as on 9 December 2010.

52 Police Reform Programme (2009), Public Attitude Follow Up Survey, Final Report, P. 94: <http://www.prp.org.bd/downloads/FollowupSurvey.pdf>, as on 12 November 2010.

53 Ibid., p. 95.



of the survey alleging physical abuse during arrest.⁵⁴ Such problems highlight the significance of extensive training of police officers, both men and women, in handling such cases.

2.3.3 Training under the PRP

Over the last few years the focus of police training has altered from an emphasis on the physical and outdoor aspects of policing to include those of law and human rights. The changing legal environment, enhanced awareness of citizens, the internal debate within police cadres to develop a better profile, and oversight by judicial and human rights institutions have necessitated this change. In this environment, creatively designed training packages which are administered consistently are required to make training effective and long lasting.

The PRP considers its training programme to be particularly successful. It is designed to address problems associated with all aspects of inspection, control, leadership and supervision within the police. The vital components of the training are: the introduction of transparent, merit-based police recruitment processes; development and institutionalisation of training (including specialised training); delivery and evaluation capacity; the introduction of flexible and cost-effective training delivery options, including work-based learning; setting targets for increased recruitment of women in the police force; and improving on the efficient use of women police and their representation in more responsible roles. The aim is to ensure that leadership and management training at all levels is improved.

However, there is a crucial obstacle to training. Even with a new curriculum, qualitative improvements in training will be elusive without incentives for police trainers and the de-politicisation of the transfer process. At present, transfers to police training facilities are seen as “punishment postings”. Till this attitude changes, no benefits of improved training will be seen.

Critics feel the PRP’s emphasis is on equipping the police rather than training them. It is hoped that the PRP takes this criticism into account as they enter their next phase.

2.3.4 Community-Based Policing

In Bangladesh, there have been broadly three phases of community-based policing projects (CBPs). In the first phase in 1992, police departments, in conjunction with the Town Defence Party, began to implement community policing in Mymensingh town and parts of Dhaka under the name of “Neighbourhood Watch”. There are now over a hundred Neighbourhood Watch initiatives under the community policing scheme.⁵⁵

The second phase was predominantly a non-governmental initiative. In 2004, the Asia Foundation formed the first Community Policing Forums (CPF) in three districts⁵⁶ to bridge the communication gap between the police and the community by forming CPFs. Unfortunately, since this initiative was not driven by the police, the effort failed to achieve the objective of fostering a true community policing approach.⁵⁷

Over the past couple of years, the third phase of CBP was instituted by the Bangladesh Police. Apart from the National Strategy on Community Policing, the Bangladesh Police has also drafted a Community Policing Manual

54 Ibid., p. 99.

55 Institute of Governance Studies BRAC University (2006), *The State of Governance in Bangladesh 2006: Knowledge, Perceptions, Reality (Dhaka)*, p. 68: http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf, as on 23 October 2010.

56 Boghra, Jessore and Madaripur were the first districts where CPFs were established by the Asia Foundation.

57 Police Reform Programme (2008), *Community Policing: National Strategy for Bangladesh* (Dhaka), p. 7: <http://www.prp.org.bd/Menudownloads.htm>, as on 12 November 2010.

that stands out as one of the most detailed documents on community policing in the region.⁵⁸ It not only defines the rationale, the principles and objectives of community policing, it also explains what and how it must not be seen to be or understood. It repeatedly emphasises, for instance, that community policing must be seen as a working philosophy rather than a technique that can be applied to solve problems, and that it must not have a top-down approach but rather a decentralised one.⁵⁹

To carry out the various functions, the manual envisages a two-tiered framework at the policy and operational levels. At the policy level, it provides for: setting up a National Community Policing Advisory Committee to serve as a supreme body to give strategic directions to the community policing initiatives; one Crime Prevention Centre at the police headquarters to act as a “central research, policy and strategic formulation unit for Bangladesh Police”; and a similar centre at the divisional levels to oversee the implementation of the various initiatives. At the operational level, it provides for the setting up of Community Policing Cells at the district police stations to serve as the “focal point for coordination and monitoring the community policing forums/committee and the crime prevention programmes”; and finally, Community Policing Forums at the grass-roots level to ensure the appropriate implementation of community policing in specified localities.

With the Strategic Plan and the Community Policing Plan being recent initiatives, a considerable amount of work needs to be done for community policing to become formally operational. The only aspect that has been actively implemented is the Community Policing Forums, many of which were set up even before the MoHA approved the National Community Policing Strategy.⁶⁰ Comprised of members of the community, the non-governmental sector, private sector groups, police and other government agencies, the CPFs are envisaged as a means to enhance public-police cooperation and create a more accessible police service. Their performance has been varied. In several places, they have not only been useful in overseeing the delivery of basic services, such as repair of roads, planting trees, and setting up health centres, they have also helped in resolving local problems, thereby reducing the number of cases filed in the police stations.⁶¹

Despite the formation of over 40,000 ward-level CPFs, community policing is still not clearly understood by the police or the community.⁶² This is partly attributed to the lack of CPF officers and easily accessible information centres providing information about the CPF and the monthly meetings.⁶³ Till the Community Policing Manual was formulated, the CPFs did not form part of government policy. This added further to the confusion surrounding CPFs, with some viewing them as bodies independent of the police. Other problems, such as the frequent transfer of police officers, particularly the officers in charge, regular intervention by political leaders and the general lethargy among some superintendents of police (SPs) also slowed down the implementation of the programme. Nevertheless, these may be regarded as teething problems, given the newness of the concept in Bangladesh. Officials have noted a compelling interest in the functioning of the concept both within the community and the police at large. With the sound strategy drawn up by the PRP and the Bangladesh Police, there is great promise for the gradual institutionalisation of community policing.

58 Police Reform Programme (2008), *Bangladesh Police, Community Policing Service Manual*: <http://www.prp.org.bd/Menudownloads.htm>, as on 21 December 2009.

59 Ibid., p. 8.

60 International Crisis Group (2009), *Bangladesh: Getting Police Reform on Track*, Report No. 182, 11 December, p. 22: [http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/182%20Bangladesh%20Getting%20Police%20Reform%20on%20Track.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/bangladesh/182%20Bangladesh%20Getting%20Police%20Reform%20on%20Track.ashx), as on 1 December 2010.

61 Harun-ur-Rashid (Lighthouse), Paper on “Community Policing” at CHRI-FNF Workshop entitled “Our Rights and the Role of Police in a Democratic Society” held on 28 and 29 August 2010 at Dhaka.

62 Police Reform Programme (2008), *Community Policing: National Strategy for Bangladesh* (Dhaka), p. 7: <http://www.prp.org.bd/Menudownloads.htm>, as on 12 November 2010.

63 Harun-ur-Rashid (Lighthouse), Paper on “Community Policing” at CHRI-FNF Workshop entitled “Our Rights and the Role of Police in a Democratic Society” held on 28 and 29 August 2010 at Dhaka.

2.3.5 Critics of the PRP

The report by the International Crisis Group, Bangladesh, “Getting Police Reforms on Track”,⁶⁴ while lauding the PRP’s efforts, is also critical of the project. According to the report, in theory and on paper, the ten-year PRP appears to be a government-owned process led by the MoHA. However, the reality is that it is driven and funded almost entirely by UNDP and the UK Department for International Development (DFID), with small contributions from other donors and the Bangladesh government. Several problems beleaguered the PRP from the outset. A clear lack of political will by successive governments to take up police reform was observed as the single largest obstacle to the programme. Although the PRP did gain momentum under the military-backed CTG, the inability to amend or replace the archaic Police Act of 1861 was a major drawback. Poor project planning and administration has also stagnated progress. Highly centralised decision-making has not only closed any avenues for debate within the PRP, it has prevented it from adapting to varying circumstances. Former and current PRP officials stated that donor agencies compounded the problem. The needs of the police and the donors’ goals were also occasionally found to be at cross purposes with each other. The budget for Phase I, though expansive, did not sufficiently cover recurring costs for the office equipment distributed through the programme, such as gasoline for vehicles, paper for photocopiers, repair work and so on.

With these flaws in view, the report states that without the donors, it would not have been possible to carry out any administrative reforms in the socio-political climate in Bangladesh. A former IGP stated: “The PRP may not be reform in the real sense but at least the donors, despite all their faults, are keeping the issue [reform] alive when it might otherwise be dead.” With a budget nearly double that of Phase I, a new agreement was signed in October 2009 between the government and UNDP to finance Phase II of the PRP. It is unclear whether the lessons learnt in Phase I will serve to make Phase II more efficient and lead to greater ownership from the Bangladesh government.

2.4 Draft Police Ordinance, 2007

The most significant outcome of the PRP-Bangladesh Police collaboration is the creation of a Draft Police Ordinance, 2007 to replace the outdated Police Act of 1861. There are 935 laws in Bangladesh that touch on the issue of policing in some way, shape or form.⁶⁵ Consequently, the system is highly irrational. Inevitably, there are contradictions and gaps in the legislative framework. It remains unclear when (if ever) the system can be fully rationalised. This is one of the reasons why the CTG, Bangladesh Police and the UNDP undertook the task of putting together the Draft Police Ordinance, 2007.

With the input of foreign donors and progressive police officers, the Draft Police Ordinance, 2007 is an exceptional document. If implemented, it would serve as a template for regional neighbours to emulate. Although it has a few weaknesses, it is largely a forward-thinking approach to policing. Generally, it seeks to establish a democratic form of policing in Bangladesh.

2.4.1 Attention to Human Rights

The Preamble of the Draft Ordinance states: “Whereas the police has an obligation and duty to respond to the democratic aspirations of the people, function according to the law and Constitution, and respect the human rights of the people and protect their rights.” The explicit inclusion of “human rights” in the Preamble sets the tone of the Draft Ordinance. This document is determined that the police protect human dignity rather than undermine it. If operationalised, and more importantly, internalised by police personnel, it will be a drastic change from the manner in which policing in Bangladesh is typically carried out.

64 International Crisis Group (2009), *Bangladesh: Getting Police Reform on Track*, Asia Report No. 182, 11 December: [http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/182%20Bangladesh%20Getting%20Police%20Reform%20on%20Track.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/bangladesh/182%20Bangladesh%20Getting%20Police%20Reform%20on%20Track.ashx), as on 9 December 2010.

65 Police Reforms Programme (2009), Interview with Hubert Staberhofer: <http://www.prp.org.bd>, as on 12 November 2010.

2.4.2 Political Interference

Section 10(2) of the Draft Police Ordinance, 2007 states: “Direct or indirect influence or interference into police investigation, law enforcement operation, recruitment, promotion, transfer, posting or any other police function in an unlawful manner shall be a criminal offence.” This provision is groundbreaking for two reasons. First, it criminalises behaviour that is often perpetrated by well connected and powerful individuals. If implemented and followed, this provision would go a long way in piercing the culture of impunity that afflicts Bangladesh. Second, Section 122 of the Draft Ordinance 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

It is no secret that politics plays a role in the transfer and posting of police officers. In several cases, the local MP personally selects the Officer in Charge for his constituency. One police officer was cited in the Daily Star as arguing that “as political parties use the police for their interest, law enforcers always keep themselves busy to make political leaders happy and so people suffer. Due to affiliation with political parties they (policemen) do not even bother about people’s interest. They always try to fulfil the political will of the government.”⁶⁶ If promulgated, the penalty outlined in Section 10(2) could radically alter the cost-benefit of engaging in corrupt activity.

2.4.3 National Police Commission

Section 37 of the Draft Ordinance creates the National Police Commission (NPC) to function as a non-partisan body overseeing the functioning of the Police Service. The Commission is composed of both elected and nominated members. It comprises four politicians (two from the government and two from the Opposition), four non-politicians (or “independent” members), the Secretary of the Ministry of Home Affairs and the Chief of Police. Some of the duties this diverse group will be tasked with include:

- Recommending to the government a list of three police officers for potential appointment as Chief of Police
- Recommending to the government the premature transfer of the Chief of Police and other police officers as provided in the Ordinance, before the completion of the normal tenure of two years for reasons laid down in Sections 7 and 12 of the Ordinance⁶⁷
- Overseeing the implementation of plans prepared by different police units
- Receiving an annual general report from the heads of the units
- Submitting an annual report to the government and parliament
- Recommending reforms for modernisation of laws and procedures in respect of the police, prosecution, prisons and probation services
- Considering the proposals of the Police Policy Group and giving its recommendations to the government
- Maintaining the Public Safety Fund.⁶⁸

66 Institute of Governance Studies BRAC University (2006), *The State of Governance in Bangladesh 2006: Knowledge, Perceptions, Reality (Dhaka)*, p. 68: http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf, as on 23 October 2010.

67 The interesting aspect about Section 44(2)(c) is that it does not acknowledge that one of the NPC members (Chief of Police) is the same person who is the subject of the discussion regarding removal. Will he/she have a vote in this matter, when there is an obvious conflict of interest? The Section is silent on the issue. This is notable because the NPC’s decisions only require a simple majority [see Section 47(6)] and therefore the Chief of Police could very easily be the deciding vote on a matter involving any issue.

68 Section 143 of the Ordinance would establish a fund operated by the NPC for the purposes of improving police infrastructure and service as well rewarding good performance.



Again, the duties of the NPC are similar to those of equivalent bodies in the region. Its creation will result in greater transparency and efficiency in police functioning. However, the issue is always one of implementation. Even if the Draft Police Ordinance, 2007 can be promulgated, it remains to be seen whether the NPC can operate as envisioned, given the deep-rooted nature of feudal policing in Bangladesh.

2.4.4 Police Complaints Commission

Chapter VIII of the Draft Police Ordinance, 2007 creates a Police Complaints Commission, a five-member body of eminent persons with a “brilliant record of integrity and commitment to human rights”.⁶⁹ The Commission would have the powers to investigate serious complaints against the police. It could also direct heads of departments to take disciplinary action or register a criminal case against an errant officer. The Commission would have a permanent secretary and it would be mandatory to report all instances of police misconduct to it.

With police accountability, or the absence of it, being such a major issue of concern in the country, this is a noteworthy provision. However the Commission, if set up, would have some inherent weaknesses. An essential feature of all independent oversight bodies is to give them powers to ensure witness protection. In the absence of such provisions it is unlikely that an already fearful public would complain against the police.

Despite the progressive elements of the Ordinance there are several sections that undermine its very *raison d’être*. Section 145 requires governmental sanction or sanction from a senior official before filing a case against a police officer. If the Ordinance hopes to address the problem of impunity then this is one provision that must be deleted from the books.

However, despite the flaws, the Draft Ordinance is a good example of what modern democratic policing laws should be. It is a tremendous improvement over the present governing law and is a progressive document that will seek to replace the colonial system of policing. The consultative process around the Draft Ordinance was unique. It took the views and opinions of different players within and outside government circles as well as the public at large. Communities are the beneficiaries of good policing and victims of bad policing. Therefore it is crucial that a law that directly touches on the rights, safety and security of the people would take into account their perceptions.

2.4.5 Prospects for Promulgation

As pointed out above, the formation of the Awami League-led government following elections in December 2008 generated hopes for rapid implementation of police reforms. Unfortunately, the government has shown little interest in passing the Ordinance that promises significant changes to transform the police into a professional, accountable and efficient service. Recent remarks made by the Additional Secretary, Ministry of Home Affairs, calling the Ordinance unrealistic and impracticable, suggest that it is unlikely to be passed in the near future.⁷⁰

It is generally believed that “too many people benefit from the weakness of the current legal architecture, which facilitates corruption and abuse from both inside and out of the police force, thus sustaining powerful constituencies resistant to reform”. Whether it is the bureaucracy, wary of loosening its control over the police, or the military, sceptical of weakening its control over Bangladesh’s security policy, there are several obstacles to the reforms.⁷¹ It is perhaps for these reasons that from the initial stages, the Ordinance has encountered

69 The members of the Commission would consist of a retired Judge of the Appellate Division of the Supreme Court, a retired IG or AIG, a retired Secretary/Additional Secretary to the government, and two persons of repute and standing from civil society (including one woman).

70 *The Daily Star* (2010), “Whither Police Draft Ordinance, 2007?”, 23 August: <http://www.thedailystar.net/newDesign/news-detail.php?nid=151810>, as on 24 August 2010.

71 International Crisis Group (2009), *Bangladesh: Getting Police Reform on Track*, Asia Report No. 182, 11 December: <http://www.crisisgroup.org>



considerable difficulty in getting enacted. It was first published in June 2007. On 12 August 2007, the Bangladesh Police submitted it to the Ministry of Home Affairs, which later asked the former to resubmit it after translating it into Bangla and mentioning the differences between the Draft and the 1861 law. Police officials resubmitted the Draft Police Ordinance, 2007 to the Ministry at the end of 2007, which forwarded it to the Chief Adviser's Office (CAO). The CAO sent a letter to the Ministry on 16 January 2008, asking for consultation with stakeholders at thana, district and divisional levels. On 29 January 2008, the Ministry forwarded the order to the Police Headquarters with an additional order to “submit proven information and papers of the consultation workshops”.⁷²

The PRP and Bangladesh Police arranged for thousands of copies of the Draft to be made available to the general public. Consultations were subsequently held in upazillas, districts and divisions throughout Bangladesh. These consultations were completed by June 2008 and the findings were forwarded to the MoHA. However, nothing happened till December 2008.

Tactically, it was a strategic error on the part of the CTG not to include the Awami League and Bangladesh National Party in its attempts to reframe Bangladeshi law. Although Bangladesh's political parties can sometimes be obstructionist that is insufficient reason not to consult them on the tremendous changes the CTG sought. In the end, the CTG knew that it would have to transition power from itself to a democratically elected government. Therefore, it was imperative that the process of enacting a new ordinance included the people who would ultimately promulgate it into law. However, the CTG did not do so during the two years it was in power.

In an effort to reassess the current approach to police reform, and the direction it should take in a more democratic context, the Commonwealth Human Rights Initiative organised a consultation in July 2009, in conjunction with the Institute of Governance Studies (BRAC University) and the BRAC Human Rights and Legal Services Programme, that sought to formulate specific recommendations on how the Bangladesh Police can improve its delivery of services.

2.5 Recommendations

Government of Bangladesh

1. **Immediately Promulgate the Draft Police Ordinance, 2007.** Despite the fact that it was not involved in drafting the Ordinance, the Government of Bangladesh should commit immediately to conduct a review of the Draft Ordinance and promulgate it as soon as possible. The only way to achieve police reform is if politicians demonstrate the political will to change matters.
2. **Limit Political Interference in Day-to-Day Policing Matters.** This can be done by introducing complete transparency in the recruitment, selection, transfer and promotion processes. Any illegitimate interference in these matters should be considered a criminal offence.
3. **Put Pressure on the Bangladesh Civil Service (BCS) to Accept Reform.** The government must persuade the BCS to accept the amendments to the police administration as provided in the Draft Police Ordinance, 2007.
4. **Invest in Training.** Training needs a complete overhaul. Besides training on investigations and law and order, attention needs to be given to soft skills as well. Onsite training courses need to be introduced and training should be geared towards internalising constitutional values.

risisgroup.org/~media/Files/asia/south-asia/bangladesh/182%20Bangladesh%20Getting%20Police%20Reform%20on%20Tr ack.ashx, as on 9 December 2010.

72 Shariful Islam (2008), “Ministry Asks Police HQ for Further Consultations”, *The Daily Star*, 5 February: <http://www.thedailystar.net/story.php?nid=22081>, as on 6 February 2008.

- 
5. **Increase the Number of Police Personnel with Special Attention to Recruitment of More Women.** A severely short-staffed service will be unable to perform its duties in accordance with the law. To soften the image of the police, more women need to be recruited at all levels, not merely at the lower rungs.
 6. **Invest More Heavily in Improving the *Thanas*.** Democratic policing can only be achieved by transforming the culture and behaviour at the *thana* level. As such, it is critical that more resources and time are devoted to the model *thanas*. Specific measures that can be carried out include:
 - a. Apportion more of the development budget to the creation of additional model *thanas*.
 - b. Conduct comprehensive training programmes to improve police skills, especially on various conceptual and technical issues.
 - c. Reduce 24-hour on-call duty of police to strictly eight hours a day.
 - d. Increase recruitment of female police.
 - e. Stop frequent transfers – an officer must remain posted at a station for a minimum of three years. Future transfer should be done from one model *thana* to another.
 - f. Implement an efficient monitoring and supervision mechanism at the model *thanas* to capture the efficacy of implemented reforms.
 7. **Enhance Accountability of the Bangladesh Police.** To ensure rule of law, it is important to strengthen both internal and external oversight over the police. The Bangladesh Police has established a Police Internal Oversight unit but that in itself is inadequate. It is important to set up an external, independent Police Complaints Commission as suggested in the Police Ordinance, 2007 to keep a check on police misconduct. It should also strengthen the newly established National Human Rights Commission to enable it to play an effective role in protecting human rights.

Bangladesh Police

8. **Implement the Community Policing Strategy Vigorously.** The Community-Based Policing (CBP) Strategy seeks to overcome a major problem on the concept in Bangladesh and the confusion regarding its roles and objectives. By clearly delineating the CBP's objectives, the various instruments necessary for its implementation, and the methods of evaluating its performance, the CBP Strategy lays a solid foundation to build a democratic, accountable police service. It is imperative that the Bangladesh Police remains committed to implement the strategy. Some of the necessary steps that must be followed immediately include:
 - a. Expand the understanding of the CBP from a problem-solving technique to a working philosophy, particularly among the junior officers.
 - b. Strengthen training mechanisms of the police and community organisations that will transfer the necessary tools to deal with community issues. This includes mainstreaming human resources and training activities by integrating the community policing component into the basic and advance training programmes.
 - c. Increase the number of consultations between the police and the community. The success of the CBP is contingent on open and constant dialogue.
9. **Revise and Update Regulations for the Police.** The current regulations for Bangladesh Police were formulated in 1943. Since the fate of the Draft Police Ordinance, 2007 remains unclear, it is imperative that police reform should not remain at a standstill.

73 Police Reform Programme (2008), *Community Policing: National Strategy for Bangladesh* (Dhaka): <http://www.prp.org.bd/Menu/downloads.htm>, as on 12 November 2010.

- 
- 10. Strengthen the Police Internal Oversight Unit.** Internal disciplinary mechanism can act as a strong check against police misconduct and misbehaviour. The internal unit must function efficiently, showing no tolerance for wrongdoing.

Civil Society Organisations (CSOs)

- 11. Work with the Bangladesh Police to Encourage Community Policing.** To ensure the success of the community policing initiatives CSOs and stakeholders need to engage with the initiative, help build and mould it, as well as be continuously involved in its monitoring and evaluation.
- 12. Campaign and Educate on the Need for Police Reforms.** Given the poor state of policing in Bangladesh, it is important for CSOs to educate the average citizen about the nature of policing they are entitled to.
- 13. Develop Police-Specific Documentation Centres.** With police torture commonplace, CSOs should emulate Odhikar's efforts and methodically document the abuses that are committed. By maintaining proper and accurate records, a body of documentation will emerge that can serve as the basis for advocacy and education on the issue of police reform.

Chapter 3

India



3.1 Background

Ironically, the greatest catalyst for police reform in India has been the increasing violence in the form of terrorist and extremist attacks. The decades of struggle, the scores of commission reports and the clamour for reform, all failed to make governments realise the pressing urgency for reform. But the terror strikes, the growing internal conflict (left wing extremism), the eroding faith of the public and the continual failure of the police to perform its job finally made governments recognise that something was fundamentally wrong with the police and it must change. The 26/11 Mumbai terror attacks in 2008 underscored systemic failure of law enforcement agencies, including “lack of proper training of personnel, antiquated equipment, ineffective coordination between the disparate response agencies and faulty media management”.⁷⁴ These failures increased governments’ reliance on paramilitary and armed forces, leaving the state police forces in a secondary, inferior position. At the same time, these very developments reinforce the need for police reform. The dialogue has ultimately shifted from the need for reform to the type of reform.

Several models for reform have been suggested. Recommendations of the National Police Commission (NPC) in 1979 to the judgement of the Supreme Court in the Prakash Singh case on reforms in 2006 have all laid it down in unambiguous words. The government’s vision of reform however, is guided by its War on Terror. The vision does not blend perfectly well with recommendations of the past. The establishment of a National Investigating Agency, the enactment of an anti-terror law and laws against organised crime with stringent provisions, creation of regional National Security Guards (NSG) hubs, strengthening the intelligence network, setting up counter-insurgency and anti-terrorism training schools and modernisation of the police forces are some of the main features of the government’s vision of reform. Notwithstanding the gravity of security threats and the need for police modernisation, implementing reforms solely with the purpose of responding better to terrorism has its own share of pitfalls. Fighting terrorism or internal conflict requires a police force that has a strong foundation and can function in an efficient, effective and unbiased manner. This functioning has to be seen not only when the police is dealing with emergencies but also when it is carrying out everyday policing. The so-called War on Terror cannot be won with a tough attitude. Instead, a sustained approach against terror requires the development of a police force that is well organised, well controlled, well led, well equipped and well trained.

With the Supreme Court judgement in the Prakash Singh v Union of India and Others⁷⁵ case in 2006, there was a hope that reform would now be initiated. However, four years since, little has been done by way of implementation. An assessment of the states’ compliance or non-compliance, reveals a continuing resistance to the processes of insulating the police from undue political interference, and providing accountability and transparency. As a result, the archaic Police Act, 1861, continues to govern policing in several Indian states. Policing being a state subject, the states are required to pass their own police legislation, but most states have implemented weak Acts subverting the Court’s directives. Some states do fare better and have taken reform more seriously. However, there is resistance from several quarters which is difficult to counter.

The Congress-led United Progressive Alliance (UPA) returned to power in 2009 for the second consecutive term. Police reforms found a mention for the first time in their election manifesto: “The Indian National Congress recognises the imperative of police reforms. A clear distinction between the political executive and police administration will be made. The police force will be better provisioned especially in the matter of housing and education facilities; the police force will be made more representative of the diversity of our population; and police recruitment will be made more effective and training professionalised to confront new and emerging threats. Accountability of the police force will be institutionalised.” The manifesto promise was in keeping with the Supreme Court’s hope in the Prakash Singh case that “governments would rise to the occasion and enact

74 Kamal Kumar, former Director, National Police Academy and Member, Monitoring Committee, made a statement in the wake of the 26/11 attacks. He iterated the “need for capacity building of the police to counter terrorism.”

75 (2006) 8 SCC 1.

a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizen...” Despite the promise for reform the Centre has done little by way of implementing the Court’s directives.

However, the picture is not entirely grim. The modernisation scheme has afforded states the opportunity to improve infrastructure and technology, the Police Mission and micro-missions are geared towards developing a new vision for the police and bringing about attitudinal changes in the policing mindset. Some state police forces have begun to recognise the importance of community policing and introduced these into their policing plans. Other states are paying greater attention to training, and recognise that the focus of training needs to shift from the physical to include aspects of law, human rights and constitutional values. It needs to be seen if the reforms move from the rhetoric to actual implementation.

However, the principle underlying most reform initiatives is a hard approach to security, without due recognition for the values of upholding human rights as a precondition of human security that must, ultimately, guide any police reform movement.

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

National Police Commission Reports (1977- 1981)

First Report

Set up District Inquiry Authorities (DIA) in every district. This would be “an independent oversight authority” to investigate the large number of complaints made against the police.

Second Report

A State Security Commission should be set up to help the state government discharge its responsibilities openly and within the existing legal framework. The Commission should also assist the police in carrying out its functions, without undue interference.

Police officers should be protected against illegitimate transfer and suspension orders.

Third 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 and other atrocities against Scheduled Castes and Tribes.

Fourth 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.

Fifth Report

Stress on women in the police and that they should become an integral part of the police organisation without any distinction in the kind of duties performed by them.

Sixth Report

Investigation staff should be separated from law and order staff at the police station level in urban areas.

Seventh Report

A Central Police Committee should be created to advise and monitor the police.

Eighth Report

Protection available to police officers under Sections 132 and 197 of the Code of Criminal Procedure should be withdrawn.

The eighth report also drafted a Model Police Act with a recommendation to replace the Act of 1861.

Ribeiro Committee (1998)

First 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.

The Chief of Police should 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.

Second Report

Replace the 1861 Act.

Urgently implement the NPC's recommendations regarding recruitment, training and welfare of the constabulary.

Padmanabhaiah Committee (2000)

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

Adopt the philosophy of community policing.

The DGP should 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 minimum tenure of two years to all officers. Promotions should be subject to completing mandatory training programmes and examinations.

District Police Complaints Authority should 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 Police Reform: Initiatives and Resistance

Indian state governments' initiatives for police reforms have invariably been lukewarm. During the 1960s and 70s some state governments set up Police Commissions⁷⁶ to examine the functioning of the police, identify problems and suggest solutions. However, no government displayed the will to accept the package of reform measures suggested.

The most significant reform initiative was the National Police Commission (NPC) set up in 1977 immediately after the Emergency. It was the total misuse of the police during the Emergency by the central government of the time that led to the appointment of the Commission by the new government.

Between 1979 and 1981, the NPC produced eight reports and also a model police law to replace the 1861 Police Act. The NPC was a lost opportunity to reform. None of its recommendations were accepted. The central government, in fact, wrote⁷⁷ to the state governments, asking them not to take note of the Commission's observations and recommendations on the subject of political control over the police as they lacked an "objective and rational approach" and revealed a "biased attitude". With such advice from the Centre, the very idea of reform was conveniently set aside and forgotten. Fifteen years later, on 30 July 1996 a writ petition was filed by two retired Directors General of Police (Prakash Singh and N.K. Singh) in the Supreme Court. The petition prayed for the Apex Court's intervention to direct the government to consider the NPC's recommendations earnestly for implementation.

The Supreme Court Judgement

After ten years of litigation, which had already followed decades of inaction on this issue, a diluted police reform process commenced when on 22 September 2006, the Supreme Court passed its judgement in the petition filed by Prakash Singh.⁷⁸ In its judgement, the Court instructed the state and central governments to comply with a set of seven directives that would, if taken together in the spirit of the judgement, tackle the major ills that plague policing today. Simply put, these ills relate to: ensuring that the police are kept away 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."⁷⁹

Through these directives the Court's wished to return the day-to-day functioning of the police into their hands, and with the increased powers and responsibilities would come an increased accountability – both for wrongdoing as well as for performance. They are as enumerated below.

1. **Constitute a State Security Commission to (i)** ensure that the state government does not exercise unwarranted influence or pressure on the police; (ii) lay down broad policy guidelines; and (iii) evaluate the performance of the state police. The SSC was to have bi-partisan representation along with members of civil society in order 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 was aimed at combating arbitrariness in the appointment of the highest ranking police officer.

76 Police Commissions were set up in Bihar in 1958-61, Uttar Pradesh and West Bengal in 1960-61, Punjab in 1961-62, Maharashtra during 1962-64, Delhi in 1966-67, Assam in 1969 and Tamil Nadu during 1969-71.

77 The Ministry of Home Affairs, Government of India's Letter No.11013/11/83- NPC Cell, dated 31 March 1983.

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

79 *Ibid.*, p. 7.

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 for 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 was 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 both state and district levels. The state level Authority would inquire into cases of serious misconduct including incidents involving: (i) death; (ii) grievous hurt; and (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; and (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 the investigative and law and order wings, starting with towns and urban areas with a population of one million and above. It was believed that this would streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court did not say how this separation was to take place in practice, but clearly indicated that there must be full coordination between the two wings of the police.

The response of the state governments towards the Supreme Court's directives was indifferent. A few of the smaller states complied with the directives fully or partially and a few others filed for an extension of time. Unfortunately, most states, particularly the larger ones,⁸⁰ objected to the directives and asked the Court to review them. The Court dismissed the review petition on 23 August 2007. The progress remained slow and finally on 16 July 2008, the Supreme Court set up a three-member Committee under the chairmanship of one of their retired judges to monitor compliance of their directives by the central and state governments.

The following is a chronology of the unconscionable delay that has transpired since the Supreme Court's ruling in *Prakash Singh*:

80 Tamil Nadu, Gujarat, Punjab, Maharashtra, Uttar Pradesh and Karnataka.

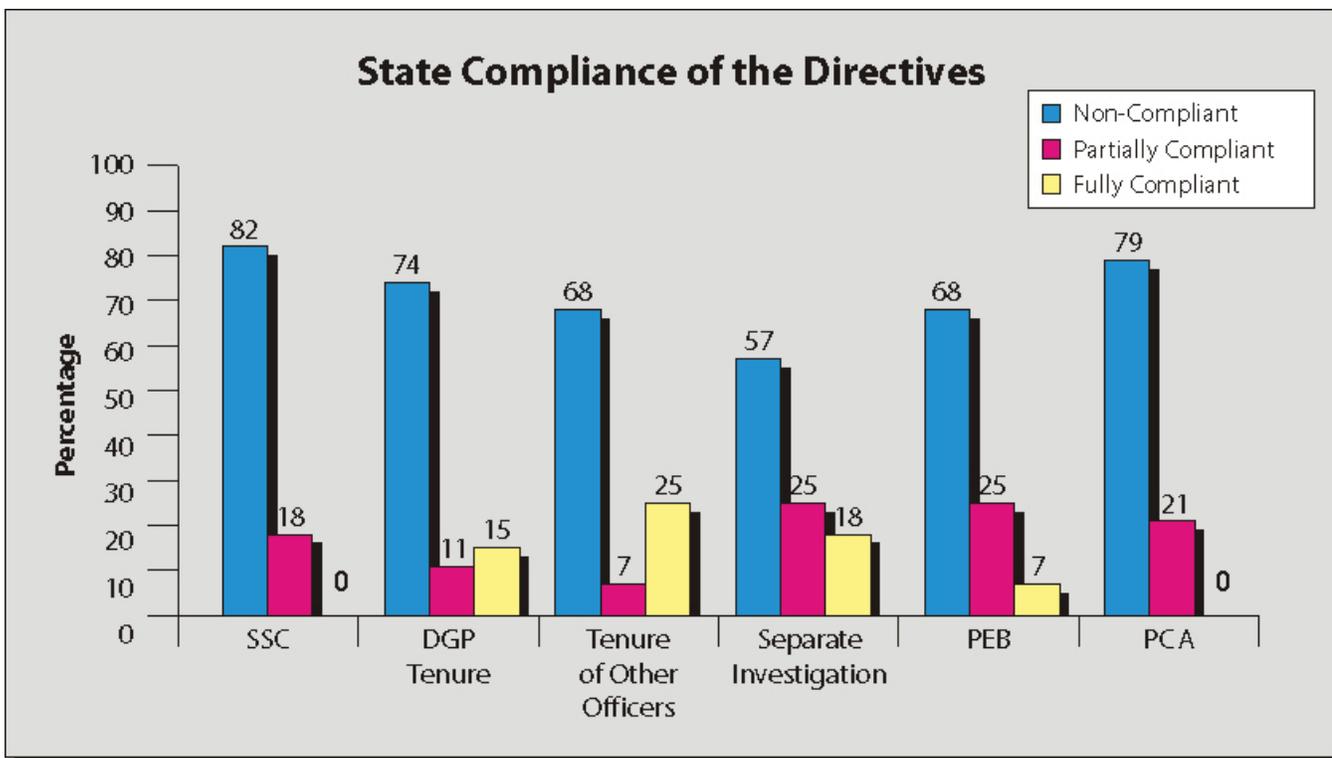
Chronology: *Prakash Singh and Others v Union of India and Others*

Date	Supreme Court Hearings, Events and Deadlines
30 July 1996	Two retired DGPs, Prakash Singh and N.K. Singh, file a PIL in the Supreme Court.
22 September 2006	The Supreme Court delivers judgement requiring state and central governments to implement its seven directives. Governments had till 3 January 2007 to comply.
11 January 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 the deadline for compliance of Directives 1, 4, 6 and 7 by three months.
31 March 2007	Extension for implementation of Directives 1, 4, 6 and 7.
10 April 2007	Deadline to file affidavits of compliance.
23 August 2007	Prakash Singh files contempt petitions against six states – Gujarat, Punjab, Maharashtra, Karnataka, Tamil Nadu and Uttar Pradesh.
23 August 2007	Supreme Court dismisses review petitions filed in January .
14 December 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 March 2008	Supreme Court Hearing and deadline for states to file compliance report.
28 April 2008	Supreme Court considers establishing a Monitoring Committee (MC).
16 May 2008	Supreme Court passes an order to set up the MC.
18 December 2008	Supreme Court Hearing declines to rule on contempt before MC reports back.
21 July 2009	Supreme Court Hearing declines to rule on contempt, CJI stating, "Not a single state government is willing to cooperate. What can we do?"
February 2010	Supreme Court Hearing – Advocate Raju Ramchandran appointed <i>amicus curiae</i> for the Monitoring Committee.
August 2010	Monitoring Committee sends its final report to the Court.
8 November 2010	Supreme Court issues notice to four states – Maharashtra, Uttar Pradesh, Karnataka and West Bengal for total non-compliance.
6 December 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.

3.3 State Compliance of the Directives

The response of state governments to the Court’s directives has been lukewarm at best. Four years later, not a single state can claim to have fully complied with the reform package suggested by the Court. Even where states appear to have complied with some of the directives it continues to remain on paper. The ground level situation presents a grim picture of compliance. Every reform attempt is made clearly and only to avoid the scrutiny of the Court or the Monitoring Committee.

Only 13 states⁸¹ have so far enacted new police legislations, whereas others have issued Executive Orders. But both the orders and the legislations “clearly reflect dilution, in varying degree, of the spirit, if not the letter, of the Court’s directives.”⁸² The chart below assesses the compliance level of the 28 states under three categories: non-compliant where the directives have not been implemented at all, partially compliant where only some criteria has been implemented, and fully compliant where implementation has been as prescribed by the Supreme Court directives. Data has been compiled based on affidavits submitted by the states and CHRI submissions.



3.3.1 Checking Political Interference: The Creation of State Security Commissions

The Police Act of 1861, which governs policing in some states even today, vests the superintendence of the police to the state governments.⁸³ At the district level, it puts the police under the command of the District Superintendent of Police, but is subject to the “general control and direction” of the District Magistrate.⁸⁴ However, the word “superintendence” and the phrase “general control and direction” have not been defined in law. Over the years, this has enabled governments of the day to use the police to serve their partisan interests, whenever required.⁸⁵

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

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

83 The Police Act, 1861, Section 3.

84 Ibid., Section 4.

85 Joshi G.P. (2007), Controlling the Police: An Analysis of the Police Acts of Commonwealth Countries, Working Paper No.13, IPES, October: <http://www.ipes.info/wps/WPS%20No%2013.pdf>, as on 12 November 2010.

The creation of Security Commissions was aimed at returning the functioning of the police into their own hands. The idea of reform that seeks to insulate the police forces from the illegitimate control of politicians and bureaucrats has been resisted severely by every state government and the Centre. The reason is that no government is willing to weaken its control over the police force. Politicians at the helm of affairs in various states have not hesitated at saying, “What is the use of being in power if we lose control over the police.” It is in fact this mindset and belief that has wrecked every reform initiative suggested in the last several decades.

The significance of both these bodies in effecting police reforms cannot be overstated. The SSC is envisaged to serve as a non-partisan, independent body overseeing the performance of the police and guiding its delicate relationship with the political executive so as to minimise undue political interference. As such, it is to serve as a buffer between the police and the state government to enable the police to function autonomously, while yet adhering to the requirements of accountability to the democratically elected government. While the directive provided the SSC to be headed by the Chief Minister or Home Minister and the DGP of the state was to be its ex-officio Secretary, the states were given the freedom to choose between the models recommended by the NHRC, the Ribeiro Committee and the Sorabjee Committee with regard to the other members.⁸⁶

Although police is a state subject in India, policing of the seven union territories⁸⁷ falls under the jurisdiction of the central government. If states have fared badly in relation to compliance, the Centre’s performance has been dismal. In March 2010, four years after the Supreme Court judgement, the union government issued a memorandum setting up the Commission. The proposed model for the Security Commission suggests that there would be one Commission for all the union territories. The composition is not along the lines suggested by the Court. Powers are not binding and no credible process for the selection of its members has been laid out. In fact, the model is weak, defeating the very purpose of setting up such a body.

It is discouraging to note that not a single Commission set up across the country has followed the Court’s guidelines. All the Commissions have only recommendatory powers, most are dominated by the bureaucracy and lack sufficient representation from civil society. They do not employ an arms-length selection process of independent members, and as a result, most members are beholden to the government for their appointment and continuance in service. Too many bodies that have been set up in the past to cure an ill have soon become sick liabilities themselves – unaccountable and compromising, for the sake of perks of office and government largesse. It is inevitable that the fate of the Security Commissions will be the same.

3.3.2 Police Accountability: Setting up Police Complaints Authorities

If Security Commissions were envisioned as bodies aimed at improving police professionalism, the Police Complaints Authorities (PCAs) were to serve towards increasing accountability. In order to keep a check on police excesses and misconduct, the directives provided for setting up a complaints body both at the state level and at the district level in every state. The state-level authority is empowered to look into allegations of “serious misconduct”, defined as instances leading to death, grievous hurt or rape in custody. The district-level authorities are empowered to look into all complaints of death, grievous hurt, rape in custody, allegations of torture, land/house grabbing, or any incident involving serious abuse of authority. The jurisdiction of the authorities in each state was also divided according to ranks of officers: the state-level authority is to look into complaints against

86 The Sorabjee Committee model included no sitting officials as its members. Instead it recommended a retired Chief Justice of the High Court as its Chair along with a member from the State Human Rights Commission (SHRC), one from the State Public Service Commission (SPSC), and three other independent members to be appointed by the governor after a tripartite and transparent selection process. The Ribeiro Committee recommended three independent members selected by a panel created by the Chairperson of the NHRC. A Judge of the High Court (on recommendation of the Chief Justice) is a member. The NHRC model comprises two serving or retired judges as members (on recommendation of the Chief Justice); alternatively it may be composed of one judge and either a member of the SHRC or the Lok Ayukta of the state.

87 Daman and Diu, Dadra and Nagar Haveli, Lakshadweep, Andaman and Nicobar Islands, Chandigarh, Puducherry and the National Capital Territory of Delhi.

officers of the rank of Superintendent of Police and above, whereas the district-level authorities are to deal with complaints against officers of Deputy Superintendent of Police and below.

There is ample evidence of increasing police deviance in India. The annual reports of the National Human Rights Commission (NHRC) contain details of public complaints against police personnel received by them. NHRC data shows that they received 370,000 complaints against police forces in the last ten years relating to human rights abuses.⁸⁸ The majority of the complaints received by NHRC are against police personnel. Official statistics indicate that the number of public complaints received by the police departments against their employees is high. During a five-year period (2004-08), as many as 2,76,148 complaints against the police were received from the public. Of these, 48,939 were only for 2008.⁸⁹ These statistics themselves, should be reason enough for states to set up complaint bodies as directed by the Court.

Unfortunately, in its order, the Court did not specify that these authorities must be independent civilian authorities. Nowhere in the world do members of Police Complaint Authorities include serving or even retired police officers. Simple logic indicates that the police have their own independent internal machinery for correcting the police and the new authorities were intended as outside oversight bodies. This additional level of oversight was necessary because internal mechanisms do not function at all, function poorly or only to correct small and minimal disciplinary proceedings. They also function behind closed doors and do nothing to persuade the public that there is real accountability for police misbehaviour.

The authorities presently set up are nascent. They are not fully provisioned and are hardly known. Their design is faulty and their powers weak. Any impact will take a long time to discern. To date, 19 states have set up Complaints Authorities. However, it is only in seven states that the authorities are actually functional.⁹⁰ No state government has established Police Complaints Authorities at both the district and state levels that fully comply with the Supreme Court's orders. Most states have either set up an authority at the state level or at the district level. Where established, the authorities comply only partially with the directives in terms of composition, mandate and powers. Members are either not full-time or are appointed directly by the government instead of being empanelled in accordance with the directives.⁹¹ A significant minority of states – Uttar Pradesh, Tamil Nadu, Punjab, Mizoram, Madhya Pradesh, Karnataka, Jammu and Kashmir and Andhra Pradesh – have completely ignored this directive. The case of Uttar Pradesh is particularly appalling. According to the latest NHRC statistics,⁹² the highest number of human rights violations in Uttar Pradesh was by the police – a huge 18,068 cases.⁹³

The Centre's record in setting up the authorities has been just as disappointing. A single authority has been envisioned for investigating complaints from Daman and Diu, Dadra and Nagar Haveli, and Lakshadweep; another

88 Azera R. (2010), "Over 3.7 Lakh Complaints Against Police on Human Rights Abuse", NERVE news, 29 April: <http://www.nerve.in/news>, as on 10 December 2010.

89 Crime in India, Annual publication of the National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India.

90 These are the states of Assam, Goa, Kerala, Tripura, Uttarakhand, Haryana and the Union Territory of Chandigarh.

91 The Supreme Court ordered that the Chairperson of the state-level PCA is to be a retired Judge of the High Court or Supreme Court chosen by the state government from a panel of names proposed by the Chief Justice. The other members are to be chosen by the state government from a panel prepared by the State Human Rights Commission, Lok Ayukta (Ombudsman) or State Public Service Commission.

92 Of the total number of cases the Commission registered over the past 10 years till 31 March 2010, the highest number was against the police. According to earlier data, the NHRC registered 377,216 complaints against the police till March this year, and of these, 248,505 were from Uttar Pradesh. The nature of complaints against the police includes arbitrary use of power, abduction, rape, custodial violence and death, fake encounters and unlawful detention.

93 The Times of India (2010), "Delhi, Uttar Pradesh Account for 67 Per Cent Human Rights Violations", 29 November: <http://timesofindia.indiatimes.com/india/Delhi-Uttar-Pradesh-account-for-67-human-rights-violations/articleshow/7010286.cms>, as on 11 December 2010.

to handle Andaman and Nicobar Islands, Chandigarh and Puducherry; and a third authority set up at the state level would look into complaints in Delhi.

Unfortunately, eight months after the passage of the memorandum, little progress has been made in setting up these bodies except in Chandigarh, which set up its three-member Complaints Authority in September 2010 and a one-member Authority in Haryana.

Though compliance with the other directives have been slightly better, there remains a wide gap between compliance as provided on paper and the situation on the ground. The separation of investigation from law and order is yet to be implemented on the ground with several states demanding an augmentation of manpower and resources before effectively implementing this directive.⁹⁴ Although Police Establishment Boards have been set up in most places, irregular transfers remain rampant.⁹⁵

Clearly the resistance to reform is overwhelming and comes from all quarters. The politicians do not want their unfettered control over the police curbed and wish to retain their present ability to use it for narrow political ends, to intimidate enemies and to stifle dissent. There is resistance from within the police service itself. They desire better conditions and less interference, but they don't want accountability and many are simply comfortable with the present system of patronage, unevaluated performance and unchecked power. There is also resistance from the bureaucracy. There has been a traditional rivalry between the administrative services and the police service and an increasing inter-service tension which sees any improvement as a gain for one service that will threaten present power structures by removing the police from the clutches of the bureaucracy. So, maintaining the status quo becomes a goal in itself.

The decay and degeneration of policing has been permitted to continue for too long at the cost of public safety and security. Reform measures need to rise above merely giving police arms and ammunition and must insist that underlying systems change and be responsive to the public's needs and rights. There is little evidence of that intention today.

3.3.3 Compliance Watchdog: The Monitoring Committee

In order to monitor the progress of states in implementing its directives, the Supreme Court set up a three-member Monitoring Committee in May 2008, headed by retired Supreme Court Judge K.T. Thomas. In its two-year term, the Committee held a number of meetings, travelled to the various states, submitted four interim reports between October 2008 and December 2009 and the final report in August 2010.

The Committee played a crucial role in highlighting non-compliance by most states. However, it did feel constrained in that it had to rely solely on the affidavits submitted and replies given by state governments to obtain information. Unsatisfied with the level of compliance as well as the states' attempts to comply only on paper, the Committee felt the need to look into the ground realities. Since it would be impossible for the Committee to visit all the states and union territories in the country, it decided to visit the four states of Maharashtra (West Zone), Uttar Pradesh (North Zone), Karnataka (South Zone) and West Bengal (East Zone). All of these, in the Committee's assessment, were defaulters besides being highly populous.

Based on the Committee's report, the Apex Court at its hearing on 8 November 2010, took serious note of the lack of compliance. It issued notices to the four errant states examined by the Committee, asking their Chief Secretaries to appear before the Court at the next hearing to clarify why the six directives had not been complied with. In fact, it is only ahead of its appearance in the court that Uttar Pradesh decided to constitute a State Security Commission on 5 December 2010 and fix two years as the minimum tenure for the Inspector General

94 Justice K.T. Thomas Committee Report, p. 12.

95 Ibid.

(IG), Deputy Inspector General (DIG), Superintendent of Police (SP) and the officer in charge of the police station. Likewise, the Karnataka government issued a notification to form the Complaints Authority on 3 December 2010, three days before it was to appear before the Apex Court with a report on its compliance with the directives.⁹⁶

Although it had limited impact, the Monitoring Committee did manage to pull up a few states in their compliance. Now that its term is over, it remains to be seen what measures the Supreme Court will take against those states that have failed to comply, as also to further monitor the progress of implementation by other states.

3.3.4 The Monitoring Role of High Courts

In several instances, High Courts have played a vital role in monitoring state compliance by ensuring that states function in accordance with the Supreme Court directives. In Uttar Pradesh, 751 police personnel, posted in various places had petitioned the Allahabad High Court challenging their transfer, stating that these had not been effected by the Police Establishment Board set up by the state government in pursuance of the Supreme Court directive in the *Prakash Singh* case. The state government replied that it was not possible to get approval from the Establishment Board for every transfer, “looking at the strength of the police personnel in the state”. Following the petition, the Court in October 2010 set aside the transfers of hundreds of police personnel across the state on the grounds that they were illegal as “they were not in consonance with the judgement of the Supreme Court”.

In its 8 October 2010 judgement, the Madras High Court had similarly quashed the appointment of Letika Saran as DGP of Tamil Nadu on the grounds that the Supreme Court guidelines in the *Prakash Singh* judgement which lay down the process of selection of the DGP had not been followed. The Court directed the state government to forward the names of all eligible officers in the rank of DGP to the UPSC to prepare the panel of officers for selection. Once the UPSC forwarded the panel the state government was to select the new DGP no later than 7 December 2010. The state government, however, chose to appeal the High Court Order before the Apex Court. The Apex Court refused to stay the High Court Order thus sending out a message to states that it is time to start complying with the orders passed in the *Prakash Singh* case.

In line with the ruling of the Supreme Court in the *Prakash Singh* case, the Andhra Pradesh High Court in November 2010, ordered the state government to involve the UPSC while appointing the DGP. The Court made it mandatory for the state to fill the post only after a list of all eligible officers at the DG rank was sent to the UPSC, which would then shortlist three for final selection by the state government, thereby making the process more transparent.

3.4 Towards Democratic Policing: Replacing the 1861 Act

3.4.1 Model Police Act: Police Act Drafting Committee

As the Supreme Court was considering the *Prakash Singh* case, the central government set up a Police Act Drafting Committee (PADC) in October 2005 – commonly known as the Soli Sorabjee Committee – tasked with drafting a new model Police Act. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it, and draft a model act that could guide states while adopting their own legislation. The constitution of the PADC was prompted by the Prime Minister’s concern expressed at the Conference of District Superintendents of Police in early 2005: “We need to ensure that police forces at all levels, and even more so at the grass roots, change from a feudal force to a democratic service.”⁹⁷

96 The Times of India (2010), “Police Reforms Still a Distant Dream”, 8 December: <http://timesofindia.indiatimes.com/city/bangalore/Police-reforms-still-a-distant-dream/articleshow/7062490.cms>, as on 15 December 2010.

97 Prime Minister’s Office (2005), PM’s Address to the Superintendents of Police Conference, 1 September: <http://pmindia.nic.in/speech/content.asp?id=182>, as on 1 December 2008.

Very shortly after the Supreme Court delivered its judgement, the PADC submitted its Model Police Act, 2006 to the Home Minister. Although possessing both strengths and significant weaknesses, the Model Police Act complements the Supreme Court judgement in that it provides the detailed instructions through which the directions of the Supreme Court can be most effectively implemented. However, as with previous commissions and governmental attempts to address systemic flaws in policing, the Model Police Act was shelved and subsequently ignored.

It was hoped that the central government would at least use the Model Act to update/replace police laws in the union territories, particularly the National Capital Territory. In 2010, the Ministry of Home Affairs put forward a draft Delhi Police Bill using the template of the Model Bill. However, it is discouraging to note that the safeguards of independence and accountability explicitly drawn up by the Court and reflected in the Model Bill have been ignored in the draft Delhi Police Bill.

Any law enacted by the Centre will be influential in shaping policing laws in other jurisdictions across the country. It is therefore imperative that the new law to govern future policing in the capital fully takes into account the recommendations of the Court and its own Committee without dilution as well as the needs and values of modern policing.

3.4.2 State Police Laws: Reform or Retrogression

Till date, only 11 states have enacted fresh Police Acts to replace the old legislation and two states have amended their earlier laws on the subject to accommodate the new directives of the Court.⁹⁸ The Union Territory of Chandigarh has chosen to adopt the Punjab Police Act. Six states have completed the drafting of new police legislations or tabled bills in the Assembly.⁹⁹ Two states are currently in the process of drafting.¹⁰⁰

No	States and UTs	Lack of Response
1	Maharashtra	No legislation or draft underway
2	Mizoram	No legislation or draft underway
3	Nagaland	No legislation or draft underway
No	States and UTs	Work in Progress
1	Uttar Pradesh	Drafting Committee set up but no draft produced as yet
2	West Bengal	West Bengal Draft Police Act, 2007, ready
3	Jammu & Kashmir	Drafting Committee set up
4	Manipur	Drafting underway
5	Madhya Pradesh	Drafting underway
6	Jharkhand	Drafting underway
7	Orissa	Drafting Committee set up
8	Arunachal Pradesh	Draft Bill ready
9	Delhi	Draft Delhi Police Bill, 2010, ready
10	Andhra Pradesh	Andhra Pradesh Police Bill drafted and ready
No	States and UTs	Bills
1	Tamil Nadu	Tamil Nadu Police Bill, 2008, tabled in legislature on 14 May 2008

98 The states of Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Punjab, Rajasthan, Sikkim, Tripura, Uttarakhand and Meghalaya have passed new police legislations. Kerala and Gujarat have passed Amendment Acts.

99 Goa, Kerala and Tamil Nadu have tabled their drafts in the Assembly. Arunachal Pradesh, Andhra Pradesh, Delhi and West Bengal have their drafts ready, though some are not in the public domain.

100 Orissa and Uttar Pradesh have set up committees to draft new legislations but have not produced a draft.

2	Karnataka	Draft Bill was completed by end of 2008, but not tabled
3	Kerala	The Kerala Police Bill, 2010, tabled in the assembly in April 2010; the Bill has been referred to a 19-member Select Committee
4	Goa	Goa Police Bill tabled in the Legislative Assembly on 27 August 2008; the Bill has been referred to a Select Committee
No	States and UTs	New Legislation/Amendment Bills passed after the Prakash Singh judgement
1	Bihar	Bihar Police Act passed on 28 March 2007; notified on 31 March 2007
2	Tripura	Tripura Police Act passed on 29 March 2007; in force from 7 April 2009
3	Chhattisgarh	Chhattisgarh Police Act passed on 20 July 2007; notified on 28 September 2007
4	Assam	Assam Police Act passed on 8 August 2007; notified on 18 September 2007
5	Haryana	Haryana Police Act passed on 21 March 2007; notified on 2 June 2008
6	Himachal Pradesh	Himachal Pradesh Police Act passed on 28 August 2007; Governor's assent given on 21 September 2007
7	Kerala	Kerala Police (Amendment) Act passed on 19 September 2007; in force from 5 October 2007
8	Rajasthan	Rajasthan Police Act passed on 21 September 2007; notified on 1 November 2007
9	Sikkim	Sikkim Police Act received Governor's Assent on 28 June 2008; notified on 30 July 08
10	Punjab	Punjab Police Act passed on December 2007; in force from 20 February 2008
11	Uttarakhand	Uttarakhand Police Act passed on 2 January 2008; in force from 4 January 2008
12	Gujarat	Bombay Police (Gujarat Amendment) Act, 2007, passed by Legislative Assembly on 20 July 2007; notified on 23 March 2008
13	Chandigarh	The Punjab Police Act, 2007 was extended to Chandigarh in March 2010
14	Meghalaya	Meghalaya Police Act passed by the state Legislative Assembly on 3 December 2010; yet to be notified at the time of writing this report.

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. The new retrograde legislation leaves the 1861 colonial model behind in its unsuitability.

Moreover, except for Kerala and Delhi, there has been a complete lack of transparency, community consultation or civil society input in this process. In several states, members of the public are completely unaware that their government is in the process of reforming the police laws.

The Kerala government after tabling its Police Bill in the legislature referred it to a 19-member Select Committee. The Select Committee took upon itself the task of going to each of the 14 districts and inviting public feedback on the Bill. It drafted a questionnaire on the Bill which was put up on its website. Responses to the questionnaire have been invited and should hopefully be considered by the Committee before placing its report in the Assembly.

3.5 National Police Mission and Micro-Missions

Apart from the Supreme Court directives, the government of India also 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 force into an effective instrument for the maintenance of internal security.¹⁰¹ The key objectives of the NPM are to work towards bringing an attitudinal change in the policing mindset from the “force” psychology to a “service” one and refine the roles and responsibilities of the police in light of the emerging security challenges. It is also mandated to chart out a road map to improve the working conditions of the police including resources and facilities available, standardise their rules and regulations and assist state governments to chart out annual strategic plans. Notably, the NPM is not to be a substitute for the various committees and commissions set up on police reforms. Instead, it would equip the police to think creatively and help it to transform itself from a reactive to a proactive organisation.

The first meeting of the NPM, however, was held only two years later in September 2007 under the Chairmanship of the Home Secretary. At this meeting, the members felt it necessary to set up a number of micro-missions in order 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 ratios, performance evaluation, training, leadership and welfare of police, among other things
2. Community Policing to deal with ways of improving police interaction with the public
3. Communication and Technology, to review
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

The second meeting of the micro-missions was held a year later in October 2008. Four projects have so far been approved on transparent recruitment processes, community counselling centres, soft skill training and lastly on the accessibility of the police entitled, “anywhere anytime policing”. However little is known on the implementation and status of these projects.

3.6 Reforms in the Face of Insurgency

There is an arena of armed conflict in the states of Central India including Chhattisgarh, Orissa, Jharkhand, West Bengal and Andhra Pradesh, where Naxalites – groups following the Maoist revolutionary ideology – are challenging the Indian state. In November 2009, the government launched an inter-state offensive in five states – Chhattisgarh, Jharkhand, Orissa, Bihar and West Bengal – aimed at combating the Maoists and reclaiming the areas (mostly forested belts) under their influence. Code named “Operation Greenhunt”, the site presently at the centre of the offensive is in the district of Dantewada in Chhattisgarh. Further, the offensive has been reduced to a massive surveillance and combing operation. Poorly trained (particularly in jungle warfare and counter-insurgency) and equipped, the police are both the preferred target of the Naxalites as well as the main perpetrators of human rights violation in the region.¹⁰² Instances of police atrocities (the most common being fake encounters and disappearances) are rife in these five states.

That the government is cognisant of the need for police reforms in order to deal effectively with internal security challenges like terrorism and Naxalism is evident in the various measures being undertaken towards capacity building of the state police forces. Among the reforms being stressed by the government, the key aspects

101 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.

102 One of the most glaring incidents took place in a remote village called Singaram in Dantewada District, Chhattisgarh, where 19 villagers alleged to be Naxals by the police were killed in January 2009. Relatives of those killed filed a petition in the High Court. For details, see “The Jungle Justice of the Trigger Happy”, Tehelka Magazine, Volume 6, Issue 5, 7 February 2009: http://www.tehelka.com/story_main41.asp?filename=Ne070209coverstory.asp, as on 10 December 2010.

include providing secure buildings for police stations; adequate provisions for equipment, weaponry, mobility, communication, training and forensic science in the state police budget; strengthening the state intelligence set-up; and improving the police-population ratio. In order to expedite these reforms, the central government is providing massive assistance to the states through two central schemes: the Modernisation of Police Force (MPF) scheme, and the Security Related Expenditure (SRE) scheme. Broadly, the MPF covers assistance for new procurements and infrastructure-related expenses, while the SRE covers recurring expenses related to insurance, training and the operational needs of the security forces. With increase in terrorist and left wing extremist activities, the government divided states into two categories – “A” and “B”. The former category includes eight states (Jammu and Kashmir and all the seven states of the North East) which face high incidences of terrorist or extremist violence. These are entitled to 100 per cent assistance. The remaining 20 states were put into category “B” and would be given 75 per cent of the funding.¹⁰³ Besides, it also includes a special component for strengthening police infrastructure in the 76 Naxal-affected districts at the rate of Rs. 2 crores per district per year for a period of five years.

Governments can no longer ignore the fact that some basic reform of the police must take place. But here again the vision for reform remains restricted to filling vacancies, modernising weaponry and equipment, overhauling recruitment procedures, building intelligence networks, setting up counter-insurgency and anti-terrorism training schools, and most importantly and retrogressively, enacting or amending laws with stringent provisions. Notwithstanding the need for modernisation of the police force, little emphasis is placed on reforming the culture of impunity that marks policing in conflict areas. A great deal of leeway is given to the police to carry out “combing” operations without accompanying accountability measures. No additional reporting mechanisms have been put in place even while due processes have been relaxed. There is no accountability mechanism to monitor how the funds released under these schemes are used. While a Monitoring Information System (MIS) was set up by the Planning Commission tasked with monitoring the implementation of other development schemes in the select Naxal-affected districts,¹⁰⁴ MPF and SRE have not been placed under its review.

These measures, while necessary, will be easily reversed unless statutory and institutional arrangements are put in place that guarantee operational autonomy to the police and ensure that they act at all times in strict accordance with the law. Governments have failed to recognise the importance of reforming the culture as a necessary aspect of counter-insurgency.

3.7 Lost Opportunity for Reform: The Prevention of Torture Bill

Radical reform of policing (and of the larger criminal justice system) will only be achieved if custodial torture and impunity are not permitted to continue as at present. The Government of India signed the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, but has still not ratified the Convention or its Optional Protocol. In 2008, India came up for its first review under the United Nations Universal Periodic Review (UPR), which entailed a comprehensive review of all of the government of India’s international human rights commitments. In the course of its review, a total of seven countries – United Kingdom, France, Mexico, Nigeria, Italy, Switzerland and Sweden – urged India to expedite the ratification of the Convention Against Torture.¹⁰⁵ This is a recommendation arising out of the UPR which India will have to report on in its next review, which will take place in 2012. Given the past track record of the government in similar circumstances, a mad scramble to pass domestic legislation outlawing torture before ratification is more than likely to take place in 2011, before reporting for the next UPR. It is a shame that matters of such critical importance become reduced to an item on a checklist for the government.

103 Ministry of Home Affairs, Government of India, Annual Report 2008-2009, pp. 116-117.

104 Planning Commission, Government of India, “MIS-Left Wing Extremism Districts”, available at <http://pcserver.nic.in/lwe/login.aspx>.

105 Report of the Working Group on the Universal Periodic Review: India, 23 May 2008, p. 16: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/136/54/PDF/G0813654.pdf?OpenElement>, as on 10 December 2010.

In 2008, eleven years after signing the UN Torture Convention, the government released the first draft of a legislation designed to outlaw torture. During the next two years, the Draft Prevention of Torture Bill made little progress through the legislative process. In May 2010, this Bill was hurriedly passed by the Lok Sabha – the Lower House of India’s Parliament, with no pre-legislative public consultation or even adequate debate in the House. Protests from civil society over the poorly drafted provisions of the Bill resulted in it being referred to a cross-party Select Committee in the Upper House, namely, the Rajya Sabha for detailed discussion in August. The Committee tabled its report in the House in the first week of December, which has recommended amendments to the text of the Bill.

The tenor of the Select Committee’s recommendations towards an amended Prevention of Torture Bill leans towards increased accountability. The Committee has recommended the widening of the definition of torture in the Bill to comply with the definition laid down in the UN Convention, and also, importantly, to include serious offences already established in the Indian Penal Code. This is a welcome step towards a domestic legal definition of torture that conforms to the necessary legal standards. In what is clearly a show of will to the government, the Committee conditioned the requirement of prior sanction for prosecution to hold that if sanction requests are not granted within three months from the date of application, the sanction is deemed to be granted. While many can argue that there is no place for prior sanction when it comes to an anti-torture law, considering the vested interest of the government to retain a prior sanction clause in this Bill, it is a small victory that the Committee mustered the will to officially recommend a tempered down version of the prior sanction clause. The Committee also recommended independent investigation of torture cases, statutory compensation for victims, and witness protection, which will set a new precedent in laws towards greater police accountability. These recommendations send a clear signal that torture is perpetrated by police officers in myriad forms, and that special enforcement mechanisms are needed to realise accountability for the commission of torture. It is heartening to note that there is now some official admission of the multiple measures needed to hold the police in India accountable, as there are considerable difficulties in accessing legal remedies in practice. But it must be added that it is always the input of civil society which steers lawmakers towards using legal standards as their basis; the primary instinct is still for the state to protect its public servants above and beyond its citizens.

While it remains to be seen what the final content of India’s anti-torture legislation will be, this new statute will have important implications for police reform. A strong law, backed by the will to implement it properly, will act as a deterrent and introduce the principle of accountability that is so lacking at present. But a weak law, if allowed to pass, will perpetuate abuse and impunity.

The Prevention of Torture Bill, 2010 in its present form falls exceedingly short of national and international human rights standards. The elements constituting torture laid down in Section 3 and 4 of the Bill do not address the full scale of acts that qualify as torture and are routinely practised in India. It also falls short of the definition in Article 1 of UNCAT. Further, the Bill not only fails to lay down a minimum sentence for a person found guilty of torture, but also creates an additional barrier in prosecuting public servants by mandating prosecution sanction from the concerned government or authority. Taken together the Bill is a glaring reflection of the lack of commitment on the part of the government to redress institutionalised torture that routinely occurs at the hands of the police. In fact, the Bill gives greater protection to public servants than to victims of torture. If passed in its present form, the Bill may well be derisively called “The Promotion of Torture Bill”.

3.8 Special Laws: Unchecked Powers

Bombings, terror strikes, organised crime and internal conflict have been on the rise in India over the past several years. With every terrorist strike in the country there is an upsurge in public statements on the need to introduce harsher anti-terrorism laws in India. India is labelled a “soft state” and special laws are positioned as the answer to

increasing crime and terrorism with the assertion that the existing legal framework, i.e. the penal and procedural laws, are inadequate to curb or control the menace of terror and organised crime.

Special laws create new offences on “organised crime”, “terrorist acts” and being a member of an “unlawful organisation”. They do away with the procedural safeguards which exist under ordinary criminal law as embodied in the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act. These laws make “confessions” to police officers admissible in evidence and virtually block out the chances of bail. Arguments in favour of such provisions appeal to the general public and in the prevailing mass hysteria on “terror”, most people, who do not fully understand their implications, are in favour of these.

The truth is that India has some of the harshest anti-terror laws in the world. The National Security Act, in force throughout the country, permits imprisonment of persons suspected of being a threat to “public order” or “security of the state” for up to one year without trial simply on the orders of an executive authority. Other examples of special laws that abound in post-colonial India today are the Maintenance of Internal Security Act (MISA), Armed Forces Special Powers Act (AFSPA), Maharashtra Control of Organised Crime Act (MCOCA), Karnataka Control of Organised Crime Act (KCOCA), Chhattisgarh Special Public Security Act (CSPSA) and the Unlawful Activities Prevention Act (UAPA).

Special laws are in fact merely knee-jerk reactions of inefficient governments who have nothing else to offer in the face of public outcry. They are very poor substitutes for revamping already existing police and paramilitary forces, and intelligence gathering and investigative machineries, which are the real impediments to better security. Rather than straightening out politicised and ineffective policing by actually loosening their grip on its functioning, governments are happy to give an already abusive police more power while eroding citizens’ civil liberties through ever more dangerous laws.

3.8.1 Anti-Terror Laws

The era of anti-terror laws began with the introduction of the Terrorist and Disruptive Activities (Prevention) Act, (TADA) in 1985 for the prevention of terrorist activities in Punjab. TADA was allowed to lapse in 1995 owing to widespread allegations of abuse. The legislation was ultimately succeeded by the Prevention of Terrorist Activities Act, 2002.¹⁰⁶ Despite the government’s loud protestations that the law contains a number of safeguards, the short history of its use proved that the concern of several civil society groups was not misplaced. The implementation of the Act in fact showed that it was misused for incarcerating political opponents, to serve communal purposes, and without application of mind, was used against innocent citizens.

In 2004, the Prevention of Terrorism Act (POTA) was replaced by the Unlawful Activities (Prevention) Act (UAPA) under the Congress-led UPA-I government. The Act was subsequently amended in 2008 following the Mumbai attacks of 26/11. Draconian provisions in the 2004 Act were left out in the 2008 Amendment. The Centre’s decision not to include these draconian provisions in the amended UAPA probably stemmed from its conviction that they are neither useful in the trial and conviction of terrorist offences, nor in their prevention, and that they are poor substitutes to serious investigative and prosecutory efforts.

The 2008 Amendment, though slightly milder than its predecessors, does not allow for anticipatory bail. Regular bail is made exceedingly difficult and no one ever accused of a terror offence is likely to get bail. Instead of a 15-day detention period that is permitted under ordinary law, the Act authorises detention for up to 30 days. Judicial

¹⁰⁶ Two Prevention of Terrorism Ordinances were promulgated in October 2001 and December 2001 before the passage of POTA. They were enacted as temporary laws to operate for three years. The High Courts and the central government had the power to make rules in accordance with the law.

custody is permitted for a period of 90 days which can be further extended up to 180 days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for further detention. What is even more worrying is that judicial custody can be converted to police custody if the investigation officer makes a request on affidavit, stating the reasons for doing so. Presumption of innocence – the most fundamental principle of a fair trial – is reversed in the Act. Such wide police powers and curtailment of liberties are clearly against the vision of the Indian Constitution which considers liberty to be a paramount right.

The Special Cell of the Delhi Police was formed in 1986 as a counter-terrorism force. It shot into prominence in the late 1990s, claiming to have killed many terrorists and to have solved several cases. In time, some of its officers began to figure in extortion cases and dubious encounters. Unfortunately, whenever the courts have found that the Special Cell has framed people by fabricating evidence, they have not suggested any action to be taken. Tellingly, lower courts in Delhi have repeatedly acquitted “terrorists” arrested by the Special Cell.¹⁰⁷

3.8.2 Laws Against Organised Crime

The Rajasthan Control of Organised Crime Bill, 2006, and the Andhra Pradesh Control of Organised Crime Bill, 2006 are pending with the central government for their approval before they can be introduced in the respective state legislatures. The Gujarat Control of Organised Crime Bill, 2003, and the Uttar Pradesh Control of Organised Crime Bill, 2007, were passed by the legislatures of those states and have been reserved by the respective governors for the President’s consideration. All the four Bills are modelled on the Maharashtra Control of Organised Crime Act (MCOCA), 1999 (which was extended to Delhi in 2002), and the Karnataka Control of Organised Crime Act, 2002.

MCOCA continues to remain the most controversial legislation on the books. The Act is in fact harsher than TADA or POTA. Aimed “to make special provisions for prevention and control of organised crime with stringent and deterrent provisions and for coping with criminal activity by organized crime syndicates...” the Act has been clearly misused if not outright abused. It is in fact the stringent and deterrent provisions that have wholly abetted the abuse.

The law has proved to be a black hole for hundreds of accused. Once charged under this Act the presumption is in favour of guilt instead of innocence; confessions to police are admissible as evidence and securing bail is next to impossible. With the police routinely using torture to force confessions, making these confessions admissible only reinforces a culture of impunity within the force. Clearly, the Mumbai police have used this law, often indiscriminately, only to put people behind bars and keep them there for as long as possible. A number of people charged under the Act have been ruled innocent after spending years behind bars.

What governments fail to realise is that police reform measures cannot co-exist with “special laws” that tend to enhance police powers sans the checks and balances. As an arm of the state, the police have the duty not only to protect life and property, but also to ensure an environment in which individual liberties can be enjoyed optimally. This is the true function of the police in a democratic society. Counter terror measures that undermine human rights, due process, and the rule of law will only spread public fear, threatening the life and liberty of the very people the police is supposed to protect. So-called reform measures that give enhanced powers but don’t include accountability mechanisms are bound to fail. Lasting reform will not come about till steps are not taken to change the image of the police as a powerful, abusive and unaccountable force.

107 *Tehelka Magazine* (2010): “Terror that Wasn’t”, Volume 7, Issue 08, 27 February: http://www.tehelka.com/story_main43.asp?filename=Ne270210terror_that.asp, as on 10 December 2010.

The Armed Forces Special Powers Act

The state of Jammu and Kashmir and many of the North East states¹⁰⁸ are long-term areas of armed conflict in the country. Of the North East states, at present, Assam and Manipur are the worst affected by armed conflict though ethnic militant groups seeking autonomy or independence are active in many of the other states. All these areas of armed conflict have become heavily militarised, with a huge presence of Indian security forces, paramilitary forces, and Indian army units in some places. In Kashmir and the North East, the armed forces operate under the legal framework of the Armed Forces Special Powers Act (AFSPA), 1958.¹⁰⁹ This law authorises the governor of the state or the central government to declare the whole or any part of the state as a disturbed area. If in either one's opinion it is in such a "disturbed or dangerous condition" as to make it necessary to use the armed forces in aid of civil power, they may authorise it. Under the Act, commissioned as well as non-commissioned officers of the armed forces are given powers to shoot to kill, arrest, demolish structures, and conduct warrant-less searches, on mere suspicion.¹¹⁰ This has led to grave violations of the right to life, liberty and security of person, and right against arbitrary detention, and resulted in torture, enforced disappearances, and rape. The Act provides that no prosecution can be launched against officers working under the Act, without prior sanction from the central government. This legal requirement, coupled with a good faith clause prohibiting the arrest of armed forces personnel except with prior sanction,¹¹¹ have cumulatively ensured impunity for armed forces personnel.

This Act was originally intended to be a short-term measure, but it has been kept in force for decades in the states under its ambit. Despite tremendous public agitation in both the Kashmir Valley and Manipur against this law, the central government has declined to repeal it, even though there is considerable evidence that it has led to gross violations of human rights.

The continued application of legal structures such as AFSPA restricts the possibility for police reform in states experiencing armed conflict. As long as these states are home to legal structures and practices that facilitate impunity for the most serious violations of human rights, there is no possibility of police reform.

The need for reform cannot be ignored any longer. The issue is being discussed at every Chief Ministers' Conference as well as Directors General of Police Conference held annually. The police mission and micro-missions are all geared towards bringing about reform. Though delayed and only after terrorist and extremist violence increased and spread, the Centre augmented its grant under the modernisation scheme to the state governments substantially. What remains of concern however in the face of increasing violence and conflict, is the tendency of governments to hijack the fundamentals of reform and replace it with policing that is tough and militaristic. If this trend is permitted to develop the reforms achieved till date will be permanently reversed.

108 The North East states include Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

109 The Act has been in force in the North East states since 1958 and in Jammu and Kashmir since 1990.

110 Section 4, Armed Forces Special Powers Act.

111 Section 45, Code of Criminal Procedure, 1973.

3.9 Recommendations

The Government of India

1. **Pursue the Agenda of Police Reforms Vigorously.** Police being a state subject, the main responsibility for implementing the reforms lies with the states. But the Government of India can undertake several steps by way of pushing forward the agenda of reforms. For instance, it can set an example by complying in letter and spirit with the Apex Court's Directives.
2. **Introduce the Model Police Act.** The Model Police Act can be introduced at the Centre as well as the Congress-ruled states. This will give the Centre the moral authority to ask the state governments to follow suit. It will be able to convince the state governments about its genuineness and commitment to reform.
3. **The Modernisation of the Police Force Scheme.** The MPF scheme focuses on the construction of police buildings, purchase of vehicles, purchase of arms and ammunition, purchase of equipment, enhancement of infrastructure facilities for police training, computerisation, purchasing forensic science equipment and developing infrastructural facilities for forensic science laboratories. However according to CAG reports the spending under the scheme is not as desired. This needs proper monitoring. The Centre can also ensure that all funds, whether allocated under the police modernisation grants or other sources, are released only against transparent proposals and after satisfactory accounting of expenditures from the previous fiscal year.
4. **Immediately Amend or Repeal Special Laws that Impinge on Citizens' Rights.** Apart from pursuing the Supreme Court Directives, the Government of India must amend other legislations that severely impinge on rights of citizens. Lasting reform will not be achieved in the atmosphere of a repressive state.
5. **Strengthen the National Police Mission.** The NPM was set up with the objective to enable the transformation of the police into an effective instrument to maintain order. 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. The reports and the status of the missions must be made public. Transparency will play an important role in the reform process.

State Governments

6. **Implement the Directives of the Apex Court Without Dilution.** States governments must stop thinking that implementing the Apex Court's Directives will render them powerless.
7. **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.
8. **Ensure that New Police Acts Proactively Solicit Input from Civil Society on Drafting Police Legislation for the State.** This can be done in the following ways:
 - a. Have civil society involved at the drafting stage. This will ensure that the Bill which emerges from the committee sufficiently addresses the concerns of the public.
 - b. Hold public forums and meetings to get the public's feedback on potential new legislation.
 - c. In accordance with Section 4(1)(c) of the Right to Information Act, 2005 (proactive disclosure), ensure that when draft legislation goes before the State Assembly it is also put in the public domain and made available for comment.

9. **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.
10. **Invest More Time and Effort into Community Policing.** International practice suggests that community policing is an effective tool for intelligence gathering and it forges a healthier bond with the public.

Government of India/State Governments

11. **Recruitment Must be Made More Transparent and Merit-Based.** The Transparent Recruitment Process (TRP) policy introduced by the Centre should be scrupulously followed. At the same time, sanctioned posts that remain vacant need to be filled at the earliest.
12. **Attention Needs to be Paid to Police Stations.** Even today, despite all the schemes and reforms, 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 properly.
13. **Improve Training Facilities.** Governments need to realise that the training given to the police today does not make them fit for the purpose. Training methodologies need to shift the stress from 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.

Police Services at the State and National Level

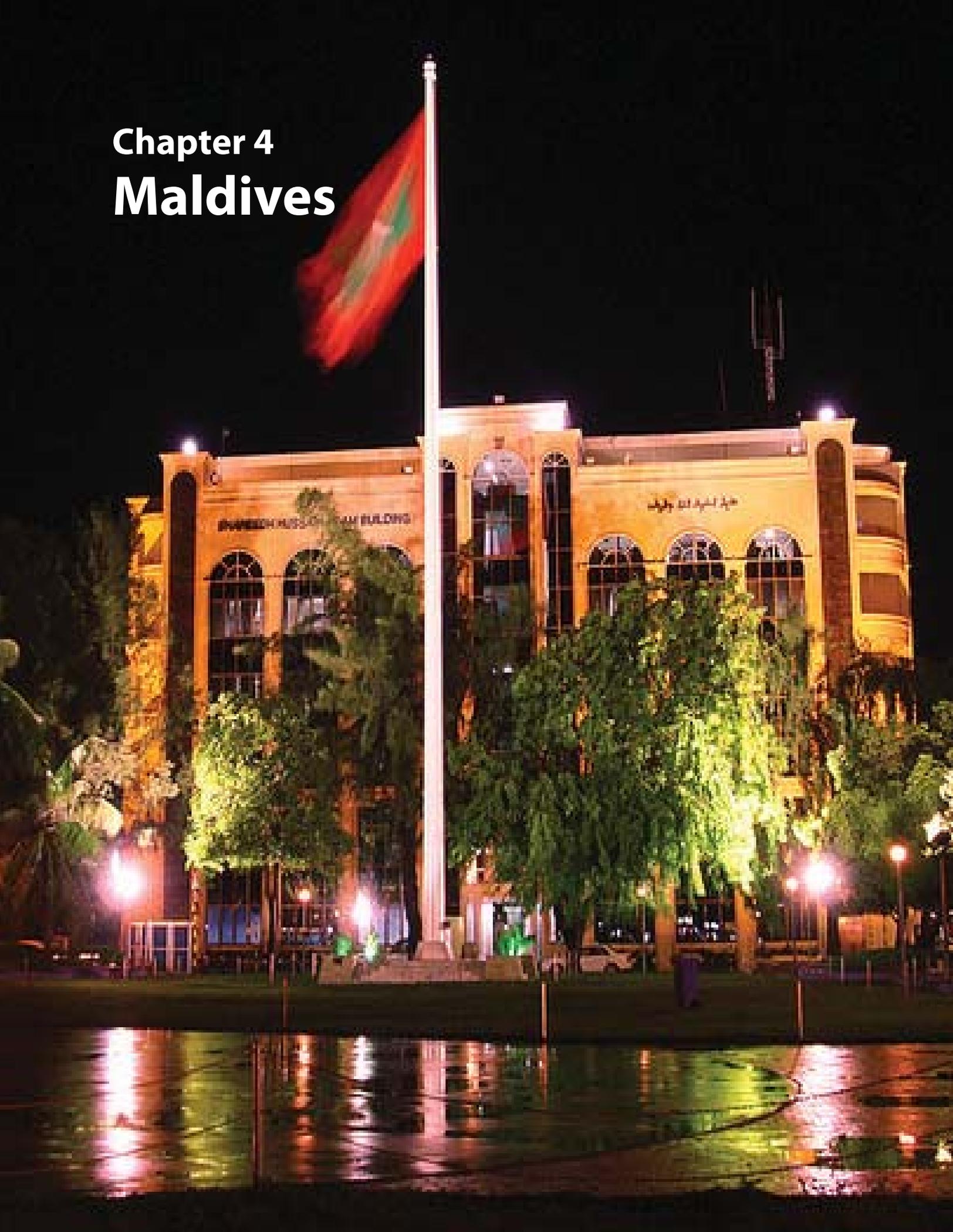
14. **Establish an Effective Internal Mechanism that Permits the Public to Make Complaints Against the Police.** The success of internal accountability mechanisms depends on the effectiveness of police leadership. Unfortunately, the authority of police leadership has gradually been eroded over a period of time. This has led to loss of discipline in the force and has promoted a tendency at different levels in the police to seek outside patronage for rewards and to be shielded against punishment. Police leadership in the states need to ensure that internal mechanisms are revived to regain the lost faith of the public. This can be achieved by the following:
 - a. Specify a prompt and transparent process of inquiry into complaints against a police officer with complainants informed at every stage of the process and outcomes.
 - b. Place a complaint/suggestion box outside every police station.
 - c. Set up complaint cells in each district, range and state headquarters.

Civil Society Organisations

14. **Involve the Community and Public at Large in the Reform Process.** Doing so will improve the police-public interface.
15. **Campaign and Educate on the Need for Police Reforms.** Given the level of dysfunctional policing in India, it is critical that civil society organisations inform the average Indian of their rights and the sort of policing they should expect from law enforcement agencies. Raising public awareness on these issues will inevitably make the police more cautious and law abiding.
16. **Conduct Social Audits of Police Stations.** A social audit is a way of measuring, understanding, reporting and ultimately improving police performance. It can help narrow the gap between a vision and reality.

Chapter 4

Maldives



4.1 Background

In October 2008, the small island country of the Maldives held its first multi-party democratic elections that saw the defeat of the incumbent President, Maumoon Abdul Gayoom, in power since 1978, and the victory of the human rights activist, Mohamed Nasheed of the Maldivian Democratic Party (MDP). This paved the way for the greatly needed strengthening of political, legislative and institutional reforms, based on rule of law and commitment to human rights, a process initiated first by Gayoom in 2004. Pro-democracy protests backed by international pressure prompted Gayoom to initiate a constitutional reforms process that was refined into a Roadmap for the Democratic Reform Agenda in March 2006. These reforms paved the way for the introduction of a multi-party system, an independent judiciary, greater accountability through the People's Majlis (parliament) and independent bodies such as the Human Rights Commission and the Judicial Services Commission.

Policing too underwent significant changes as part of the reform agenda. A police force was first established by law in 1933 under colonial rule. It was subsequently disbanded and was re-established only in 1972 as part of the National Security Service (NSS). Unlike other nations in the Commonwealth, the Maldives did not have police legislation even after independence in 1965. In the absence of such legislation, the police derived their powers of arrest from a general enactment adopted by parliament.¹¹² Section 6 of the General Laws enacted in November 1968 (Law No. 4/68 – Javiyani) states:

In the event a person is suspected of contravening orders of the Sharia or the State, or a person is deemed unfit to be left at large owing to him or her being suspected of creating a danger to the public, the discretion to arrest that person, without causing any harm to him or her, is vested in the Ministry of Defence and National Security, the Ministry of Home Affairs in Male, and the Ministry of Atolls Administration in the atolls.

Till 2004, the police functioned as a paramilitary force under the Ministry of Defence and National Security. The NSS that grew from a size of approximately 1,000 to 3,500 personnel, had, by the turn of the twenty-first century, become notorious for its harsh treatment against those thought to be engaged in anti-government activities.¹¹³ According to one estimate, the Maldives has had the highest proportion of its population arrested and charged than any country in the world.¹¹⁴ The growing domestic pressure from various groups (see Box on Transition to Multi-Party Democracy) prompted Gayoom to initiate wide-ranging political reforms, a key component of which was the transformation of the police into a civilian body.

In September 2004, the Maldives Police Service (MPS) was created as a civilian law enforcing body under the Ministry of Home Affairs, while the NSS (renamed the National Defence Force in April 2006) remained under the Ministry of Defence. Rather than a force to protect the government, MPS was envisioned as a civilian body committed to the rule of law with the core objective of preventing crime and ensuring peace and order. Through this transformation, President Gayoom sought to convey his government's commitment to political reforms. At first, little change was visible in the policing culture on the ground. This can partly be attributed to the absence of necessary legislation guiding police powers and responsibilities. Consequently, it was not till the Police Act, 2008 was passed on 5 August, followed closely by the ratification of the Constitution that a legal framework was provided to carry forward police reforms in true earnest. President Nasheed's entire campaign rested on demanding rule of law and human rights reform, which greatly enhanced the possibility of achieving democratic policing.

112 Aminath Najeeb (2007), "Police Accountability in the Maldives", Paper presented at the CHRI Roundtable on Police Reform: An Exchange of Experiences from South Asia, March 2007, New Delhi, India; Also see Maldives Royal Family (2010), Maldives Police: Old Wine in a New Bottle: http://www.maldivesroyalfamily.com/maldives_police.shtml, as on 25 November 2010.

113 Beatrice Jauregui (2010), "Bluing Green in the Maldives: Countering Citizen Insurgency by "Civil"-izing National Security", in John D. Kelly et al. (Eds.) *Anthropology and Counterinsurgency* (University of Chicago Press; Chicago & London, 2010), p. 3

114 Ibid.



In the last two years, MPS has evolved into a more professional and people-friendly organisation with fairly sound systems of accountability in place. It continues to face formidable challenges amidst already growing disillusionment within a section of society against the democratic experience and the language of human rights.¹¹⁵ But the MPS is investing a great deal in formulating policies at par with international best practices in order to facilitate the transition. Its Strategic Plan, 2007-2011 is one such example that is strongly grounded in democratic policing principles and seeks to enable a deeper understanding of the redefined roles and responsibilities of the police.

Transition to Multi-Party Democracy

President Gayoom's 28-year rule, more so during the latter years, were marked by widespread human rights abuses, particularly against political activists, journalists and dissenters. A fact-finding report by the Law and Society Trust, Sri Lanka, and the Asian Human Rights Commission, Hong Kong, underscores a clear pattern during these arrests of bypassing basic guarantees of due processes. The most important of these were: the right to be told of the reasons for arrest; the right to fair trial without undue delay; the right of appeal to an independent body; the right to access to legal representation; and the right to freedom from torture while in detention.¹¹⁶

Amidst growing domestic unrest, the killing of an inmate in Maafushi Prison in September 2003, followed by the death in custody of other dissenting prisoners provided the necessary momentum. While locally it gave rise to an unprecedented level of dissent, internationally, the human rights record of the Maldives began to be scrutinised, compelling President Gayoom to announce political reforms in late 2003.¹¹⁷ These included the creation of the Office of the Prime Minister, guaranteeing independence to the People's Majlis (parliament) from the executive, the formation of more political parties, the establishment of the Supreme Court, and the establishment of the Human Rights Commission of the Maldives. In terms of initiatives towards criminal justice reform, the most notable was the Paul Robinson Report on the Criminal Justice System, 2004, under the sponsorship of the United Nations Development Programme. Taking note of the weaknesses in the Maldivian criminal justice system, the report goes on to recommend wide-ranging reforms. Reforms pertaining to the police, included: the drafting of a Police Act; police regulations, limiting the powers to arrest and detain; the establishment of an oversight committee with civilian representation; and several other recommended measures. The recommendations, however, were general in nature, and required the government to flesh out the details.

In August 2004, the slow pace of reforms resulted in mass demonstrations in support of speedier improvement in the political and human rights situation, leading to the Proclamation of Emergency by President Gayoom. This was followed by a large number of arrests and people were detained without charge.¹¹⁸ Although a majority of detainees were subsequently released with government pressing charges only against 17 persons, concerns were rife about whether these people would receive a fair trial given the flaws in the criminal justice system.

Amidst deep scepticism, President Gayoom announced his Roadmap for the Democratic Reform Agenda in March 2006 outlining a timetable for human rights and democratic reform. Given the widespread

115 Maldivian Democracy Network (2010), *Needing to Scale the Communication Barrier*, p. 1.

116 Law and Society Trust (2007), *State of Human Rights in the Maldives*, Volume 17, Issue 231, January, p. 1.

117 Adam Cooper (2006), *Prospects for Human Rights in the Maldives*, CHRI Newsletter, Volume 13, No. 3: http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&catid=76%3Aautumn-2006&id=316%3Aprospects-for-human-rights-in-the-maldives&Itemid=396, as on 20 November 2010.

118 Amnesty International (2005), *Human Rights Violations in the Context of Political Reforms: Maldives*, ASA 29/001/2005, 24 February, <http://www.amnesty.org/en/library/info/ASA29/001/2005/en>, as on 20 November 2010.

human rights violations and the culture of fear that marked his long rule, the Roadmap represented a promising start. The key components included: strengthening the system of governance; strengthening the protection and respect for human rights; enhancing the independence of the judiciary; developing a multi-party political system; strengthening the civil service; modernising the electoral system; enhancing the role of the media; and strengthening key institutions such as the Anti-Corruption Board, Ombudsman's Office and Police Integrity Commission.

Each of these eight key components was to be achieved through specific measures. The system of governance was to be strengthened by revising the Constitution as well as educating the electorate about the same; promotion and protection of human rights was to be achieved by strengthening the Maldives Human Rights Commission Act and acceding to international human rights conventions.

In spite of the Roadmap, the government's repression of independents and opponents continued. At least 110 opposition activists were arrested in November 2006; outspoken government critics were imprisoned without due process; and a ban was imposed on holding public rallies.¹¹⁹ Much of the government's energy was spent in suppressing the opposition led by the Maldivian Democratic Party (MDP). Given these repressive measures, it may be said that constitutional and political reforms began in true earnest only with the change of government and the election of President Nasheed in October 2008.

Chronology of Political Reforms:

2003	Establishment of the Human Rights Commission of Maldives (December) by Presidential Decree and later reconstituted as an independent commission in 2008
2004	Reorganisation of the Maldives Police Service as a civilian body
2005	Registration of Political Parties
2005	Ratification of the Human Rights Act
2008	Ratification of the Constitution (August)
2008	First Presidential Elections (October)
2008	Establishment of an independent Supreme Court
2008	Granting independence to the Auditor General's Office
2008	Establishment of the Ombudsmen, Anti-Corruption and Civil Service Commissions
2009	Election to the People's Majlis (May)
2009	Appointment of the Police Integrity Commission (July)

4.2 The Maldives Police Service: Reform from Within

Viewed in context of the Democratic Reform Agenda, the reorganisation of the Maldives Police Service (MPS) into a civilian body can be seen as recognition within the government of the vital role of the police in upholding

119 Amnesty International (2006), "Renewed Repressive Measures Against the Opposition", Public Statement, 28 November: ASA 29/010/2006 <http://www.amnesty.org/en/library/info/ASA29/010/2006/en>, as on 22 November 2010.



and supporting democracy. MPS was envisaged as a body equipped to confront non-traditional security threats in a professional manner in order “to create a more safe and secure Maldives with the support of the community”.

In order to achieve an effective transition into a civilian body, MPS undertook several measures. In 2006, it entered into an agreement with the Western Australian Police to “provide knowledge, advice and expertise to assist the Maldives Police Service enhance its professionalism during its transition phase”.¹²⁰ These initiatives included reform of the training syllabus at the Maldives Police Service Academy to reflect the philosophy underpinning community-oriented policing. It also entered into a contract with a retired British police superintendent to assist in building capacity of station managers in supervision, community policing and station management. Such initiatives show that the government was at least in part supportive of strengthening MPS as a civilian body.

However, MPS suffered from several teething problems during its initial years following the transition. At first, it lacked adequate resources and the training necessary to perform its role as a civilian law enforcement body. This is evidently clear in a report submitted to the Commissioner and Management Board in October 2006 reviewing the MPS.¹²¹ The report observed that no formal job descriptions delineating the roles and responsibilities of police officers were put in place. 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.¹²² A number of police officers, for instance, were found in hospitals in the capital city of Male, processing medical examination applications or in the capital police administrative section processing paperwork, when in fact, only a few officers are required for paperwork at a given point of time. In the absence of job descriptions, MPS faced a unique problem of being overstaffed and yet underutilised to carry out police functions. Most police stations were not equipped with operational manuals setting out the rules and regulations that would govern the day-to-day duties of police officers. The Special Operations Department (SOD) set up to support regular police officers in emergency situations was permitted to function as a paramilitary organisation with excessive reliance on the use of force to control situations, without any training in the minimum use of force, or on other non-violent measures.¹²³ By permitting a large department within the police (according to the report, SOD comprised 250 officers, i.e. 12 per cent of the force) to function as a paramilitary force, the government belied the very principles of democratic policing underlining its political reforms and failed to address the accusation that it was using unwarranted violence to control certain situations.

To overcome these limitations, MPS formulated a Five Year Strategic Plan for 2007-2011 that embodied the value of democratic policing to confront the sense of fear that pervaded Maldivian society. It emphasised community policing as a way to “build and sustain public trust and confidence in the police”. These are clearly reflected in the desired outcomes:

- To ensure lawful behaviour and community safety;
- Deal and apprehend offenders in accordance with the law;
- To provide professional and responsive services; and
- To achieve good governance.

In November 2009, it came out with a “Way Forward: Project Progress” on the Strategic Plan that sought to lay down steps and initiatives to implement the strategies and objectives laid out in the Plan. In doing so, it decided to take an “incremental project-based approach to institutionalising new processes, procedures, structures and

120 Mohamed Jinah (2007), “Policing in Maldives”, a paper presented at the CHRI Roundtable Discussion on Police Reform: A Exchange of Experiences from South Asia, 23-24 March 2007, New Delhi.

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

122 Ibid., p. 25.

123 Ibid., pp. 42-43.



standards which underpin enhanced and more responsive service delivery”.¹²⁴ It identified 54 projects, designed to address a priority objective laid out in the strategic documents of MPS or to create an enabling environment. Significantly, the Plan does not simply state lofty objectives; it also specifies actions to be taken to achieve the desired outcome as well as progress indicators. For instance, stress is laid on the development of information systems, facilitating flow from the public, and developing local partnerships to address crime and community safety. Keeping aside the issue of the practical realisation of these goals, the comprehensive nature of the Strategic Plan is certainly a promising start for a police organisation. Notably, the Western Australian Police Service played an instrumental role in the creation of an enabling environment within MPS from May 2006-May 2007.¹²⁵

Additionally, MPS subsequently undertook several measures to develop as a professional organisation. It put in place a set of police regulations laying down the rules and regulations governing day-to-day policing. It established several internal structures such as the Professional Standards Directorate mandated to promote police compliance with the highest ethical and human rights standards. It developed 16 specialised departments, such as the Community Engagement and Crime Prevention Department, Custodial Department, Drug Enforcement Department, Forensics Department and Serious and Organised Crime Department. It underwent a critical structural change in January 2010. The transformation saw the appointment of three Deputy Commissioners unlike the traditional structure that had a single one.¹²⁶ The structural change also saw an expansion in the number of other senior commissioned officers. Presently, there are four Assistant Commissioners of Police (ACP) as a result of the changes to the structure.¹²⁷

Recognising the need to familiarise all its officers with human rights principles, MPS has also developed a training course to be imparted through the Maldives Police Academy established in March 2006, providing Basic Human Training to the uniformed staff joining MPS.¹²⁸ It is now mandatory for all new recruits to undergo human rights training. The Academy started with a Basic Recruit Training course, but has since developed an Advanced Certificate in Policing course starting January 2009.

In spite of these initiatives, the major obstacle for the civilian transformation of MPS was that President Gayoom continued to retain enormous powers over the police: the appointment of the Commissioner of Police and the Deputy Commissioner of Police, police promotions and policies were all decided by the President. Suppression of dissent, crackdown on opponents of the regime, custodial torture, muzzling of the local media, and arbitrary detentions remained rampant.¹²⁹ In the absence of a Police Act, police manuals, and other important legislations such as the Code of Criminal Procedure and an Evidence Act determining the powers of the police, providing ways to hold them accountable and discerning the admissibility of evidence, MPS enjoyed enormous impunity. A special force created for the protection of the regime against protestors, known as the Maldivian Riot Force, also called the Star Force, was specially trained in aggressive methods and became infamous for abuse of human rights and inhuman treatment of detainees.

With this backdrop, the passing of the Police Act on 5 August 2008 and the subsequent ratification of the Constitution on 7 August were momentous developments in the unfolding of police reforms.

124 Maldives Police Service (2009), *The Way Forward: Project Progress: Strategic Plan 2007-2011*, Ministry of Home Affairs, Government of Maldives, p. 11.

125 *Ibid.*, p. 12.

126 Maldives Police Service (2010), Ministry of Home Affairs, Republic of Maldives, *Inception Report*, p. 5.

127 *Ibid.*, p. 5.

128 Maldives Police Service (2010), Ministry of Home Affairs, Government of Maldives, *Police Academy*: <http://www.police.gov.mv/?a=48>, as on 25 November 2010.

129 Asian Human Rights Commission (2006), *Maldives: Human Rights Situation in 2006*, Hong Kong.

4.3 The Police Act, 2008

Notably, the Police Act (hereafter the Act)¹³⁰ came into force under President Gayoom’s tenure, and he went on to sign three documents stating that the “Maldives Police Service is instated as an institution run directly under the Ministry of Home Affairs”.¹³¹ The Act, in particular, is commendable for its emphasis on serving the people and providing police services in concert with the public. Section (2)(g) mentions the provision of assistance to the public in solving civil issues to the extent required; while Section (2)(h) mentions the provision of assistance to the public and policing services in concert with the public. Other key objectives of the police as laid out in the Act (Section 2) include:

- Ensuring public order and peace
- Respecting the fundamental rights of the citizens and upholding those rights
- To operate as assented or agreed to in international conventions
- To discover, ascertain and investigate criminal acts committed in the Maldives as well as outside Maldivian territory by Maldivian citizens.

It, however, does not incorporate several safeguards of independence and accountability that are necessary to achieve democratic policing. Most notable is the absence of a clause on the composition and constitution of MPS. In order to build a democratic police organisation, the significance of adequate representation of all sections of society is imperative. In the case of the Maldives, it is particularly important to ensure fair representation in MPS from all the atolls so that it does not remain capital-centric. By not laying down any guidelines on this, the Act fails to ensure an inclusive police organisation. Other major strengths and weaknesses of the Act are discussed below.

4.3.1 Police Powers

As indiscriminate use of force by the police was the hallmark of law enforcement by the security forces under President Gayoom, the Constitution and the Police Act sought to review this. The Constitution forbade unlawful arrest or detention (Article 45); mandated an arrestee to be informed in writing of the grounds of arrest within 24 hours; and accorded the arrestee the right to legal counsel and to be brought within 24 hours before a judge (Article 48). Additionally, the Constitution forbids “cruel, inhumane, degrading treatment or punishment, and torture” (Article 54), and affords the right against self-incrimination to every arrestee (Article 48). The Police Act further lays down an elaborate set of responsibilities and duties for the police intended to instil greater respect for human rights in the performance of their functions. Notably, the Act criminalises an intentional exercise of powers or discretion beyond that entitled to a member of MPS [Section 13(e)]. Together, these provide a sound legal framework to improve policing in the Maldives.

That these laws are beginning to have an impact on the ground is evident from the fact that in 2009, there were no reports of extrajudicial killings by state actors, and that the police were generally found to respect the rights of the accused, by informing them of the grounds for arrest and their right to legal counsel.¹³² Nonetheless, the understanding of the reformed police powers and the means of balancing rule of law and human rights with the demands of security and order are far less clear. One of the main problems is that laws governing the provision of

130 See the Unofficial Translation of Law Number 05/2008 [Police Act] by the Chief Inspector of Police, Abdulla Phairoosch, December 2009, Maldives Police Service, Ministry of Home Affairs, Government of Maldives.

131 Maldives Police Service (2008), Ministry of Home Affairs, Government of Maldives, English News, 5 August: <http://www.police.gov.mv/?n=2257&lang=en>, as on 23 November 2010.

132 US Department of State (2010), 2009 Human Rights Report: Maldives: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136090.htm>, as on 28 November 2010.

legal aid (provided by Article 53 of the Constitution), the Evidence Act and an Act replacing the Penal Code are yet to be passed by parliament. There is also no definition of “arrest” in any statute or case law, constituting a grey area in the justice system. In the absence of these, there is a sense of confusion regarding the law.

Constitutional and Legal Reform

Maldives law is a mixture of Sharia law, English civil law and common law.¹³³ Although it was formerly a British Protectorate, the Maldives never inherited a strong English law or common law culture. When the Constitution came into force in August 2008, it allowed for the continuance of existing laws unless amended by the People’s Majlis (Article 269). Consequently, laws to deliver the mandate of the Constitution such as the Human Rights Commission Act ratified in August 2005, and the Police Act passed in August 2008 were enacted. But parliament needs to pass several other laws in order to effect the commitments envisioned under the Constitution. These include:

- Penal Code
- Evidence Act
- Judicature Bill
- Legal Aid Bill
- Juvenile Justice Act
- Prison and Parole Bill

There are also differences within MPS over the reformed role of the police following its separation from the National Security Service in 2004.¹³⁴ This is most pronounced on issues such as training of new recruits. The training is seen as being too lenient by the more experienced police officers who describe the reforms as “too much democracy”. The persistence of this mindset that remains sceptical of democratic freedoms is something that MPS will have to be mindful of in drawing its strategies and command structure. But more importantly, much more will have to be done to enhance the understanding of the concept of democratic policing in order to institutionalise the democratic transformation of MPS.

4.3.2 Police-Executive Relations

A key characteristic of democratic policing is functional autonomy coupled with strong accountability mechanisms. The police need to be free from external influences in their day-to-day functioning while at the same time, it must be subject to policy guidance and the oversight of the executive. However, the police in the Maldives continues to remain under the control and influence of the President. For instance, Section 52 of the Act gives the President full control over the appointment of the Commissioner of Police from among the high-ranking police officers as well as his dismissal. In the absence of specific criteria for the appointment of the Commissioner, the Act relies too heavily on the principle of seniority without due emphasis on the “merit” criteria that can be derived from the past performance of the police officer.

The relationship between the Commissioner and the Minister of Home Affairs that determines how independently the police are able to function, has been explained in a language that is at best ambiguous. The Minister is responsible for “setting policies to carry out the role of the police and sustain the standard of services rendered by the police”, and “issue regulations and orders deemed necessary for ensuring compliance to the Act”. At the

133 Ministry of Foreign Affairs (2010), Government of Maldives, Maldives Universal Periodic Review National Report, p. 3.

134 Beatrice Jauregui, “Bluing Green in the Maldives: Countering Citizen Insurgency by “Civil”-izing National Security”, in John D. Kelly et al. (Eds.), *Anthropology and Counterinsurgency* (University of Chicago Press; Chicago & London, 2010), pp. 23-37.



same time, the Minister has also been given the power to “give a direct order to any individual police officer, or a group of officers, or all police officers, at any given time” [Section 16(b)(2)]. The Act neither specifies the nature of such order nor the procedure to be followed in case of a dispute between the Commissioner and the Minister. In case of a clash of opinion between them, this power lets the Minister supersede the Commissioner even on issues that do not fall within the Minister’s direct jurisdiction, such as taking disciplinary action against a culpable employee, a function listed specifically under the responsibility of the Commissioner in Section 53(c). The Commissioner has also been made accountable to the Minister “with regard to the application of legal powers and discretions vested with the post” [Section 52(f)]. Typically, while the Minister should have a say in determining the guidelines and policy regarding policing, in order to achieve the objectives of the Constitution and the Police Act, giving the Minister a say over individual cases is what often results in undue political interference. On this specific function, the Commissioner should be free from the Minister’s control, while at the same time be accountable for his decisions.

4.3.3 Internal Accountability

In terms of internal accountability, MPS has established an Internal Investigation Unit reporting directly to the Commissioner of Police. The Commissioner of Police is responsible for investigating complaints brought against the employees of MPS and to take disciplinary action against the culpable employees (Article 53(c), Police Act). For this purpose, the Commissioner’s Directorate has also established a Grievance Unit. The Police Act puts in place high standards of ethical behaviour. Additionally, MPS has a separate Code of Conduct and Ethics. Such a framework makes it easier to initiate disciplinary action against police misconduct. According to the government, at least 97 officers have been dismissed since the Act came into force.¹³⁵

4.3.4 Police Integrity Commission

The Police Integrity Commission (PIC) was first established in September 2006 under former President Gayoom but was generally considered toothless and inactive. The Act (Section 19) mandates the Commission to fulfil 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 service.

The significance of an external complaints body to investigate issues regarding the conduct of police officers cannot be overemphasised. Because of the specific mandate of the police – to use force to curb violence and disorder – it is important for them to be held accountable at every step by making easily available channels where people can file complaints. The PIC was set up to perform such a function in the Maldives.

Much of the effectiveness of PIC in performing its functions depends on the powers vested with it as well as its relationship with the Minister in charge. In terms of its mandate, PIC is vested with wide-ranging powers under the Police Act. It is, for instance, empowered to summon witnesses to obtain their statements, enter government offices and other places to examine these places and documents available there, or obtain special information from a person or a party on a particular area. The Commission has been vested with considerable follow-up powers to prevent it from becoming a toothless body. For instance, it can forward to the Attorney General’s Office those cases where it decides to lay criminal charges against police officers. However, the Act falls short of

135 Ministry of Foreign Affairs (2010), Government of Maldives, Maldives Universal Periodic Review National Report, p. 10.



giving binding powers to the Commission. Article 44 states that the recommendations submitted by 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. This reduces the role of PIC to a recommendatory body and fails to recognise the importance of a powerful independent commission in reforming the organisational culture of a police force that tended to reward violent conduct.

In order to be effective though, it is also important that PIC be constituted as an independent body. The Act, however, does not provide adequate safeguards against undue political influence in the composition of PIC. Although the President is authorised to appoint the members of the Commission (a maximum of five) in accordance with the advice of the People's Majlis, the Act does not provide a consultative procedure to achieve this.¹³⁶ In the absence of an independent selection process, the composition of PIC depends considerably on the credibility and disposition of the President, leaving ample space for misuse of the Commission's mandate.

Despite its mandate, the functioning of PIC since its establishment demonstrates lack of government backing. First, even though President Nasheed assumed office in November 2008 and sent recommendations regarding the members of PIC to parliament in December of the same year, it was not till July 2009 that all the five members were appointed. Part of the delay was caused by the change in the composition of the People's Majlis following the 2009 May elections that gave the opposition party Dhivehi Rayyithunge Party (DRP) a majority in the People's Majlis. But even, under the Nasheed Presidency, support has been weak at best. The President of the Commission, Shahinda Ismail explains how PIC was not provided a proper work environment.¹³⁷ The budget allotted to PIC in July 2009 was withdrawn in early September on the ground that "the funds were not utilized by the end of August." The Commission then had to make several requests to the Finance Ministry to sanction the funds all over again.

Against these odds, it is encouraging to note that PIC has taken up several important investigations using its suo moto powers. One of the initial cases it handled was an assessment of the police custodial centre in Male. Following a visit to the centre in August 2009, PIC reported that it lacked adequate facilities to run its administrative tasks and made five recommendations to the Home Minister.¹³⁸ This included building a detention facility of acceptable standards, and till then, improving the medical services, food supplies and hygiene of the existing centre as interim measures. In its follow-up visit in November 2009, the PIC noted that many of its recommendations had been acted on.

4.3.5 Community Policing

That MPS is aware of the police's poor public image and that it recognises the need to earn the trust of the community in order to be effective, is clearly reflected in its Strategic Plan, 2007-2011. It is also encouraging to note that community policing is not just seen as a "strategy", but as an entirely new philosophy. As a result, community safety lies at the heart of most of its strategies. Great emphasis is laid on fostering partnerships with the community to "proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder and fear of crime". The key strategy includes the establishment of Crime Prevention Committees (CPC) in the atoll communities constitutive of the police and various members of the community, and the "Together We Can Fight Crime" programme held in different atolls since 2006 aimed at increasing public

136 In India, for instance, while the Chairman of the Police Complaints Authority (the Authority) has to be a retired judge chosen by the state government from a panel of names suggested by the Chief Justice, the other members are chosen by the state government from a panel prepared by the State Human Rights Commission, Lok Ayukta or State Public Service Commission. The composition was specified as such to ensure the independence of the Authority.

137 Shahinda Ismail (2009), "Police Integrity Commission of the Maldives", NIPSA Newsletter, December: http://vs4it.com/index.php?option=com_content&view=article&id=75&Itemid=128, as on 22 November 2010.

138 Maldivian Democracy Network (2009), Prison Situation Update, October: <http://www.mvdemocracynetwork.org/prison-situation-update-october-2009/>, as on 29 November 2010.



awareness about different crimes as also seeking solutions from the public for crime prevention.¹³⁹ The CPC, however, has met with mixed results, as noted by Dr Hala, Member, Police Integrity Commission. Some CPCs have been welcomed by the communities whereas others have remained inactive.¹⁴⁰ In order to support its initiatives, MPS needs to review its strategy of determining the strength of police officers in various atolls. At present, in addition to a police station in every atoll, islands with populations exceeding 2,000 people also have a police station.¹⁴¹ Another notable initiative is the Victim of Crime project of MPS that seeks to define the responsibilities of the police towards providing requisite assistance to victims of crime. To this end, the Victim of Crime Act is in the legislative phase.¹⁴²

4.4 The Human Rights Commission of the Maldives

National human rights institutions constitute an important link in the chain of police accountability. As part of their overall mandate to promote and protect human rights, they also investigate complaints against the police. In a significant move, the Human Rights Commission of the Maldives (HRCM), first established in December 2003, was reconstituted in 2008 as an independent body under the new 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” [Article 192(3)], the Human Rights Commission Act, ratified on 18 August 2005, empowers HRCM to investigate complaints alleging infringement of human rights, filed either by a person, or a private organisation, or a representative acting on their behalf; or a government authority; or initiate an investigation on its own (Section 20).

HRCM has generally taken a proactive stand on human rights violation and has conducted several surveys in the past two years. It has visited several jails in 2009 including Maafushi, Male and Feydhu, Finolhu. Of the 546 complaints it received, 55 were related to complaints against the police.¹⁴³ But HRCM does not have a branch or office outside the capital. As a result, it is inaccessible to two-thirds of the population, although complaints can be made on the phone. This is a serious limitation of the Commission. Another limitation is that, like PIC, it too is dependent on the Ministry of Finance for its budget, and has complained of inadequate funds. Without financial independence from the government, it will be difficult for the Commission to perform its functions earnestly. Moreover, HRCM has also not been vested with binding powers. As a result, on completing an inquiry, it can only make recommendations to the concerned authority.

4.5 Future Prospects

The Maldives is one of the few countries that can now boast of a peaceful transition to multi-party democracy. The present administration’s commitment to principles of human rights and civil liberties on the basis of which it came to power, is reflected in its Strategic Action Plan, 2009-2013 (different from that of MPS) that serves as a National Development Framework.¹⁴⁴ The Plan is a telling document in highlighting the government’s priorities and an assessment of the task at hand. It is encouraging to note that the reform of the criminal justice system

139 Maldives Police Service (2010), Ministry of Home Affairs, Government of Maldives, Crime Prevention: <http://www.police.gov.mv/?a=8>, as on 26 November 2010.

140 Interaction with Dr Hala Hameed from 15-19 November 2010 as part of the South Asia Visiting Programme organised by CHRI with support from FNF, New Delhi.

141 Dr. Hala Hameed, “The Need for Strengthening Community Policing in the Maldives”, NIPSA Newsletter, December 2010.

142 Maldives Police Service (2009), Ministry of Home Affairs, Government of Maldives, The Way Forward: Project Progress: Strategic Plan 2007-2011, p. 28.

143 Asia Pacific Forum (2010), “Maldives: Annual Report Highlights Key Issues”, 9 March: <http://www.asiapacificforum.net/news/maldives-hrcm-annual-report-reveals-concerning-statistics.html>, as on 29 November 2010.

144 The Republic of Maldives, The President’s Office, “Aneh Dhivehi Raajje,” The Strategic Action Plan 2009-2013: <http://www.presidency.gov.mv/4/>, as on 28 November 2010.



remains among the government's main priorities. Moreover, the key themes or ideas described as critical in implementing rule of law – establishing restorative and rehabilitative justice through a strong parole system, ensuring full independence of the judiciary, combating corruption and promoting a culture of integrity and honesty, decentralization to increase local participation in decision-making, and effective and accountable public administration – demonstrate a sound understanding of the principles of good governance.

The government's assessment of its constraints in realising the goals of the Plan, (incorporated within the Plan) is also encouraging. For instance, a particular area of concern identified is “lacking ability of the law enforcement agencies, legal sector and judiciary to investigate, litigate and sentence based on evidence”. It further identifies the lack of a pro-bono legal service, juvenile justice system, limited detention and rehabilitative facilities, financial constraints and physical infrastructure as barriers to access justice. Lack of awareness and geographical inaccessibility are other factors that affect access to justice. An understanding of these limitations informs much of the government's policies towards implementing rule of law. Policies relevant to police reform include:

- Developing human resources for professionals in the legal system, law enforcement agencies and the judiciary;
- Providing facilities to expedite processing of court cases by facilitating charge negotiation under relevant legislation and establishing restorative justice;
- Promoting access to justice through the creation of a Victim and Witness Support Unit, strengthening the juvenile system and modernising easy accessibility in civil and criminal processes;
- Enhancing and strengthening prosecution service as a whole to ensure the constitutional right to a speedy trial;
- Rehabilitation of offenders by implementing proper parole procedures;
- Establishing a mechanism through which the public can file complaints and strengthen the accountability of law enforcement agencies and the judiciary;
- Developing a national crime prevention framework to respond effectively to the increase in criminal offences;
- Strengthen evidence-based investigations.

These policies constitute a comprehensive framework for police reform. In working towards these goals, the government of the Maldives is following a participatory approach by engaging with various civil society stakeholders. Civil society too, is assuming a far more proactive role with the diminishing fear of persecution that once pervaded the society. A sign of this is a joint workshop that CHRI organised with HRCM and the Maldivian Democracy Network which sought to increase awareness about the concept of democratic policing and how to operationalise it in the Maldives (see Box on Joint Workshop).



Joint Workshop

CHRI conducted a two-day training workshop on “Police Reforms in the Maldives: Obstacles, Strategies and Way Forward” in July 2010 in collaboration with the Human Rights Commission of Maldives (HRCM) and the Maldivian Democracy Network (MDN). The objective of the training was to build the capacity of civil society and the staff of independent bodies, to understand fundamental aspects of democratic policing, and how such concepts are applicable in the Maldivian context. It was attended by members of PIC, HRCM, MDN, Prosecutor General’s office, Transparency International Maldives, and other NGOs. Particular emphasis was placed on explaining what is meant by the “operational autonomy” of the police. The participants were not fully aware of the forms that political interference can take with respect to the police.

CHRI’s experience with these two days of training was positive. Those who attended were keen to learn about MPS and how they could improve its performance. On the whole, people are satisfied with the evolution of MPS since 2004 (when it was first started), but there was widespread acknowledgment that it could do better.

Given this backdrop, there is certainly greater space and opportunity to consolidate liberal democracy. Such a context presents an extremely conducive environment to promote and strengthen the concept of democratic policing.

Notwithstanding the government’s resolve to implement rule of law, it faces formidable challenges in terms of sustaining democracy and consolidating the institutions. Despite its determination, it has been unable to get parliamentary approval for several Bills. This is because President Nasheed’s party, the MDP, does not enjoy a majority in parliament. Former President Gayoom’s DRP in coalition with the People’s Alliance together constitute the largest opposition in parliament with a total of 35 seats between them (as opposed to 28 held by the MDP). Although this falls short of the two-third majority mark required for the passing of legislations, it provides room for bargaining and contestations between the two parties. Owing to deep a political division, the entire 13-member cabinet resigned en masse in June 2010 creating a constitutional crisis. Although they were reappointed a week later, divisions continue to hold up parliament’s work. For instance, the People’s Majlis failed to pass the Judges Bill and approve a new Chief Justice within the stipulated deadline of 7 August 2010, throwing the country into yet another constitutional crisis. The government’s resolve to expedite political and criminal justice reforms suffers considerably in light of determined parliamentary opposition.

Even MPS has been slow in implementing many of its initiatives as laid out in its Business Plan. The Plan, for instance, provided for the establishment of a monitoring body for the Crime Prevention Committees by 31 March 2010, and for the formulation of a National Crime Prevention Strategy by 1 April 2010, that are yet to be made functional. Such delays and challenges are bound to occur as the police, the executive and parliament grapple with their new roles and responsibilities. But the government must also ensure that it does not lose the momentum generated by the presidential elections against the backdrop of raised expectations and aspirations.

4.6 Recommendations

The Government of the Maldives

1. **Immediately Pass Legislation Related to Criminal Justice Reforms.** To promote access to justice and strengthen the foundation of democratic policing, it is important that laws such as the Juvenile Justice Bill, Legal Aid Bill and Evidence Act are passed immediately. Without these legislations, and the rights that they protect, the policing culture is unlikely to change substantially.
2. **Provide Adequate Resources to Independent Commissions.** These commissions include the Police Integrity Commission and the Human Rights Commission of the Maldives. Presently the commissions require the approval of the Ministry of Finance for their budget allocation. Budgets for these bodies should be approved by parliament and administered by the authorities themselves, with an obligation to report on their spending to parliament.
3. **Extend Full Support and Cooperation to the Maldives Police Service.** This is particularly important in operationalising its objectives and strategies as identified in the MPS Strategic Plan. The Plan identifies several constraints such as limited human resources, financial constraints and lack of technical expertise as barriers to implementing their strategies. These must be addressed immediately.
4. **Pursue the Police Reforms Agenda Vigorously in the Various Atolls.** In its Strategic Action Plan 2009-2013, the government rightly identifies improving access to justice through decentralisation. This can be made possible by providing HRCM or PIC with financial and manpower resources to travel to atolls or set up desks at the level of the atolls.
5. **Amend the Police Act, 2008 to Better Reflect and Embody the Principles of Democratic Policing.** This includes better delineation of the limits of political control and oversight as well as strengthening the safeguards of independence and accountability.
6. **Actively Engage with Civil Society.** This is particularly important for mounting a legal awareness and literacy campaign.

Maldives Police Service

7. **Implement the Strategic Plan, 2007-2011 Vigorously.** Based on the Strategic Plan, MPS drew up a detailed and comprehensive Business Plan 2010 that lays down specific targets in order to combat various crimes and to increase police visibility and legitimacy. Most of these targets must be achieved by the end of 2010. Although information on the targets achieved is yet to be placed in the public domain, it is imperative that MPS ensures the fulfilment of the targets laid out.
8. **Cooperate with PIC.** Carry out frequent audits of all MPS custodial facilities.
9. **Use Crime Mapping to Address Issues of Growing Crime.** With growing crime and gang wars, MPS should take up the task of crime mapping itself. This will help understand high crime-prone areas better and develop localised strategies to tackle the different kinds of crime.
10. **Conduct an Assessment of Crime-Prone Islands.** To combat crime effectively and prevent anti-social behaviour, the MPS Strategic Plan also identifies the need to conduct an assessment of crime level across the atolls. This is an important factor to determine the number of police officers that need to be stationed at the atolls, and to devise crime prevention strategies based on the unique characteristics of each atoll. This is also critical for reviewing the number of police stations required in each atoll – currently 19 across the atolls.

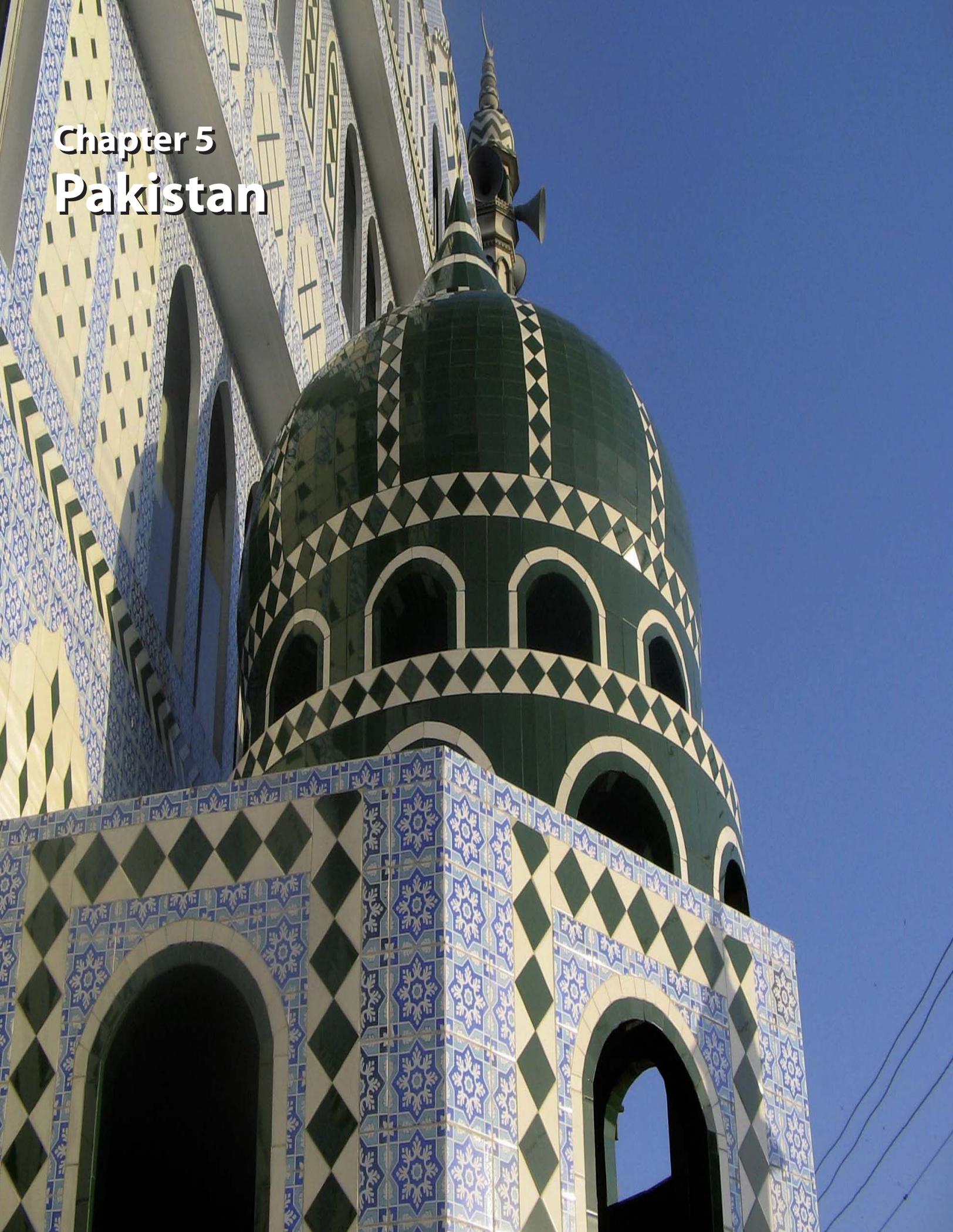
- 
11. **Greater Emphasis on Behavioural and Attitudinal Reform in the Training Imparted to the Police.** To effect a change in the mindset of the police, the training curricula designed by the Police Academy focuses on crime investigation techniques, office management skills, and other technical skills.¹⁴⁵ Greater emphasis needs to be placed on behavioural aspects such as inter-personal communication skills, stress management, and other self-analysis aspects including self-esteem, identity, and personal attitudes and prejudices. Along with technical training, such training is an important measure to enhance positive attitudes and healthy behaviour, which in turn will help improve police professionalism.
 12. **Greater Engagement with Civil Society Organisations.** MPS Business Plan envisages an active involvement of NGOs and CSOs in promoting awareness of the legal system and other strategies of MPS. However, the involvement of CSOs must not be confined to this function alone. Their inputs must also be sought in decision-making, particularly on issues such as standardisation of custodial facilities in line with recognised international standards, training curricula, alongwith legislation that relates to policing and criminal justice issues.

Civil Society Organisations

13. **Build and Consolidate Expertise on Democratic Policing.** The Constitution and the Police Act, 2008 lay down the foundation of democratic policing committed to the rule of law and human rights. However, having experienced 38 years of autocratic rule, the concepts of human rights and democratic freedoms are new to Maldivians. To ensure proper implementation of these ideals, CSOs will first have to enhance their understanding of how they can be operationalised. This will enable them to become aware of ways in which the government can undermine these rights, which in turn will enable them to raise their voice against any violations.
14. **Campaign and Educate on Police Reforms and Democratic Policing.** The Constitution of the Maldives along with the Police Act, 2008 redefined the powers of the police and their responsibility towards citizens. Given the history of fear and brutality that characterised policing, particularly since the turn of the century, scepticism about the police runs deep within the society. It is important for CSOs to educate people about the changes in the law, the limitations imposed on police powers, and the rights that they are entitled to, particularly vis-à-vis the police. Only an informed citizenry can help increase police accountability.
15. **Monitor the Working of MPS Closely.** Public pressure and push by various interest groups play an important role in ensuring the delivery of public services. It is important for CSOs to monitor and evaluate the implementation of the Strategic Plan of MPS closely, and depending on its assessment, draw up different advocacy tactics. Such findings must be regularly shared with MPS and the government, for which various lobbying tactics need to be devised. CSOs must put in place a systematic process to lobby for police reforms to prevent it from being personality/individual driven.
16. **Work with the Maldives Police to Encourage Community Policing.** The success of community policing is contingent on open and constant dialogue between the police and the community. CSOs must put in place special teams that can work with the Maldives police in carrying out their various community policing initiatives, as also conduct research of new measures that can be applied in the Maldives.

145 Maldives Police Service, Ministry of Home Affairs, Government of Maldives, Business Plan 2010, p. 137.

Chapter 5
Pakistan



5.1 Background

For a country ravaged by formidable security challenges, ranging from ethnic strife, terrorism, insurgency and separatism, the story of police reforms is particularly discouraging. As noted elsewhere: “Few reforms would make more of an impact on Pakistan’s security and political context than reforming the civilian security forces, particularly the police.”¹⁴⁶ An efficient, accountable and professional police would enhance the government’s ability to provide security and, in turn, increase its legitimacy among the people.

Following the 2008 national elections in Pakistan that saw the return of civilian rule, there was a renewed hope that the commitment to rule of law and human rights enshrined in the Charter of Democracy¹⁴⁷ would guide the policies of the newly-formed government led by the Pakistan People Party (PPP). In light of growing street protests and sectarian and terrorist attacks in the heartland, strengthening the police force is considered particularly critical for security management in Pakistan, both domestically and internationally. At the domestic level, the government’s commitment to police reforms was reflected in its election manifesto that stated: “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.”¹⁴⁸ Internationally, these objectives constituted the cornerstone of the US partnership with Pakistan through the Kerry-Lugar-Berman Bill that explicitly ties security aid to the freeing of Pakistan’s civilian government from military influence. A major aspect of this strategic reorientation is a renewed focus on the role of the civilian police.

Three years hence, government policies and reform initiatives have fallen short in many respects, most notably on police reforms. Instead of increasing accountability and ensuring commitment to the rule of law, reform measures have in fact further strengthened the culture of impunity that the law enforcing agencies enjoy. The Eighteenth Constitutional Amendment passed in April 2010 retains the exemption given to the police and the armed forces from conformity to fundamental rights for the purpose of the “proper discharge of their duties” [Article 8(3)]. The provision declaring any law inconsistent with fundamental rights as null and void does not apply to those laws governing the police, the armed forces and any such other forces. Other legislations including the Draft Punjab Police Act (yet to be passed), the Balochistan Levies Force Act and the Nizam-e-Adl Regulations (discussed below) significantly curtail the role of the police or entrench political control over it.

With regards to the Police Order, 2002 (which replaced the 1861 Police Act), the Eighteenth Amendment removes the requirement of presidential consent for its amendment, leaving it only within the jurisdiction of parliament (see Box). But because the Order had never really taken off, this is unlikely to make any difference regarding its implementation.

Promulgated as a federal law, the Police Order was placed under the Sixth Schedule of the Constitution, as a result of which it could not be amended, repealed or altered by parliament without the prior approval of the President.¹⁴⁹ This proviso, however, stands removed following the Eighteenth Amendment to the Constitution passed on 8 April 2010 by the National Assembly and on 15 April 2010 by the Senate. Consequently, the power to amend the Order lies only with parliament. Under Article 184 of the Order, the provinces are empowered to make rules to carry out the purposes of the Order or even to amend it to meet any local requirements *with the approval of the Prime Minister*. However, no provincial assembly can alter the substantive provisions of the Order, as that power rests only with parliament. In any case,

146 Carnegie Endowment for International Peace (2010), Political Dimensions of Police Reform in Pakistan, 14 July, United States.

147 The Charter of Democracy was signed by Nawaz Sharif, leader of the Pakistan Muslim League, and the late Benazir Bhutto of the Pakistan Peoples Party on 14 May 2006 in London ahead of the national elections that were first due in 2007. The document formed an alliance between Pakistan’s two largest political parties and outlined steps to end military rule and restore civilian rule.

148 Pakistan Peoples Party (2008), Election Manifesto 2008: <http://www.ppp.org.pk/manifestos.html>, as on 23 October 2010.

149 Article 268 (2), Seventeenth Amendment to the Constitution, 2003, Pakistan.

if a provincial assembly enacts a law or an amendment that is repugnant to the Police Order, 2002, the provisions of the Police Order shall prevail, as it is a federal law (Article 143 of the Constitution).¹⁵⁰

Clearly, police reforms have remained hostage to the government's indecision, the power struggle between the centre and the provinces, and a general lack of political will. The rapidly deteriorating security situation retains the army and paramilitary at the helm of security management, while police reform continues to suffer from the reluctance of the military and intelligence agencies to augment police capacity. A failure to appreciate the impact that inadequate and oppressive policing can have on politics and governance, risks repeating the mistakes that have plagued Pakistan since independence. Democratic policing can help militate against intrusive and politically charged misconduct perpetrated by those in power. This fact is acknowledged by numerous government-sponsored commissions that were tasked with studying the problems of policing in Pakistan. These commissions have all fundamentally concluded: better policing requires the political will to make it happen (see Box on History of Police Reforms in Pakistan). With a democratically elected government in place, many in Pakistan hope that there will now be sufficient space to cultivate a culture of democratic policing.

History of Police Reforms in Pakistan

1948	Passage of Bill in the Sindh Assembly to introduce a Metropolitan System of Policing in Karachi
1951	Recommendations of Sir Oliver Gilbert Grace, IG Police, NWFP
1961	Police Commission headed by Mr Justice J.B. Constantine
1962	Pay and Services Reorganisation Committee headed by Justice Cornelius
1970	Police Commission headed by Major General A.O. Mitha
1976	Police Station Enquiry Committee headed by M.A.K. Chaudhry
1976	Law and Order Sub-Committee headed by Ch. Fazal Haque
1976	Foreign experts, comprising Romanian police officers
1976	Police Reforms Committee headed by General Rafi Raza
1981	Orakzai Committee on Police Welfare, Promotion and Seniority Rules
1982	Cabinet Committee on the Emoluments of SHOs
1983	Cabinet Committee on Determining the Status of SHOs
1983	Sahibzada Rauf Ali Committee
1985	The Police Committee headed by Mr Aslam Hayat
1987	Report of the two-member delegation's visit to Bangladesh and India
1989	Report of the seven-member delegation's visit to Bangladesh and India
1990	Police Reforms Implementation Committee headed by M.A.K Chaudhary
1995	Report of the UN Mission on Organised Crime in Pakistan
1996	Report of the Japanese Police Delegation on the Police System in Pakistan
1997	Committee on Police Reforms under the Chairmanship of the Interior Minister
1998	Report of the Good Governance Group on Police Reforms: Committee Vision
2000	Report of the Focal Group on Police Reforms: NRB Draft, 2000

150 "Legal Status of Police Order 2002: The Need for a Uniform Police Law for Pakistan", Paper submitted by Afzal Shigri, Deputy Inspector-General before parliament, 10 February 2010.



5.2 The Government of Pakistan: Status of the Police Order, 2002

Ironically, albeit encouragingly, it was Musharraf who passed the Police Order, 2002 on 14 August 2002 as part of his overall reform agenda. Attempting to change a deeply entrenched police system, this Order was the first effort in a Commonwealth South Asian country to incorporate some norms of democratic policing into a law governing the police. 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”.

The Police Act of 1861 gave the government the authority to exercise superintendence over the police, but did not define the word “superintendence”. It also failed to prescribe guidelines to restrict the government from misusing the police for partisan and illegitimate purposes. The Police Order introduced a provision to remedy just this. It vests the superintendence of the police force in the government, but clearly prescribes that the power of superintendence “shall be so exercised as to ensure that police performs its duties efficiently and strictly in accordance with law”. The Order fills a very important gap in law by defining the word “superintendence” to mean “supervision of Police... through policy, oversight and guidance” and specifying that while exercising it, the government shall ensure “total autonomy” of the police officer in “operational, administrative and financial matters”.

The original Order put in place mechanisms and processes designed to limit political interference in police functioning and ensuring accountability for performance and misconduct. For instance, the Provincial Police Officer (PPO) was to be selected by the provincial government from a panel of three police officers recommended by the National Public Safety Commission (NPSC) from a list provided by the federal government. With the 12-member NPSC composed of three from the Treasury, three from the Opposition and six independent members, it was felt that personnel suggestions put forward by NPSC would be non-partisan, since its composition was equitably assigned. Similarly, it also called for the creation of District Public Safety Commissions, Provincial Public Safety Commissions and Police Complaints Authorities (at the provincial and federal levels). Each of these bodies was constituted in a manner that sought to minimise political interference and provide some form of external accountability for police conduct.

Owing to the backlash from the provinces, the bureaucracy and certain segments of the policing community, the reforms passed in 2002 were significantly curtailed by amendments that were introduced between 2004 and 2007. As our previous report highlighted, over a period of four years, eight ordinances were promulgated to introduce scores of substantive and hundreds of minor amendments to the original Police Order. Most notably, the Police Order (Amendment) Ordinance, 2004, amended or replaced 73 of the 187 Articles found in the original Police Order 2002. The amendments caused considerable confusion and a serious loss of efficiency. They were seen as an attempt to redirect power that was originally granted to the Public Safety Commissions back to the provincial government, especially with regards to transfers and postings. In addition, the re-emergence of the DMG of the civil service as a centre of considerable power and influence contributed to the delay in police reform throughout Pakistan.

Part of the problem with the Order was that it lacked legitimacy, since it was perceived by the provinces as an intrusion by Musharraf in what was a matter of provincial concern (policing is under the control of the provinces according to the Constitution). The Police Order was seen by many as an effort to diminish the power of the provinces and strengthen that of Musharraf. The same issue affected his Local Government Ordinances, 2001. It sought to facilitate grass roots democracy through the establishment of local councils at the district and sub-district levels, but proved to be little more than a cover for further centralised control over the lower levels of government, as the local councils were only given nominal powers. Following the elections in February 2008 and the return of a civilian government, nearly all provincial governments indicated their resolve to replace the Order of 2002 with their own laws.¹⁵¹ The following table illustrates the ways in which the original Police Order, 2002 was regressively amended and what impact those amendments had.

	Police Order, 2002	Amendments	Impact
1	The Provincial Police Officer (PPO) would be selected by the provincial government from a panel of three police officers recommended by the National Public Safety Commission (NPSC) from a list provided by the federal government [Article 11(1)].	The PPO would be selected by the provincial government from a panel of three police officers recommended by the federal government [Article 11(1)].	The elimination of the NPSC from the process of selecting the PPO means that the list provided to the provincial government is not vetted by an independent body. This increases the likelihood that politics will dictate the composition of the list.
2	The provincial government could only prematurely transfer the PPO or Capital City Police Officer (CCPO) before the expiry of the three-year tenure, with the agreement of the concerned Public Safety Commission [Article 12(2)]. In addition, the federal government could only recall a PPO with the agreement of the NPSC [Article 12(6)].	No agreement from the concerned Public Safety Commission is required for the provincial or federal governments to prematurely transfer or recall the PPO.	This amendment diluted the role of Public Safety Commissions to guard against the politicisation of personnel decisions. The independent commissions no longer have the opportunity to veto improper transfers or recalls.
3	The Provincial Public Safety Commission or the provincial government had the authority to initiate a case for premature transfer of the PPO for unsatisfactory performance of duties. But concurrence of the two was necessary for a final decision [Article 12(3)].	The Provincial Public Safety and Police Complaints Commission (PPSPCC) can only recommend the premature transfer of the PPO to the provincial government [Article 12(3)].	The downgrade from being able to initiate as well as to provide concurrence by the PPSC for a transfer to merely recommend one, is another example of how the powers of independent institutions created in 2002 have been diminished by amendments.
4	The District Police Officer (DPO) could be transferred before the end of his/her three-year tenure on the ground of inefficiency and ineffectiveness if: <ul style="list-style-type: none"> Both the <i>Zila Nazim</i>¹⁵² and the District Public Safety Commission (DPSC) concurred after he/she had been heard in person by the (DPSC) [Article 15(3)]. 	The DPO can be transferred before the end of his/her three-year tenure if: <ul style="list-style-type: none"> There is exigency of service or misconduct and inefficiency; and The government approves [Article 15(3)]. 	The fact that transfers of DPOs only require the approval of the government (and no other body) means that the situation remains as it was before the 2002 Police Order was promulgated. Transfers of DPOs will not be subject to any scrutiny outside the government.
5	The <i>Zila Nazim</i> had nothing to do with the annual Performance Evaluation Report of the Head of the District Police.	The <i>Zila Nazim</i> is responsible for preparing the Performance Evaluation Report for the Head of the District Police [Article 33(3)].	Unless objective benchmarks for performance are enumerated, a risk exists that the <i>Zila Nazim</i> may abuse this power.

6	Half of the DPSC was composed of <i>Zila</i> Councillors [Article 38(1)] and the other half of independent members [Articles 38(2)].	One-third of the District Public Safety and Police Complaints Commission (DPSPCC) will be Members of the Provincial Assembly (MPA) and/or National Assembly (MNA) [Article 38(1)(a)], one-third will be independent members [Article 38(1)(b)], and one-third will be <i>Zila</i> Councillors [Article 38(1)(c)].	The inclusion of MPAs and/or the MNAs introduced an overtly political element to the constitution of these bodies. In a genuine liberal democracy, there would normally be little objection to including elected officials. However, parliamentarians in Pakistan have not demonstrated an ability to perform their assigned responsibilities without adopting a fiercely partisan approach. ¹⁵³
7	A separate Police Complaints Authority (PCA) existed at the provincial level. This body would have only looked at complaints brought before it by the DPSC, the Head of the District Police or individuals (Articles 103-108).	A separate PCA no longer exists at the provincial level. Instead, the complaint function is now integrated with the Public Safety Commissions at both district and provincial levels (DPSPCC & PPSPCC).	The merger of Public Safety Commissions with PCAs means that there is no dedicated body to accept complaints at the district or provincial level. The two bodies were meant for different functions and ought to be separately constituted with distinct duties and powers.
8	The 12-member PPSC was to be composed of three members from the Treasury, three from the Opposition [Article 74(1)] and six independent members [Article 74(2)].	The PPSPCC comprises four members from the Treasury, two from the Opposition [Article 74(1)] and six independent members [Article 74(2)].	The reduction in Opposition members was obviously designed to give the government greater influence in police functioning. A professional police service requires that the government is unable to wield undue influence, especially since the government of the day may be in opposition after the next election.

Another problem with the Police Order, 2002 was that it was linked to the Local Government Ordinances, 2001. These Ordinances sought to curb the power of the bureaucracy by establishing elected local councils at the district and sub-district levels. These elected bodies wielded considerable power at the district level over the police through provisions such as:

- Visiting a police station to determine if a person is under lawful detention (Article 33(1), Police Order);
- Writing the performance evaluation report of the District Police Officer (Article 33(3), Police Order);
- Directing the District Police Officer to register a First Information Report when necessary (Article 35(1), Police Order 2002).

151 I.A. Rehman (2010), "Police Brutality", Dawn, 7 October 2010: <http://www.dawn.com/2010/10/07/police-brutality-by-i-a-rehman.html>, as on 27 February 2010.

152 *Zila Nazim* (Urdu term for "mayor") heads the district government and performs such functions and exercises such powers as have been assigned to him under the Local Government Ordinance, 2001.

153 Chattha, Abid Hussain, Presentation at "From Force to Service: Towards Better Policing in Pakistan", Joint CHRI-CRCP Consultation, Islamabad, 17 July 2008. Mr Chattha is an advocate and former PML(Q) Member of the Provincial Assembly (Punjab).



But similar to the Police Order, 2002, these reforms were strongly resisted by the provinces. Till 31 December 2009, any such change of the Local Government Ordinances also required presidential approval. In early 2010, all four provinces suspended the elected local bodies and reverted to the system of civil servants being in charge of the administration.¹⁵⁴ While Balochistan passed its own Local Government Law on 13 May 2010, others are still in the process of drafting the legislations.

With these changes in the local government system, many mechanisms introduced in the Police Order, 2002 become ineffective. For instance, the District Public Safety and Police Complaints Commission, established under Chapter V of the Police Order, 2002 to address complaints against the police, were to comprise nine members, of which three were to be elected by the local Zila Council (Article 38, Police Order). With the dissolution of Zila councils, the appointment criteria for DPSPCC's also unclear and it is likely that the District Magistrate, a post typically used provincial governments to exercise administrative control, would wield considerable influence on the functioning of the commissions.

Finally, much of the discipline and efficiency of the police force depends on the training imparted at police colleges and institutes. The existing training and educational curriculum of the Pakistan police face several problems some of which were highlighted in a recent survey on police training: inadequate training facilities; poor attention on police practical work; low educational background of police recruits, making the training even more difficult; low educational qualification of trainers; excessive emphasis on physical training; lack of interest and responsibility by the trainers; and several others.¹⁵⁵ The same survey highlighted the high level of dissatisfaction among the police officers with the training. Training in modern concepts and techniques such as forensic psychology, criminalistics, crime-mapping techniques and issues that affect police relations with the community, including human rights, restorative justice, minority rights, stress management, multiculturalism are not given due importance. Despite the ambitious changes introduced by the Police Order, 2002 to modernise police recruitment, selection and training, the situation continued along the same pattern because the reforms were not preceded by adequate capacity-building, resource management and revamping of training schools and colleges.¹⁵⁶

5.2.1 The National Public Safety Commission

Among other duties, the National Public Safety Commission (NPSC) is responsible for overseeing the functioning of federal law enforcement agencies [Article 92 (1)]; facilitating the establishment and functioning of the CPLCs [Article 92(2)]; overseeing the implementation of plans prepared by heads of federal law enforcement agencies [Article 92(3)(d)]; and evaluating the delivery of performance targets on a quarterly basis [Article 92(3)(e)]. The idea behind the creation of the NPSC was to insulate the federal police agencies from undue political interference and increase their accountability by mandating submissions of annual reports and undertaking performance evaluations on an annual base.

Although NPSC functions under the Federal Interior Ministry, in its composition, it is equally represented by the legislature (members of the National Assembly) and civil society (independent members are selected through a panel headed by the Chief Justice of the Supreme Court). This lends the Commission a unique credibility, as it balances executive and legislative oversight with civilian representation. The powers vested with NPSC though, leave much to be desired. To be effective, an oversight body must have the powers to appoint the chiefs of police and exercise disciplinary control over police officers. NPSC, however, can only recommend police officers to the federal government for the appointments of heads of the federal agencies [Article 92(3)(a)].

¹⁵⁴ Democracy Reporting International (2010), "Pakistan's Local Government Reform and Electoral Arrangement", July, Berlin, Germany.

¹⁵⁵ Fasihuddin, *Pakistan Journal of Criminology*, p. 44 Volume 1, No.2, July 2009.

¹⁵⁶ Ibid.



Moreover, while the federal law enforcement agencies are required to submit an annual report to NPSC, this power is useless unless NPSC's recommendations, based on the reports submitted, are given binding powers.

Following its establishment in 2006, NPSC held regular monthly meetings as mandated. In fact, in April 2008, it released its first Annual Report (albeit for 2006). But since the change of government in 2008, and particularly after the appointment of Rehman Malik as the Interior Minister, who is the ex-officio Chairperson of NPSC, the number of meetings has declined considerably; the Commission has not met since April 2010.¹⁵⁷ Even with its limited mandate, NPSC will be as effective as the central government desires it to be. For instance, part of NPSC's problem currently is an incomplete quorum. As Advocate Sarkar Abbas points out, the Commission is to have six independent members but currently has only four; and six members of parliament who have been nominated by the Speaker as required, but have not received clearance from the Interior Ministry.

The change of government and the composition of new assemblies, in fact, stalled the functioning of most safety commissions that were set up across the provinces and districts. As a result, the Commission has been unable to hold meetings despite having the infrastructure, office space and staff.

It is clear that the government is reluctant to allow independent oversight over policing and wants to retain complete control over it. A functioning NPSC is an important step towards a relatively independent body to monitor the current state and pace of police reforms across Pakistan. As Advocate Abbas further points out, there is a dire need for such safety commissions to be functioning in order to combat police excesses and address people's grievances.

5.2.2 The Federal Police Complaints Authority

Article 97 of the Police Order, 2002 creates the Federal Police Complaints Authority (PCA). The PCA is meant to receive complaints from the district level against an Islamabad Capital Territory Police Officer or any member of any federal law enforcement agency. However, the Complaints Authority has not been established and that is a significant failing. The problem is that the amended Article 1(3) clearly excludes the enforcement of the Police Order in the Islamabad Capital Territory (ICT) till "local governments assume office". According to Chapter X of the Police Order, 2002, the Federal PCA has two jurisdictions: one is the ICT and the other is the Federal Law Enforcement Agencies (FLEA). But if the condition given in Article 1(3) is not fulfilled then the Federal PCA's responsibilities are circumscribed, in that it will have jurisdiction only over FLEAs. However, even a limited PCA has not been constituted eight years after the original Police Order, 2002 was promulgated.

5.2.3 The National Police Management Board

Chapter XVIII of the Police Order, 2002 provides for the creation of the National Police Management Board (NPMB). It is a body composed of the various heads of police across Pakistan, at the provincial and federal levels, that is supposed to meet twice a year. Basically, it is meant to advise the government on broader police planning, such as recruitment, training, inter-agency cooperation, and improving operational capabilities. However, to the disappointment of many, NPMB only recently started holding regular meetings. Between 23 September 2002, the Board's initial meeting, and 14 May 2008, NPMB convened only twice. But the regularity of meetings improved with the appointment of Mr Tariq Khosa as Director General of the National Police Bureau in May 2008. Two NPMB meetings were held in 2008 itself, and substantive issues were taken up, including the creation of a Police Complaints Authority at the federal level.

157 Interview with Advocate Sarkar Abbas, Member, National Public Safety Commission, 26 October 2010.

5.2.4 Provincial Public Safety and Police Complaints Commissions

At the provincial and district levels, the complaint functions are merged with the public safety commissions. Accordingly, the Provincial Public Safety and Police Complaints Commissions (PPSPCC) are responsible not only for overseeing the functioning of the police and evaluating its performance within their provinces, but also to take cognisance of cases of “police neglect, excesses, abuse of authority” on its own accord or on a complaint by an aggrieved party, or any of the DPSPCCs or the government.¹⁵⁸ But like NPSC, the PPSPCC’s have also not been given any binding powers. For instance, on the completion of an inquiry into a complaint against a police officer, a PPSPCC only has the authority to recommend disciplinary action or order the registration of a criminal case under the relevant provisions of the PPC.¹⁵⁹ Without binding powers, the police are free to disregard the recommendations of the Commission.

Unfortunately, the notification and establishment of PPSPCCs throughout Pakistan has been poor. In Balochistan, the PPSPCC does function, but resources are limited, political will is lacking and there is resistance from within the police to the setting up of independent bodies to oversee them.

In NWFP, the PPSPCC was notified and one meeting was held in the presence of NPSC. In Punjab the PPSPCC does not function at all, since it has not met for the past five years. In Sindh, the PPSPCC was constituted in May 2006.¹⁶⁰ However, the Commission currently stands defunct as the term of half of its members (six), who were nominated by the Speaker of the provincial assembly in 2006, expired with the dissolution of the assembly following the elections in February 2008. Thereafter, members are yet to be appointed by the Speaker of the new assembly.

The poor functioning of the PPSPCCs is attributable to the obstinate position taken by the provinces when it comes to police reform and the fact that they were never consulted during the initial formulation of the Provincial Public Safety Commissions, like the rest of the Police Order, 2002. It is not known if the provinces would agree to strengthen the PPSPCCs, if they were consulted. Perhaps they would simply seek to keep these bodies ineffectual because it serves their interests in having a direct control over the police. But in any democratic federation, it is critically important that provinces have ownership over the process and outcome. Otherwise, the PPSPCCs will barely function, and may not even be notified.

5.2.5 District Public Safety and Police Complaints Commissions

The duties of the District Public Safety and Police Complaints Commissions (DPSPCC) include: the approval of local policing plans;¹⁶¹ “take steps to prevent the police from engaging in any unlawful activity arising out of compliance with unlawful or mala fide orders”;¹⁶² register an FIR within 48 hours when warranted;¹⁶³ hear complaints;¹⁶⁴ conduct fact-finding;¹⁶⁵ and refer a matter to the Provincial Public Safety and Police Complaints Commission if the Head of District Police does not act on the matter.¹⁶⁶

Yet, for all the value of having DPSPCCs in place, the provincial governments have not notified the safety

158 Article 80(2)(q), Police Order, 2002, Pakistan.

159 Article 80(2)(r), Police Order, 2002, Pakistan.

160 The Provincial Public Safety and Police Complaints Commission, Sindh, was constituted vide Home Department’s Notification No. POL-HS/10-1/2006 dated 10 May 2006. See Provincial Assembly of Sindh (2009), List of Business, 21 March: <http://www.pas.gov.pk/index.php/business/stn/en/19/305>, as on 30 October 2010.

161 Article 44(1)(a), Police Order, 2002, Pakistan.

162 Article 44(1)(e), Police Order, 2002, Pakistan.

163 Article 44(1)(h), Police Order, 2002, Pakistan.

164 Article 44(1)(l), Police Order, 2002, Pakistan.

165 Article 44(1)(m)(ii), Police Order, 2002, Pakistan.

166 Article 44(1)(m)(iii), Police Order, 2002, Pakistan.



commissions in each district. Punjab has notified commissions in 22 of 35 districts; Sindh has done so in 12 of 15 districts (where one DPSPCC serves five districts in Karachi); Balochistan has notified a DPSPCC in 18 of 29 districts; and NWFP has done the same in 23 of 24 districts (except Malakand). While these figures might have changed over the past two years, the more relevant fact is that relatively few of these commissions are functioning. As of February 2009, there was no DPSPCC functioning in Sindh despite having been set up in 12 out of 15 districts.¹⁶⁷ The provinces have not provided them with the necessary infrastructure or human resources. In most of the DPSPCCs, the representation of members is not according to the provisions of the Police Order, 2002. Particularly troubling is that the commissions sometimes fail to convene even the minimum required meetings because of incomplete quorum.

Moreover, the local government reforms have had maximum impact on the functioning of the DPSPCC's. One-third of the members were to be selected from among the elected Zila Councils but with the dissolution of the Zila Councils, many DPSPCC have become dysfunctional. The Police Order, 2002 envisaged a close relationship between the DPSPCC and the *Zila Nazim* whereby the former was to submit an evaluation of the performance targets contained in the Local Policing Plan to the *Zila Nazim*, but also had the power to report to the provincial government in case of a collusive relationship between the *Zila Nazim* and the head of the district police.¹⁶⁸

5.2.6 Citizen-Police Liaison Committees

The Police Order, 2002 empowers the government to establish Citizen-Police Liaison Committees (CPLC) as “voluntary, self financing and autonomous bodies” so that they may help build the capacity of NPSC and PPSPCCs, serve as a liaison between aggrieved citizens and the police, and provide assistance to the commissions and the federal PCA. While the district CPLCs were established in Lahore, Faisalabad, Sialkot, Peshawar, Karachi and Quetta, over 125 more are still to be created in the other districts of Pakistan.

In Karachi, the CPLC was initially formed in 1989 as a response to an increasing crime rate. From vehicle snatching to kidnapping, criminal activity was seriously affecting the business community. As a result, they approached the Governor to set up what became the first CPLC. The Karachi CPLC has subsequently sought to make police work more effective, efficient, transparent, and accountable. It contributes to the protection of citizens' rights and security by improving police-community relations and making the police accessible by having respected citizens, such as justices of the peace, at police stations. The Karachi CPLC has five Zonal Reporting Cells (at the district level) and a Central Reporting Cell in Sindh, at the Governor's Secretariat, which comprises shift controllers, secretaries, computer operators, citizen liaison officers, telephone operators, and police complaint cell officers. It is equipped with the latest computer technology and has among other things, databases containing stolen property, First Information Reports, and criminal records.

However, except for Karachi, CPLCs are viewed as failures because the government has not provided them with adequate funding, autonomy or importance. This is disappointing since the inclusion of CPLCs in the Police Order, 2002 was a step forward in recognising that community policing, through networks such as these, go a considerable way in bridging the significant trust deficit that currently exists between the police and the public.

Also troubling is that the CPLCs established thus far are primarily comprised of elites. For instance, the Lahore CPLC does not have a single member with a proven track record of public service or experience in human rights. More often than not, members are industrialists, businessmen or former bureaucrats. This negates the very *raison d'être* of the CPLCs which is to involve diverse groups so as to improve policing in the community. The CPLC in Karachi articulates a desire to be inclusive. On its website, it states: “Members so chosen were drawn up after careful scrutiny and in-depth interviews of the volunteers nominated from a cross-section of the society.

167 Dawn (2009), “Public Safety Bodies Still Not Functioning”, 18 February: <http://www.dawn.com/2009/02/18/local11.htm>, as on 26 October 2010.

168 Article 44(f), Police Order, 2002, Pakistan.



Dedication, motivation, honesty and service above self is the essential ingredient of a CPLC member, as he is expected to always endeavour to provide relief equally to all citizens irrespective of their caste, creed, financial status or political affiliation at all times.” However, the website fails to disclose the qualification and background of the CPLC members.

5.3 Provincial Governments: Status of Police Reforms

By way of reiteration, no reform makes more sense in Pakistan’s context than police reforms. The internal security situation across Pakistan has rapidly deteriorated. In 2009, non-official estimates record at least 2,568 incidents of terrorism, resulting in the death of 3,021 people of which 1,296 were killed in 108 suicide bombings.¹⁶⁹ Target killings, suicide bombs and sectarian attacks wreaked havoc throughout the country. Against this backdrop, the police not only failed miserably in providing security to the people, at many places, they were, in fact, violators instead of upholders of the rights of the people. Torture, deaths in custody, enforced disappearances, “honour” killings and police encounters were reported routinely throughout Pakistan.¹⁷⁰ According to the Human Rights Commission of Pakistan (HRCP) estimates, at least 253 people in Punjab, and 74 in Sindh were killed in police encounters in 2009.¹⁷¹

The Sialkot Tragedy

The total failure of the law enforcing agencies to provide security to its people was yet again reflected in the mob-lynching of two brothers, Hafiz Mughees and Muneeb Butt in Sialkot, Sindh province on 15 August 2010. This incident sent shock waves across the nation. Although the cause behind the lynching is yet to be established, and mob lynching is not new to Sindh province, the killings in Sialkot are a reminder of the fact that such murders are getting more brutal. Even more shocking was the revelation of the involvement of the police in the instance. Police inquiry into the incident brought out that the Sialkot SHO fled the scene of the public lynching.¹⁷² Action has been taken against a few policemen in Sialkot and the Supreme Court even issued a sou moto notice of the killings following which the SHO “concerned” was arrested and a case registered against 14 people. Despite this, the prospect of the family getting justice for the murder remains bleak, with allegations of police corruption. The aggrieved family has totally differed from the police inquiry report produced before the Supreme Court.¹⁷³

Ironically, the Sialkot incident comes only months after Pakistan ratified the International Covenant on Civil and Political Rights along with the Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment in June 2010. These legislations are an embodiment of fundamental human rights, and their ratification is meant to enable greater protection of such rights by a country. This incident unfortunately demonstrates complete lack of awareness both among the public and police officers of the responsibilities bestowed on them under these legislations.¹⁷⁴

169 Human Rights Commission of Pakistan (2010), Annual Report: State of Human Rights in 2009, Lahore, p. 6.

170 Amnesty International (2009), Human Rights in Pakistan: <http://www.amnesty.org/en/region/pakistan/report-2009>, as on 24 October 2010.

171 Ibid., p. 6.

172 The Express Tribune (2010), “Sialkot Mob Murder Inquiry Launched”, 21 August: <http://tribune.com.pk/story/41310/police-held-responsible-for-mob-murders/>, as on 25 October 2010.

173 The Express Tribune (2010), “Sialkot Case Changing Direction, Says Family”, 3 October: <http://tribune.com.pk/story/57954/sialkot-case-changing-direction-says-family/>, as on 25 October 2010.

174 The Daily Times (2010), “ICCPR and the Sialkot incident”, 9 September: http://www.dailytimes.com.pk/default.asp?page=2010\09\09\story_9-9-2010_pg3_2, as on 25 October 2010.



Apart from the Police Order, other measures were also undertaken in the direction of police reforms but each such initiative failed to push forward the principles of democratic policing. These have been discussed below:

5.3.1 Draft Punjab Police Act, 2010

The most notable development in the province of Punjab regarding police reforms was the formulation of a Draft Punjab Police Act (DPPA). A draft was earlier prepared by the Police Act Drafting Committee, Central Police Office, Lahore on 4 December 2009 and was circulated to senior police officials for feedback. Subsequently, the Punjab Law Minister formed a sub-committee headed by the Adviser to the Chief Minister on Law and Order to prepare a final draft of the Act.¹⁷⁵

The DPPA, however, is a disappointment. It does not reflect a strong progressive legislation to meet the modern-day needs of society or the police. Its provisions ensure that police functioning will not improve and will continue to remain a force that imposes the law rather than a service that upholds the law. The DPPA allows the provincial government to retain control over the police through various means: the superintendence of the police remains with the provincial government (Section 9) without any definition of what superintendence means (unlike the Police Order, 2002 that clearly defined superintendence); the chief police officer – the Provincial Police Officer (PPO) – is appointed directly by the provincial government without being vetted by a selection panel; and the postings of other officers by the PPO is also subject to government approval. These measures adversely affect the functional autonomy of the Chief of Police, which is necessary for effective implementation of police functions.

Further, the oversight bodies that are established are also weak. To take the example of the bodies established at the district level, the District Police Councils (DPCs) are meant to serve as “channels for addressing people’s grievance against the police and promoting citizen-police cooperation”. But the DPCs do not include any independent members or representatives of civil society and are heavily tilted in favour of the ruling party in their compositions. While they have the power to receive complaints from an aggrieved person of neglect or misconduct by a police officer and furnish a report of findings of the enquiry and any action taken (Section 79), they are not empowered to either initiate findings on their own, or take action in case the report submitted by the police does not satisfy the members. DPPA is also silent about the time frame within which an enquiry report must be submitted after allowing space for unnecessary delays. This leaves ample space for the executive to influence the functioning of the police force.

But above all, the DPPA is problematic because it vests the district police officers with additional discretionary powers. It empowers the District Police Officer (DPO) to issue orders for the maintenance of public order or preventing public nuisance under Section 144 of the Criminal Procedure Code (CrPC).¹⁷⁶ Such an order may “direct any person to abstain from a certain act or to take certain order with certain property in his possession... to prevent or tends to prevent obstruction, annoyance or injury or risk of obstruction, annoyance or injury, to any person lawfully employed, or a danger to human life, health, or safety, or a disturbance of the public tranquillity...” Under the CrPC, this power is vested either with the Zila Nazim (Section 44, CrPC) or with the Magistrate of the First Class (Section 133, CrPC).

The extension of this power to the DPO is problematic for two reasons. First, the DPPA does not define public order or security, in the absence of which the judgement of “public disorder” lies with the DPO. Second, and following from the above, although the DPPA mandates consent of the District Police Council for any such order to take effect, the biased composition of the DPC fails to guarantee accountability in this process. Moreover, the

175 CSS Forum (2010), “Police See New Law as DMG Move to Grab Power”, 11 January: <http://www.cssforum.com.pk/general/news-articles/30298-police-see-new-law-dmg-move-grab-powers.html>, as on 26 October 2010.

176 Section 38, the Punjab Police Act, 2010 (Draft), Pakistan.



DPPA also empowers the DPO with the power to appoint Special Police Officers (SPO) for specific purposes.¹⁷⁷ Every such SPO is given the same powers and immunities as a regular police officer. Yet, again the DPO is empowered with additional powers without laying down fair procedures of recruitment or training of SPOs or even identifying the conditions that warrant such recruitment. Inclusion of SPOs runs the risk of expanding the ranks of the Punjab Police with poorly trained and unprofessional officers.

5.3.2 Policing the Frontiers: Reform Initiatives

Up to 2002, Balochistan was divided into “A” areas (constituting 5 per cent) and “B” areas, with the former under the police and the latter under the Levies.¹⁷⁸ The Police Order, 2002 merged the two forces with a view to bring the entire province under the control of the police. There was strong opposition to this merger on two grounds. First, the Levies comprise local people, who, though not adequately trained and equipped, understand the culture and ethos of the people; and second, the crime statistics in “A” areas under police control was much higher than in “B” areas.¹⁷⁹ The demand for the revival of the Levies gradually coalesced into the passing of the Balochistan Levies Force Act, 2010 (BLF Act, 2010) by the provincial assembly on 4 April 2010. The Act extends to the whole of Balochistan and applies to members of the Balochistan Levies Force as well as officers authorised by the government to command the Levies.¹⁸⁰

Given the strong anti-Pakistan sentiment in Balochistan, particularly against the Frontier Corps (the top rung of the force is filled with military officers who are mostly from outside Balochistan), the revival of the Levies may be necessary to maintain law and order.¹⁸¹ At the same time, effort must be made to transform the Levies into a professional force. With the revival of the Levies, the government also announced reforms in the force structure with an increased pay and plans to recruit 1,500 Levies personnel in order to improve the performance of the force.¹⁸² This is a welcome step but more needs to be done to establish an efficient and accountable force, particularly in order to allay concerns over it serving the interests of tribal leadership instead of the people. According to the BLF Act, 2010, the provincial government enjoys complete control over the Levies by retaining the recruitment, appointment and promotion of the Director General and other officers.¹⁸³ Members are also vested with a wide range of powers including the power to apprehend anyone on “sufficient grounds”,¹⁸⁴ to enter and inspect without warrant any public place “on reliable information”¹⁸⁵ and to assist in preventing members of the public from exploitation by any person or members of an organised group.¹⁸⁶ Such powers have been vested with the Levies without guaranteeing safeguards or ensuring the capability of officers to administer them justly.

The situation in the Federally Administered Tribal Areas (FATA) is only slightly better. Law enforcement agencies in FATA comprise the Frontier Corps, a paramilitary agency, the tribal Levies and Khassadars. Debate over political, judicial and administrative reforms of FATA, including the integration of the seven agencies

177 Section 27, the Punjab Police Act, 2010 (Draft), Pakistan.

178 Unlike the FATA region, both the “A” and “B” areas are governed by the Code of Criminal Procedure of Pakistan and the Pakistan Penal Code. See Senate of Pakistan (2005), “Report of the Parliamentary Committee on Balochistan”, Report No. 7, November, p. 12.

179 Ibid. Also see, The Daily Times (2007), “More Crime in Police-Controlled Areas in Balochistan”, 11 November: http://www.dailytimes.com.pk/default.asp?page=2007\07\11\story_11-7-2007_pg7_13, as on 26 October 2010.

180 Section 1, The Balochistan Levies Force Bill, 2010, Bill No. 5 of 2010, Pakistan.

181 See International Crisis Group (2006), “The Worsening Conflict in Balochistan”, Crisis Group Asia Report No 119.

182 Dawn (2010), “152 Billion Budget for Balochistan”, 22 June: <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/rs152-billion-budget-for-balochistan-260>, as on 25 October 2010.

183 Sections 5, 6 and 18, the Balochistan Levies Force Bill, 2010.

184 Section 7(k), the Balochistan Levies Force Bill, 2010.

185 Section 7(m), the Balochistan Levies Force Bill, 2010.

186 Section 7(p), the Balochistan Levies Force Bill, 2010.



and the six frontier regions with the province of Khyber Pakhtunkhwa (KP), and bringing the region under Pakistan's normal criminal justice system, has been ongoing for a while now. FATA is currently governed by the Frontier Crimes Regulation (FCR) enacted as a special law in 1871 which vests the administration of the agencies in the hands of a Political Agent selected from the Pakistan Civil Service. The Agent "supervises over trials, awards punishment and administers justice without even a possibility of revision by a regular court of law".¹⁸⁷ Neither the CrPC nor the Pakistan Penal Code applies to FATA. Given its many draconian features, several civil society groups demanded the repeal of FCR. In his first speech as Prime Minister on 25 March 2008, Gilani too promised to repeal 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.

Instead of repealing FCR, President Zardari announced a reform package in August 2009 for FATA that introduced several amendments to FCR, curtailing the bureaucracy's arbitrary powers of arrest and detention and according the right to bail to prisoners. While these amendments are a welcome step, justice will continue to elude the region as the Political Agent's decisions cannot be appealed in any court and the defendants do not have any right to legal defence. Extending the jurisdiction of the courts and the judicial system in FATA, notwithstanding their weaknesses, is the only way of inculcating respect for human rights, rule of law, and justice.¹⁸⁸

5.3.3 Nizam-e-Adl Regulations, 2009

The Nizam-e-Adl Regulations received presidential assent in April 2009 after being passed by both houses of parliament unanimously. Implemented as part of the peace deal signed between the then NWFP government and the Taliban-affiliate Tehreek-e-Nifaz-e-Shariat-Mohammad (TNSM) to end hostilities ongoing in Swat valley since summer 2007, the Regulations implement Sharia law in parts of the Provincially Administered Tribal Areas (PATA) except for the tribal area adjoining Mansehra district and the former State of Amb.¹⁸⁹

Termed as the key to the restoration of peace in the Swat valley, the Regulations in fact violate both the basic law and the fundamental rights of the people. The judicial officers appointed under the Regulations are to conduct and resolve civil and criminal cases in accordance with the Sharia within a strict time period (six months for civil and four months for criminal cases), and without any adjournments.¹⁹⁰ The Regulations provide no guarantees to make appeals against the orders and provide no "assurance that the judges charged with enforcing it are qualified enough to condemn people to irremediable excesses".¹⁹¹ The law enforcing agencies and the courts are completely under the control of the government, to the extent that the government can even give "such directions...as are necessary in relation to service of court processes on the parties, witnesses or any other

187 Asian Human Rights Commission (2010), Frontier Crimes Regulation: Infringing Human and Child Rights, 6 September, Hong Kong: <http://www.ahrchk.net/statements/mainfile.php/2010statements/2803/?print=yes>, as on 2 November 2010.

188 International Crisis Group (2009), "Countering Militancy in FATA", Asia Report No. 178, 21 October: http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/178_pakistan___countering_militancy_in_fata.ashx, as on 1 December 2010.

189 The Province of Khyber Pakhtunkhwa (KP) comprises of three major administrative parts: **settled areas** (Abbottabad, Bannu, Battagram, Charsadda, Dera Ismail Khan, Hangu, Haripur, Kohistan, Kohat, Karak, Lakki Marwat, Mansehra, Mardan, Nowshera, Swabi, Peshawar and Tank), **Provincially Administered Tribal Areas (PATA)** including Malakand Agency and the districts of Upper Dir, Lower Dir, Chitral, Swat, Buner, Shangla, and the pocket of Kala Dhaka/"Black Mountains", Kohistan (previously part of Swat state) and the State of Amb, now submerged in the Tarbela Dam reservoir, and the **Federally Administered Tribal Areas (FATA)** comprising seven Tribal Agencies and six Frontier Regions. The Tribal Agencies are Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan and South Waziristan. The Frontier Regions include F.R. Bannu, Central Kurram, F.R. Dera Ismail Khan, F.R. Kohat, F.R. Lakki, F.R. Peshawar and F.R. Tank.

190 Section 9(6) and Section 10, Nizam-e-Adl Regulations, 2009, Pakistan.

191 Human Rights Commission of Pakistan (2009), "HRC Sees Risk to Basic Rights and Constitution", 18 February: <http://www.hrcp-web.org/showprel.asp?id=59>, as on 3 November 2010.



person, and, for any general or specific purposes”.¹⁹² In short, the Regulations provide a legal framework for the abusive practices of religious extremists. In such a situation, the police can hardly be expected to deliver in a professional, efficient and impartial manner.

5.3.4 Capacity Building Initiatives

That the police in Pakistan are ill-equipped and lack sufficient resources has been corroborated by several independent reports as also the various commissions that looked into police reforms in Pakistan (see History of Police Reforms).¹⁹³ To overcome these deficits, the Government of Pakistan (Ministry of Law, Justice, Human Rights and Parliamentary Affairs) along with the Asian Development Bank (ADB) came together to implement an Access to Justice Programme in 2001. The long-term objective of the programme was to “reduce poverty and promote good governance through improvements in the rule of law”.¹⁹⁴ Among other things, the programme contained six police reform outcomes:

1. Insulation of police from interference
2. Improved capacity
3. Establishment of an independent prosecution service
4. Greater police accountability and transparency
5. Better liaison between the police and citizens
6. Public awareness and protection of rights.

In 2009, however, the ADB came out with its project completion report that characterised its outcome in police reforms as not very successful and effective. The main reason attributed for this is the resistance by the provinces to implement the Police Order, 2002 and the subsequent amendments to the Order that overturn its progressive features. Some of the issues that the programme was able to achieve include:¹⁹⁵

- § Upgradation of Police Training College, Quetta, Balochistan
- § Upgradation of the training college in Punjab and a training course for investigators
- § Development of 72 police training modules for the National Police Academy
- § Establishment of independent prosecution services in all four provinces.¹⁹⁶

Additional training of the police was supported through various other Technical Assistance Programmes of ADB. One such programme aimed at supporting the implementation of the Police Order in four pilot districts of Punjab province namely Faisalabad, Gujranwala, Gujran, and Multan (March 2007-March 2010). Another aimed at helping the police develop the required procedural manuals and rules of business for the conduct

192 Section 15 (2), Nizam-e-Adl Regulations, 2009, Pakistan.

193 International Crisis Group (2010), “Reforming Pakistan’s Criminal Justice System”, Report No. 196, 6 December: <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/196%20Reforming%20Pakistans%20Criminal%20Justice%20System.ashx>, as on 1 December 2010.

194 Asian Development Bank (2009), “Pakistan: Access to Justice Programme: Completion Report”, December, p. 1: <http://www.adb.org/Documents/PCRs/PAK/32023-01-pak-pcr.pdf>, as on 1 December 2010.

195 Ibid., pp. 9-10.

196 See the Balochistan Prosecution Service Act, 2003; NWFP Prosecution Service Act, 2005; Punjab Criminal Prosecution Service Act, 2006; and the Sindh Criminal Service Ordinance, 2007.



of scientific investigations and improved public oversight of the police (December 2004-January 2008).¹⁹⁷ The latter programme resulted in two legislations – the Punjab Forensic Science Agency Act, 2007 and the Punjab District Public Safety and Police Complaint Commission Conduct of Business Rules, 2007. But even here, it was found that unless the Government of Pakistan assumes ownership of the programme, the long-term sustainability of these initiatives will be difficult.

5.4 Future Prospects

It is evidently clear that police reforms continue to be sidelined in Pakistan despite a deteriorating security environment, rising crime and violence, and considerable international pressure pushing for reforms. Some attribute this to be more by design than due to limited state capacity.¹⁹⁸ This might be true as is evident by the repeated attempts by the state to codify feudal systems of governance and law particularly in the Khyber Pakhtunkhwa province, such as through the Nizam-e-Adl Regulations.

This is also borne out by the fact that whatever reforms were undertaken were piecemeal, mired in controversy, lacked legitimacy, and above all, failed to embody the principles of democratic policing necessary to achieve peace and security.

Yet, the police organisation itself remains amenable to reform. Since 2000, the Pakistan police has led the demand for reform, and continues to do so, only to be stifled by military and civilian leadership that benefit from a corrupt police force.¹⁹⁹ Other encouraging signs include the performance of the National Highways and Motorway Police (NHMP) that has gained the confidence of the people. As a result of a better working environment, training drivers to international standards and an enhanced salary structure NHMP boasts of bringing down the crime rate on highways by 82 per cent, and the accident rate by 74 per cent.²⁰⁰

These offer a ray of hope on the question of police reforms, but more importantly, a space for the international community (governments and donor agencies) to support such initiatives.

5.5 Recommendations

Government of Pakistan

1. **Pursue the Implementation of Police Order, 2002 Vigorously:** After the Eighteenth Amendment, the provinces are either free to pass their own police legislation or implement the Police Order, 2002, the amendment of which no longer requires presidential assent. Except for Punjab, no other province has drafted its own legislation, and even the Punjab draft is yet to be passed. The Government of Pakistan must ensure that the Order is implemented in provinces other than Punjab. It should also initiate the process of amending the Order to accommodate the changes introduced by the Local Government (LG) reforms. Because of the LG reforms, many of the public commissions established under the Police

197 Ibid., pp. 31-32.

198 Petzschmann P. (2010), Pakistan's Police between Centralization and Devolution, Norwegian Institute of International Affairs: <http://english.nupi.no/Publications/Books-and-reports/2010/Pakistan-s-Police-between-Centralization-and-Devolution>, as on 1 December 2010.

199 Fair C. (2009), "Policing Pakistan", The Wall Street Journal, 30 June: <http://online.wsj.com/article/SB124630267412469431.html>, as on 11 November 2010.

200 Daily Times (2008), "NHMP to Train Public Sector Drivers", 8 June: http://www.dailytimes.com.pk/default.asp?page=2008\06\08\story_8-6-2008_pg7_28, as on 4 November 2010.



Order, 2002, such as the District Public Safety and Police Complaints Commissions, exist in a legal vacuum. As a result, the process of improving the performance of the police at the district level is affected.

2. **Resource the Federal Police Complaints Authority to Make it Fully Operational and Functional.** Unlike other facets of the Police Order, 2002, the authority to set up the PCA resides solely with the Government of Pakistan. Therefore, the failure to do so eight years after promulgation needs to be addressed immediately.
3. **Implement Recruitment Procedures at Federal Law Enforcement Agencies that Place More Emphasis on Diversity.** At the moment, police services in Pakistan, especially at the top of the police hierarchy, are predominantly male and Punjabi. It is important that law enforcement reflects the demographics of the people it polices. Therefore:
 - a. Ensure that more emphasis is placed on recruiting police personnel from Balochistan, NWFP and other parts of Pakistan that are under-represented in the police services.
 - b. Recruit more women. The inclusion of more women in policing will result in the better provision of services for both female victims and criminals.
4. **The National Public Safety Commission should Provide an Update in Its Next Annual Report on the Functioning and Status of Public Safety and Police Complaints Commissions.** This should be done at the district and provincial levels. There is a dearth of information on this issue. An attempt by NPSC in this regard will clarify the progress (or lack thereof) in operationalising the public safety commissions.
5. **Include a “Conflict of Interest” Clause in the Police Order, 2002.** By making it mandatory for police officers to periodically disclose their relations and close contacts with those in key postings (these postings could be enumerated in an attached schedule), it would be possible to demand that a police officer recuse himself from a case that involves such persons. A move in this direction could significantly curtail the level of undue political influence that currently permeates policing in Pakistan.

Provincial Governments

6. **Refrain from Tinkering with the Progressive Provisions of the 2002 Police Order.** Provinces should ensure that any new legislation encapsulates the vision and objectives of the Police Order.
7. **Initiate and/or Expedite the Process of Implementing the Police Order, 2002.** Although Punjab has presented a new police legislation, it is a substantially diluted version. While provinces are empowered to amend the Police Order, 2002 to meet local requirement, they must ensure that they endorse progressive elements of the Order of functional autonomy and enhanced accountability so as to effect change in policing on the ground.
8. **Engage with the Federal Government on the Issue of Police Reforms.** To date, the provinces have largely refrained from participating in the reform of police services. This is primarily because the Police Order, 2002 was promulgated without their input. However, now that a democratically elected government is in office, this would be an appropriate juncture for provinces to open a dialogue with the federal government on the issue of police reform.
9. **Encourage and Invite Active Participation of Civil Society in the Efforts to Reform the Police.** With provinces having considerable say in the practical functioning of police services, it is vital that they seek ways to formally include CSOs in improving policing. This can be done by getting CSO input into



new legislation, reforming the prevalent *thana* culture, and strengthening community engagement with law enforcement.

Government of Pakistan/Provincial Governments

10. **Substantially Increase the Funds Available for Policing.** The Kerry Lugar Bergman Bill explicitly ties security aid to the freeing of Pakistan's civilian government from military influence. Care should be taken that this is adhered, while carrying out periodic evaluation at the same time.
11. **Allocate Existing Funds More Efficiently.** Greater focus should be placed on improving thana facilities, increasing acquisition of necessary hardware (vehicles, mobiles, faxes), and bettering the housing conditions of the rank and file.
12. **Ensure that Allocated Funds are Actually Released.** There is a tendency for funds to bottleneck at the DPO office and thus not reach the appropriate *thana*. These funds are then not used and the allocated money lapses because the police have not planned their expenditures properly.
13. **Demonstrate a Commitment to Community Policing.** Do this by providing adequate funding, autonomy and importance to CPLCs. Begin by making CPLCs in large urban settings fully operational and functional. This will serve as a template to set up effective CPLCs in every district.

Police Services at the Provincial and National Level

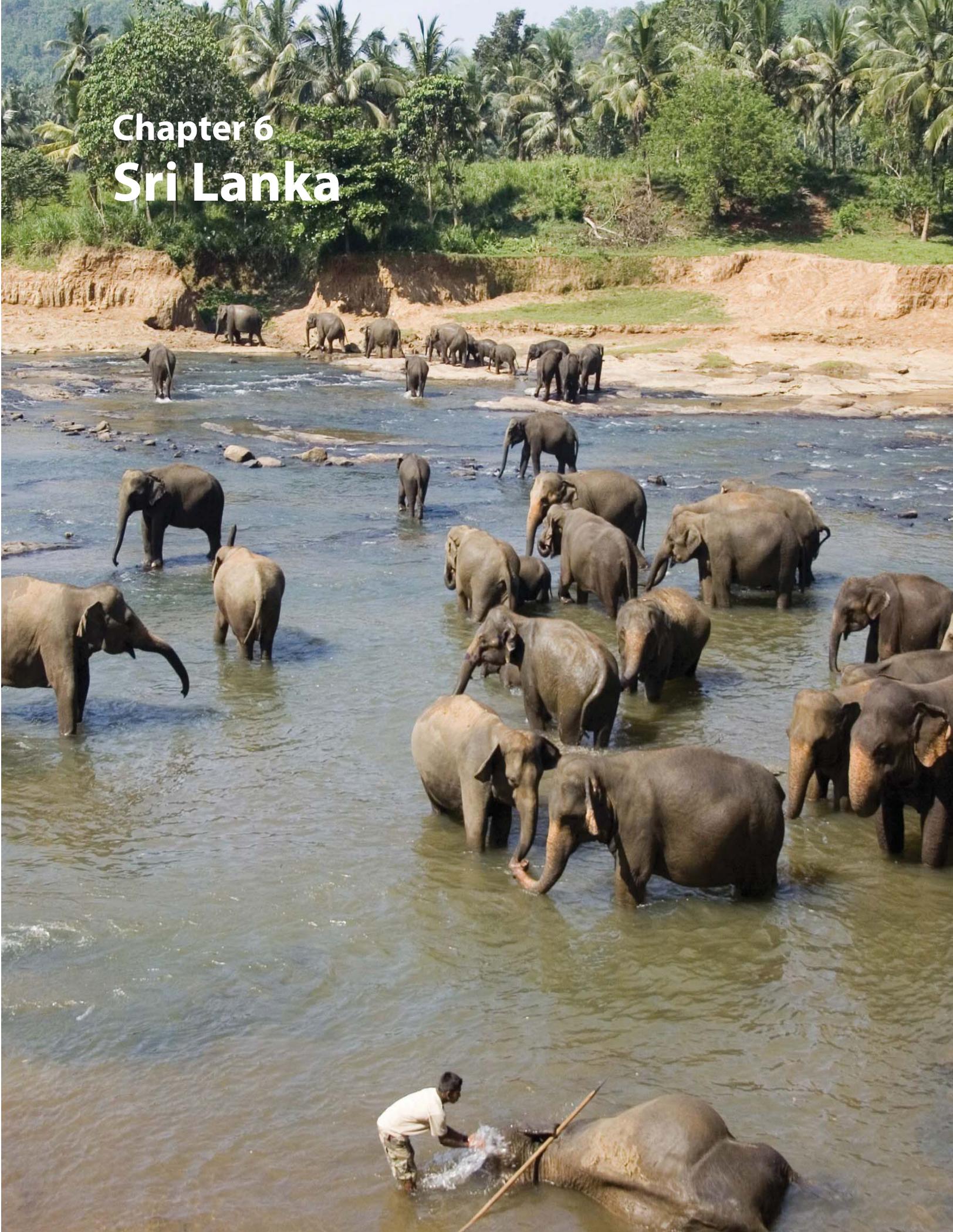
14. **Commit More Time and Attention to the Training Aspects of Police Personnel.** Over the last few years the focus of police training has changed from an emphasis on the physical and outdoor aspects to including those of law and human rights. The changing legal environment, awareness amongst citizens, internal debate within police cadres to develop a better profile and oversight by judicial and human rights institutions have necessitated this change. In this environment, creatively designed training packages which are administered consistently are required to make training effective and long-lasting.
15. **Identify Ways to Emulate the Success of the National Highways and Motorway Police.** After investing more resources into the functioning and operation of NHMP, it has succeeded in providing less corrupt and more efficient service. An examination of how and why NHMP was able to reform, can educate other services on how to do the same.
16. **Create a Women's Desk in Every Thana.** At the same time ensure that women police are available in every *thana*. This is critical to building confidence in women to approach police stations with their complaints.
17. **Commit to Establishing More Forensic Laboratories.** The existing level of technical infrastructure for investigations is quite poor. Although devoting resources to this will be costly, it is essential that the facilities available for crime scene examination meet basic standards.
18. **Take Steps to Make the Budgetary Process More Transparent.** This can be done by introducing provisions in the law that require the mandatory submission of a detailed policing plan along with the requisite budget to be placed before parliament or the provincial legislatures. Annual reporting against this plan as well as the spending profile should also be laid before parliament and the provincial legislatures. These reports should also be easily accessible to the public.



Civil Society Organisations

- 19. Keep Close Watch on the Drafting of New Legislations.** Wherever possible, CSOs should engage with the police and government to ensure that any new legislation adheres to the principles laid down in the Police Order. CSOs should also demand that draft legislations be placed in the public domain and a critique of the same should be provided to governments and police forces.
- 20. Do More to Strengthen CPLCs throughout Pakistan.** With few CPLCs functioning, CSOs could do far more in bolstering their reach and capacity, in both urban and rural districts. There is tremendous value in having well-intentioned and knowledgeable members of civil society engage with police at the grass roots level.
- 21. Campaign and Educate on the Need for Police Reforms.** Given the threats posed by terrorism and the compromised physical security of all Pakistanis, the issue of police reform has never been more relevant. It is important that CSOs take this opportunity to inform average Pakistani citizens of their rights and the type of policing they should expect from law enforcement.
- 22. Direct Advocacy Efforts Towards the Provinces.** Typically, attempts to influence policing policy are centred on the government in Islamabad. However, given that the fate of the Police Order, 2002 is unknown, greater responsibility over policing issues may be transferred to the provinces. Therefore, it is recommended that CSOs engage with provinces sooner rather than later and encourage them to embrace police reform.

Chapter 6 Sri Lanka





6.1 Background

In May 2009, Sri Lanka emerged as perhaps one of the few countries in recent times to have declared a military victory against a decades-old insurgency. Since 1983, when the Tamil insurgency began in earnest, the singular focus and attention of the Sri Lankan state was to eliminate the terrorist threat posed by the Liberation Tigers of Tamil Eelam (LTTE) and other separatist movements. Today, with the conclusion of the war, Sri Lanka stands at a critical juncture in its efforts to secure lasting peace and build a society based on justice and the rule of law.

The conclusion of the bloody war generated hopes for the resurrection of democratic governance and general stability. To achieve this, it is imperative that wartime mentalities change. It is crucial for a lasting peace that some measures of justice are put in place and that governance reform brings about principles of transparency and accountability with a strong respect for rights and freedoms. However, there is evidence to show the contrary. There is little will to initiate the reforms needed to restore the country's liberal and democratic institutions. Constitutional reform does not appear to be a priority for the government. Rehabilitation and strengthening the Tamil-speaking areas in the north and east is not on the government's agenda, nor is there a serious consideration of the situation of the marginalised minorities and the need to introduce measures to include these minorities in post-war Sri Lanka.

Importantly, there are no signs of the President loosening his grip on power and ensuring that democratic institutions begin to function independently. The recent changes which were introduced, embed Rajapaksha's power and unchallenged continuity in office. Moving towards a functional democracy requires that the Government of Sri Lanka (GoSL) scales down its military muscles. This has not happened. There is no discussion of a gradual reduction of the military. Sri Lanka remains the most militarised nation among those in South Asia with 13,000 military personnel per million people, or about one soldier per sixty civilians.²⁰¹

The government²⁰² has chosen to come down heavily on its detractors, including Rajapakse's victorious general, Sarath Fonseka.²⁰² The government is already being accused of arbitrary arrests and detentions, denial of fair public trial, corruption and lack of transparency, infringement of freedom of movement, harassment of journalists and lawyers critical of the government, and discrimination against minorities.²⁰³ Emergency regulations that impose serious restrictions on civil liberties were introduced. Extrajudicial killings, abductions and disappearances have increased, and in a relatively short period, a culture of impunity has developed that has caused considerable concern in civil society and the international community.

The last straw came in the form of the Eighteenth Amendment to the Constitution that further undermines democracy in Sri Lanka. It removes the two-term limit to the presidential term; increases the executive's power over appointments (the widely-represented Constitutional Council is now replaced by a five-member council including the Prime Minister and the Leader of Opposition), and reduces the independence of parliament and the judiciary. The current atmosphere of fear and acquiescence threatens to further polarise the communities of Sri Lanka. It puts in risk the little work that was done to improve policing and reverts to the role originally envisaged for the police by the colonial authorities.

201 In terms of military expenditure as a percentage of GDP, Sri Lanka spends the most in South Asia. The figure is 6 percent, or roughly one-fifth of the entire budget, and it is expected to remain unchanged even in the 2011 budget. IPCS (2009), "Post-LTTE Sri Lanka: Demilitarization as a First Step Towards Peace", 21 July: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-7U937V?OpenDocument>, as on 1 November 2010, and Asian Tribune (2010), "Sri Lanka: Appropriation Bill for the Year 2011, Presented Yesterday", 20 October 2010: <http://www.asiantribune.com/news/2010/10/20/sri-lanka-appropriation-bill-year-2011-presented-yesterday>, as on 1 November 2010.

202 Asian Tribune (2010): "A Close Look at Fonseka's Sentencing", 20 September: <http://www.asiantribune.com/news/2010/09/20/my-beat-close-look-fonseka%E2%80%99s-sentencing>, as on 18 October 2010.

203 US Department of State (2010), Bureau of Democracy, Human Rights and Labour, "2009 Country Reports on Human Rights Practices", March 11: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>, as on 11 October 2010.



6.2 Post-War Challenges and Continuing Impunity

Sri Lanka today faces a rule-of-law crisis. Basic institutions such as parliament, the judiciary and the police remain destabilised. The enormity of the challenges before the nation cannot be undermined. Apart from restoring public utilities and resurrecting administrative machinery, the government also faces the herculean task of rehabilitating the displaced. As of August 2010, approximately 200,000 internally displaced persons (IDPs) were returned or released from camps, 70,000 remain displaced or are in transit sites near their home areas and less than 35,000 others still await release from emergency sites. It was reported that 565 children identified by the security forces in May 2009 as associated with the LTTE were almost immediately separated from the adult detainees, held in separate rehabilitation centres monitored freely by the United Nations Children's Fund (UNICEF), and all released by May 2010. These figures come from reliable sources but have not been made public.²⁰⁴

However, notwithstanding some of these positive developments, the government does not appear to be inclined to restoring the rule of law. The conclusion of the war does not bring with it any systematic attempts at reforming the criminal justice system. In fact, a great deal of the post-war measures undermines the importance of the rule of law in building a stable democracy. As a result, enforced disappearances, illegal detentions, extrajudicial killings and torture remain endemic.

A culture of impunity prevails even today. The Working Group on Enforced or Involuntary Disappearances had earlier labelled Sri Lanka as the country with the second largest number of non-clarified cases of disappearances on its list. As many as 5,822 outstanding cases were being reviewed by the United Nations (UN) Working Group on Enforced and Involuntary Disappearances at the end of 2009.²⁰⁵ Not being a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance, Sri Lanka escapes being answerable to the Committee established under Articles 31 and 32 of the Charter.

The Special Task Force (STF) is a good example of an actor that is not held accountable for the abuses it has perpetrated. Formed in 1983, STF is a paramilitary unit that specialises in counterterrorist and counter-insurgency operations. Primarily involved in fighting the LTTE, STF became notorious for its human rights violations, including “disappearances” and extrajudicial killings. The Sri Lankan Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces concluded in 1997 that STF was the arresting agency in 5 per cent of the 1,219 “disappearance” cases that took place in the North Eastern Batticaloa district between 1988 and 1996.²⁰⁶ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions also reported that individuals allegedly died while in the custody of the STF of Sri Lanka in Colombo.²⁰⁷ Despite well-documented allegations of abuse, STF members have managed to avoid accountability for their actions and continue to function with impunity.²⁰⁸ Even when complaints of police abuses are initiated by lawyers or human rights organisations, they are investigated by high-ranking officers belonging to the same areas where the abuses have occurred. Their inquiries usually drag on for a long time, give more opportunities for the perpetrators to intimidate the victims and their supporters, and don't produce credible results. These

204 “Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects: ICJ Briefing Note”, September 2010.

205 United Nations Human Rights Commission (2009): Report of the Working Group on Enforced or Involuntary Disappearances, 21 December: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/177/04/PDF/G0917704.pdf?OpenElement>, as on 3 November 2010.

206 Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces (1997), Final Report, Sessional Paper No. 7: http://www.disappearances.org/news/mainfile.php/frep_sl_ne/, as on 12 November 2000.

207 UN Commission on Human Rights (1998), Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye submitted, pursuant to the Commission on Human Rights Resolution 1997/61, E/CN.4/1998/68/Add.2, 12 March 1998, p. 31, para. 131: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b1044&skip=0&query=waly>, as on 1 December 2010.

208 Human Rights Watch (2008), Recurring Nightmare: State Responsibility for ‘Disappearances’ and Abductions in Sri Lanka, Volume 20, No. 2(c), pp. 48-50: <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0>, as on 12 November 2010.



officers meanwhile, try to persuade or intimidate complainants to arrive at compromises.²⁰⁹

In the unusual event that a matter is actually taken to court, the judiciary frequently fails to hold the wrongdoers accountable. Since the crime of “enforced disappearances” is not in the Sri Lankan Penal Code, the prosecution normally files indictments on charges of abduction or abetment. However, proving such offences during times of conflict is extraordinarily difficult.²¹⁰ As a result, from the time a right has been violated to a trial that rarely occurs, a culture of impunity reigns supreme.

While security hawks often argue that the extreme circumstances of war demand extreme responses, experience from around the world shows that a culture of impunity does not improve the security situation. On the contrary, it increases political and social tensions and can therefore deepen the security crisis.²¹¹ Indeed, the UN Security Council Resolution 1674 (2006), on the protection of Civilians in Armed Conflict, states: “Ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses.”²¹²

6.2.1 Clamping on Freedoms: The Return of Emergency Regulations

Nearly a year after the conflict ended in May 2010, parliament relaxed the emergency provisions.²¹³ In June 2010, the GoSL notified the UN-Secretary-General that it had terminated the derogations to Articles 9(2), 12, 14(3), 17(1), 19(2), 21 and 22(1) of the International Covenant on Civil and Political Rights (ICCPR) previously notified on 30 May 2000 pursuant to a declaration of a State of Public Emergency. The derogation made to Article 9(3), however, remained in effect. Article 9(3) provides that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” Despite the notification sent in June, parliament approved the extension of the Emergency Regulations in October, 2010, by another one month.²¹⁴ The justification given by the Prime Minister was that the Tigers were “regrouping”. The regulations are now being used to compel former associates of the LTTE to undergo rehabilitation and as a means of preventive detention on the basis of security threats.²¹⁵ These laws and their application give rise to serious human rights violations. In the past too, there has been adequate documented evidence of its abuse. If Sri Lanka is serious about transforming itself into a functional democracy, then the continued application of the emergency provisions need to be done away with permanently.

209 Asian Human Rights Commission (2009), *Recovering the Authority of Public Institutions*, p. 12: <http://www.ahrchk.net/pub/pdf/AHRC-PUB-002-2009-RecoveringAuthority.pdf>, as on 12 November 2010.

210 Pinto-Jayawardena, K. (2007), “‘Cosmetic’ Commissions and the Rule of Law in Sri Lanka”, CHRI Newsletter, Spring 2007: http://www.humanrightsinitiative.org/publications/nl/newsletter_spring_2007/article2.htm, as on 6 December 2010.

211 International Commission of Jurists (2008), *Briefing Paper, Sri Lanka’s Emergency Laws and International Standards*, June 2008: p. 8: <http://www.icj.org/IMG/SriLanka-BriefingPaper-Mar09-FINAL.pdf>, as on 11 October 2010.

212 United Nations Security Council Resolution 1674(2006), S/RES/1674, 28 April 2006, para. 7: <http://domino.un.org/UNISPAL.NS/F/45643a78fcb719852560f6005987ad/e529762befa456f8852571610045ebef!OpenDocument>, as on 12 November 2010.

213 The Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 (“EMPPR 2005”) deals with powers of arrest and detention, powers of search and seizure, trial procedures, admissibility of confessions, bail, and other amendments to criminal procedure. The Act was further amended to the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006 (“Emergency Regulations 2006”) that define and criminalise “terrorism” and “acts of terrorism”, and create new offences, including engaging in transactions with a terrorist or terrorist group regardless of knowledge and intent.

214 ColomboPage (2010), “Sri Lankan Parliament Extends Emergency, PM Says Tigers are Regrouping”, 19 October: http://www.colombopage.com/archive_10B/Oct19_1287503893JR.php, as on 2 November 2010.

215 These powers are found in the temporary Emergency Regulations – ER 2005, as amended, and ER 2006.



6.2.2 A Long History of Torture

Torture has been prevalent in Sri Lanka since the rise of the Tamil and Sinhala insurgency of the 1980s. Laws enacted since the late 1970s shield security personnel from any kind of accountability. In 1994 the country ratified the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Subsequently, the Convention Against Torture Act was passed in parliament. A Prosecution of Torture Perpetrators Unit (PTP Unit) was created within the Attorney General's office to allow the prosecution of officers accused of the offence. With no permanent staff since its set up, it has only existed on paper. The Attorney General's office has over the years, turned away complaints of aggrieved victims and as a result the legislation has never really yielded any results. On the contrary, with the introduction and continuance of the Emergency Regulations most of the remedies under the Act have been taken away.²¹⁶

6.2.3 Policing Challenges in the North and East

The security situation in the north and east of Sri Lanka, which were the hotbeds of conflict, remain bad even after the conclusion of the war. Large parts of the north and the east were outside the writ of the Sri Lankan police, and so one of the key challenges in this region is the restoration of the administrative machinery. To its credit, the GoSL has been reasonably successful in de-mining most of the conflict zone, but it has also used it as a premise to hold thousands, especially those identified as ex-LTTE (combatant or otherwise) under draconian anti-terror and preventive detention legislations. The blanket of "national security" is also used as a façade to cover up, or altogether ignore allegations against members of any security forces, be it the police, the STF or the Sri Lankan Army. It is alleged that the displacement camps as well as those intended for detention are strictly government-controlled and the conditions of those residing in them, pitiful. The government has full control of the aid given out in the camps, and access to the camps, especially to CSOs, has been minimal.

The language barrier too presents a huge challenge. Of the 15,000 security forces posted in the north of Sri Lanka, only 15 per cent are conversant in Tamil, or can even understand it.²¹⁷ Tamil is spoken by the majority of the population in these regions. Till recently, FIRs were only recorded in Sinhalese, and this posed major problems for the Tamils who didn't speak the language and often had to rely on translations. The re-establishment of courts in the affected areas remains a daunting task for the government. Without functioning courts and the basic administrative machinery in place, the police remains ineffective in providing justice to those who have recently resettled here.

6.3 Post-War Sri Lankan Police

Pre- or post-war, there is little public trust of the police in Sri Lanka. As far back as 1970, an independent commission identified the Sri Lankan police's pervasive shortcomings:

The police do not enjoy the goodwill of the public. The public image of the police is not at all what it should be. The fear of battery by the police is in every citizen. Several cases of torture have come to light in the courts. The police have therefore to win the public confidence by a long period of correct behaviour before public cooperation can be gained. The outlook and attitude of mind towards the public has to change. Courteous attention and civility must replace the rude and militaristic attitude that is characteristic of a police station. No laws can effect the change. Even after public attention has been focused on a number of incidents in which the police have belaboured the public, reports of police

216 In his August 2010 report, the Special Rapporteur on Torture stated: "Since the implementation of the Emergency Regulations, most of the safeguards against torture either do not apply or are simply disregarded."

217 IRIN Asia (2010), "Post War Recovery Snagged by Language Barrier", 28 June: <http://www.irinnews.org/report.aspx?ReportId=89651>, as on 3 November 2010.



violence still continue to appear in the press. We think that this attitude of mind of the police is largely due to the fact that the machinery for investigating complaints by the public against the police at present is unsatisfactory and does not command the confidence of the people.²¹⁸

These words, though written in 1970, will hold true even today.

6.3.1 Half-Hearted Attempts at Reform: The Seventeenth and Eighteenth Constitutional Amendments

History of Police Reforms in Sri Lanka

Sri Lanka retains Police Ordinance No. 16 of 1865 as its governing police legislation. Section 56 enumerates duties that are still relevant today: try to prevent all crimes, offences, and public nuisances; preserve the peace; apprehend disorderly and suspicious characters; detect and bring offenders to justice; collect and communicate intelligence affecting the public peace; and promptly obey and execute all orders and warrants lawfully issued and directed by any competent authority. However, the ordinance is silent on accountability measures.²¹⁹ The first in-depth examination of police reforms in Sri Lanka was the 1946 Soertsz Commission Report (named after Justice Francis J. Soertsz, Commissioner). The title of the report was “Sri Lanka Police Service – Suggestions for Improving its Efficiency and Effectiveness”. This report covered such topics as the composition of the force; the conditions of the service and selection of officers for promotion and transfer; procedure for investigations of complaints made by the public against the police; the powers and duties of the police; and amendment of the Police Ordinance to give effect to the recommendations of the Commission.²²⁰ Another commission report was published by the Government Publication Bureau in October 1970 and this was named the Basnayake Commission. This Commission’s mandate was to examine the nature and scope of the functions of the police; the measures that should be taken to secure the maximum efficiency of law enforcement agencies; the measures that should be taken to reorganise the police; the structure and composition of the police force, including methods of recruitment, training of personnel and the selection of officers for promotion and transfer; and the procedure that should be adopted for the investigation of complaints made by the public against members of the police service.²²¹ The Basnayake Commission went to great lengths to analyse the issues facing the police and in fact even reworked the existing 1865 law in order to remedy its many shortcomings. However, nothing ultimately came out of this effort. The report of a further commission was published in 1995. It is generally known as the Justice D.G. Jayalath Commission Report. The mandate of this Commission was to examine and report on the structure and composition of the police force; the methods of recruitment and training of personnel; the selection of officers for promotions and transfer; the nature and scope of policing functions; measures that should be taken to secure the maximum efficiency with respect to the maintenance of law and order; measures that should be adopted to encourage better relations with the general public; and the establishment of a Permanent Police Commission to administer recruitment, promotions and disciplinary control in the police service.²²² The Jayalath Committee reiterated the

218 Basnayake Commission (1970), Final Report of the Police Commission of 1970, Chapter 4, para. 54: <http://www.ruleoflawsrilanka.org/resources/PoliceCommissionReport1970.doc/view>, as on 10 December 2008.

219 Section 55, Police Ordinance No. 16, 1865 (Sri Lanka), states that the IGP may frame orders and regulations that the police under his command are bound to follow so as to prevent neglect or abuse and ensure the efficient discharge of duties. While there are penalties if an officer does not follow the rules, the ordinance does not provide for any external review of misconduct or internal procedures for disciplinary proceedings.

220 Asian Human Rights Commission (2010), Sri Lanka: Police Reform Initiatives within a Dysfunctional System: <http://www.ahrchk.net/pub/mainfile.php/sldysfunctional/254/>, as on 1 December 2010.

221 Ibid.

222 Ibid.



concerns and recommendations of the Basnayake Commission. However, nothing was done in the aftermath of this report to minimise the illegitimate political interference of police functioning. In 2008, the Sri Lanka Police Academy was established with the amalgamation of the Police Higher Training Institute and the In-Service Training Division which are now Divisions of the Sri Lanka Police Academy.

Similar to the other countries in South Asia, several reports and studies have been commissioned in Sri Lanka to examine the poor state of policing (see Box). And as in those other countries, the reports have been largely ignored by the successive governments.

Attempts at police reform have been half-hearted. In 2001, the situation deteriorated to a critical point which gave birth to a genuine desire in Sri Lanka to address the longstanding politicisation of government business in several different sectors of the bureaucracy and other institutions. Owing to the increasing polarisation of politics in Sri Lanka, nearly every public appointment had become a partisan affair. To address this decay, there was unanimous support in parliament for the passage of a Constitutional Amendment. The Seventeenth Amendment to the Sri Lankan Constitution was passed in October 2001. The Amendment sought to increase accountability of public commissions (such as the Judicial Service Commission, Police Commission, Human Rights Commission and other designated commissions) by restricting the powers of the executive over the composition of these bodies. A 10-member, Constitutional Council (CC) was created comprising the Prime Minister, the Leader of the Opposition, Speaker, a presidential appointee, five persons appointed by the President on the nomination of both the Prime Minister and the Leader of the Opposition, and one person nominated by the minority parties.²²³ Since this body was tasked with making appointments to key institutions,²²⁴ it was important that its composition was drawn from all the parties and was not inherently partisan. Although the Seventeenth Amendment faced formidable challenges in its implementation due to factors such as shortage of funds (even though the bodies were meant to be independent, they had to depend on parliament for funds), it was still considered a significant step in establishing a culture of good governance in the country.²²⁵

6.3.2 The Eighteenth Amendment: Stripping Away the Façade of Democracy

The reform process did not last long. The Seventeenth Amendment was labelled by the government as “ineffective and impractical”. Within seventeen months of winning the war the Eighteenth Amendment to the Constitution was passed in September 2010. With this Amendment, the political system in Sri Lanka runs the risk of being transformed into a constitutional dictatorship with a very powerful executive lacking adequate safeguards to ensure accountability. In such a context, prospects for access to justice in general, and democratic policing in particular, remain extremely slim.

All the reforms that the Seventeenth Amendment sought to bring about in key institutions were undone. The 10-member Constitutional Council was replaced by a five-member Parliamentary Council comprising the Prime Minister, the Speaker, the Leader of the Opposition, a Member of Parliament nominated by the Prime Minister and a Member of Parliament nominated by the Leader of the Opposition.²²⁶

Under the Eighteenth Amendment to the Constitution all appointments are now with the President. According to the Seventeenth Amendment, the President was obliged to appoint members of the seven commissions (Election

223 Article 41(A), Seventeenth Amendment, Constitution of the Democratic Republic of Sri Lanka, 1978.

224 Article 41(B), Seventeenth Amendment, Constitution of the Democratic Republic of Sri Lanka, 1978.

225 Rule of law Sri Lanka (2010), 17th Amendment to the Constitution, MCM Iqbal: <http://www.ruleoflawsrilanka.org/resources/writings-of-m-c-m-iqbal/the-17th-amendment-to-the-constitution>, as on 1 December 2010.

226 Asian Tribune (2010), “Sri Lanka’s Parliamentary Council to be Set Up within One Month”, 6 November: <http://www.asiantribune.com/news/2010/09/06/sri-lanka%E2%80%99s-parliamentary-council-be-set-within-one-month>, as on 1 December 2010.



Commission, Public Service Commission, Police Commission, Human Rights Commission, Bribery Commission, Finance Commission and Delimitation Commission) on the nomination of the Constitutional Council. With regard to appointments to the higher judiciary, the Judicial Service Commission and the four scheduled offices of the Attorney-General, Auditor-General, Ombudsman and the Solicitor General, in Parliament he could only do the same with the approval of the Council. The Inspector General of Police (IGP), who in the Seventeenth Amendment had to be appointed on the approval of the Constitutional Council, is now appointed by the Cabinet of Ministers like any other head of department. With these amendments the de-politicisation of politics and the move to increase accountability of public commissions which the Seventeenth Amendment tried to introduce have been completely set aside. Additionally, Articles 41A to 41H, which ensured that appointees would be persons of eminence and integrity, who have distinguished themselves in public life and are not members of a political party have been repealed. Thus there is the inevitable situation of unsuitable appointees and politicisation of the commissions. Police officers who formed a special category under the Seventeenth Amendment (i.e. neither armed forces nor public officers) have been brought within the definition of public officers.²²⁷

The Seventeenth Amendment created a Public Service Commission comprising nine members who would serve for three years and who were appointed by the President on the recommendation of the Constitutional Council. The Eighteenth Amendment brings about changes in the powers of the Commission that will have important ramifications on the police.

Issue	Seventeenth Amendment	Eighteenth Amendment	Impact
Presidential Term Limit	President enjoys two term limited to six years each.	Removed term limits on executive power.	Presidential term limits are critical to a functional democracy. The removal of the term limit, especially in the current political scenario could mean that the Rajapakse dynasty can rule unabated with no limits on their power.
Abolishment of Constitutional Council	Ten-member Constitutional Council established with the mandate to recommend and approve appointments to seven independent commissions. The Council was to be comprised of a majority of independent, non-political members.	The Constitutional Council is abolished and its powers transferred to the President. The President needs only to consult five political persons in making appointments. No selection criteria for appointments are mentioned.	Effectively, the President has unilateral powers to appoint members on important oversight bodies. Independent bodies are captured by the executive.
Weakened Police Service Commission (PSC)	No political members allowed to be appointed on the Police Service Commission. The Commission has full administrative and disciplinary control of all police officers, except the Inspector-General of Police.	The President unilaterally appoints all members of the Commission with no stipulated criteria. The Inspector-General of Police is given full administrative and disciplinary control of all police officers. The Commission's powers in this regard are abolished.	The entire police is under the direct control of the IGP, and thereby the executive, as the President appoints the IGP. The role of the National Police Commission is diluted to a basic complaints body.
Appointment of other key posts	The Constitutional Council was responsible for the appointments to key leadership positions in the higher judiciary, parliament, and of the Inspector-General of Police.	The President is granted unilateral power to make these appointments.	The system of checks and balances is lost and makes politicisation of these key posts imminent. Any independence of the judiciary and police is lost.

227 Article 61F, Eighteenth Amendment, Constitution of the Democratic Republic of Sri Lanka, 1978.



Originally vested with the power of appointment, transfer and disciplinary control of public officers the Commission under the Eighteenth Amendment does not have the same independence that prevailed under the Seventeenth. The appointment, transfer and disciplinary control of heads of departments earlier with the Commission now come under the Cabinet of Ministers, with the ministry secretaries being appointed by the President. This will lead to the eventual politicisation of the public service.

Another important change is that the delegation of the powers of the Public Service Commission to committees and public officers will be determined by the Cabinet. For example, all powers of appointment and dismissal in respect of police officers may be delegated to the IGP at the discretion of the Cabinet.²²⁸ Earlier under the Seventeenth Amendment, the Police Commission decided on the nature and extent of such delegation, not the Cabinet.²²⁹

Taking all these features together the unmistakable trend is that Sri Lanka is slowly drifting towards unfettered executive power with total politicisation of the public service and the police.

6.3.3 The National Police Commission

As the police is one of the institutions most affected by undue political interference, the Seventeenth Amendment provided for the creation of a National Police Commission (NPC). Composed of seven civilians selected by the President from recommendations made by the Constitutional Council, the mandate of NPC was to insulate the police from political interference and investigate public complaints against the it.

NPC appointments are for a three-year term and members were required to step down if they decide to hold a political office.²³⁰ NPC was given the powers of: appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police (this power was to be exercised in consultation with the Inspector-General of Police); establishing procedures for the investigation of any public complaint initiated by an aggrieved person against a police officer or the police service; and formulation of schemes of recruitment and training and the improvement of the efficiency and independence of the police service.²³¹ Vesting the Commission with constitutional powers over appointment, transfer and disciplinary control over police officers was considered an important step towards depoliticising the police. In effect, the Commission wielded considerable influence over the police service under the Seventeenth Amendment.

The Eighteenth Amendment vests the power of appointing the members of the Police Commission solely with the President. With the abolishment of the Constitutional Council and the new Parliamentary Council having no say in the appointments there is no doubt that appointments to the Commission will be political and its functioning will be such that find favour with the government. The Commission also has vastly reduced powers in the Eighteenth Amendment. Its only functions are (i) to entertain and investigate complaints from the public against a police officer or the police force and (ii) provide redress according to any law passed by parliament. If these laws are inadequate or weak (and it is more likely that they will be) the Commission could become ineffective and toothless and is likely to lose all faith in the eyes of the public.

6.3.4 The Police Commission Under the Seventeenth Amendment

Vesting the Commission with constitutional powers for appointments, transfer and disciplinary control over police officers was considered an important step towards depoliticising the police. The Commission, however,

228 Article 155G, Eighteenth Amendment, Constitution of the Democratic Republic of Sri Lanka, 1978.

229 Article 155H, Eighteenth Amendment, Constitution of the Democratic Republic of Sri Lanka, 1978.

230 Article 155A, Seventeenth Amendment.

231 Article 155G, Seventeenth Amendment.



invited considerable criticism by initially delegating its powers of transfers back to the IGP²³² who was empowered to further delegate these powers. In 2004, NPC responded to its critics and altered its delegations. The powers of appointments, promotions and transfers (but not disciplinary control) of officers including and below the rank of Sub-Inspectors were given to a three-member Committee of the Commission headed by a retired High Court Judge. However, senior officers of specified ranks could still complete transfers on grounds of the exigencies of services and contemplated disciplinary action with respect to these ranks. Also, powers of disciplinary control with respect to officers below the rank of Inspector of Police were once again delegated to senior officers. With respect to appointments, promotions, disciplinary control and transfer of officers at and above the rank of Inspector of Police, NPC retained all its powers. With the changes made in 2004, NPC appeared partially successful in checking political interference in police functioning. However, after the first membership term expired and the new members were political presidential appointees, the situation at NPC changed for the worse.

After the tenure of the original NPC lapsed in November 2005, and before new appointments were made, the task of transfers and promotions fell to the President's brother, Gotabhaya Rajapakse (Secretary of Defence). What followed was a spate of transfers including "the transfer of senior officers instrumental in successfully carrying out anti-crime drives. Some reports state that these senior officers were transferred for offending powerful figures through their strict enforcement of the law."²³³ Shortly thereafter, President Rajapakse made unilateral appointments to the several Commissions, and in April 2006, selected Neville Piyadigama as the Chairperson of the Police Commission. Piyadigama shared a close relationship with the President.²³⁴ His record as Chairperson has been ambivalent. Although a public complaints procedure was finally gazetted during his tenure (see Section 6.3.5), it was widely felt that the NPC had not sufficiently fulfilled its role as articulated by the Seventeenth Amendment.

In both its first and second terms NPC's functioning was hampered by lack of financial resources, inadequate investigative powers and lack of cooperation from the police department. In addition to these systemic constraints, NPC's willingness to address allegations of police involvement in abductions and "disappearances" has been questioned by many. However all along NPC justified its stand that though it had received "several complaints" on abductions and disappearances, most of these were allegedly by paramilitary elements, the Karuna group, the army or unidentified men. They maintained that "there were no specific allegations about police involvement" in these crimes.

Satisfaction with the Working of the National Police Commission

According to a survey conducted by Transparency International – Sri Lanka, it was not only the public that was sceptical of NPC's ability to safeguard rights. The constabulary also remained disenchanted with its performance. About 66.8 per cent of the constables and sergeants remained dissatisfied with NPC. This was quite disquieting as it is the junior officers that are most subject to the corrupt orders of superiors and need assistance from an institution such as NPC.²³⁵

232 National Police Commission (2003), Circular No. 1703/2003, 26 March, as cited by Weliamuna, J.C. (2004), *The National Police Commission, Sri Lanka: State of Human Rights 2004*, p. 173, Law and Society Trust, Colombo.

233 Asia Human Rights Commission (2006) "Sri Lanka: Bypassing the 17th Amendment is a Move Towards the Return to Absolute Power", a statement by the Asia Human Rights Commission, 14 February: AS-024-2006: <http://www.ahrchk.net/statements/mainfile.php/2006statements/432/>, as on 12 November 2008.

234 When President Rajapakse was Labour Minister, he made Mr Piyadigama the Secretary of his Ministry and when he was appointed the Fisheries Minister, again Piyadigama functioned as Ministry Secretary. See Gnanadass, W. (2006), "A Post for President's Pal Cuts Root of 17th Amendment", *The Nation*, 11 June 2006: <http://www.nation.lk/2006/06/11/newsfe4.htm>, as on 12 December 2008.

235 Weliamuna, J.C. (2006), *In Pursuit of 'Absolute Integrity': Identifying Causes for Police Corruption*, Transparency International – Sri Lanka, p. 76.



6.3.5 Police Complaints Investigation Division

Ensuring that the police act within the limits of the law and uphold the Constitution at all times is an essential feature of good governance. Systems need to be set up to look into excesses committed by the police and provide relief to the victims. In a country like Sri Lanka with a notorious history of gross human rights violations by security forces, the need for such a body is even greater, particularly at a time when the nation is engaged in strengthening its democratic institutions. However considering its past record and the lack of any political will to bring guilty officers to account, the further weakening of the Police Commission under the Eighteenth Amendment comes as no surprise.

An important function of the Police Commission under the Seventeenth Amendment was the investigation and redressal of complaints against police personnel and the police service.²³⁶ This function has been retained under the Eighteenth Amendment.²³⁷

The complaints mechanism under the Seventeenth Amendment did not prove to be effective, mainly because NPC referred complaints to the IGP, who in turn referred the cases to the Special Investigation Unit (SIU). During its first term, NPC appointed nine district coordinators (mostly retired policemen) to deal with complaints.²³⁸ During that year it registered 1,078 complaints; only thirteen were charge-sheeted and one was interdicted.²³⁹

At the beginning of 2007, NPC finally gazetted rules for the Police Complaints Investigation Division (PCID). However, the rules were not nearly as progressive as had been hoped. Rule 17 stipulated that if disciplinary action or prosecution against a police officer was recommended, then the disciplinary action according to departmental procedure or prosecution against such police officer would continue to remain in the hands of the IGP “in accordance with applicable departmental procedures” rather than referred for rigorous legal sanctions.²⁴⁰

After the creation of the necessary rules, NPC received 1,216 complaints from the public against police officers between January and June 2007. However, only in four cases were the suspects formally charged with crimes, and in seven instances policemen were given warnings.²⁴¹ Although the institutions are in place and the requisite rules have been established, it appears that there is little political will to aggressively pursue the cases brought before NPC.

Subsequently, torture complaints came to be investigated by the SIU from the criminal investigation unit²⁴² based in Colombo. These investigations were conducted with a high degree of competence. However, referrals to them had to be made by either the Attorney General’s department or the IGP.²⁴³ Both these authorities are reluctant to refer torture cases to that unit unless pressured to do so in exceptional cases of public scandal or political pressure.

236 Article 155G(2), Seventeenth Amendment.

237 Article 155FF, Eighteenth Amendment.

238 Pinto-Jayawardena, K. (2007), “An Unfulfilled Promise: Critical Scrutiny of the National Police Commission of Sri Lanka”, LST Review, Volume 18, Issue 238, August, p. 17.

239 National Police Commission (2006), Annual Report 2006, p. 37.

240 The precise wording of Rule 17: “At the conclusion of an investigation, if it recommended that disciplinary action or prosecution against a police officer shall be instituted, the IG or DIG, as the case may be, shall be notified along with evidence recorded at the investigations and draft charges, to initiate forthwith such disciplinary action according to departmental procedure or prosecution against such police officer”. See Gazette Extraordinary 1480/8 – 17 January 2007.

241 Human Rights Watch (2008), Recurring Nightmare: State Responsibility for ‘Disappearances’ and Abductions in Sri Lanka, Volume 20, No. 2(c), p. 101: <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0>, as on 12 November 2008.

242 The Special Investigations Unit (SIU) is a unit of the Criminal Investigations Department of the Attorney General’s Office. The personnel of the SIU are seconded from the SLP. The SIU is a non-permanent arrangement at the AG’s department which attends to cases on an ad hoc basis. The special unit was initially charged with investigating allegations of torture under the Convention against Torture Act (No. 22 of 1994); officially, in its initial period of functioning, 60 cases of torture have been filed in the high courts against about 100 officers.

243 Government of Sri Lanka, Attorney General’s Department: <http://www.ewisl.net/attorney1/Special%20Units/specialmissing.htm>.



As stated above, the Eighteenth Amendment retains the power of the Police Commission to investigate complaints against the police. Yet the Commission no longer has the power to take disciplinary action against a police officer, or even transfer an officer under investigation. With its wide powers, the Police Commission under the Seventeenth Amendment found its task extremely challenging. In this context, it is difficult to imagine how the new and emaciated Commission is expected to carry out its mandate.

Enhanced Powers of the IGP and its Effect on the Police Department

Since the Constitutional Council is no longer the independent entity envisioned by the Seventeenth Amendment, the presidential appointment of the IGP as provided by Article 41C is not subject to any independent scrutiny. The appointment process has become murkier with the Eighteenth Amendment. The Cabinet directly appoints the IGP, and no consultation is required with the Parliamentary Council, which replaces the Constitutional Council. Under the Seventeenth Amendment, the tenure of the IGP was protected by the Removal of Officers (Procedure) Act, 2002.²⁴⁴ Under the Eighteenth Amendment, the IGP holds office at the pleasure of the Cabinet with the latter having the power to summarily remove the IGP from office.²⁴⁵ The Eighteenth Amendment has substantially whittled down the role of NPC. All appointments, transfers, removals that under the Seventeenth Amendment resided with NPC are now placed directly under the IGP. With an insecure tenure and a dependence on the executive for his appointment and continuation in service, it is highly inconceivable that the top police officer of the country would do anything in contravention of the wishes of the Cabinet.²⁴⁶ On such a tight leash of the Cabinet, the Eighteenth Amendment marks the complete politicisation of the IGP's office and puts the police in the dangerous hands of those who choose to abuse their power.

6.4 Is International Pressure Working?

Atrocities committed over all the years of war have never received the investigations they deserved. Victims on both sides have had no access to justice, no reparation and no closure to the sufferings they experienced. This has left behind a large section of the population with no faith in the process of law and no confidence in the justice systems – the courts, the police or the government. The essential fabric of a functional democracy has been severely damaged. All Sri Lankans, deserve justice, and for peace to prevail some justice must be done.

With a large and influential Tamil diaspora spread throughout the world, Sri Lanka is compelled at times to be sensitive to how the international community views its human rights record. Owing to the tremendous number of incidents of disappearances, summary executions, extended periods of arbitrary detention and intimidation tactics throughout the civil war and immediately after, during the post-war period, there has been mounting international pressure on the Government of Sri Lanka to take a serious look into the matter and provide real justice to those affected.

The government has in the past appointed committees to examine serious violations of human rights by security forces, in the so-called “war” period and even after the war. It is a well-known fact that Commissions of Inquiry (COIs) have not worked as mechanisms of justice in Sri Lanka. “Presidential Commissions have proved to be little more than tools to launch partisan attacks against opponents or to deflect criticism when the state has been

244 Section 3, Removal of Officers (Procedure) Act, No. 5 of 2002, Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of 27 March 2002: <http://www.documents.gov.lk/Acts/2002/Removal%20of%20Officers%20%28Procedure%29%20%28Act%205%29/H%2013394%20%28E%29%20%28Removal%29.pdf>, as on 1 November 2010.

245 Transparency International – Sri Lanka (2010): Parliament Watch, August: http://www.tisrilanka.org/pub/parliamentwatchAugust_2010.pdf, as on 1 December 2010.

246 Sri Lanka Guardian (2010), “18th Amendment: Legitimizing a culture of “Hondamai Sir?”, 12 September: <http://www.srilankaguardian.org/2010/09/18th-amendment-legitimizing-culture-of.html>, as on 3 November 2010.



faced with overwhelming evidence of its complicity in human rights violations.”²⁴⁷ The biggest pitfall is contained within the Commissions of Inquiry Act, 1948 itself, which gives these presidential commissions freedom to determine their own procedures. This has resulted in commissions relying on ex-parte testimonies, never having attempted, or even been allowed to proceed beyond this stage. Civil society groups in Sri Lanka regard the COIs appointed by the Sri Lankan governments between 1977 and 2001 as being nothing more than an eyewash. “These COIs have had negligible impact insofar as actual prosecutions.”²⁴⁸

6.4.1 Commission of Inquiry, 2006-2009

President Rajapakse appointed the 2006-2009 Commission of Inquiry into 16 cases of serious human rights violations by both the government security forces and the LTTE. In order to add greater legitimacy to the proceeding, an International Independent Group of Eminent Persons (IIGEP) was tasked to assist the Commission and ensure that such inquiries were conducted in a transparent manner, and in accordance with basic international norms and standards pertaining to investigations and inquiries. However, the legitimacy of the endeavour was questioned from the beginning. There was concern that the Attorney General was going to lead evidence at the Commission. The IIGEP felt that this was a serious conflict of interest, and made a statement that the Commission “does not seem to have taken sufficient corrective measures to ensure that its proceedings are transparent and conform to international norms and standards of independence, impartiality and competence.”²⁴⁹ While the government continued to impede its progress, the IIGEP became increasingly frustrated and then announced on 6 March 2008, that it was terminating its involvement with the Commission of Inquiry.²⁵⁰ In a recent speech, a former member of the IIGEP, Arthur Dewey, stated that along with the failure of the Commission of Inquiry, the government “also dashed one of Sri Lanka’s best opportunities to dismantle its twin cultures of fear and impunity”.²⁵¹

6.4.2 Lessons Learnt and Reconciliation Commission

Succumbing to international pressure an eight-member Lessons Learnt and Reconciliation Commission (LLRC) was set up immediately after the war.²⁵² In his memorandum to the cabinet, the President stated that “it has been apparent for quite some time to the government, that the conflict situation due to the very brutality and long duration of the violence perpetrated against Sri Lanka, would have caused great hurt and anguish in the minds of the people, that requires endeavours for rehabilitation and the restoration of democratic governance complemented by measures for reconciliation.”²⁵³

247 Amnesty International (2009), “Twenty Years of Make Believe: Sri Lanka’s Commissions of Inquiry”, p. 3, June: <http://www.amnesty.org/en/library/asset/ASA37/005/2009/en/c41db308-7612-4ca7-946d-03ad209aa900/asa370052009eng.pdf>, as on 23 October 2010.

248 Pinto-Jayawardena, K. (2010), “Still Seeking Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry since 1977”, January, as on 1 November 2010.

249 Asian Human Rights Commission (2007), International Independent Group of Eminent Persons, Second Public Statement, June 15: <http://www.ahrchk.net/statements/mainfile.php/2007statements/1065/>, as on 12 November 2008.

250 International Independent Group of Eminent Person (2008), IIGEP Website, Press Releases: 6 March: <http://www.iigep.org/press-releases.htm>, as on 12 November 2008.

251 Illankai Tamil Sangam (2009), Annual General Meeting, Speech by Arthur Dewey, 14 November: http://www.sangam.org/2009/11/AGM_2009.php?uid=3749, as on 1 November 2010.

252 The Commission was set up on 6 May 2010 and has been asked to report back to the President within six months from its date of appointment. The Commission is to report on the lessons to be learnt from the events during the period, February 2002 to May 2009, their attendant concerns and to recommend measures to ensure that there will be no recurrence of such a situation. It is also charged with reporting whether any person, group or institution directly or indirectly bears responsibility in this regard. Its main focus will be on restorative justice and the steps that need to be taken to compensate or restore losses, whatever nature or form they may take.

253 Ministry of Defence, GoSL (2010), “President Appoints Lessons Learnt and Reconciliation Commission”, 17 May: http://www.defence.lk/new.asp?fname=20100517_07, as on 1 December 2010.



Unfortunately, all the characteristics which caused the failure of previous commissions of inquiry were inherent in this Commission. Nothing in the Commission's mandate requires it to investigate the many credible allegations that both the government security forces and the LTTE committed serious violations of international humanitarian and human rights law during the civil war, especially in the final months, including summary executions, torture, attacks on civilians and civilian objects, and other war crimes. In a joint letter rejecting LLRC's invitation to make a submission to the commission, international CSOs stated: "LLRC not only fails to meet basic international standards for independent and impartial inquiries, but it is proceeding against a backdrop of government failure to address impunity and continuing human rights abuses."²⁵⁴

The independence of LLRC's members is also questionable. The Chairman, Mr Chitta Ranjan de Silva (former Attorney General), and member HMGs Paliakkara (former Foreign Secretary) were senior government representatives during the final stages of the war and were quite vocal in defending the conduct of the government and military against allegations of war crimes.

The Government of Sri Lanka remains firm that LLRC is sufficient to look into all accusations of atrocities that may have been committed by both sides during the war, but human rights groups and the United Nations have called for an independent inquiry. It remains to be seen whether LLRC will be able to fulfil its mandate and provide real justice to those who truly lost everything in the war. It is most likely that LLRC will just become another on the long list of failed commissions of inquiry in Sri Lanka.

According to a recent Crisis Group report, almost all alleged crimes during the civil conflict have gone unpunished.²⁵⁵ In July this year, the European Union said it supported a new United Nations panel²⁵⁶ to review the human rights situation in the country.²⁵⁷ However, only a few days later, the Secretary-General, Ban Ki-Moon, was forced to close the main UN office in Sri Lanka and recall its top officials over the organisation's refusal to cease investigations into alleged abuses in the country's civil war.²⁵⁸

The creation of these mechanisms allows the government to claim it is taking action, while in reality, all of them have failed to halt the crisis of "disappearances". As a consequence of its inaction on human rights issues, the UN Human Rights Council rejected Sri Lanka's bid to serve a second term on the Council in 2008 and it continues to do so in 2010.

6.4.3 Linking Trade with Human Rights

The international community has also attempted to wield influence on Sri Lanka by linking trade with human rights performance. For instance, under a regime called Generalised System of Preferences (GSP+), Sri Lanka (along with a few other select countries) is afforded special trading privileges with the European Union (EU) if it ratifies 27 international conventions dealing with environmental, labour and human rights standards. This means putting 100,000 direct jobs and a trading agreement worth over USD 1.2 billion at risk. Despite the upsurge

254 A joint letter, declining LLRC's invitation to make a presentation before them, from Amnesty International, Human Rights Watch and International Crisis Group addressed to SM Samarakoon, Secretary, LLRC, 14 October 2010: <http://www.crisisgroup.org/en/publication-type/media-releases/2010/asia/sri-lanka-crisis-group-refuses-to-appear-before-flawed-commission.aspx>, as on 21 October 2010.

255 International Crisis Group (2010), War Crimes In Sri Lanka, Asia Report No. 191, 17 May: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/191%20War%20Crimes%20in%20Sri%20Lanka.ashx>, as on 11 December 2010.

256 The UN Secretary-General set up the three-member panel to advise him on accountability issues relating to alleged violations of international human rights and humanitarian law during the final stages of the conflict that ended last year between the government and the rebel Liberation Tigers of Tamil Eelam (LTTE).

257 Asia Times Online (2010): "US Piles Pressure on Sri Lanka", 7 July: http://www.atimes.com/atimes/South_Asia/LG07Df01.html, as on 19 October 2010.

258 The Guardian, UK (2010): "United Nations Closes Sri Lanka Mission after Protest", 8 July: <http://www.guardian.co.uk/world/2010/jul/08/united-nations-closes-sri-lanka>, as on 19 October 2010.



in violence in 2008, the EU announced the renewal of GSP+ for an additional three years, pending a review to be conducted within one year to determine whether Sri Lanka is in compliance with the EU human rights requirements.²⁵⁹ The EU had subsequently called on Sri Lanka to provide written confirmation by 1 July that the country was willing to comply with 15 human rights related conditions in order to extend the trade concessions by another six months. The Government of Sri Lanka has refused to comply with European Union conditions for extending GSP+ trade concessions, calling them “insulting”. In 2010, a year after the conflict ended, the GSP+ status was withdrawn by the EU owing to the country’s poor human rights record.²⁶⁰ Statistics indicate that after the loss of GSP+ status, Sri Lanka has not been overly impacted economically, though the period is too short to analyse it in detail.²⁶¹

Clearly, there is some international pressure on Sri Lanka to rectify its human rights record. However, it remains to be seen if the international community’s firm stance holds steady and whether it can have the effect of modifying Sri Lanka’s behaviour.

6.5 Recommendations

Government of Sri Lanka

- 1. Repeal the Eighteenth Amendment.** The non-partisan effort to depoliticise governmental institutions in 2001 was a step in the right direction with the Seventeenth Amendment. The refusal of the Rajapaksa administration to abide by the Seventeenth Amendment has seriously damaged efforts to democratise the police and other governance sectors. Notwithstanding the fact that the recommendations of the Parliamentary Select Committee on how to “fix” the Seventeenth Amendment are still pending, the Eighteenth Amendment is definitely a step in the wrong direction. Too much power is concentrated in the hands of the executive and this threatens to plunge Sri Lanka into another dark period of civil strife.
- 2. Scale Back Military Operations.** This is an opportune time to implement reforms as the civil war has finally come to a close. In order to achieve any success in democratising the police, it is important to scale back the national security apparatus and pursue a long-term political solution that involves devolution of power to the provinces or proportional representation in existing political structures.
- 3. Rebuild the North and the East.** Re-establish civil and criminal courts in the former LTTE areas. Replace the dysfunctional government machinery in existence. Reduce the security restrictions on the communities living there. Ensure all improvements are made while considering the Tamils, and based on proportional representation, to make the people of the former LTTE areas a real part of the administrative process.
- 4. Stop the Operation of Emergency Laws.** With the end of military operations, Sri Lanka is no longer in need of such a stringent security net as during the civil war. Emergency laws are not a pressing need currently, and only threaten to further polarise the thousands of civilians residing in former LTTE areas.
- 5. Explicitly Address the Culture of Impunity that Plagues Sri Lanka.** In order to ensure a transparent and accountable police force, the Government of Sri Lanka must demonstrate a commitment to prosecute

259 ColomboPage (2008), “EU Grants GSP+ to Sri Lanka for Another Three Years”, 11 December 2008: http://www.colombopage.com/archive_08/December11121813RA.html, as on 18 December 2008.

260 The Daily Star (2010), “Apparel Exports to EU Rise as Colombo Loses Tariff Benefit”, 8 October: <http://www.thedailystar.net/new/Design/news-details.php?nid=157578>, as on 11 October 2010.

261 Lanka Magazine (2010), “Bangladesh To Gain From Lankan Absence In EU Apparel Market”, 8 October: <http://www.lankamagazine.com/2010/10/08/bangladesh-to-gain-from-lankan-absence-in-eu-apparel-market>, as on 11 October 2010.



human rights abusers that wear the Sri Lanka Police uniform. Without the political will to engage in unbiased inquiries of wrongdoing, police reform in Sri Lanka will never get off the ground.

6. **Cease the Intimidation, Arrest and Torture of Dissenters.** Any healthy democracy thrives on public opinion. To avoid turning into a totalitarian state, the government must cease its pogrom of abductions, torture and intimidation of journalists, aid workers, Opposition Members of Parliament and anyone who speaks out against the government.
7. **Strengthen the National Police Commission.** With no credible appointment process and an emaciated role under the Eighteenth Amendment, the independence of the National Police Commission (NPC) cannot be imagined. Further, as a grievance redressal mechanism, it has been reduced to a toothless complaints body. The duties of NPC under the Seventeenth Amendment need to be reinstated with a set of non-partisan members chosen by a credible, independent process.
8. **Establish a Proper Appointments Process Within the Policing System.** A transparent and merit-based appointment process of the IGP and other high-ranking police officers are the primary requirements of any meaningful police reform. The Eighteenth Amendment clearly disregards this requirement. Transparent and merit-based measures are necessary if the Sri Lankan policing system is to recover from its present crisis.
9. **Allow the UN-Appointed Panel to Assist LLRC in its Inquiry.** Give greater legitimacy to the commissions of inquiry and ensure that the inquiries are conducted in a free and fair manner. Provide protection to witnesses giving submissions to the commissions to ensure that they can testify in the absence of fear or intimidation.

Sri Lanka Police

10. **Improve Transparency in the Police.** Ensure that recruitments are made in a transparent fashion by the public service commissions and are not simply political appointments.
11. **Limit Unjust and Illegitimate Transfers and Promotions.** The propensity for transfers and promotions to be based on non-meritorious considerations has severely undermined the morale of police officers across Sri Lanka. Having this illegitimate practice become the exception rather than the norm will greatly increase the professionalism of the Sri Lanka Police (SLP).
12. **Concentrate on Improved Training Needs.** Build capacity in the newly established training academy. Shift the focus of training from an emphasis on the physical aspects to include aspects of law and human rights.
13. **Improve Efforts to Integrate the SLP.** Use recruitment as a means to include more of the under-represented Tamils in SLP. Providing police services in both Tamil and Sinhala (particularly in districts that are predominantly Tamil-speaking), will help build bridges between the overwhelming Sinhalese SLP and the Tamil community. Increasing the number of women in the police service will soften the image of the police.
14. **Formally Entrench the Notion of Command Responsibility into Policing Practices.** This means that if a junior officer is found responsible for violating an individual's human rights, then his/her superior should also be viewed as culpable if it can be established that:
 - a. There is a superior-subordinate relationship;
 - b. The superior knew or had reason to know that the criminal act was about to be or was committed; and



- c. The superior failed to take reasonable measures to prevent the criminal act or to punish the perpetrators thereof. Linking subordinate malfeasance to superiors will undoubtedly increase the level of internal accountability procedures in the SLP.
- 15. Develop a Credible Disciplinary Process to Ensure the Accountability of the Police.** There is an urgent need for a disciplinary process to ensure the accountability of police officers. Police regulations and standing orders need to lay down the process that will be followed for all ranks of officers in the event of a breach of discipline or violation of the law.
- 16. Articulate Guidelines that Sincerely Reject Torture as a Legitimate Investigative Tactic.** The frequent use of torture in police stations throughout Sri Lanka demonstrates a firm belief in the SLP that torture is an effective method to elicit information from witnesses and suspects. Strict enforcement of the Convention Against Torture Act is therefore essential both for the prevention of torture as well as ending the criminal behaviour of the police. However, legal sanctions alone will never eliminate the use of torture. There must be an explicit understanding and acceptance by the police that torture does not work because information secured from such tactics is notoriously unreliable.
- 17. Create an Independent Investigation Unit to Investigate Cases of Torture:** A permanent unit of competent and honest officers directly under the control of the IGP needs to be created to carry out mandatory investigations into torture complaints. These investigations must be completed efficiently and within the shortest period of time. Such measures alone will reduce the practice of torture.
- 18. Improve Training of Investigative Techniques.** Better familiarity with forensic science and crime scene examination procedures will help to professionalise the SLP. It will reduce incidences of torture as a primary means to extract information, and reverse the trend of false implications of crime by the police.
- 19. Strengthen the SLP's Human Rights Division.** Providing the Human Rights Division (HRD), a unit of the SLP directly under the supervision of the IGP and tasked with educating police personnel on the need to protect human rights, with more resources and support will institutionalise the understanding that effective policing and respect for rights are not mutually exclusive. In order to further promote this understanding, the education provided by the HRD should particularly emphasise the role of human rights defenders and encourage the police to view them as allies, rather than opponents, in effective policing.

National Police Commission

- 20. Re-Establish the Public Complaints Investigation Division.** The Public Complaints Investigation Division (PCID) has become defunct after the last lapse of National Police Commission (NPC) members. It should be reconstituted and new rules should be framed for its operation. With the Eighteenth Amendment in place, PCID should be linked to NPC to become an effective complaints mechanism. The current rules governing PCID are far too deferential. PCID should examine ways wherein it can provide complainants with redress.
- 21. Do More to Limit Political Interference.** With the new role of NPC under the Eighteenth Amendment, police officers do not have confidence that it is willing or able to address the endemic politicisation of transfers and promotions. In order for it to do its job effectively, it is imperative for NPC to have the respect of police officers.



Civil Society Organisations

- 22. Campaign and Educate on the Need for Police Reforms.** With severe media restrictions in place, and little space generally accorded to human rights issues, it is even more critical for civil society organisations (CSOs) to publicly articulate the importance of a democratic police force in Sri Lanka. In the absence of such a dialogue, nothing constructive can be accomplished.
- 23. Campaign to Repeal the Eighteenth Amendment:** The reforms process appears to have taken a step back with this latest amendment which poses a threat to democracy in Sri Lanka. The dynastic intentions of the Rajapakse family must not be permitted to succeed, and more people must be made aware of their excesses and utter abuses of power.
- 24. Apply Pressure on the Government to Allow International Oversight on LLRC.** To ensure the legitimacy of LLRC, it needs to be watched to ensure that the Commission of Inquiry is not an eyewash like several others since the 1970s. The Sri Lankan people and the international community deserve a response from the government and this will be the only way to ensure that results are seen and justice is eventually delivered.
- 25. Develop Police-Specific Documentation Centres.** By maintaining proper and accurate records of practices that have proved effective in professionalising the police, the complaints filed against SLP, and the incidents of torture, a body of documentation will emerge that can serve as the basis for advocacy and education on the issue of police reform.

The Network for Improved Policing in South Asia

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. This website consolidates a tremendous amount of information on police reforms in South Asia. With the active participation of NIPSA partners throughout the region, an e-newsletter surveying police-related issues is circulated every month to hundreds of recipients. 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.

Friedrich-Naumann-Stiftung für die Freiheit

The Friedrich-Naumann-Stiftung für die Freiheit is a foundation for liberal politics. It was founded in 1958 by, amongst others, Theodor Heuss, the first German Federal President after the Second World War. The Foundation currently works in about sixty different countries around the world, to promote ideas on liberty and strategies for freedom. Their instruments are civic education, political consultancy and political dialogue.

The Friedrich-Naumann-Stiftung für die Freiheit lends its expertise to endeavours to consolidate and strengthen freedom, democracy, market economy and the rule of law. As the only liberal organisation of its kind world-wide, the Foundation facilitates laying the groundwork for a future in freedom that bears a responsibility for future generations.

Within South Asia, with its strong tradition of tolerance and love for freedom, its growing middle classes which increasingly assert themselves, and its liberalising economies, the Foundation works with numerous partner organisations to strengthen the structures of democracy, the rule of law, and the economic preconditions for social development and a life with dignity.

NOTES

NOTES

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. It 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 interferences.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. 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. CHRI believes 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.

The state of policing throughout Commonwealth South Asia is abysmal. At the end of 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 wholly unsuitable state of law enforcement, devoid of public confidence. Even as some weak attempts have been made to reduce the politicisation of the 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 the state and pace of police reforms in Bangladesh, India, Pakistan, the Maldives and Sri Lanka in detail, and the concrete steps that can be undertaken to transition policing in the region from a force to a service. Besides having an additional chapter on the Maldives, the present report is an update of the 2008 Feudal Forces report. It is published at an important time. Elections were held in Bangladesh in December 2008, and a democratically elected government came into power, replacing the Caretaker Government which was in power for almost two years. Sri Lanka won its two-decade war against the LTTE. The Maldives held its first multi-party democratic elections that saw the defeat of President Maumoon Abdul Gayoom, in power since 1978. This, along with its share of implications on policing, definitely raised the hopes of police reform gaining momentum. India and Pakistan on the other hand, have experienced some of the worst forms of violence. Pakistan has been torn by internal strife and conflict, and India has seen some of the worst terrorist attacks and extremist violence. Reform measures in these two countries have thus been geared towards giving police more arms and ammunition, introducing new legislations and amending existing ones, curtailing civilian rights, and enhancing policing powers.

In the wake of all these developments this update of *Feudal Forces: Reform Delayed* captures the pace of reforms, the obstacles that come in the way and recommendations for change.

Published in partnership with:

Friedrich Naumann
STIFTUNG

FÜR DIE FREIHEIT

USO House, 6, Special Institutional Area, New Delhi 110067, INDIA
Phone: +91-11-2686 2064/ 2686 3846 Fax: +91-11-2686 2042
www.southasia.fnst.org www.stiftung-freiheit.org



Commonwealth Human Rights Initiative

B-117, 1st Floor, Sarvodaya Enclave, New Delhi - 110 017
Tel.: +91 (0)11 4318 0200, 4318 0225 – 299 Fax: +91 (0)11 2686 4688
info@humanrightsinitiative.org www.humanrightsinitiative.org