

CHRI 2008

# FEUDAL FORCES: REFORM DELAYED

Moving from Force to Service in South Asian Policing



# CHRI

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.

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Moving from Force to Service in South Asian Policing



Researched and Written  
by Sanjay Patil



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CHRI produced this report as part of its continuing advocacy on police accountability and reform in South Asia. It is the result of work performed by CHRI staff, as well as external collaborators.

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# Table of Contents

<b>Chapter 1: Introduction</b> .....	8
1.1 Colonial Legacy	
1.2 Independence and its Failed Promise	
1.3 What is “Democratic Policing”?	
1.4 Problems with Policing in South Asia	
1.5 Why is Policing in South Asia Deficient?	
1.6 Way Forward	
<b>Chapter 2: Bangladesh</b> .....	16
2.1 Background	
2.2 Abuses by Law Enforcement	
2.3 Police Reform Programme	
2.4 Draft Police Ordinance, 2007	
2.5 Recommendations	
<b>Chapter 3: India</b> .....	32
3.1 Background	
3.2 Supreme Court Directives	
3.3 State Governments: Status of Police Reform	
3.4 Government of India: Status of Police Reform	
3.5 Recommendations	
<b>Chapter 4: Pakistan</b> .....	54
4.1 Background	
4.2 The Police Order, 2002	
4.3 Status of Institutions Created by the Police Order, 2002	
4.4 What Happened to the Promised Reform?	
4.5 Future Prospects	
4.6 Recommendations	
<b>Chapter 5: Sri Lanka</b> .....	76
5.1 Background	
5.2 Culture of Impunity	
5.3 End of the Ceasefire Agreement	
5.4 An Attempt at Reform: The 17 <sup>th</sup> Amendment:	
5.5 Another Attempt at Reform: Sweden & Sri Lanka	
5.6 Does International Pressure Work?	
5.7 Recommendations	





## List of Abbreviations

BCS	Bangladesh Civil Service
BPR	Bureau of Police Research (Bangladesh)
CAO	Chief Advisor's Office (Bangladesh)
CAT	Convention Against Torture
CBI	Central Bureau of Investigation (India)
CBP	Community-based policing (Bangladesh)
CC	Constitutional Council (Sri Lanka)
CCPO	Capital City Police Officer (Pakistan)
CG	Caretaker Government (Bangladesh)
CID	Criminal Investigation Department (Bangladesh, India)
CPF	Community Police Forum (Bangladesh)
CPLC	Citizen Police Liaison Committees (Pakistan)
CRCP	Consumer Rights Commission of Pakistan
CrPC	Criminal Procedure Code (India, Pakistan)
CSO	Civil Society Organisation
CSP	Central Services of Pakistan (Pakistan)
DCO	District Coordination Officer (Pakistan)
DGP	Director General of Police (India)
DMG	District Management Group (Pakistan)
DP	Disciplinary Proceeding (India)
DPCA	District Police Complaints Authorities (India)
DPO	District of Police Officer (Pakistan)
DPSC	District Public Safety Commission (Pakistan)
DPSPCC	District Public Safety and Police Complaints Commission (Pakistan)
EU	European Union
FLEA	Federal Law Enforcement Agency (Pakistan)
FIR	First Information Report
Gol	Government of India
GoSL	Government of Sri Lanka
GSP+	Generalised System of Preferences (Sri Lanka)
HRCP	Human Rights Commission of Pakistan
HRD	Human Rights Division (Sri Lanka)
IGP	Inspector General of Police (Bangladesh, Pakistan, Sri Lanka)
IIGEP	International Independent Group of Eminent Persons (Sri Lanka)
LTTE	Liberation Tigers of Tamil Eelam (Sri Lanka)
MNA	Members of National Assembly (Pakistan)
MPA	Members of Provincial Assembly (Pakistan)
MT	Model Thanas (Bangladesh)
NGO	Non-governmental organisation
NHMP	National Highways and Motorway Police (Pakistan)



NIA	National Investigating Agency (India)
NPC	National Police Commission (Bangladesh, Sri Lanka)
NPMB	National Police Management Board (Pakistan)
NPSC	National Public Safety Commission (Pakistan)
NRB	National Reconstruction Bureau (Pakistan)
NWFP	North West Frontier Province (Pakistan)
OIC	Officer-in-Charge (Bangladesh, Pakistan)
PADC	Police Act Drafting Committee (India)
PCA	Police Complaints Authority (India, Pakistan)
PCC	Police Complaints Commission (Bangladesh)
PCID	Public Complaints Investigation Division (Sri Lanka)
PPO	Provincial Police Officer (Pakistan)
PPP	Pakistan People's Party
PPSPCC	Provincial Public Safety and Police Complaints Commission (Pakistan)
PRP	Police Reform Programme (Bangladesh)
PTP	Prosecution of Torture Perpetrators (Sri Lanka)
RAB	Rapid Action Battalion (Bangladesh)
SHO	Station House Officer (Pakistan)
SLP	Sri Lanka Police
SOP	Standard Operating Procedure
STF	Special Task Force (Sri Lanka)
SPCA	State Police Complaints Authorities (India)
SSC	State Security Commission (India)
UN	United Nations
UNDP	United Nations Development Programme
USD	United States Dollars

## Chapter 1


# Introduction

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









From the Khyber Pass to the Burmese border, and from the Himalayas to the Pearl of the Orient, 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*. That report delved deeply into the theory of democratic policing and why it is a desirable model for the region. Its examination of policing in South Asia revealed a state of law enforcement wholly unsuitable and devoid of public confidence. Even as some weak attempts have been made to reduce the politicisation of police, increase its accountability, and improve its management, implementation has been poor because governments are reluctant to fully and urgently engage on desperately needed reform.

The problems relating to police are patent and well documented, including by CHRI in *Feudal Forces: Democratic Nations*. The present report does not provide a laundry list of the ills that affect policing in South Asia. Rather, its purpose is to provide greater detail on the current state and pace of police reforms in Bangladesh, India, Pakistan and Sri Lanka<sup>1</sup> and the concrete steps that can be undertaken to transition policing in the region from a force to a service.

## 1.1 Colonial Legacy


When the British Empire first started wielding more control and influence on its colonies in South Asia, it modelled policing after the militaristic Irish Constabulary rather than the civilian London Metropolitan model. This was meant to subjugate very large and hostile indigenous populations with a relatively small force. The British implemented police forces that:

- answered predominantly to the regime in power and its bureaucracy and not to the people;
- were responsible for controlling populations, rather than protecting the community;
- sought to secure the interests of one dominant group;
- were required to remain outside and distinct from the community; and
- were extremely hierarchical in structure where loyalty was to the leadership and the establishment rather than to the rule of law.

Even after independence from British rule South Asian governments have largely retained this colonial structure of policing. The central government in India has retained the Police Act of 1861 and state governments have generally modelled their respective Acts after it as well. Bangladesh, a unitary state, has also chosen to retain the Police Act of 1861. Sri Lanka continues to use the Police Ordinance No.16 of 1865. Pakistan has a Police Order from 2002 but it is largely ignored. And the Maldives only created a police force distinct and separate from its National Security Service in 2004.<sup>2</sup> 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 all drafted an ambitious Bill of Rights that enshrined the



sovereignty of citizens, acknowledged the paramountcy of law, provided explicit guarantees of civil and political rights, and enumerated social and economic rights. Yet 60 years later, despite such noble proclamations, everyday policing is unable to protect basic fundamental rights such as the right not to be arbitrarily detained or arrested. Even the absolute and non-derogable right against the use of torture is abused by police throughout South Asia.<sup>3</sup>

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.


## 1.3 What is “Democratic Policing”?

In order for Commonwealth South Asian countries to fulfil the promise of independence and cultivate robust democratic institutions, policing in the region must change. Simply put, democratic nations need democratic policing.<sup>4</sup> While recognising that definitions of democracy can be contested, the approach taken by the United Nations in its human rights training manual for police is most ideal. This definition of democracy operates within the framework of the Universal Declaration of Human Rights and the Convention of Civil and Political Rights and includes:

- being able to take part in government;
- promoting equal access to the public service;
- ensuring that the will of the people is the basis of government;
- ensuring that this will is expressed through elections; and
- upholding the rule of law and protection of rights.<sup>5</sup>

Democratic policing is a term that has emerged over the past decade to describe the characteristics of policing a democracy, where the police serve the people of the country and not a regime.<sup>6</sup> The UN International Police Task Force (1996) succinctly encapsulates what policing in democracies should be like: “In a democratic society, the police serve to protect, rather than impede, freedoms. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised. A democratic police force is not concerned with people's beliefs or associates, their movements or conformity to state ideology. It is not even primarily concerned with the enforcement of regulations or bureaucratic regimens. Instead, the police force of a democracy is concerned strictly with the preservation of safe communities and the application of criminal law equally to all people, without fear or favour.”<sup>7</sup>

Democratic policing sets out a normative framework for police agencies in a democracy even though the systems and strategies for police in one jurisdiction may be quite different from another. It provides a common frame of reference for civil society, policy-makers, donors and the police.<sup>8</sup> A democratic police is characterised by the following: an orientation to serve civic society rather than the state; transparency and accountability runs throughout the organisation; personnel reflects 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.<sup>9</sup> “These values are considered non-negotiable and without all of them, or processes which seek to move the police towards



their achievement, police organisations cannot be considered democratic in their structure, culture or performance.”<sup>10</sup>

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

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

## 1.4 Problems with Policing in South Asia


Policing in South Asia does not command the confidence of the public because it is seen as oppressive, unfair and woefully inefficient. Consequently, the police are frequently alienated from the communities they serve and hence have less chance of successfully containing crime, civil unrest and extremist violence. Even when in desperate need, a visit to the police station is often viewed as a measure of last resort (especially if the person in need happens to be a woman or sexual minority). Across the region a number of 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 excess 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 giving false 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 police will behave lawfully. However, none of the countries in Commonwealth South Asia have what could be described as a transparent and functional external (or internal) accountability mechanism that complies with international good practice. In addition, 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. Though ad hoc commissions of inquiry or national human rights institutions exist in each South Asian country, they have proved unable to hold police accountable for malfeasance or to change its methods.

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 career.

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. For example, public complaints cannot be written because paper is frequently out of stock and if a vehicle is available for use, then it is without petrol. Moreover, irrational provisioning results in surreal situations where hardware is provided (i.e. computers, mobiles, radio sets or forensic equipment), but essential peripherals, maintenance contracts, or training for use are absent.


Fifth, the conditions and conditioning of the lower ranks are unconscionably bad. In addition to the fact that recruitment is often marred by bribery and influence peddling, the officers ultimately employed often fail to reflect the demographic composition of the community being policed. Further, police to population ratios are well below international norms because many sanctioned positions remain vacant. Also, it is not uncommon for police personnel to work 24-hour shifts without a rest day or live in sub-standard barracks. These inadequate conditions of the lower ranks are exacerbated by non-existent or deficient training in investigative techniques and crime scene examination. 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.

## 1.5 Why is Policing in South Asia Deficient?

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

Further, corruption runs deep in each of Bangladesh, India, Pakistan and Sri Lanka. This corrosive practice not only compromises the integrity of the police, but its manifestation amongst the political class, the judiciary and the civil service means that police interaction with each of these sectors is inevitably coloured by the same tarnished brush. Thus, even if policing institutions magically decided one day to eliminate internal corruption, its effort would fall short because it would still be embedded in a larger system that remained unreformed.

Bad policing also exists due to economic reasons. The tremendous poverty in South Asia means that there is a limited pool of money for many competing needs. As a result, police forces throughout the region are not always provided the basic necessities required to perform an effective job. Sometimes this deficiency is a function of mismanagement rather than due to a shortfall in funds. However, when per capita expenditure on policing is 1.40 USD in Bangladesh<sup>11</sup> and 215 USD in the United States,<sup>12</sup> it is clear that the mismanagement of budgets is not the only reason that police have insufficient funds available. 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. For instance, the police are manipulated and exploited by the wealthy and influential for selfish reasons and this is rarely seen as strange or inappropriate. Additionally, inadequate educational services means that the average citizen is rarely aware of his/her rights or even what sort of policing they are entitled to. Thus, it is understandable that the public often sends mixed signals about what kind of police service it wants. When affected by criminal activity it would like an efficient and aggressive police force. But when victimised by police excess, they profess a desire for policing that is “fair and responsive”. This paradox can only be resolved through education and engagement with policing.

## 1.6 Way Forward


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

Second, it is vital to define the contours of the executive-police relationship. In any democracy the ultimate responsibility for ensuring public safety and security lies with the people’s representatives. The police are implementers. As such, the police and political executive are both bound together in the common endeavour of preventing and investigating crime, maintaining law and order and ensuring that the people have a well functioning essential service that protects life, property, 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 properly articulated. A careful balance has to be struck between legitimate “supervision” of the police by the political executive and illegitimate interference and influence. Conversely, the police must always remain accountable to elected politicians for upholding the law and to perform its duties in accordance with the law. If this balance is properly struck, then democratic policing will be inevitable. That is why it is so important to carefully define what “superintendence” of the police actually means and to carve out spheres of competence that ensure that the power of the executive is conditioned while the police have operational responsibility.

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

Fourth, reform will not succeed unless police have a greater respect for the rule of law and democratic norms. An efficient and well provisioned police without constitutional values is likely to be a harsher entity than even at present. The entrenched social conditioning of police has to be addressed if sustainable police reform is to be achieved. For instance, law enforcement agencies on the subcontinent rarely reflect



the multicultural and multiethnic populations they police. The Sri Lanka Police Service is almost exclusively Sinhalese and is increasingly perceived as siding with that ethnicity.<sup>13</sup> In addition, scheduled castes/scheduled tribes and muslims are grossly under represented in the higher ranks of Indian policing.<sup>14</sup> Moreover, none of the countries in Commonwealth South Asia have sufficiently incorporated women into the police services.<sup>15</sup> An important step would be to recruit more minorities and marginalised groups into the policing fold.

Ideally, police reforms need to be done in tandem with reforms in the criminal justice system and in broader governance. 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 the gatekeepers of citizen protection, safety and security, peace and justice. The interplay between the public and the police is usually more immediate, intense and frequent than interactions with the judiciary, bureaucracy or political class. Therefore, if left unchecked and unreformed, policing will continue to undermine security rather than provide it.

The consequences of inaction on this issue are significant. In 2008, 67 suicide attacks in Pakistan killed 973 and injured 2,318.<sup>16</sup> Bangladesh has developed a reputation as the prime transit route for trafficking heroin to Europe from South East Asia.<sup>17</sup> India has been unable to control the ongoing violence taking place in Naxal-affected areas<sup>18</sup> and has also suffered a number of high-profile terrorist attacks in 2008.<sup>19</sup> Further, thousands of people continue to “disappear” in Sri Lanka, with little expectation that those responsible will be caught.<sup>20</sup> 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.

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 like this, as well as consistent long-term advocacy on the issue, are intended to inform and catalyse much needed reforms.

Police reforms are too important to neglect and too urgent to delay.



Chapter 2

# Bangladesh

"The police in Bangladesh have become an extracting agency, rather than anything resembling a service."







## 2.1 Background

Along with India and Pakistan, Bangladesh was a part of British India and thus was (and continues to be) governed by the Police Act of 1861. From Partition in 1947 to the Liberation War of 1971, Bangladesh was known as East Pakistan and therefore shares a common history with Pakistan on the issue of police reform until 27 March 1971 (refer to the chapter on Pakistan for more details). After achieving independence, Bangladesh continued to struggle with an unprofessional and deeply dysfunctional police force. In addition to tremendous poverty, vulnerability to cyclones and political instability, Bangladesh suffered from an incredibly politicised and unaccountable police cadre. As pointed out by a former Inspector General of Police, many committees and commissions have been formed since 1971 to diagnose the problems with the police and formulate specific recommendations. "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 agenda from being implemented."<sup>1</sup>


Bangladesh has developed a reputation as one of the most corrupt and politicised countries in the world.<sup>2</sup> There has been a politicisation of Bangladeshi society at all levels since 1991, including the civil service, the police and the judiciary. In particular, the police in Bangladesh have become an extracting agency, rather than anything resembling a service.<sup>3</sup> The polarisation of Bangladesh culminated with an exceptionally violent election campaign during the latter part of 2006. The violence forced the initial caretaker government, led by Professor Iajuddin Ahmed, to step aside in favour of the military-backed Caretaker Government (CG), led by former World Bank economist Dr Fakhruddin Ahmed.

Ostensibly, the caretaker government is supposed to serve as a neutral third party that facilitates a free and fair election during the transition from one democratically elected government to the next.<sup>4</sup> In this instance the CG assumed power on 11 January 2007, and stayed in control much longer than anyone expected. The reason given for this highly controversial decision was 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, is the CG in a position to hold the cleanest and most transparent election in Bangladesh's history on 29 December 2008.<sup>5</sup>

## 2.2 Abuses by Law Enforcement

However, the record of the CG was decidedly mixed. During the nearly two years that they were in charge, there were a number of well-documented allegations that government forces and police were involved in cases of torture and extrajudicial executions. According to Odhikar's Report on Bangladesh (2007), 64 people were extrajudicially killed by the police that year and another 94 by the Rapid Action Battalion (RAB).<sup>6</sup> In their 2008 report, Odhikar states that 59 people were extrajudicially killed by the police and another 68 by RAB.<sup>7</sup>

In addition, the risk of torture looms over anyone unfortunate enough to be detained by a law enforcement agency in Bangladesh, especially for those individuals that are seen to be in political opposition to the ruling power. According to Odhikar, at least 44 people were reportedly tortured by law enforcement



agencies in each of 2007 and 2008. There have been many documented cases where suspects were picked up by law enforcement agencies, detained, and tortured while they were in custody.<sup>8</sup>

Irrespective of what political party or military-backed government is in power, police forces in Bangladesh have a reputation for wielding heavy-handed tactics when carrying out their duties. For instance, Section 54 of the Code of Criminal Procedure and Section 86 of the Dhaka Metropolitan Police Ordinance 1976 afford the police considerable discretion in making arrests. It has been found that the discretion accorded under these sections is disproportionately abused when the police deal with poor people. Other factors included political rivalry, vested interests and police corruption.<sup>10</sup> Unfortunately, as former additional Attorney General Abdur Razaque Khan once pointed out, “the police are not accountable even under judicial scouting because people are so afraid of mailing complaints against police.”<sup>11</sup>

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 by using minimal possible violence. The Rapid Action Battalion (RAB) is a relatively new law enforcement agency in Bangladesh that has a reputation for utilising aggressive methods. RAB was created in June 2004 based on the Armed Police Battalions (Amendment) Act, 2003. It is a composite force drawing personnel from the police, the paramilitary and the armed forces, with 12 battalions throughout the country at present. The main functions of RAB 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.<sup>12</sup>

However, like the police, RAB has been accused of human rights abuses and using excessive force. During the RAB-led Operation Clean Heart in 2002-2003, about 45,000 citizens were arrested and 60 people 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.<sup>13</sup>

Although RAB is often seen as a separate entity from Bangladesh Police, the truth is that RAB is still considered a part of the policing apparatus. As a result, in spite of 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 an officer of RAB, 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.<sup>14</sup>

## The Torture of Tasneem Khalil

Perhaps the most well-known case was the detention and torture of Tasneem Khalil. Mr Khalil was a reporter for the English language newspaper *The Daily Star* who had also done work for Human Rights Watch and CNN. On 11 May 2007, the Directorate General of Forces Intelligence arrested Mr Khalil apparently for his outspoken criticism of the military's role in extrajudicial killings, torture, arbitrary arrests, and other abuses. According to the Human Rights Watch report on Mr Khalil's case, security forces during emergency rule in Bangladesh often arrested people in the middle of the night without a warrant. They are often in plainclothes, offer no identification and cite the emergency laws to justify their actions.<sup>9</sup> This is precisely what happened to Mr Khalil. At 12:50 am “joint forces”, a term used when the military and police operate in tandem, forcibly blindfolded Mr Khalil and took him to an undisclosed location. It was there that Mr Khalil was beaten and tortured over the next few days, repeatedly accused of being a subversive intent on destabilising Bangladesh. He was forced to “confess” to his crimes of engaging in anti-state activities and propaganda. He was released relatively quickly due to the international pressure that was placed on the caretaker government immediately after Mr Khalil's detention. Upon release, Mr Khalil went into hiding and was eventually able to secure asylum in Sweden.



## 2.3 Police Reform Programme (PRP)

Despite the fact that a number of committees and commissions have looked into the problems associated with policing, none of those efforts resulted in substantive reform. In 2003, the first serious police reform initiative in Bangladesh was started by the United Nations Development Programme (UNDP). The UNDP Bangladesh Country Office got 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 the Bangladesh Police. The UNDP put together a Needs Assessment Report 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.”<sup>15</sup>

From this assessment, the Police Reform Programme (PRP) was created. With funding from the UNDP, the European Community and the UK Department for International Development, the objective of the PRP 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.”<sup>16</sup> By working in conjunction with the Bangladesh Police, the PRP seeks to professionalise the service by improving its efficiency and effectiveness in several key areas:

- Crime Prevention;
- Investigations, Operations and Prosecutions;
- Human Resource Management and Training;
- Strategy and Oversight;
- Programme Management;
- Communication; and
- Trafficking in Human Beings.<sup>17</sup>

The PRP acknowledges that the police alone cannot solve these problems and need to work in close collaboration with 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.

The PRP has identified various systemic issues that serve as obstacles in implementing democratic policing. These include:

- shortfalls in supervisory and managerial competence;
- under-resourced and under-trained police force;
- lack of specialised technical capacity to deal with emerging crimes;
- management and effective operations of the police adversely impacted by external influences with great regularity;
- low number of women police and their low representation in decision-making positions;
- low motivation and morale linked to low pay, poor working conditions and limited promotion prospects, especially at the lower levels; and
- widespread abuse of authority, whilst accountability and transparency are lacking.<sup>18</sup>





### 2.3.1 Model *Thana* (MT)

A recurring theme of police reform discussions throughout South Asia is the issue of resources for the police. In Bangladesh, there are two types of financial budgets: the revenue budget and the development budget. The revenue budget is meant to pay for the running of government (i.e. salaries). The development budget is meant to pay for major investments in the country (i.e. infrastructure). Interestingly, foreign aid given to Bangladesh finds its way to the development budget. Yet, notwithstanding the importance of the police, they are always under the revenue budget. As a result, there is very little money to invest in better policing.<sup>19</sup> In fact, the situation has become so dire that per capita expenditure on policing is 1.40 USD in Bangladesh<sup>20</sup>, as compared to 215 USD in the United States.<sup>21</sup>

The lack of financial resources has severely compromised the functioning of *thanas* (police stations) throughout Bangladesh. This is quite troubling as *thanas* must serve as the foundation of any democratic police service. Mr A.S.M. Shahjahan, former IGP of Bangladesh and leading advocate for police reform (see “Shouting Against the Wind” on page 23), 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 all 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.<sup>22</sup>

The PRP seeks to address the consequences of this funding shortfall by directing much needed resources to the creation of Model *Thanas* (MTs) in various districts throughout Bangladesh. The aim of the MTs 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.”<sup>23</sup> This is done by adopting a pro-people, service-oriented policing. Standard Operating Procedures (SOPs) will be developed for the MTs through workshops that are being held at each Model *Thana*.<sup>24</sup> At the moment, there are 11 MTs with plans of expanding to more geographically diverse locations in 2009.<sup>25</sup>

The philosophy underpinning MTs is to ultimately reform the police at the most basic level. The organisational strategy of MTs focuses on committing the requisite funds necessary to improve the delivery of police services. A visit to both a regular *thana* and a Model *Thana* in Dhaka revealed the differences between the two and the impact those differences ultimately have on service delivery.



## Regular *Thana* in Daskin Khan

Akhtar Hussain, the Officer in Charge (OIC) of the Daskin Khan *Thana*, is overburdened and overstressed. Mr Hussain has been OIC of Daskin Khan since December 2007. He is expected to police 700,000 people with only 1 Inspector, 13 Sub-Inspectors, 12 Assistant Sub-Inspectors and 40 Constables. Compound this lack of personnel with a lack of infrastructure, and his problems increase exponentially. For example, he has only three vehicles to patrol the entire area under his jurisdiction (one of those is only occasionally available, and one is nearly 14 years old and falling apart). Moreover, he was only recently given a fax machine. Prior to that, if the courts required a document for a pending case, he had to send an officer and his only reliable car to the courts to have the document delivered. Without email or a fax machine, this need to hand-deliver necessary documents was costly and inefficient.


In addition to transportation and other infrastructure issues, Mr Hussain identified three areas in desperate need of improvement:

- Time off – A shift often runs from 10 am-2 am and personnel are expected to work every day.
- Residential issues – Police personnel are posted away from families for years at a time.
- Career advancement – Promotions based on merit are very rare. It took Mr Hussain 15 years to go from Sub-Inspector to Inspector.

## Model *Thana* in Uttara

Saiful Alam Chowdhury has served as OIC of Uttara since 24 April 2008. The *thana* was inaugurated as “model” on June 7, 2007. He polices 150,000 people with 1 Inspector, 20 Sub-Inspectors, 28 Assistant Sub-Inspectors and 62 Constables. Mr Chowdhury has a larger number of personnel at his disposal than the OIC in Daskin Khan, even though he is responsible for far fewer people. Mr Chowdhury and the other police personnel at Uttara receive training from the PRP on service delivery and on investigative techniques. At the moment he has at his disposal six motorcycles, one car for himself, and two patrol vehicles. There is a separate area in the station house for intake of complaints and inquiries. In addition, he is equipped with not only a fax machine, but he also has access to new radio handsets, a closed circuit television camera at the station house and a PRP-issued mobile phone. Another feature of the MT is the holding of Open House Day once a month, the objective of which is to have a more transparent operation of policing and to further accelerate the efforts of community-based policing. “On this day people talk directly to the police about their problems in the community. Police talk about what they can do and what they will do to solve specific problems”.<sup>26</sup>

While there is no question that PRP investment in the MTs has resulted in better equipped *thanas*, the critical question is “have the increased resources translated into better policing”? Empirical evidence seems to suggest that it has. An interim evaluation report on the MTs published in May 2007 looked at four of the 11 MTs established at that time. It concluded that the MTs had demonstrated an ability to perform the basic functions of police in a better manner. With the traditional impediments partially addressed (i.e. lack of computers, fax machines and proper intake procedures), the MTs have proved far better in making entries in the General Diary and registering First Information Reports.<sup>27</sup> In addition, the time to reach the place of occurrence was reduced by an average from 45 to 28 minutes. This was said to be directly attributable to the increased number of vehicles supplied. Further, investigation times were reduced by an average from 91 to 56 days. This was said to be due to better support from police forensic labs and enhanced cooperation with the public.<sup>28</sup>



A comprehensive qualitative study on the MTs was conducted in June 2008 and it confirmed the findings of the interim evaluation done in May 2007. It concluded that the “overall observation is that the present service delivery system demonstrates highly positive indications with regard to efficiency and effectiveness across the study model *thanas*.”<sup>29</sup> However, this is not to suggest that the MTs are perfect. In fact, the qualitative study makes it clear that there is significant room for improvement. The following is a partial list of some recommendations on how to improve the existing model:


- comprehensive training programmes are needed in order to improve the skills of police, especially on various conceptual and technical issues;
- reduce 24-hour on call duty of police to strictly 8 hours a day;
- increase recruitment of female police;
- stop frequent transfers – an officer must remain posted at a station for at least three years and future transfers should be done from one MT to another; and
- implement an efficient monitoring and supervision mechanism at the MTs in order to capture the efficacy of implemented reforms.<sup>30</sup>

It appears that the MTs are an improvement to the normal *thanas*, but the failure for substantial improvement 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 alone will not reform police behaviour. Salma Ali, Executive Director of Bangladesh National Women’s Lawyer Association, suggests that so much emphasis was put on improving the infrastructure of the MTs that 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 figuring out how to include the other stakeholders in the process of reform at the station level.<sup>31</sup> The PRP is correct when it states that added resources and changing attitudes must occur in tandem if the initiative of the MTs is to succeed.<sup>32</sup> What remains to be seen is if the MTs can achieve the latter in the longterm.

## Shouting Against the Wind

Police reform in South Asia proceeds incrementally, some would say glacially. However, without the concerted efforts of a few determined current and former officers, even the small steps that have been achieved may not have been possible. In Bangladesh, two leading proponents for police reform are Mr A.S.M. Shahjahan and Mr N.B.K. Tripura. Mr Shahjahan is a former IGP who served as Deputy Leader of the UN team that conducted the Needs Assessment of Bangladesh Police in 2003. He has written prolifically on the need for police reform and tirelessly advocates for a change in police culture.

Mr Tripura is an Additional Inspector General of the Bangladesh Police. During his tenure as the National Programme Director of the Police Reform Programme he has overseen the development of a robust and comprehensive campaign to modify policing structures and introduce accountability mechanisms for the police in his country. One of the challenges for Mr Tripura has been trying to do all of this during the uncertainty and unusual circumstances of a Caretaker Government. It is hoped that once the democratically elected government is in place Mr Tripura can convince it to promulgate the languishing Draft Police Ordinance, 2007.



In Pakistan, Mr Tariq Khosa has been a police officer for over 25 years and served as the Director General of National Police Bureau during 2008. Under his leadership, the National Police Management Board, which works as the permanent secretariat under the Police Order, has been far more active. For instance, the National Public Safety Commission published its first ever Annual Report during his tenure. As a member of the Punjab subcommittee that provided recommendations for the draft Police Order, 2002, police reform is something that Mr Khosa takes very seriously. He firmly maintains that the best accountability mechanism for the police has to come from within the police itself. But as he astutely points out, since the inception of Pakistan the institutions have followed the law of the ruler and not the rule of law.<sup>33</sup>

Mr Prakash Singh has been closely identified with police reforms in India primarily because he was the named plaintiff in the seminal Supreme Court case on this issue. During his many years on the Indian Police Service, Mr Singh was Police Chief of Uttar Pradesh and commanded the Border Security Force. In 1996, he launched a long battle to have police reforms addressed in India. Although it took 10 years to have the Supreme Court issue a ruling, the directives set forth by the Court were largely consistent with what he requested. Mr Singh is currently devoted to ensuring that the states throughout India comply with the Supreme Court Directives.


Mr Jayakumar Thangavelu was a Deputy Inspector General of Legal Affairs in the Sri Lanka Police Service during 1999-2007. With the civil war intensifying each week, he is one of the few voices in that country who devotes considerable time and energy advocating for police reform. Having the audacity to question policing structures, and the corresponding political interference that occurs, Mr Thangavelu has not won too many friends among the political class in Sri Lanka. Yet, despite that, he continues to speak out on this issue because he firmly believes that nothing will change in the country he loves till there is a commitment to the rule of law.

Notwithstanding the incredible individual contributions each of these men have made during their respective careers, one of the critiques often put forward of the officer class in South Asia is that when they discuss police reform there is a tendency to ignore the conditions and sentiments of the constabulary. Due to the hierarchical nature of policing structures in the subcontinent, there is an oft-repeated belief that the officer cadre either does not understand, or chooses not to understand, the plight of constables. It is critical that all voices in the policing structure are heard and incorporated into any substantive dialogue on reform.

## 2.3.2 Gender and Policing

A long-standing issue in South Asia has been the abysmal dearth of women police personnel in both the officer cadres and constabulary. In this regard, Bangladesh is no different than its regional neighbours as it has a significant shortage of female officers. The Police Reform Programme has acknowledged the need for more female representation in the police ranks. As a result, it and the Bangladesh Police jointly organised a launching ceremony of the Bangladesh Police Women's Network on 21 November 2008. The Network will provide leadership for the achievement of national and global women's development objectives through the policewomen's capacity building and professional skill development.





In a speech, the Home Adviser Major General M.A. Matin said, “For the first time in Bangladesh the police have a network or a forum which will strengthen, unite and raise the profile of women in the criminal justice sector nationally and internationally. A positive image for Bangladesh will be created in the region through the launching of the Bangladesh Police Women’s Network. The Network can play an important role in policing. It will help create leadership and professionalism in the women police. The government has a plan to recruit 3000 female police personnel over the next three years to increase the representation of women in the Bangladesh Police.”<sup>34</sup> He also said that a woman-friendly environment in the policing system would be created through the network, dedicated to the support and recruitment of more women.

### 2.3.3 Community-Based Policing (CBP)

Depending on the context, “community-based policing” (CBP) can mean many different things. In Bangladesh, there have broadly been three phases of CBP. The first phase was an initiative of the Bangladesh Police in 1992. At that time, police departments, in conjunction with the Town Defense Party, implemented community policing in Mymensingh town and parts of Dhaka under the name of “Neighbourhood Watch”. There are now more than 100 Neighbourhood Watch initiatives under the community policing scheme.<sup>35</sup>


The second phase was predominantly a non-governmental initiative. Beginning in 2004, the Asia Foundation worked in Boghra, Jessore and Madaripur districts to bridge the communication gap between the police and the community by forming Community Police Forums (CPFs). After the Bangladesh Police failed to catalyse the requisite level of interest in CBP during the 1990s, it was non-governmental organisations (NGOs) that sought to establish community police forums that included 20-25 people from the community, with one person representing the police. The objective was to facilitate a better relationship between the police and community. Unfortunately, since this initiative was not owned by the police and was solely driven by the NGO without an exit strategy, the effort failed to achieve the stated objective of fostering a true community policing approach.<sup>36</sup>

Over the past couple of years, the third phase of CBP was instituted by the Bangladesh Police. They set up an initiative whereby the local communities would get men to perform very basic policing duties. These men would be paid a nominal monthly amount (with money collected from the community) for services rendered. By all accounts, this programme has been effective in alleviating the burden on the police and giving locals a say and stake in how their communities are policed. Unfortunately though, there have been instances where locals involved in CBP have used their position as a cover for vigilante behaviour.<sup>37</sup>

It is for this last reason that the PRP is looking to explicitly incorporate CBP into its programming. In order to ensure that there is a comprehensive and consistent, approach to CBP across Bangladesh, it is the hope of the PRP to invest considerably more time and energy in 2009 on this particular component.<sup>38</sup>

## 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. All told, there are 935 laws in Bangladesh that touch on the issue of policing in some way, shape or form.<sup>39</sup> 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 that the CG, Bangladesh Police and the UNDP undertook the task of putting together a Draft Police Ordinance in 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 possesses some 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 Police Ordinance, 2007. This document is intent on having the police protect human dignity rather than undermine it. This is a drastic change from the way that policing in Bangladesh is typically carried out.

However, the words of the Preamble will have little impact unless attitudes and approaches within Bangladesh Police are modified and improved. At the moment there appears to be some progressive police officials at the top of the Bangladesh hierarchy that are enthusiastic about police reforms. But in the event that those particular individuals are transferred out of their posts, there needs to be a systemic shift in mentality at Bangladesh Police in order to ensure that any progress on reform is not lost.

## 2.4.2 Political Interference

Section 10(2) 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 Police Ordinance, 2007 states that the penalty for violating this provision is a *minimum* of six months imprisonment (to a maximum of two years).

Given the deeply entrenched nature of corruption and interference in Bangladesh, the provision of a minimum sentence is quite exceptional. According to the Institute of Governance Studies at BRAC University, the state exercises strong control over police agencies and many policy decisions regarding police are apparently instigated for political purposes. For instance, on assuming power in October 2001, the government introduced major shifts in different tiers of the police administration. A new Inspector General of Police was appointed and many Officers-in-Charge (OIC) of various police stations were transferred, as well as 48 Superintendents of Police. In addition, about 50 senior officials including Additional Inspector General, Deputy Inspector General, and Superintendent of Police were sent on forced retirement. Reports in 2005 suggested that the length of academy training for 205 trainee Assistant Superintendents of Police was reduced to nine months from 12 months, and in-service training reduced to three from six months. It seems that this abridged training time is for politically-aligned individuals whom the government wanted to ensure were finally selected before their tenure ended in late October.



It is no secret that politics plays a role in the transfer and posting of police officers. In many cases the local MP personally selects the OIC for his constituency. One police officer was cited in the daily star as arguing that “as political parties use 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 fulfill the political will of the government.”<sup>40</sup> 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 (NPC)

Chapter IV of the Draft Police Ordinance, 2007 creates the NPC. As in Sri Lanka and Pakistan, the purpose of the NPC is to have a non-partisan body oversee the functioning of the Police Service. The NPC is composed of four politicians (two from government, two from opposition), four non-politicians (or “independent” members), the Secretary of Ministry of Home Affairs, and the Chief of Police. Some of the duties this diverse group will be tasked with include:

- recommend to the government a list of three police officers for potential appointment as Chief of Police;
- recommend to the government premature transfer of Chief of Police, and other police officers as provided in the Ordinance, before the completion of normal tenure of two years for reasons laid down in Sections 7 and 12 of the Ordinance;<sup>41</sup>
- oversee implementation of plans prepared by different police units;
- require heads of the units to submit to the NPC an annual general report;
- submit an annual report to the government and Parliament;
- recommend reforms for modernisation of laws and procedure in respect of police, prosecution, prisons and probation services; and
- consider the proposals of the Police Policy Group and give its recommendations to the government.

The duties of the NPC are very similar to those of equivalent bodies in the region. The theory of having the NPC is quite noble and indeed necessary. However, the issue is always one of implementation. Even if the Draft Police Ordinance, 2007 can somehow be promulgated, it remains to be seen whether the NPC could operate as envisioned, given the deep-rooted nature of feudal policing in Bangladesh.

### 2.4.4 Police Complaints Commission (PCC)

Chapter VIII of the Draft Police Ordinance, 2007 creates the PCC. The purpose of this body is to provide the public with a means to complain about police misconduct. This five-member body will have a “brilliant record of integrity and commitment to human rights” and shall 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). Some of the functions the PCC will perform include:

- receive from the NPC, or an aggrieved person, a written complaint of neglect, excess or misconduct against any Police Officer;

- process the complaint and refer the ordinary case to an appropriate authority for action and report, and in serious cases initiate action on its own;
- receive from the NPC or the Range Police Officers or head of Units any report of death, rape or serious injury to any person in police custody and take steps to preserve evidence relating to such incident;
- request the Chief Justice, in serious cases, to appoint a District and Sessions Judge for a judicial enquiry;
- appoint in appropriate cases a police officer who is senior in rank to the officer complained against as an inquiry officer, and supervise the inquiry proceedings;
- send a copy of the inquiry report to the competent authority and direct it for departmental action on the finding of the enquiry or registration of a criminal case as appropriate and direct the competent authority to submit a report about the action taken;
- inform the complainant of the outcome of the enquiry in writing as soon as possible;
- where the PCC is not satisfied with the order in cases referred to it, it may send a report to the next higher authority for revision of the order by the awarding officer and the process be repeated till it is considered by the final authority;
- recommend disciplinary action against an enquiry officer for wilful neglect or mishandling of an enquiry; and
- prepare and send to the government an annual report.


Similar to the NPC, the role of the PCC is to serve as a counterweight to the extraordinary forces that negatively colour policing in South Asia. By having a body, independent from the police, review complaints of custodial death, serious injury or custodial rape, the public can hope that perhaps their case will be fairly heard.

## 2.4.5 Other Notable Provisions

The following are additional provisions of the Draft Police Ordinance, 2007 that are worth noting:

- Section 7(2): Chief of Police (or IGP) shall have tenure between 2-3 years;
- Section 7(8): Chief of Police can only be transferred or removed from post by the government (with concurrence of NPC) through a written order specifying reasons, consequent upon his: a) voluntary application on personal ground; or b) conviction by a court of law in a criminal offence; or c) punishment of dismissal, removal, or compulsory retirement from service of or reduction to a lower post, awarded under the provisions of the government Servants (Discipline and Appeal) Rules, 1985 or any other relevant rules;
- Section 10(1): Superintendence of police vests with the government;
- Section 21(1): Creation of the Special Branch (for the collection, collation, analysis and dissemination of intelligence);
- Section 21(3): Creation of the Criminal Investigation Department (CID) for investigating cross-district or cross-border crime;
- Section 21(5): CID will look at cyber crime, organised crime, terrorist offences, homicide cases, trafficking in human beings, economic offences, ICT-related crimes;
- Section 56: Community participation in policing;
- Section 69: Creation of the Bureau of Police Research (BPR);
- Chapter IX: Creation of police tribunals to deal with matters of internal discipline;
- Chapter X: Welfare of police personnel;



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- Chapter XI: Creation of the Police Policy Group (analogous to the NPMB in Pakistan), tasked with coordinating the efforts of the NPC, PCC and BPR on matters relating to professionalism, transparency, accountability, service condition, professional standard and ethics of the Police personnel.

## 2.4.6 Prospects for Promulgation

Although there was initially tremendous enthusiasm among police officials, donor agencies and civil society regarding this Draft Police Ordinance, 2007, it has encountered considerable difficulty in getting enacted. The Draft Police Ordinance, 2007 was first published in June 2007. On 12 August 2007, the Bangladesh Police submitted it to the Home Ministry, which later asked the former to submit it again after translating it into Bangla and mentioning differences between the draft and the 1861 law. Police officials then re-submitted the Draft Police Ordinance, 2007 to the Home Ministry at the end of 2007, which forwarded it to the Chief Adviser's Office (CAO). The CAO sent a letter to the Home Ministry on 16 January 2008, asking for consultation with stakeholders at *thana*, district and divisional levels. The Home Ministry on 29 January 2008, forwarded the order to the police headquarters with an additional order to "submit proven information and papers of the consultation workshops".<sup>42</sup>

The PRP and Bangladesh Police then arranged to have thousands of copies of the Draft Police Ordinance, 2007 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 Home Ministry. However, nothing happened to it from June 2008 until December 2008.

With national elections finally scheduled to take place on 29 December 2008, there is a widespread belief that the delay in promulgating the Draft Police Ordinance, 2007 is entirely due to the intransigence of bureaucrats who view the ordinance as an attempt to dilute their power and administrative control over the police. Since the politicisation of the police is a well documented truth in Bangladesh, it is believed that regardless of whether the Awami League or the Bangladesh National Party are elected in the upcoming polls, neither party will be too interested in promulgating an ordinance that seeks to free the police from undue political interference. By delaying enactment, the bureaucrats have attempted to engineer the death of an ordinance that would have diminished their hold on power and influence.

Tactically, it was a strategic error on the part of the Caretaker Government (CG) not to include the Awami League and Bangladesh National Party in its attempts to reframe Bangladeshi law. Although the political parties of Bangladesh can sometimes be obstructionist, that is an insufficient reason to not consult them on the tremendous changes the CG sought. Ultimately, the CG knew that it was going to have to transition power from itself to a democratically elected government. Therefore, it was imperative that the process of enacting new ordinances included the people who would finally promulgate them into law. However, the CG did not do that during the two years it was in power.

It is hopeful that the Awami League's electoral manifesto states: "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." However, it remains to be seen what ordinances a newly elected government will retain once it assumes office. Many are sceptical as to whether it will pass the draft ordinance that it has had little input in crafting.



## 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 new democratically elected government of Bangladesh should commit immediately upon assuming office 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 have things change.
2. **Put pressure on Bangladesh Civil Service (BCS) to accept reform.** The new government must persuade the BCS to accept the amendments to police administration made in the Draft Police Ordinance, 2007.
3. **Provide for more stringent review of RAB misconduct.** As presently drafted, RAB personnel would not be subject to scrutiny under the Draft Police Ordinance, 2007. Given that existing mechanisms have proved inadequate in holding RAB accountable for torture or extrajudicial killing, the Government of Bangladesh must implement measures that will address this shortcoming.
4. **Invest more heavily in improving the *thanas*.** Given that democratic policing can only be achieved by transforming the culture and behaviour at the *thana* level, it is critical that more resources and time are devoted to the Model *Thanas*. Specific measures that can be taken include:
  - a. Apportion more of the development budget to the creation of additional MTs;
  - b. Conduct comprehensive training programmes in order to improve the skills of police, 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 at least three years. Future transfer should be done from one MT to another;
  - f. Implement an efficient monitoring and supervision mechanism at the MTs in order to capture the efficacy of implemented reforms.

### Bangladesh Police

5. **Bolster efforts to establish community-based policing (CBP) in districts around Bangladesh.** Given that this programme has been effective in alleviating the burden on police, while also providing locals with a say in how their communities are policed, this is a programme that ought to be expanded and replicated. Some ways to do that include:
  - a. Involve senior Bangladesh Police officials in the effort to establish a community policing strategy. The ownership of CBP by those with the most influence will increase likelihood of success;
  - b. Strengthen training mechanisms of the police and community organisations that will transfer the necessary tools to deal with community issues. This includes



- mainstreaming the human resources and training activities by integrating the Community Policing component into basic and advance training programmes;<sup>43</sup> and
- c. Increase the number of consultations between the police and community. The success of CBP is contingent on open and constant dialogue.
6. **Undertake measures to provide training and support that seek to change *thana* culture.** Since the political situation in Bangladesh is usually quite volatile and unpredictable, it is unclear whether the Draft Police Ordinance, 2007 will be promulgated. However, in the absence of promulgation, the Bangladesh Police should not wait to implement changes that are necessary. Therefore, it should immediately provide the necessary training to educate the lower ranks on investigation techniques and proper ways to handle victims and witnesses with respect and dignity.
  7. **Revise and update regulations for the police.** The current regulations for Bangladesh Police are from 1943. Since the fate of the Draft Police Ordinance, 2007 remains unclear, it is important that reform of the police continues irrespective of what happens to the Ordinance.

## Civil Society Organisations (CSOs)

8. **Work with the Bangladesh Police to encourage community policing.** Continue building on the work started by the Asia Foundation and others, with particular attention paid to ensuring that any programmes are in sync with the efforts undertaken by Bangladesh Police in this regard.
9. **Campaign and educate on the need for police reforms.** Given the poor state of policing in Bangladesh, it is important that CSOs are able to educate the average citizen about the sort of policing they are entitled to. Especially in the aftermath of the December 2008 election, there is increased interest in democracy and governance issues and it is important for CSOs to capitalise on this heartening trend.
10. **Develop police-specific documentation centres.** With police torture commonplace, CSOs should emulate the efforts of Odhikar and methodically document the abuses committed by law enforcement. 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

“Despite far-reaching changes in governance and India’s transition from a colonised nation to a sovereign republic, the archaic Police Act of 1861, or acts modeled after it, continue to govern policing in India.”





## 3.1 Background

Despite far-reaching changes in governance and India's transition from a colonised nation to a sovereign republic, the archaic Police Act of 1861, or acts modeled after it, continue to govern policing in India. According to the Indian Constitution, policing is a state subject.<sup>1</sup> Thus, states must enact their own Police Acts but most states have chosen to simply adopt the 1861 Act. Those states that have enacted their own Acts have often passed legislation that closely resembles the 1861 Act.

However, the Government of India (GoI) still has a prominent role when it comes to policing. It retains jurisdiction over policing in the Union Territories and central police organisations like the Central Bureau of Investigation (CBI)<sup>2</sup> and the recently created National Investigation Agency (NIA).<sup>3</sup> Yet, notwithstanding its jurisdiction over certain policing organisations, the GoI has chosen to retain the Police Act of 1861 instead of updating it with a new law that is more relevant for modern times.

This Act, and the kind of policing culture that has been allowed to flourish in independent India, have led to countless abuses by police officers, a dysfunctional and corrupt service, and a force that is almost entirely divorced from the communities it is tasked with protecting. After conducting an exhaustive survey that examined police torture in 47 districts throughout India, People's Watch extrapolated those findings to all 620 districts in the country and projected "that there is a common prevalence of 1.8 million cases of torture, ill treatment and inhuman behaviour at the hands of the police" that takes place every year in India.<sup>4</sup>

The need for police reform has been acknowledged by successive governments. From 1979 onwards, a number of commissions were set up by the central government to suggest ways to reform the police.<sup>5</sup> Yet, the recommendations of these commissions have not been implemented and their reports have largely been ignored (see "Selected Recommendations of the National Police Commission Reports").

In 1996, two former Director Generals of Police (DGPs) took a different tact and requested the Supreme Court of India to direct central and state governments to adopt a set of measures that would address the most glaring deficiencies in the functioning of the police. The petitioners based their requests on the findings of the aforementioned police reform commissions. However, as with most cases that go before the Supreme Court, the wheels of justice moved very slowly.

But after 10 years of litigation, which had already followed decades of inaction on this issue, a diluted police reform process finally commenced in India on 22 September 2006. On that date the Supreme Court delivered a historic judgment in *Prakash Singh and Others vs. Union of India and Others*<sup>6</sup> (hereinafter "*Prakash Singh*"), whereby it instructed the GoI and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start reform. 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."<sup>7</sup>

However, the subsequent implementation of the directives at the state and national levels has been abysmal. Considering that GoI counsel and lawyers for the plaintiff agreed to the wording of the directives before the Court issued them, and that none of the states objected to the directives at the time, the level of non-compliance with the Court's ruling is deeply puzzling. The Court stated that the directions are binding upon central and state governments until they frame "appropriate legislations". Unfortunately, subsequent events indicate that the GoI and state governments have chosen to blatantly disregard the Court's edict on this matter.

## Selected Recommendations of the National Police Commission Reports

### *1<sup>st</sup> Report*

Police hierarchy should consider and deal with the large number of complaints that are made against the police. District Inquiry Authority should be set up in each district. This would be “an independent oversight authority” to look into complaints.

### *2<sup>nd</sup> Report*

The basic role of the police is to function as a law enforcement agency and render impartial service to the law, without any heed to the wishes, indications or desires expressed by the government which either come in conflict with, or do not conform to, the provisions contained in the Constitution or laws. This should be spelt out in a new Police Act.

In the existing system, the police function under the executive control of the state government. The manner in which political control has been exercised over the police in this country has led to gross abuses, resulting in the erosion of rule of law and loss of police credibility as a professional organisation. A State Security Commission should be set up to help the state government discharge its superintendence responsibilities openly and within the existing legal framework.

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

### *3<sup>rd</sup> Report*

A special investigation cell should be created in the police department at the state level to monitor the progress of investigation of cases under the Protection of Civil Rights Act or other atrocities against Scheduled Castes and Tribes.

### *4<sup>th</sup> Report*

Senior officers should make surprise visits to police stations to detect persons held in illegal custody and ill treatment of detainees.

Police performance should not be evaluated primarily on the basis of crime statistics or number of cases solved.

### *5<sup>th</sup> Report*

Women police officers should be given a greater role in investigations work. Women officers should become an integral part of the police organisation. Women police officers should share all the duties performed by male officers and should be recruited in much larger numbers than at present.

### *6<sup>th</sup> Report*

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

### *7<sup>th</sup> Report*

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

### *8<sup>th</sup> Report*

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

The current Police Act should be replaced.

## 3.2 Supreme Court Directives

The Supreme Court's directives are meant to cure the root causes of police malfunctioning that have been around since India achieved independence. They are intended to do three things:

- Ensure that there is a buffer body between police and politicians which will allow the police to be functionally autonomous even as they are supervised by the political executive. In addition, the oversight of police by the elected representative is conditioned by a certain amount of process and regulation. As a result, the relationship will lose its present characteristic of unfettered discretion and illegitimate interference. **Supreme Court directive: Set up a State Security Commission.**
- Ensure that there is an *independent civilian* oversight body that can hear complaints against police malfunctioning. This is intended to provide a quick and specialised local remedy for people aggrieved by the police. It is hoped that its work would discern patterns of behaviour and make recommendations that if obeyed would change the police institutionally and make it better with each passing year. **Supreme Court directive: Set up a Police Complaints Authority.**
- Ensure that the internal systems of the police and its management are allowed to function in a professional manner. Thus, there can be no excuse for substandard performance. **Supreme Court directive: Set up a Police Establishment Board.**

The seven directives, in their entirety, stipulate that governments must:

(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;

(2) Ensure that the Director General of Police is appointed through a merit-based, transparent process and enjoys a minimum tenure of two years;

(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, which will decide all transfers, postings, promotions and other service-related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police;

(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, who should also be given a minimum tenure of two years;



(6) Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody; and

(7) Separate the investigation and law and order functions of the police.

In *Prakash Singh* the Supreme Court required all governments, at centre and state levels, to comply with the seven directives by 31 December 2006 and to file affidavits of compliance by the 3 January 2007. When the Supreme Court convened a hearing on 11 January 2007, in order to assess compliance with its judgement, the responses from states ranged from partial compliance with the directives (through the use of executive orders/government memorandums) to articulating strong objection to the directives.<sup>8</sup> During this hearing a significant number of states requested the Court to grant them more time to comply with the directives.<sup>9</sup>

However, after the Court granted an extension, the Gol and many of the states have used every opportunity to avoid enacting substantive police reform instead of complying with the directives. The following is a chronology of the unconscionable delay that has transpired since the Supreme Court's ruling in *Prakash Singh*:

Chronology: Prakash Singh & Others. Versus Union of India & Others	
Two retired DGPs, Prakash Singh & N.K. Singh, file a public interest litigation in the Supreme Court	1996
Supreme Court delivers judgment on the Prakash Singh petition, gives states until 3 January 2007 to comply	22 September 2006
Supreme Court hearing on state compliance with its directives of September 2006	11 January 2007
Compliance deadline imposed by Supreme Court for directives 2,3,5	Immediate as of 11 January 2007 (through executive orders)
Extension for implementation of remaining directives 1,4,6,7	31 March 2007
Deadline to file affidavits of compliance	10 April 2007
Supreme Court dismissal of review petitions filed by 6 states.	23 August 2007
Supreme Court hearing on contempt petition filed by Prakash Singh	14 December 2007
Supreme Court hearing and deadline for states to file compliance report	13 March 2008

Supreme Court considers establishing a Monitoring Committee	28 April 2008
Supreme Court passes an order to set up a Monitoring Committee (MC)	16 May 2008
Supreme Court hearing declines to rule on contempt before MC's report	16 December 2008

In May 2008 the Supreme Court created a three-member Monitoring Committee to oversee state compliance with the directives. It was given a two-year term. On the face of it, this might appear to be a positive development. However, advocates of police reform are disappointed that the sense of urgency articulated by the Supreme Court in September 2006 and January 2007 has largely been abandoned in favour of an incremental/committee approach that has historically failed. In addition, the mere fact that the Supreme Court chose to appoint a committee rather than utilise its own powers to compel compliance appeared to be an abdication of the Court's responsibility.

### **An Exercise in Continued Delay**

The Supreme Court created the Monitoring Committee through its order on 16 May 2008. Despite having four meetings in 2008 the Committee has only considered the compliance of Andhra Pradesh, Madhya Pradesh, Uttar Pradesh and Orissa.

The Committee, chaired by former Supreme Court Judge K.T. Thomas, was given a term of two years (subject to possible extension). It was asked to present its first report to the Court within six months. Although the Supreme Court received the Committee's interim report on 20 October 2008, the Bench made no mention of the report's content during the hearing that took place on 16 December 2008. Instead, the Court only issued an order that stipulated the amount to be reimbursed to the Committee members for each meeting they attend. It is troubling that the Court did not communicate to the named parties the substance of the report and has not pressed the Committee to work more quickly. Even though the express purpose of creating the Monitoring Committee in the first place was ostensibly to expedite state compliance with the directives, it appears that after seven months the Committee has not had the desired impact.



## 3.3 State Governments: Status of Police Reform

Ever since the Supreme Court issued its directives, state governments throughout India have been committed to not implementing them in letter or spirit. From Andhra Pradesh arguing that the establishment of Police Complaint Authorities would demoralise police, to Uttar Pradesh contending that the creation of State Security Commissions would undermine the power of the elected government, most states have attempted to avoid, circumvent or simply delay police reforms.

Those states that are looking to delay implementation have either permitted legislative drafting to stall, or they have passed a bill that runs contrary to the directives. A visit to CHRI's website will provide greater detail on what most of the states have included in their respective new acts. To date, no state has passed legislation that encapsulates all the Supreme Court directives. In particular, states have fought to dilute the State Security Commissions and the Police Complaint Authorities.

### 3.3.1 State Security Commission (SSC)

As of December 2008, only 12 states out of 28 have established SSCs through legislation or government orders. These are Assam, Bihar, Chhattisgarh, Gujarat, Harayana, Himachal Pradesh, Kerala, Punjab, Rajasthan, Sikkim and Tripura. In practice, however, each of these new police acts has systematically undermined the Supreme Court's directive regarding SSCs. The SSCs suffer from a skewed composition, limited mandate and curtailed powers.

#### Composition

The SSC, as envisaged by the Supreme Court, would be headed by the Chief Minister or Home Minister and have the DGP of the state as its ex-officio Secretary. With regard to other members, states were given the discretion to choose between models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee. The idea was to ensure that the SSC would be able to function independent of government interference. Instead, most state governments that have enacted legislation have manipulated the composition of the SSCs to ensure their continued control over the police.

For example, the Gujarat government, which passed the Bombay Police (Gujarat Amendment) Act, 2007, has reserved for itself and the police five out of seven seats on the SSC. It consists of the Chief Minister, the Home Minister, the Chief Secretary, the Home Secretary and two non-official members.<sup>10</sup> Even the provision for two non-official members in the Act is mere window dressing as they are to be appointed directly by the state government without an empanelment process.

Some other states have included a retired judge or the leader of the opposition to maintain a facade of independence but have nevertheless ensured that the majority of the members on the commission are police officers, government officials or members who are beholden to the government.

## Mandate

The mandate of the SSC is to ensure that there is a buffer between the police and the state government, so as to permit the police to be functionally autonomous even as they are supervised by the political executive. However, state governments have been extremely reluctant to comply with this and have considerably diluted the SSC's mandate when drafting new legislation. For instance, the Assam Police Act, 2007 states that the SSC will "identify performance indicators to evaluate the functioning of the Police Service."<sup>11</sup> This is a significant departure from what the Court intended, which was not merely to identify indicators but to actually *conduct the evaluation of the police itself*.

Many states, such as Gujarat, have stipulated that the SSC's Annual Report should be submitted only to the state government and not the Legislative Assembly as ordered by the Supreme Court. Moreover, none of the new statutes have mentioned that one of the functions of the SSC is to ensure that the state government does not exercise unwarranted influence on the police. Thus, it is clear that the state governments have no intention of allowing the SSC to function as intended.

## Powers

State governments have shown a complete disregard for the Supreme Court judgement, which explicitly states that SSCs shall possess binding powers. All 12 states have given their State Security Commission the power to make recommendations, but none have explicitly stated in their legislation that such recommendations will be binding on the concerned government. This is illustrated by the Uttarakhand Police Act, 2007, which limits the SSC's power to simply provide "suggestions" and "advice" to the state government.<sup>12</sup>

It can thus be assumed that the state government has free rein to disregard any recommendations made by the SSC that it finds politically inconvenient. The widespread practice of circumscribing the SSC's powers means that the Commissions will be incapable of having any real impact on police policy and performance.


## 3.3.2 Police Complaints Authorities (PCAs)

As of December 2008, only 15 states out of 28 have established PCAs through legislation or government orders. These are Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Kerala, Maharashtra, Rajasthan, Sikkim, Tripura, Uttarakhand, Punjab and Orissa.<sup>13</sup> However, none of these states have enacted legislation that actually established functioning PCAs on the ground. Further, composition, mandate and scope of powers of these PCAs vary quite considerably from state to state (see "Police Complaint Authorities in India" table on page 43). As a result, their functionality and effectiveness as oversight and accountability mechanisms also differ.

## Composition

In its directives the Supreme Court expressly ordered that the Chairman of the state level PCA be a retired judge of the High Court or Supreme Court, chosen by the state government out of a panel of names proposed by the Chief Justice. The other members of the PCA are to be 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 that the members appointed would be independent-minded individuals who would go about their work without fear or favour.

In practice, however, this direction has been systemically undermined by every state which has enacted legislation or government orders establishing PCAs. Without exception, PCA members across India have been appointed directly by state governments. As these members are essentially political appointees, they are much more likely to behave in accordance with what the executive wishes and do nothing that would displease the government or the police.

Some states, like Kerala, have actually appointed *servicing police officers* to their authorities. Others, like Gujarat, have appointed *sitting Members of Legislative Assembly* as members of their district authorities. With such a composition, it is highly improbable that these PCAs would function as a robust, independent oversight mechanism as intended by the Supreme Court.

## Mandate

The Supreme Court laid down a mandate for the Police Complaints Authorities in its 2006 judgement.<sup>14</sup> The Court required each state government to set up a PCA at the state and district level. The state-level Authority is empowered to look into allegations of “serious misconduct”, which is defined as: death; grievous hurt; or rape in custody.

The district-level Authorities are empowered to look into all complaints of: death; grievous hurt; rape in police custody; allegations of extortion; land/house grabbing; or any incident involving serious abuse of authority.

The Court laid down that the jurisdiction of the state and district level Authorities are tied to the *ranks* of officers being complained against. The state-level Authority will look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority will inquire into complaints against officers of the rank of Deputy Superintendent of Police and below. Importantly, in relation to their mandate, the Court laid down that the recommendations of the Complaints Authorities at both the state and district levels “for any action, departmental or criminal, against a delinquent police officer shall be **binding** on the concerned authority”.

The states of Uttarakhand, Tripura, and Assam have experimented slightly with the Court’s formulation. For example, in addition to death, grievous hurt or rape in custody, the Uttarakhand Police Act 2007<sup>15</sup> expands the definition of “serious misconduct” to include: arrest or detention without following the due process of law; violation of human rights; or corruption. The 2007 Tripura Police Act replicates the same language.<sup>16</sup> Assam expands the standard definition of “serious misconduct” to include: arrest or detention without due process of law; forceful deprivation of a person of his rightful ownership or possession of property; blackmail or extortion; or non-registration of First Information Report.<sup>17</sup>

## Powers

All Authorities that have been set up have the power to take cognisance of complaints made by the victim or someone complaining on their behalf. Some states, such as Assam and Haryana, also allow the National

Human Rights Commission or the State Human Rights Commission to make complaints. In addition, Assam, Haryana, Himachal Pradesh and Rajasthan provide for their PCAs to initiate inquiries *suo moto*.

All states have vested their Authorities with the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. As such, while carrying out their inquiries they have the power to summon and enforce witness attendance, receive evidence of affidavits and requisition any public record.

Despite these powers on paper, however, the Authorities' work has been severely hampered by the fact that none of them have been provided with their own investigating staff. This is in spite of the fact that the Supreme Court's judgement clearly states that PCAs may utilise the services of retired investigators from the Criminal Investigation Department (CID), Intelligence, Vigilance or any other organisation. Without independent investigators, the PCAs face grave limitations on the extent to which they can actually ascertain the facts of cases before them.

After completing their investigations, most PCAs have the power to either register an FIR if an offence is made out or to initiate departmental action if a breach of discipline is found. Sikkim and Tripura go further in providing their PCAs with the power to direct the government to pay monetary compensation to the victims of police misconduct.

The Supreme Court directive clearly stated that any recommendations of the PCA against a delinquent police officer shall be binding on the concerned authority. With the honourable exceptions of Assam, Goa, Himachal Pradesh and Kerala, most states have watered down the powers of their respective PCAs by not making their recommendations binding. Without binding powers, state governments and the police are free to disregard the recommendations of the PCA whenever they find it convenient to do so. As a result, these "toothless" PCAs will not bring about accountability and they will be unable to change the culture of impunity that exists within police forces across India.



## Police Complaints Authorities in India

Authority	Established By	Constituted on Paper/ Ground Level	Presence of Serving Government Officers	Powers Binding/Non-Binding	Rules Framed By	Office
Assam State Level	Police Act	Ground	Yes	Binding May monitor DP	Authority	Temporary
Assam District Level	Police Act	Paper	No	Not Binding	Silent	None
Bihar District Level	Police Act	Paper	Yes	Not Binding May monitor DP	Silent	None
Chhattisgarh State Level	Police Act	Paper	No	Not Binding	Silent	None
Gujarat State Level	Amendment Act	Paper	Yes	Not Binding	Silent	None
Gujarat District Level	Amendment Act	Paper	Yes	Not Binding May monitor DP	Silent	None
Haryana State Level	Police Act	Paper	No	Binding	Authority	None
Himachal Pradesh State Level	Police Act	Paper	Lok Ayukta to function as PCA	Binding	Silent	None
Himachal Pradesh District Level	Police Act	Paper	Yes	Not Binding May monitor DP	Silent	None
Kerala State Level	Police Act	Ground	Yes	Binding	Silent	Temporary
Kerala District Level	Police Act	Ground	Yes	Binding	Silent	Temporary
Rajasthan State Level	Police Act	Paper	Yes	Not Binding May monitor DP	Silent	None
Rajasthan District Level	Police Act	Paper	Yes	Binding May monitor DP	Silent	None
Sikkim State Level	Police Act	Paper	No	Not binding May monitor DP	Authority	None
Tripura State Level	Police Act	Ground	No	Not Binding May monitor DP	Authority	Temporary
Uttarakhand State Level	Police Act	Ground	No	Not Binding May monitor DP	Authority	Temporary
Goa State Level	Government Order	Ground	No	Binding	Silent	Temporary
Maharashtra State Level	Government Resolution	Paper	Yes	Not Binding	Silent	None
Maharashtra District Level	Government Resolution	Paper	Yes	Not Binding May monitor DP	Silent	None
Orissa State Level	Government Notification	Paper	Lok Ayukta to function as PCA	Not Binding	Silent	None

### 3.3.3 Bright Lights of Reform

Despite the fact that most states refuse to implement proper reform, there are some examples where they have accepted that police reform is necessary and have taken practical steps to professionalise the police. The Meghalaya state government set up a four-member Police Reform Committee in 2005, well before the Supreme Court's directives in *Prakash Singh*. This committee had fairly broad terms of reference and has travelled all over the state to examine problems that needed addressing. They consulted members of the public as well as the police in finalising their recommendations. The state government accepted the majority of the committee's recommendations. Meghalaya has issued notifications to comply with all the directives.

Arunachal Pradesh has already consulted Superintendents of Police on their policing challenges and drafted a Strategic Policing Plan for the state with detailed performance targets, milestones and timelines for achievement.

Himachal Pradesh has released a Five Year Strategic Policing Plan (2007-2011). It is heartening to note that the DGP in the foreword to the Plan states that it has been formulated after extensive consultation with a cross-section of people, members of the community, leaders, opinion makers and police officers.

A recent police reform initiative that is attracting considerable attention is the Massachusetts Institute of Technology (MIT) – Rajasthan Police Collaborative Project. Labelled “the first rigorously evaluated police reform project in the world,”<sup>18</sup> a team from the MIT J-Poverty Action Lab collaborated with the Rajasthan Police from 2005-2008 with the objectives of enhancing police performance, improving public perception of the police and gathering objective information about the same. Four reform initiatives were evaluated in 150 police stations over 11 districts:

**In-service training programme:** This included modules on a) professional enhancement of investigating officers for improving their level of competence and encouraging use of scientific techniques and b) improving public relations with inputs on ‘soft skills’.

**Community observers:** Introduced for the first time, the community observers were local volunteers chosen to sit in the police station for approximately three hours in the morning and evening (peak hours), with the sole purpose of observing the activities within the police station. As an outreach programme it was intended to increase public awareness of the roles of the police, improve police behaviour and encourage citizens to visit the police station.

**Weekly day off and duty roster system:** Under this, the entire staff in selected police stations (except the Station House Officer) received one day off every seven days. In addition, each person was given the opportunity to perform all the duties at the police station on a roster basis. The goal was to create a transparent and fair system of work allocation that would lead to lower stress and higher overall productivity.

**Freezing of transfers:** All administrative transfers in the police stations were prohibited for a period of one and half years since frequent transfers (due to outside interference) had an adverse effect on the professional and family lives of police personnel.

The project found that the most significant reforms were the freezing of transfers and the implementation of training modules. The no-transfer policy saw a 30% increase in crime-victim satisfaction and a 19%



decrease in the community's fear of the police. It also reduced staff complaints of unfairness. Thus, the training modules are being expanded to the rest of Rajasthan as a result.

According to the Rajasthan Police, "this is probably the first genuine effort of administrative reform in this part of the world where a government department has willingly opened itself to a neutral agency to identify the areas of concern in their basic field unit and rigorously evaluate the effectiveness of reform to provide a responsive, accountable and transparent police to its citizens."<sup>19</sup>

### 3.3.4 Summary of Legislative Progress

The following 24 states (out of a total of 28) have either recently passed new police legislation, amended an existing act, or have commenced work to draft new police legislation:

State	Work in Progress
Madhya Pradesh	Drafting underway
Andhra Pradesh	Drafting underway
Arunachal Pradesh	Drafting underway
Jharkhand	Drafting underway
Uttar Pradesh	Drafting underway
West Bengal	Constituted a drafting committee in March 2007
Jammu & Kashmir	Drafting Committee set up
Manipur	Police Reforms Bill drafting underway
State	Bills
Tamil Nadu	Tamil Nadu Police Bill, 2008 tabled in Legislature on 14 May 2008
Karnataka	Draft Bill completed by end of 2008, but it has not been tabled
Goa	Goa Police Bill tabled in the Legislative Assembly 27 August 2008. Bill has been referred to the Select Committee.
Orissa	Orissa Police Bill submitted by working group to drafting committee
State	New legislation passed after <i>Prakash Singh</i>
Bihar	Bihar Police Bill passed 28 March 2007, Governor's assent 30 March 2007
Tripura	Tripura Police Bill passed 29 March 2007, Governor's assent 7 April 2007

State	New legislation passed after <i>Prakash Singh</i>
Chhattisgarh	Chhattisgarh Police Bill passed 20 July 2007, Governor's assent 27 September 2007
Assam	Assam Police Bill passed 8 August 2007, Governor's assent 30 August 2007
Haryana	Haryana Police Bill passed 21 March 2007, Governor's assent 28 May 2008
Himachal Pradesh	Himachal Pradesh Police Bill passed 28 August 2007, Governor's assent 21 September 2007
Kerala	Kerala Police (Amendment) Act passed 19 September 2007. Kerala is also in the process of drafting revised legislation that has not yet been tabled in the Assembly.
Rajasthan	Rajasthan Police Bill passed 21 September 2007, Governor's assent 30 October 2007
Sikkim	Sikkim Police Act received Governor's Assent 28 June 2008.
Punjab	Punjab Police Bill passed December 2007, Governor's assent 24 January 2008
Uttarakhand	Uttarakhand Police Bill passed 2 January 2008, Governor's assent 2 January 2008
Gujarat	Bombay Police (Gujarat Amendment) Bill, 2007 passed by Legislative Assembly 20 July 2007, came into force 23 April 2008

There is no current information on the drafting of new Bills in Maharashtra, Meghalaya, Mizoram and Nagaland.

### 3.3.5 The Need for Public Input

In order to ensure that a state passes the best possible police-related legislation, one that ultimately addresses police reform in a comprehensive manner, it is important that governments open the drafting process to input from civil society and other interested stakeholders. Good practice requires democratic governments to inform the public about their intention to reform *and* enable them to participate in the process. This will increase the likelihood that any new law will address the concerns of the people most affected by unaccountable and ineffective policing.

However, except for Kerala, Karnataka and Meghalaya, there has been a complete lack of transparency, community consultation or civil society input in this process by most states. In many states members of the public are completely unaware that their government is in the process of reforming the police laws. Only by active participation in this public consultation process can members of civil society help to ensure that new police legislation meets the requirements of the Supreme Court and that it strengthens a democratic police service.

## Draft Kerala Police Act, 2008: Improve the Means for Public Input

Kerala's police reform process is at a crossroad. In November 2007, under the leadership of retired Justice V. R. Krishna Iyer, the Kerala Law Reforms Commission was tasked with drafting a new police act that took into account the recommendations of the NPC and the directives issued by the Supreme Court in *Prakash Singh*. This draft is available on the Law Reform Commission's website. At the same time, a second draft bill was put together by DGP Mr Jacob Punoose. This draft is also available on the internet.

The Law Reform Commission draft bill is far better than the one drafted by the police, and if passed would go a long way in reforming law enforcement in Kerala. However, there is ambiguity as to which draft will ultimately be introduced in the legislature, or even whether the drafts are open to public consultation. The posting of the draft bills is a step in the right direction, but not nearly sufficient. It is important to actively seek out public input since suggestions from civil society will only strengthen any prospective legislation. If the Kerala government is serious about reforming its police it should initiate a public debate so that it may incorporate the best aspects of each draft into a final bill.


## 3.4 Government of India: Status of Police Reform

Irrespective of the party in power, the Government of India (GoI) has never exhibited the political will to make the police a professionalised force. While there have been numerous attempts to conduct reviews and compile recommendations on how to convert India's police into an organisation that imbibes democratic values, the failure has always been in implementation. Recently, there were two opportunities for the GoI to deviate from its tradition of 1) not being sincere in its effort to "reform" the police or 2) reforming law enforcement in a way that perpetuates the problems underlying policing in India, rather than resolve it.

### 3.4.1 Police Act Drafting Committee (PADC)

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 to draft 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 that: "We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service."<sup>20</sup>

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 nuts and bolts 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 has been shelved and subsequently ignored.

To date, notwithstanding the directives issued by the Supreme Court or the existence of a Model Police Act, there has been no attempt by the central government to enact an updated police act for the National Capital Territory or the Union Territories. Although the Gol could serve as a leader on this issue, it has abdicated its responsibility to comply with the Supreme Court directives in those jurisdictions where it has the competence to do so. This failure to act serves as a very poor example for all the state governments.

### 3.4.2 National Investigation Agency Act, 2008

After the devastating terrorist attacks on Mumbai that commenced on 26 November 2008, there was considerable demand for the Gol to create a law enforcement agency that would have jurisdiction to investigate “federal crimes”.<sup>21</sup> In order to address the concerns expressed after Mumbai, the central government passed the National Investigation Agency Act, 2008 on 16 December 2008 and created the National Investigation Agency (NIA).

While the notion of having a law enforcement agency that could investigate certain crimes across state boundaries has long been considered,<sup>22</sup> nothing was ever done. So when the tragic events of Mumbai occurred, there was an opportunity to properly examine the issue of how to constitute this new police force. Instead, the complex task of creating a national policing agency designed to investigate terror-related crime across the country without requiring special permission from the states in order to do so, was subject to only two days of parliamentary debate. No comprehensive analysis of the issues was done, no review of existing legislation and capabilities was conducted, and an invitation was never extended to the states or civil society to suggest possible alternatives. The outcome is a new law enforcement agency that institutionally repeats the same mistakes that created undemocratic policing throughout India.

#### Disinterest in Prevention

India’s police are generally “reactive”, rather than “proactive”. This means that attention is primarily paid to dealing with crimes after they have already occurred. Proactive policing focuses on identifying preventive measures that seek to avert crime from happening in the first place. By stipulating in the Act that the NIA only has the power to investigate offences, the NIA has not been given the necessary powers to *prevent* terror-related offences. For any law enforcement agency to properly prevent crime, it requires more than simply powers of investigation and enforcement. Provision has to be made for the sharing, collection, collation, analysis and dissemination of intelligence. This is a tremendous failing of police organisations throughout India.

As pointed out by numerous committees, the failing of the CBI in relation to combating corruption has been that it is strictly an investigative agency.<sup>23</sup> For the NIA to be effective in preventing federal crime,<sup>24</sup> it needs to be able to warehouse, process and coordinate the flow of critical information. By way of example, the US Federal Bureau of Investigation was significantly restructured after 9/11 so that it could engage in, and collaborate with others on, counterintelligence activities. It was accepted that prevention is best served by the acquisition of information and then acting on that information. The NIA Act is silent on



information sharing, how information and intelligence is to be obtained, and on the NIA's relationship to other agencies that presently gather information. In fact, this oversight may severely compromise the NIA's ability to *investigate* Scheduled Offences, let alone *prevent* them.

## Potential for Politicisation

The scheme of the Act is based on the central government first making a determination that an event on the ground is actually a Scheduled Offence and then secondly, deciding whether it wishes to direct the NIA to investigate it.<sup>25</sup> These determinations are made by the political executive rather than the professional expert (the Director General who heads the Agency). For confidence to build in policing bodies, the decision-making process needs to be seen as being outside all extraneous political considerations and in the hands of a professional expert who seeks to augment the states' and centre's capacity to deal with issues that impinge on national security.

Additionally, Section 4(1) of the Act states that, "the superintendence of the Agency shall vest in the Central Government" without defining what superintendence means. In the past, the failure to define superintendence in police acts at both the state and central levels has demonstrably led to the politicisation of policing with all its attendant ills. The creation of a brand new law enforcement agency provided an opportunity to remedy this situation by clearly defining the powers and functions of the political executive and the operational responsibilities of the Director General. Decisions on whether an offence warrants NIA involvement ought to reside with the Director General. Much of the suspicion that arises with the creation of a new law enforcement agency could have been allayed if the potential for illegitimate political interference had been curtailed rather than enlarged. Instead, Section 6(3) increases the likelihood that political considerations will influence investigative decision-making when it states that, "**the Central Government shall determine ... within 15 days ... whether the offence is a Scheduled Offence or not.**"<sup>26</sup>

As presently constituted, the same difficulties that cause the politicisation of policing throughout India are reflected in the construction of the NIA. A golden opportunity to reform the way India approaches policing was missed by not ensuring that "superintendence" was carefully defined so that it permitted a professional expert to make key administrative and investigative decisions rather than a political actor. The failure to do so may permit illegitimate political interference to creep into the functioning of the NIA.




## 3.5 Recommendations

### Government of India

1. **Immediately pass legislation that updates the Police Act of 1861.** Nearly 150 years later, India is desperately in need of new police legislation that addresses the issues raised by the Supreme Court in *Prakash Singh*. The Gol should make the Model Police Act available for comment and then address the identified shortcomings.
2. **Vigorously pursue the agenda of police reform in each of the Union Territories and the National Capital Territory.** Although policing is a state concern, by visibly implementing police reforms in areas that it has jurisdiction over, the Gol can serve as an example for state governments to follow.
3. **Vigorously pursue the agenda of police reform in those states where the same political party holds power.** Further demonstrate commitment to the issue of police reform by persuading political allies to do as much as possible in establishing democratic policing.
4. **Limit the potential for the National Investigation Agency (NIA) to be politicised.** Utilise Sections 23 and 24 of the NIA Act, which empower the central government to remove difficulties and make rules, to make considerable improvements to the NIA such as clarifying what “other relevant factors” can be considered in directing the Agency to investigate a Scheduled Offence. Ensure that when new rules for the NIA are drafted, a wide consultation process is held before finalising them.

### State Governments

5. **Proactively solicit input from civil society on drafting ideal 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 committee sufficiently addresses the issue of police accountability; and
  - b. Hold public forums and meetings to get the public’s feedback on potentially new legislation.
6. **Proactively solicit input from law enforcement 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; and
  - b. Hold focus group discussions with police at all levels, particularly at the Deputy Superintendent of Police rank and below.
7. **Permit public comment to be made on any draft police bill.** 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.

8. **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

9. **When drafting a new law, state governments and the Gol ought to remove undue and illegitimate interference in all aspects of policing by doing the following:**
  - a. Make it clear in the law those policing areas in which the political executive can have a say and where they explicitly cannot have a say, recognising that the executive will legitimately have more to say on law and order matters than investigation;
  - b. Specify an independent merit-based procedure through which the political executive selects the DGP and ensures a fixed term of office so that they can do their job without fear and insecurity of being transferred;
  - c. Set up a police-department controlled internal board to decide all police transfers, postings and promotions and hear grievances about illegitimate orders;
  - d. Specify a fixed term for leadership positions like the Superintendent of Police, Station House Officer, Deputy Inspector General, so that they can do their job with predictable continuity and without undue political interference; and
  - e. Set up a Commission that includes government, opposition and independent members to give policy directions, evaluate police performance and ensure no interference in policing functions. This will ensure a bipartisan approach to policing that is presently absent.
  
10. **State governments and the Gol must improve the resources and conditions of work by doing the following:**
  - a. Substantially increase police station and investigation budgets;
  - b. Allocate sufficient budgetary resources for policing based on a detailed policing plan;
  - c. Ensure that all funds for police modernisation, whether from state or central governments, are released only against transparent proposals and after satisfactory accounting of expenditures from the previous fiscal year;
  - d. Ensure police stations across the country are provided with the requisite finances, infrastructure, training and personnel required for them to properly do their jobs;
  - e. Have only two levels of recruitment into the police – Constables and Indian Police Service;
  - f. Fill the sanctioned posts that remain vacant;
  - g. Ensure and prioritise merit-based recruitment so that the force reflects the population it polices;

- h. Revise police training to include more education on investigative techniques;
- i. Separate law and order functions from investigation and then equip the investigation wing adequately with the requisite resources and training;
- j. Revamp the training syllabus so that it is more appropriate for a multicultural society;
- k. Provide periodic in-service refresher training;
- l. Re-classify constables as skilled workers which will ensure their pay scales improve; and
- m. Ensure reasonable working conditions by establishing a Police Welfare Board that will address issues of health, housing, insurance, and other concerns of police personnel.

## Police Services at the State/National Level

11. **Establish an effective internal mechanism that permits the public to make complaints against the police.** This would involve 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 block district and state headquarters; and
  - d. Report the number and type of complaints, as well as the outcomes of such complaints, to the State Police Complaints Authority (SPCA) each year.
  
12. **Establish an effective external mechanism that permits the public to make complaints against the police.** This would involve the following:
  - a. Set up an SPCA to look into complaints of serious misconduct by officers of the rank of Superintendent of Police (and above) and a District Police Complaints Authorities (DPCA) to look into complaints of serious misconduct by officers below the rank of Superintendent of Police;
  - b. Ensure the SPCA and DPCA are free from local policing influences, are headed by retired judges and composed of independent members selected through a transparent process. A fair balance should be struck in membership between retired government officers and independent members, with exactly half as retired officers and half as independent members. To facilitate this, ensure that applications are opened up and invited from the general public through newspapers, the internet, and general publicity;
  - c. Ensure that periodic quarterly reports from the DGP is given with respect to departmental inquiries, assessing the progress of inquiries, and advising the police department on completing inquiries without delay;
  - d. Ensure these Authorities have their own machinery to investigate complaints;
  - e. Set a time limit by which complaints must be investigated and action taken;
  - f. Ensure that recommendations made by these Authorities are binding on the Police Department; and
  - g. Draft an annual report that is presented to the state legislature.



## Civil Society Organisations (CSOs)

13. **Bar Associations should provide feedback on proposed police legislation.** This will help ensure that prospective bills are properly scrutinised for legality and consistency.
14. **Involve Resident Welfare Associations and Panchayats<sup>27</sup> more explicitly in police reform.** Doing so will help 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 CSOs inform the average Indian what their rights are and what sort of policing they should expect from law enforcement. Raising public awareness on these issues will inevitably make police more cautious and respectful of the rule of law and citizen's rights.
16. **Conduct social audits of police stations.** A social audit is a means of measuring, understanding, reporting and ultimately improving police performance. It can help narrow the gap between a vision and reality.



# Chapter 4

# 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.”







## 4.1 Background


Recent political developments have largely overshadowed the issue of police reforms in Pakistan. General Pervez Musharraf, who assumed office in October 1999, was unable to retain the Presidency during a power struggle that culminated in 2008. Notwithstanding draconian measures to remove Supreme Court judges and declare a State of Emergency in November 2007, General Musharraf was unable to indefinitely resist the clamour for democratic governance. Consequently, Musharraf was compelled to call an election on 18 February 2008 that turned out to be fairer than most people expected. The results of that election were a clear repudiation of Musharraf's tenure; in spite of (or perhaps because of the sympathy generated by) the assassination of Benazir Bhutto, the Pakistan People's Party (PPP) won enough seats in the National Assembly to form a coalition government with the Pakistan Muslim League (N). Conversely, Musharraf's Pakistan Muslim League (Q) only secured 54 seats in a devastating electoral defeat.

Since February 2008, there has been a looming question of how the new government would be able to address the myriad problems facing Pakistan. On the matter of policing, the question was especially relevant since the implementation of the Police Order, 2002<sup>1</sup> throughout Pakistan has been ad hoc and erratic. A failure to appreciate the impact that inadequate and oppressive policing can have on politics

### History of Police Reform in Pakistan

1948	Passage of Bill 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 & Services Reorganisation Committee (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	Police Reforms Committee headed by Gen. Rafi Raza
1981	Orakzai Committee on Police Welfare, Promotion and Seniority Rules
1982	Cabinet Committee on the Emoluments of SHO
1983	Cabinet Committee on determining the status of SHO
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 – 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 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





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, a fact acknowledged by numerous government-sponsored commissions that have been tasked with studying the problems of policing in Pakistan. These various commissions have all fundamentally concluded the same thing: better policing requires the political will to make it happen (see “History of Police Reform 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.

## 4.2 The Police Order, 2002

Despite the fact that the aforementioned commissions have exhaustively examined police reform for years, it was not until 2002 that the plethora of issues attached to policing in Pakistan were legislatively addressed. The National Reconstruction Bureau (NRB)<sup>2</sup> was tasked with establishing fundamental reforms in the political and administrative structures of Pakistan, including the police. Police reform was part of an Asian Development Bank funded criminal justice sector reform programme. The Think Tank on Law Enforcement and Criminal Justice that originated from this programme ultimately proposed a police law that was later promulgated as the Police Order, 2002 on 12 August 2002.<sup>3</sup>

The Police Order, 2002 is the first attempt in Commonwealth South Asia of a country incorporating 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”. In addition, the listed duties of the police are quite expansive in scope. Among other things, they are required to “promote amity”, “guide and assist members of the public”, “ensure that the rights and privileges, under the law, of a person taken in custody, are protected”, and “ensure that the information about the arrest of a person is promptly communicated to a person of his choice.”<sup>4</sup>

There were many progressive elements to the Police Order, 2002 as it was originally promulgated. The new law put in place mechanisms and processes designed to limit political interference with police functioning and ensuring accountability for performance and misconduct. For instance, the Provincial Police Officer (PPO)<sup>5</sup> would be selected by the provincial government out of 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 the NPSC would be non-partisan since its composition was equitably assigned.


Similarly, the original Police Order, 2002 also called for the creation of District Public Safety Commissions, Provincial Public Safety Commissions and Police Complaints Authorities (at both 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. However, like the duties enumerated for the NPSC, the composition of these bodies was amended in 2004 in such a way so as to dilute their progressive nature. The table on pages 58 and 59 illustrates the ways in which the original Police Order, 2002 was regressively amended and what impact those amendments had.



Police Order, 2002	Amendments	Impact
<p>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) (Article 11(1)).</p>	<p>The PPO will be selected by the provincial government from a panel of three police officers recommended by the federal government (Article 11(1)).</p>	<p>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.</p>
<p>The provincial government could only prematurely transfer the PPO or CCPO before the expiry of 3 years tenure with the agreement of the concerned Public Safety Commission (Article 12(2)). The federal government could only recall a PPO with the agreement of the NPSC (Article 12(6)).</p>	<p>No agreement from the concerned Public Safety Commission is required in order for the provincial or federal governments to prematurely transfer or recall the PPO.</p>	<p>This amendment diluted the role of Public Safety Commissions to guard against the politicisation of personnel decisions. The independent commissions no longer have the chance to veto improper transfers or recalls.</p>
<p>The Provincial Public Safety Commission or the provincial government was given 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 in this regard. (Article 12(3)).</p>	<p>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)).</p>	<p>Making the PPSPCCs role in PPO transfers purely recommendatory is another example of how the power of independent institutions created in 2002 have been diminished by amendment.</p>
<p>The District Police Officer (DPO) could only be transferred before the end of his/her three-year tenure on the grounds of inefficiency and/or ineffectiveness, if both the <i>Zila Nazim</i><sup>6</sup> and District Public Safety Commission (DPSC) concurred. (Article 15(3))</p>	<p>The DPO can be transferred before the end of his/her three year tenure if:</p> <ul style="list-style-type: none"> <li>■ there is exigency of service or misconduct and inefficiency; and</li> <li>■ the government approves. (Article 15(3))</li> </ul>	<p>The fact that transfers of DPOs only require the approval of the government (and no other body) means that the situation is what it was before the Police Order, 2002 was promulgated. Transfers of DPOs will not be subject to any scrutiny outside of government.</p>



Police Order, 2002	Amendments	Impact
<p><i>Zila Nazim</i> had nothing to do with the annual Performance Evaluation Report of the Head of District Police.</p>	<p><i>Zila Nazim</i> is responsible for writing the Performance Evaluation Report for the Head of District Police (Article 33(3)).</p>	<p>Unless objective benchmarks for performance are enumerated, a risk exists that the <i>Zila Nazim</i> may abuse this power.</p>
<p>Half of the DPSC was composed of <i>Zila</i> Councillors (Article 38(1)) and the other half of independent members (Articles 38(2)).</p>	<p>1/3 of the District Public Safety and Police Complaints Commission (DPSPCC) will be Members of Provincial Assembly (MPA) and/or National Assembly (MNA) (Article 38(1)(a)), 1/3 will be independent members (Article 38(1)(b)), and 1/3 will be <i>Zila</i> Councillors (Article 38(1)(c)).</p>	<p>The inclusion of MPAs and/or the MNAs introduced an overtly political element to the constitution of these bodies. Parliamentarians in Pakistan have not demonstrated an ability to perform their assigned responsibilities without adopting a fiercely partisan approach.<sup>7</sup></p>
<p>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, Head of District Police or individuals (Articles 103-108).</p>	<p>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 &amp; PPSPCC).</p>	<p>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.</p>
<p>The 12-member PPSC was to be composed of three from the treasury, three from the opposition (Article 74(1)) and six independent members (Article 74(2)).</p>	<p>The PPSPCC is composed of four from treasury, two from the opposition (Article 74(1)) and six independent members (Article 74(2)).</p>	<p>The reduction in opposition members gives the government more 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.</p>



Even though the Police Order, 2002 was not perfect, its proper implementation would have shaken up a moribund system that is in desperate need of reform. However, since it was promulgated by a dictator that relied heavily on international donors to resource the initiative, the process (and by extension the Police Order) was viewed as illegitimate. As a result, the subsequent changes made to the Police Order, 2002 ensured that its progressive elements were neutered and that it would never function effectively. This is best illustrated by an examination of how the institutions created by the Police Order, 2002 have fared over the past 6 years.

## 4.3 Status of Institutions Created by the Police Order, 2002

The idea of having “public commissions” to serve as an external oversight body for police conduct is borrowed from Japan. The main objective of this system was to ensure the democratic administration and political neutrality of police under the supervision of a commission staffed with people of “good sense”.<sup>8</sup> In Pakistan, “the commissions have been envisaged as institutions, which would keep a check on misconduct/poor performance of the police on one hand, and protect the operational autonomy of the police against unlawful interference of provincial governments or ruling politicians, on the other hand.”<sup>9</sup>

When the Police Order was first promulgated in 2002, the police complaint feature was separate from the public commissions. As of December 2008, there is only a separate complaints authority at the federal level. At the district and provincial levels, the complaint functions have been merged with the public commissions. According to one former Inspector General of Police, “thanks to this merger, the underlying objectives behind the safety commissions and the complaints authorities have remained unfulfilled; these existing bodies are neither one nor the other.”<sup>10</sup>

### 4.3.1 District Public Safety and Police Complaints Commission (DPSPCC)

The DPSPCC is designed to fulfil the dual role of protecting people from the excesses perpetrated by the police, but it is also intended to protect the police from the excesses of political interference and undue pressure applied by superior authorities. The duties of the DPSPCC include: approve Local Policing Plan;<sup>11</sup> “take steps to prevent the police from engaging in any unlawful activity arising out of compliance with unlawful or *mala fide* orders”;<sup>12</sup> cause registration of FIR within 48 hours when warranted;<sup>13</sup> hear complaints;<sup>14</sup> conduct fact-finding;<sup>15</sup> 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.<sup>16</sup>

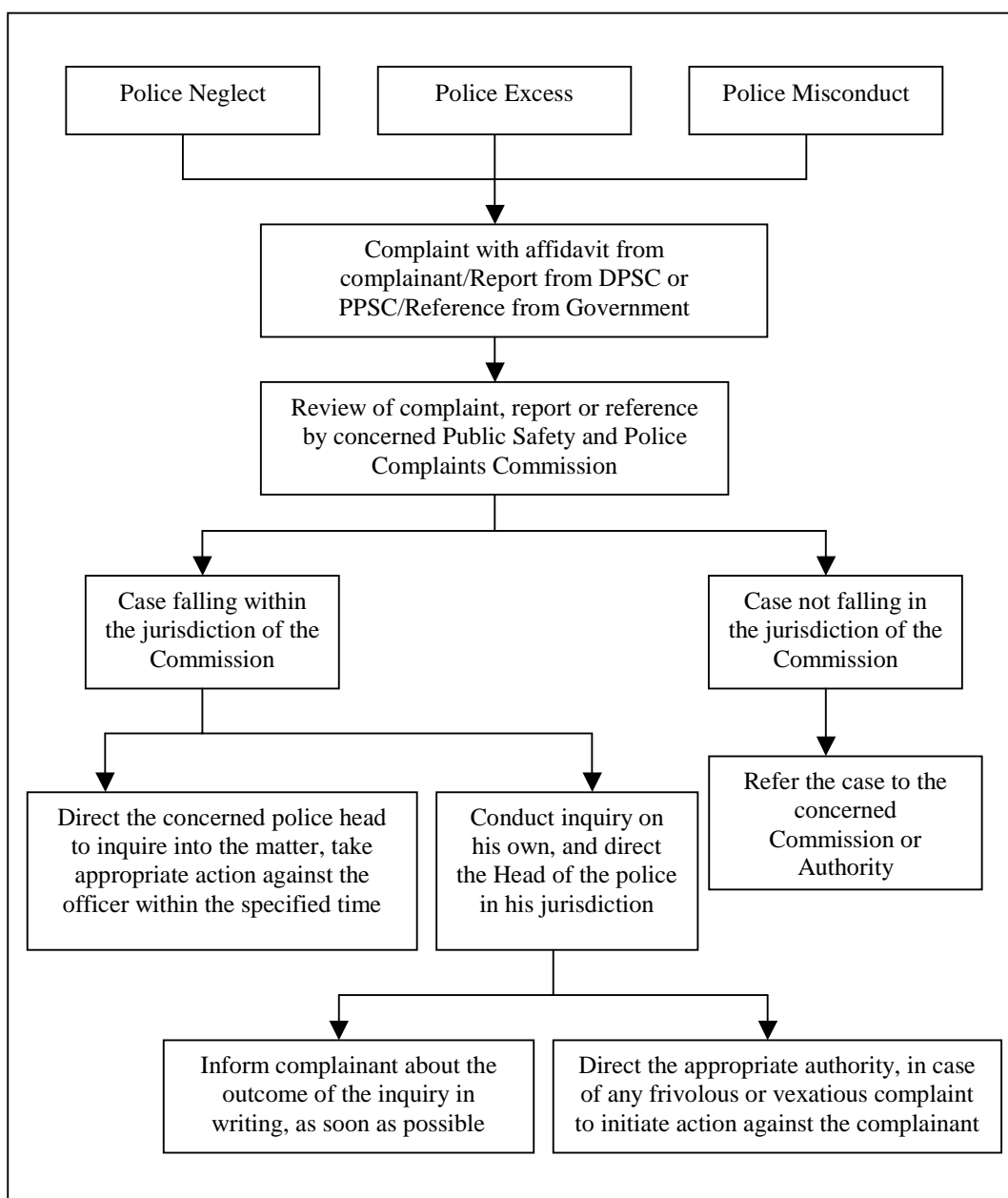
Yet, for all the value of having DPSPCCs in place, the provincial governments have not notified the safety commissions in each district, let alone made them functional. Punjab has notified the commissions in 22 of 35 districts; Sindh has done so in 12 of 15 districts (where one DPSPCC serves five districts 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).<sup>17</sup> While these figures might have changed over the past two years, the more relevant fact is that relatively few of these commissions are functioning practically. The provinces have not provided them with the necessary infrastructure or human resources. The offices for 64 DPSPCCs



were temporary and most of the support staff members were also brought in on an ad-hoc basis. 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 minimum required meetings because of incomplete quorum.<sup>18</sup>

When a DPSPCC is established and working as intended, the following flow chart illustrates how it will address a complaint:

### Grievance Redress Process of DPSPCCs<sup>19</sup>





However, one of the reasons that the DPSPCCs do not function as they should is because the amendments in 2004 seriously undermine the ability of these bodies to act independently. The composition of the DPSPCCs has been changed in favour of provincial governments. The DPSPCCs now comprise three members of the provincial assembly or national assembly from the district.<sup>20</sup> Before the amendments, there was no provision in the Police Order about the representation of parliamentarians in the district commissions. As one police officer said, “What was the need to include politicians in the administration of bodies intended to be non-partisan? It is simply another way of perpetuating political interference in the functioning of the police.”<sup>21</sup>

This latter observation is borne out by the practical experience of those who have served on a DPSPCC. Mr Abid Hussain Chattha, a lawyer and former Member of Provincial Assembly (Punjab), firmly believes that the DPSPCCs have been a flop in the Pakistani context. “It may work in the United States or in the United Kingdom, but not here. The very constitution of these bodies is political. The district commission’s three MPA/MNAs are uninterested, overburdened and biased, and the three members of the *Zila* Council who sit on the commission are appointed from a selection panel that is also largely political.”<sup>22</sup>

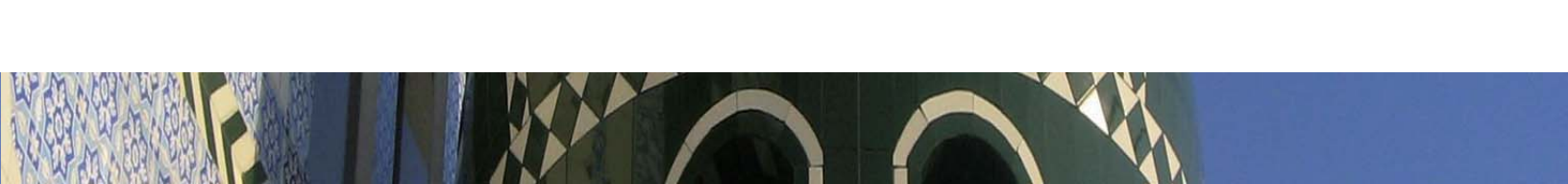
Similarly, Mrs Sarkar Abbas, a former DPSPCC member and current member of the National Public Safety Commission (NPSC), has described the powerlessness of DPSPCCs and her experience of addressing over 600 complaints from the public regarding the refusal of the police in registering First Information Reports.<sup>23</sup> In her discussions with the District Police Officer (DPO) on this issue, Mrs Abbas realised that a significant problem is that the DPSPCC recommendations have no binding force in law to hold the DPOs accountable. When the DPSPCC sent reports to the DPO, the DPO was not bound to implement the orders. Interestingly enough, some officers at the local level do not even know that the NPSC exists. This shows that at the provincial level, the institutions that the Order created are not given much weight by the government or the police.<sup>24</sup>

Aside from the lack of political will to get them started and functioning, another reason that the DPSPCCs have been unable to succeed is that the rules of procedure for the registration and processing of complaints have not been formulated.<sup>25</sup> Thus, even when there is an adequately resourced DPSPCC, it may not be able to do its job effectively (or at all) if the necessary rules and procedures have not been put in place.

### 4.3.2 Provincial Public Safety and Police Complaints Commission (PPSPCC)

Like the DPSPCCs, one of the objectives of the PPSPCCs is to “take steps to prevent the police from engaging in any unlawful activity arising out of compliance with unlawful or *mala fide* orders.”<sup>26</sup> However, it also has the important role of facilitating the establishment and functioning of the Citizen Police Liaison Committees (CPLCs);<sup>27</sup> coordinating the functioning of the DPSPCCs;<sup>28</sup> overseeing the implementation of the Provincial Policing Plan;<sup>29</sup> and recommending reforms for the modernisation of laws and procedures.<sup>30</sup> Essentially, the PPSPCC is expected to ensure that the commission system functions properly in the respective province.<sup>31</sup>

Unfortunately, the notification and establishment of PPSPCCs throughout Pakistan has been very poor. In Balochistan the PPSPCC is functioning, but there are very few resources, no political will and the police there do not want any independent bodies overseeing them.<sup>32</sup> In the NWFP the PPSPCC has been notified and one meeting was held in the presence of the NPSC.<sup>33</sup> In Sindh, the Chief Minister and the Governor



were asked to make the PPSPCC more effective but that has yet to happen,<sup>34</sup> and in Punjab the PPSPCC is not functioning at all since it has not met for the last five years.<sup>35</sup>

Part of the problem with the PPSPCCs is that they, like the DPSPCCs, were politicised by the amendments made to the Police Order, 2002. The original 12-member Provincial Public Safety Commission was composed of three from the treasury, three from the opposition and six independent members. The current PPSPCC is composed of four from treasury, two from the opposition and six independent members. The reduction in opposition members was obviously designed to give the provincial governments more influence in police functioning.

The poor functioning of the PPSPCCs is attributable to both the obstinate position of provinces when it comes to police reform and the fact that the initial formulation of the Provincial Public Safety Commissions (like the rest of the Police Order, 2002) was never done in consultation with the provinces. It is unknown whether, if consulted, the provinces would agree to strengthen the PPSPCCs. Perhaps they will simply seek to have these bodies remain ineffectual because it serves their interest in having 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 or may not even get notified.

### 4.3.3 National Public Safety Commission (NPSC)


Among other duties, the NPSC is responsible for overseeing the functioning of federal law enforcement agencies;<sup>36</sup> facilitate the establishment and functioning of the CPLCs;<sup>37</sup> oversee the implementation of plans prepared by heads of the federal law enforcement agencies;<sup>38</sup> and coordinate the functioning of the PPSPCCs.<sup>39</sup>

Although the NPSC got off to a very slow start, it is currently operational and holds regular monthly meetings.<sup>40</sup> In fact, in April 2008 it released its first Annual Report (albeit for 2006). A functioning NPSC is an important step to having a relatively independent body monitor the current state and pace of police reforms across Pakistan. If it wishes to, the NPSC can use its stature and position to highlight and draw attention to the deficiencies in Pakistan policing. Its first report attempts to do this. It cites the following as reasons for the failure to implement police reforms:

- lack of ownership by provincial governments;
- non implementation in Islamabad, annexed Jammu & Kashmir and northern areas;
- bureaucratic apathy; and
- inadequate coordination amongst police, local administration, local governments and judiciary, weak civil society oversight, political interference, coupled with many other factors.<sup>41</sup>

The report goes on to reiterate many issues identified in this publication, particularly how the NPSC was amended to enable greater political interference:

A number of institutions as provided under Police Order 2002 have not been established so far, like the Police Complaint Authority at federal level, Citizen Police Liaison Committees in most of the districts, non functioning of NPMB and Provincial Public Safety & Police Complaints Commissions. Moreover, the Police Order 2002 had originally empowered the NPSC to recommend to the Federal Government a panel of three officers for selection of Provincial Police Officers to be posted in the Provinces. Similarly, the Police Order fixed 3 year tenure for key positions and also required



premature transfer on the basis of the Commission's recommendations which could not be acted upon because of the omission of relevant provisions from the Police Order in 2004. After this, the Commission did not have much role vis-à-vis the Provincial Police Forces. These issues were raised with the Prime Minister of Pakistan when the Commission called on him on 6 July 2006.

The amendments introduced to Police Orders 2002 in the year 2004 institutionalized political interference by: inclusion of legislators in District Public Safety and Police Complaints Commissions; requirement of Chief Minister's approval for posting District Police Officers; merger of Complaint Authorities with Public Safety Commissions at provincial and district level. The reform process involved not merely the cosmetic surgery of the department but to touch every tier of the organizational structure as well as to place strong systems to oversee and steer the organization's movement towards realizing its mission. Implementing the Police Order in its true spirit with a political will, it will be in national interest to get this law passed by the Parliament, in its original letter and spirit.<sup>42</sup>

However, the NPSC will only be as effective as the central government wishes it to be. As Mrs Abbas points out, the writ of the government needs to support the NPSC as the police are a provincial subject and the NPSC does not have the necessary links with the provinces. For example, to date, the NPSC has not received any policing plans from the provinces. If better coordination is not achieved, the NPSC will be rendered useless and a great opportunity to improve policing will be lost.<sup>43</sup>

### 4.3.4 National Police Management Board (NPMB)

Chapter XVIII of the Police Order, 2002 provides for the creation of the NPMB. It is a body composed of the various heads of police throughout Pakistan, at the provincial and federal level, that is supposed to meet twice a year. Basically it is a body that is meant to advise the government on broader police planning (i.e. recruitment, training, inter-agency cooperation and improving operational capabilities).<sup>44</sup> However, to the disappointment of many, the NPMB only recently started holding regular meetings. Between its initial meeting on 23 September 2002 and 14 May 2008, the NPMB only convened twice.<sup>45</sup> But the regularity of meetings changed 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 alone and substantive issues were taken up, including the creation of a Police Complaints Authority at the federal level.

### 4.3.5 Federal Police Complaints Authority (PCA)

Article 97 of the Police Order, 2002 creates the Federal 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.<sup>46</sup> However, the Complaints Authority has not been established and this is a significant failing.<sup>47</sup> The problem is that the amended Article 1(3) clearly excludes the enforcement of the Police Order in the Islamabad Capital Territory until "local governments assume office". According to Chapter X of the Police Order, 2002, the Federal PCA has two jurisdictions: one is the Islamabad Capital Territory and the other is the Federal Law Enforcement Agencies (FLEAs). However, if the condition of article 1(3) is not fulfilled then the Federal PCA will have its responsibilities circumscribed in that it will only have jurisdiction over FLEAs. The problem is that even a limited PCA has not been constituted six years after the original Police Order, 2002 was promulgated.





### 4.3.6 Citizen Police Liaison Committee (CPLC)

Pakistan's Police Order, 2002 empowers the government to establish CPLCs as "voluntary, self-financing and autonomous bodies" so that it may help build the capacity of the NPSC and the PPSPCCs, serve as a liaison between aggrieved citizens and the police and provide assistance to the Commissions and the Federal PCA.<sup>48</sup> While the district CPLCs have been established in Lahore, Faisalabad, Sialkot, Peshawar, Karachi and Quetta, over 125 more are still to be created in other districts of Pakistan.<sup>49</sup>

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 police accessible by having respected citizens, such as justices of the peace, at police stations.<sup>50</sup> The Karachi CPLC has five Zonal Reporting Cells (district level) and a Central Reporting Cell at Sindh Governor's Secretariat, which comprises shift controllers, secretaries, computer operators, citizen liaison officers, telephone operators and police complaint cell officers.<sup>51</sup> It is equipped with the latest computer technology and contains, among other things, databases on stolen property, First Information Reports and criminal records.<sup>52</sup>

However, except for Karachi, the CPLCs are seen as a failure because the government has not provided them with adequate funding, autonomy or importance.<sup>53</sup> 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 long 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.<sup>54</sup> This appears to negate 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 that "members so chosen were drawn up after careful scrutiny and in-depth interviews of the volunteers nominated from a cross-section of the society. Dedication, motivation, honesty and service above self are the essential ingredients 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, all times."<sup>55</sup> However, the website fails to disclose the qualification and background of the CPLC members.<sup>56</sup>

## 4.4 What Happened to the Promised Reform?

Arguably, expecting a dictator to lay the foundation for democratic policing was overly optimistic. Granted, Musharraf did what none of his predecessors dared to do. He supplanted the outdated Police Act of 1861 with a new and relatively progressive order. However, Musharraf and others subsequently adopted a less-than-enthusiastic approach to police reform. There are three main reasons why the proposed reforms never really took root.



## 4.4.1 Provincial Alienation

Immediately after the Police Order, 2002 was promulgated it encountered considerable opposition because the provinces argued that they should be able to legislate on policing matters that are provincial in nature since the Constitution of Pakistan accords them that right.<sup>57</sup> The provinces greatly resented Musharraf's intrusion into what they ostensibly viewed as a matter of provincial concern. As a result, when drafting the Police Order, 2002, the National Reconstruction Bureau (NRB) worked in a policy vacuum because they received no input from the provincial governments and stakeholder buy-in was missing, especially from the provinces with population smaller than that of Punjab. That is why the issues that should have been resolved during formulation are being discussed only now.

Secondly, there was (and is) widespread resistance to the entire devolution scheme in Pakistan. In an effort to centralise power in the hands of the military rather than the bureaucracy, Musharraf promulgated the Local Government Ordinance in 2001. This ordinance sought to re-establish local councils at the district and sub-district levels by providing for the election of a *Zila Nazim*. Musharraf's stated intention was to facilitate grassroots democracy. However, devolution proved little more than a cover for further centralised control over the lower levels of government. Despite the rhetoric of empowerment, local governments were only given nominal powers from Islamabad<sup>58</sup> (see "Power of the Bureaucracy" for more details).


### Power of the Bureaucracy

At the district level there has always been a long-standing rivalry between the police, local government and the bureaucracy under the District Management Group (DMG) of the Central Superior Services, the successor of the Civil Service of Pakistan (CSP). The reason for this is simple: all three stakeholders desire power and influence. The acquisition of such power usually means that it was secured at the expense of the others. Historically, the DMG has traditionally been in the driver's seat as compared to the police and local government. This dates back to the British Raj and its dependency on the bureaucrats for the smooth administration of an unwieldy subcontinent. But the power and influence of the bureaucracy gained more prominence in Pakistan than India because immediately after Independence there was a power vacuum in Pakistan. Its founder, Muhammad Ali Jinnah, died one year after independence and his successor, Liaquat Ali Khan, was assassinated three years later. At this critical juncture in Pakistan's political development it was the military and the bureaucracy that filled the resulting leadership deficit.<sup>59</sup> Subsequently, it was the Deputy Commissioner and the Assistant Commissioner of DMG (then CSP) that wielded considerable power at the district level by having authority over executive, judicial and revenue functions.<sup>60</sup>

Continuing the reforms started by the Local Government Ordinance, 2001, the Police Order, 2002 sought to raise the profile and influence of the *Zila Nazim* by permitting him to do the following: visit a police station to find out if a person is under unlawful detention,<sup>61</sup> write the Performance Evaluation Report of the District Police Officer (DPO)<sup>62</sup> and direct the DPO to register a First Information Report (FIR) when necessary.<sup>63</sup> These powers were seen as a check on the unfettered discretion wielded by Station House Officers (SHOs).

But there has been a significant push recently to roll back whatever small improvements were made through the Local Government Ordinances. After the February 2008 election, both Sindh and Punjab took steps to reintroduce the Commissioner system.<sup>64</sup>

In fact, the NRB has recommended that the policing plan for a district, which sets out the financial resources available and achievable targets for the year, be prepared in coordination with the District Coordination Officer (a bureaucrat) rather than the



*Zila Nazim* or the DPSPCC (as currently provided under the Police Order, 2002).<sup>65</sup> If the proposal to have the DPO's Annual Confidential Report be written by the District Coordination Officer (DCO) is approved, it would lead to a situation where in several districts a DCO far junior to the head of the police in his district would report on his senior's performance. There are districts like Lahore where the post of police chief is at the rank of BS-21 whereas the DCO office is meant for a BS-20 officer.<sup>66</sup>

Again, one of the reasons that the provinces have never fully accepted the governance reforms started by Musharraf is because his passage of the Local Government Ordinance was viewed by many as an effort to diminish the power of the provinces and strengthen his own. By devolving power to local councils that were party-less, Musharraf could then manipulate these bodies to serve the Centre's interest rather than the province. The International Crisis Group conducted a survey of this issue and concluded that "since military-inspired devolution is directed to local levels, it enhances tensions between the centre and the provinces. Such schemes undermine the very concept of federalism and increase ethno-regional rifts."<sup>67</sup>

The Police Order, 2002 was promulgated with the same tensions and difficulties at play. Since the order was added to the Sixth Schedule of the Constitution, it meant that any amendment to it could only be done with the President's prior approval (see "Constitutional Gymnastics" for more detail). This was seen as another example of Islamabad ignoring provincial interests in a federal structure. As a result, citing provincial autonomy, the provinces have done whatever they can to undermine the Police Order, 2002.

## 4.4.2 Amendments to the Police Order, 2002

Due 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. 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.<sup>69</sup> Most notably, the Police Order (Amendment) Ordinance, 2004, amended or replaced 73 of the 187 articles found in the original Police Order, 2002.<sup>70</sup> The chart on pages 58 and 59 illustrates how transformative some of the modifications were to the Police Order, 2002.

### Constitutional Gymnastics

Provincial alienation and poor governance are the natural by products of Pakistan's incomprehensible approach to constitutional law. Beginning in 1958, when the Constitution was suspended for the first time by General Ayub Khan, Pakistan's founding document has been amended, manipulated and trampled on by successive anti-democrats. Most recently, Musharraf's Seventeenth Amendment to the 1973 Constitution (passed in December 2003) served to constitutionally validate all extra-constitutional actions he had undertaken post-*coup d'état*. It was in this way that the Police Order, 2002 was listed in the Sixth Schedule, under Article 268, of the Constitution. Article 268 states that the laws listed in the Sixth Schedule cannot be amended without the prior sanction of the President. This act was against the principle of parliamentary sovereignty and a blow to the federal nature of the state.

In addition, the Sixth Schedule stipulates that the Police Order shall stand omitted after six years (meaning it will automatically expire December 2009). Given that Article 184 of the Police Order permits provincial governments to amend or vary the Order with the approval of the Chief Executive, provincial governments have already started to lobby the federal government to amend (or abandon) the Police Order, 2002.<sup>68</sup>



The amendments have caused considerable confusion and a serious loss of efficiency. They are seen as an attempt to have power that was originally granted to the Public Safety Commissions redirected back to the provincial government, especially with regards to transfers and postings. With the passage of the 2004 amendments there has been a paradigm shift where authority has shifted away from the people to the government. The very spirit and character of the original order was gutted by the Police Order (Amendment) Ordinance, 2004.<sup>71</sup>

In addition, the re-emergence of the DMG of civil service as a centre of considerable power and influence has contributed to the delay of police reform throughout Pakistan. Moreover, while it is true that the Police Order, 2002 provided for the formal creation of external accountability bodies, the subsequent implementation has been so poor that many of the institutions outlined in the order have not been notified or are seriously dysfunctional.

### 4.4.3 Political Interference

The reason that police forces often function poorly is because there is no culture of professional responsibility. When investigative decisions, and even administrative matters, are constantly subject to illegitimate political interference, a dependency culture takes root. A pattern is established whereby police officers receive unsolicited instructions from political masters, and are expected to unquestioningly carry them out, or the officer in question avoids making certain important decisions until he has first consulted his political master. In either case, the outcome almost never has the interest of the public at heart. As a result, the Police Order, 2002 sought to introduce arrangements that would limit undue political interference in police operations.

However, those aspects to the Order were subsequently amended in order to maintain the long-standing tradition in Pakistan of the police serving as a standing force for vested interests. For example, the Police Order, 2002 originally stated that the Provincial Police Officer (PPO) would be selected by the provincial government out of a panel of three police officers recommended by the NPSC from a list provided by the federal government. However, now the PPO will be selected by the provincial government out of a panel of three police officers recommended by the federal government. 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.

All these attempts to reintroduce politicisation of the police neglect to appreciate one important point: 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. However, if there is no tradition of democratic turnover, as is the case in Pakistan, then the government of the day has a tendency to view its position of power as almost inviolate.

There are some in favour of the amendments and the increased role for parliamentarians. They argue that as public representatives, legislators are important stakeholders and need to be included in public oversight institutions. Since they have the mandate from the people it would be undemocratic to exclude them from such bodies. Moreover, they argue that the inclusion of parliamentarians on the DPSPCCs would make it extraordinarily difficult for senior police officers to ignore the findings of the Commission.<sup>72</sup>



These arguments do have some weight. Having a parliamentary subcommittee on policing under the National Assembly's Standing Committee on the Interior is a good idea.<sup>73</sup> But having an external body that is not inherently political in nature is valuable for the reasons cited in the Introduction to this publication. Like other countries in South Asia, there is a tendency for political elites in Pakistan to view police as a standing force for their own agenda. An external accountability structure would minimise the likelihood of this happening. Therefore, a non-partisan external body has a role to play in checking police excesses and limiting political interference.

In addition, a national human rights institution modelled after the Paris Principles can also be effective in acting as a check on political interference and police excess. Meaningful reform of the police, especially on the highly polemical issue of political interference, cannot be addressed in isolation. An integrated approach that also seeks to limit political interference in other institutions, like the criminal justice system, is necessary if any true reform on this matter is to be achieved. Hopefully the new PPP government recognises this and restores the Police Order, 2002 to its original form and demonstrates a commitment to rooting out illegitimate political interference wherever it manifests.

## 4.5 Future Prospects

While the increasingly fragile security situation in Pakistan threatens to plunge the entire country into chaos, there are glimmers of hope for police reform. First, with the number of terrorist attacks that occurred in 2008, the public is demanding a professionalised police service capable of stemming the flow of violence. Consequently, the issue of better policing has become an issue at the forefront of political debate in Pakistan (see "Thirst for Reform" on page 70).

Second, reform of the National Highways and Motorway Police (NHMP) has been so successful that many are citing it as a model for other police services to follow. In a comparison between the NHMP and district police, NHMP officers are better paid, better trained and their morale is higher.<sup>74</sup> Since the force is also insulated from politics, they stop and fine anyone disobeying motorway rules (including Ministers).<sup>75</sup> However, the main reason that the NHMP has been able to change the internal police culture so radically and quickly is because it decided to focus on educating its officers on the benefits of "proactive" policing as compared to "reactive" policing.<sup>76</sup>

Proactive policing is generally understood as taking steps to reduce criminal desire.<sup>77</sup> As such, it is comprised of implementing preventive measures (i.e. selective traffic enforcement) and involving the community (i.e. establishing "neighbourhood watch" programmes) in an attempt to lessen crime. By significantly curbing internal corruption and working closely with the public, the NHMP embodied the principles of proactive policing and has thus earned the respect and confidence of Pakistanis in a very short period of time.<sup>78</sup>

Created in 1997, the NHMP was initially composed of seconded officers from provincial police forces. With assistance from international specialists, a sophisticated training programme was crafted for the new force. While the success of the recently created NHMP might fuel the sentiment that completely scrapping the existing system and starting afresh is the only way to reform the police, it is more instructive to examine how and why the training of the NHMP worked so well. Further research on this issue is required.





## Thirst for Reform

CHRI visited Pakistan twice during 2008 in order to hold public consultations on the issue of police reform. On 17 July 2008, CHRI collaborated with the Consumer Rights Commission of Pakistan and hosted a consultation entitled, “From Force to Service: Towards Better Policing in Pakistan”. This event brought together police officials, civil society organisations, academics, media persons and legislators from across Pakistan to assess the utility of the current approach to police reform. Specifically, the discussion focused on whether police conduct has become more transparent and accountable or are the police still permitted to violate rights and under perform with impunity.

On 28 November 2008, CHRI organised another consultation on police reforms in conjunction with the Human Rights Commission of Pakistan in Lahore. The purpose of “Police Reform in Pakistan: Beyond Analysis” was to bring together key Pakistani policy and decision-makers, at both the provincial and federal levels, so as to move the police reform dialogue beyond analysis and focus on prescription.

Both events were very successful in identifying opportunities for civil society to make useful interventions (see “Recommendations” at the end of this chapter). More importantly, the significant turnout and enthusiastic participation of invited guests suggest that there is a considerable thirst for an active campaign on police reform. However, with Pakistan beset with so many governance-related issues, the challenge will be to illustrate why policing issues ought to be heard above the din. In addition, as was pointed out at the Islamabad consultation, “Reforming existing systems are more difficult than creating new ones because the mindset and functioning pattern of existing systems is difficult to pierce. Systems such as police cannot be reformed in isolation if allied systems and laws (such as CrPC and the entire administration of justice) remain the same. Reform must be undertaken in totality”.<sup>79</sup>






## 4.6 Recommendations

### Government of Pakistan

1. **Immediately repeal the amendments that have been made to the Police Order, 2002.** The spirit and intent of the Police Order, 2002 was radically altered by subsequent amendments. In particular, the following aspects of the original order should be immediately restored:
  - a. Separate functions of the Police Complaints Authorities from those of the Public Safety Commissions. There should be dedicated bodies for review and oversight at the district and provincial levels.
  - b. Depoliticise the institutions created so that the composition does not favour the treasury.
2. **Resource the Federal Police Complaints Authority (PCA) so that it is 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 have done so six years after promulgation needs to be immediately addressed.
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 Punjabi males. It is important that law enforcement reflect 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 underrepresented 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. **Begin a constructive dialogue with the provinces on police reform.** Given the failure to include provincial input during the drafting of the Police Order, 2002 it is important to consult the provinces on what they are willing to do to effect police reform at the provincial level. This will address the concern that the provinces have not been adequately engaged in the shape police reform should take.
5. **Request the National Public Safety Commission (NPSC) to provide an update in its next Annual Report on the functioning and status of public safety and police complaint commissions at the district and provincial levels.** There is a dearth of information on this matter. An attempt by the NPSC in this regard will clarify the progress (or lack thereof) in getting the public safety commissions operational.
6. **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

7. **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 up a dialogue with the federal government on the issue of police reform.
8. **Incorporate civil society more explicitly 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 how to improve policing. This can be done by getting CSO input on CPLCs, reforming the prevalent *thana* culture, and strengthening community engagement with law enforcement.

## Government of Pakistan/Provincial Governments

9. **Substantially increase the funds available for policing.** Since a proper functioning police force would be more effective in countering domestic terror and insurgency, one option would be to place more emphasis in having foreign governance aid directed to the police rather than the military. In this way the police could become far better funded than they are currently.
10. **Allocate existing funds more efficiently.** Greater focus should be placed on improving *thana* facilities, increasing acquisition of necessary hardware (i.e. vehicles, mobile phones, fax machines), and bettering the housing conditions of the rank and file rather than investing so much in the care and protection of police officials and VIPs. A better allocation of resources in this manner will also have the benefit of boosting the constabulary's morale.
11. **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 utilised and the money that is allocated lapses because the police have not properly planned their expenditures.
12. **Demonstrate a commitment to community policing by providing adequate funding, autonomy and importance to the CPLCs.** Begin by making the CPLCs in large urban settings fully operational and functional. This will serve as a template for setting up effective CPLCs in every district.



## Police Services at the Provincial/National Level

13. **Commit more time and attention to training police personnel on human rights issues.** Given that most police officers below the rank of Assistant Superintendent of Police are not university educated, they could benefit from training that focuses on human rights law and the corresponding constitutional guarantees that accompany such rights.
14. **Establish a human rights cell in every *thana*.** These cells would be staffed not by police officials but with civil society organisations and respected members of the community. The purpose of these cells would be to report on any rights violations that occur and to arrange legal aid when required.
15. **Identify ways to emulate the success of the National Highways and Motorway Police (NHMP).** After investing more resources into the functioning and operation of the NHMP, it has succeeded in providing a less corrupt and more efficient service. An examination of how and why the NHMP was able to reform can educate other services on how to do the same. In particular, look into the potential for expanding proactive policing norms to all the policing services.
16. **Create a mandatory women's desk in every *thana*.** In order to address the systemic discrimination that women face regularly at *thanas*, it is critical that special sections are established so that female victims feel comfortable coming forward with a complaint.
17. **Commit to establishing more forensic laboratories.** The existing level of technical infrastructure in place 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 acceptable standards.
18. **Take steps to make the budgetary process more transparent by introducing provisions in the law.** Currently, budget drafting is an opaque exercise. Ideally, police services should voluntarily disclose the amount of funds available at the beginning of the fiscal year and indicate the strategy for the expenditure of these funds. This ought to be done right down to the district level. Doing so will generate healthy debate on which policing priorities should take precedence. Thus, provisions in the law are needed in order to make the budgetary process more transparent, open and participatory.

## Civil Society Organisations (CSOs)

19. **Do more to strengthen CPLCs throughout Pakistan.** With so few CPLCs functioning, CSOs could do far more in bolstering the reach and capacity of CPLCs 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 grassroots level.





20. **Provide the police with the necessary personnel to staff a newly created human rights cell in each *thana*.** The participation of well-trained and informed civil society in this endeavour will ensure that an independent entity is available at the *thana* to monitor police excess. This will undoubtedly reduce flagrant abuse perpetrated by the police.
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 the average Pakistani citizen of what his rights are, and what sort of policing he should expect from law enforcement.
22. **Direct advocacy efforts towards the provinces.** Typically, attempts to influence policing policy is centred on the government seated in Islamabad. However, since the fate of the Police Order, 2002 is unknown, greater responsibility over policing issues may ultimately be transferred to the provinces. Therefore, it is recommended that CSOs engage with provinces as soon as possible so as to encourage them to embrace police reform.





# Chapter 5

# Sri Lanka

“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 taken place.”









## 5.1 Background

With more than twice the per capita Gross Domestic Product of India, Pakistan or Bangladesh<sup>1</sup> and an independence not born out of partition or civil war, Sri Lanka enjoys an economic and political system that is more stable than its neighbours. However, while there is no threat of a military coup during election cycles, as there has been in Pakistan and Bangladesh, the ongoing civil war in Sri Lanka has undermined its ability to cultivate a functional social contract.

Since 1983, when the Tamil insurgency began in earnest, the focus and attention of the Sri Lankan state has been to eliminate the terrorist threat posed by the Liberation Tigers of Tamil Eelam (LTTE). This civil war has dominated the political scene in Sri Lanka for the past 25 years. A breakthrough ceasefire agreement between the two sides was brokered in February 2002. It was monitored by the Norwegians and was widely viewed as successful in reducing the carnage and destruction that had become a way of life for many.

With the ceasefire in March 2002, there was a hope for change as both the LTTE and the Government of Sri Lanka (GoSL) seemed interested in reaching a mutually acceptable political arrangement. The thaw in hostilities was most evident in a changed approach to policing. "The operation of draconian legislation such as the Prevention of Terrorism Act, which gave the police extraordinary powers, was suspended, and there was a recognition that the police which had faced a difficult situation during the period of conflict, responding to acts of terrorism by the LTTE, had to embark on an initiative relevant to the new phase of conflict resolution where the police would not only have to return to its more traditional role of civilian policing, but do so in a manner that was sensitive to the challenges of multi-ethnicity, pluralism and respect for diversity."<sup>2</sup>

However, the LTTE-boycotted election of 2005 witnessed the ascension of Mahinda Rajapakse to the Presidency of Sri Lanka. The leader of the Sri Lanka Freedom Party made it clear during the political campaign that he would take a more aggressive approach towards the LTTE. Once in office, military confrontation between the GoSL and the LTTE intensified under the new administration. Emergency regulations that imposed restrictions on civil liberties including the freedom of expression and movement were introduced, extra-legal killings, abductions and disappearances increased, and in a relatively short period there developed a culture of impunity that has caused considerable concern in civil society and the international community.<sup>3</sup>

## 5.2 Culture of Impunity

The number and degree of human rights abuses perpetrated by state actors in Sri Lanka is well documented. The Working Group on Enforced or Involuntary Disappearances "stress[ed] that Sri Lanka remains the country with the second largest number of non-clarified cases of disappearances on its list."<sup>4</sup> Four Commissions of Inquiry appointed by the government put the "total number of persons who had disappeared during the period 1988-90 ... at [approximately] 27,200."<sup>5</sup> The recent resurgence of violence between the Sri Lanka Government and the LTTE has given rise to allegations of a new round of disappearances, with the Sri Lanka Human Rights Commission reporting that in 2006 there were "345 instances countrywide of politically motivated disappearances at the hands of the security forces or by paramilitary forces allegedly



tioned to the government, or the LTTE.”<sup>6</sup> In March 2007, the Inspector General of Police (IGP) in Sri Lanka officially recognised the role of the police and army in disappearances when he announced that more than 400 people including “ex-soldiers, serving soldiers, police officers and underworld gangs and other organised elements” had been arrested since September 2006 on charges of abduction.<sup>7</sup>

The Special Task Force (STF) is a good example of an actor that has not been held accountable for abuses it has perpetrated. Formed in 1983, the STF is a paramilitary unit that specialises in counter-terrorist and counter-insurgency operations. Primarily involved in fighting the LTTE, the 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 the STF was the arresting agency in 5% of the 1,219 “disappearance” cases that took place in the North Eastern Batticaloa district between 1988 and 1996.<sup>8</sup> 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.<sup>9</sup> Despite well-documented allegations of abuse, STF members have managed to avoid accountability for their actions and continue to function with impunity.<sup>10</sup>

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 taken place. 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 officers meanwhile try to persuade or intimidate complainants to arrive at compromises.<sup>11</sup>

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 the charges of abduction or abetment. However, proving such offences during times of conflict is extraordinarily difficult.<sup>12</sup> 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, but rather increases political and social tensions and can therefore deepen the security crisis.<sup>13</sup> Indeed, the UN Security Council 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.”<sup>14</sup>

## 5.3 End of the Ceasefire Agreement

By 2006 the terms of the ceasefire were being virtually ignored. On 2 January 2008, the GoSL formally announced its withdrawal from the ceasefire agreement and subsequently initiated an intense military offensive against the LTTE.<sup>15</sup> This far-reaching military campaign has effectively stifled substantive discussion on human rights in Sri Lanka. In its pursuit of eradicating terrorism, the GoSL has focused all its energy and time in enacting legislation and policies that seek to undermine the LTTE but that also have the effect of disrespecting the rule of law and human rights. For instance, Regulation 23 of the Emergency Regulations (originally passed in 2005) was amended in 2006 and it requires every householder to furnish the names of all those that live in his/her house when requested by the officer-in-charge:



23(1) Every Officer-in-Charge of a Police Station may direct every householder residing within his Police Station area to furnish him with a list of names of all the persons residing with him in his household, distinguishing the members of his family from other residents, whose stay may be of a temporary or permanent nature, and servants. Further, if he is so directed by the aforesaid Police Officer, he shall from time to time, report any increase or diminution or change in the list furnished by him.

(2) No householder who has received a direction under paragraph (1) shall harbour a stranger in his household without informing the aforesaid Officer-in-Charge of such fact.

(3) Every householder directed to furnish information under paragraphs (1) and (2) who fails to comply with such direction, shall be guilty of an offence.<sup>16</sup>

While the regulation technically applies to all Sri Lankans, clearly the intent is to itemise where all the Tamils live in Colombo.<sup>17</sup> Currently, the majority of arrests made by the police in Colombo are through the application of this particular regulation. The police often ask for far more information than is required to be given, demanding details about income, bank accounts and other extremely sensitive information. These requests are most definitely outside the scope of Regulation 23. However, the general public is ignorant of the fact that standardised forms for Regulation 23 have been drafted. The problem is that the police do not utilise these standardised forms; they use forms which reflect their desire for additional information.<sup>18</sup>

Provisions such as Regulation 23 create a hostile environment for Tamils, one predicated on profiling. For instance, during the early hours of 7 June 2007, the police and army officers forcibly evicted 376 Tamils living in lodges (boarding houses) in Colombo.<sup>19</sup> People were given less than half an hour to pack all their belongings and board buses. This move was thought to have occurred because the IGP at the time said that Tamils could not remain in Colombo without a valid reason.<sup>20</sup>

The expansive application, and sometimes abuse, of Regulation 23 is reflective of the aggressive tactics often employed by the police in Colombo and in other parts of Sri Lanka. Consequently, there is little public trust of the police in Sri Lanka. As far back as 1970, an independent commission identified the pervasive shortcomings of police in Sri Lanka:

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 co-operation 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 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.<sup>21</sup>

The above words, although written in 1970, are still true today. Like the other countries in South Asia, many reports and studies have been commissioned in Sri Lanka to examine the poor state of policing (see “History of Police Reform in Sri Lanka” on page 81). And as in those other countries, these reports have been largely ignored by the politicians of Sri Lanka.



## History of Police Reform in Sri Lanka

Sri Lanka retains Police Ordinance No. 16 of 1865 as its governing police legislation. While Section 56 enumerates duties that are still relevant today (i.e. 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 to him by any competent authority), the ordinance is silent on accountability measures.<sup>22</sup>

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.<sup>23</sup>

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 the 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.<sup>24</sup> 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, which 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.<sup>25</sup> The Jayalath Committee reiterated the 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.





## 5.4 An Attempt at Reform: The 17<sup>th</sup> Amendment

Although there have been half-hearted attempts to reform the police throughout Sri Lanka's history, the dire situation reached a critical point in 2001. There was a genuine desire in Sri Lanka to address the longstanding politicisation of government business in several different sectors of the bureaucracy and other institutions. Due to the increasing polarisation of politics in Sri Lanka, nearly every public appointment became a partisan affair. As a result, there was unanimous support in Parliament for the passage of a Constitutional Amendment that sought to address this matter. The 17<sup>th</sup> Amendment to the Sri Lankan Constitution created an apolitical 10-member Constitutional Council (CC). The CC was to be composed of the Prime Minister, 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.<sup>26</sup> Since this body was tasked with making appointments to key institutions,<sup>27</sup> it was important that its composition drew from all the parties and was not inherently partisan.

### 5.4.1 The National Police Commission (NPC)

With police being one of the institutions most affected by undue political interference, the 17<sup>th</sup> Amendment provided for the creation of a National Police Commission (NPC). Composed of seven civilians selected by the President from recommendations made by the CC, the mandate of the NPC is to insulate the police from political interference and investigate public complaints against the police. An indication of how central this particular task is for the NPC, Article 155F(1) reads:

Every person who, otherwise than in the course of such person's lawful duty, directly or indirectly by himself or by or with any other person, in any manner whatsoever influences or attempts to influence or interferes with any decision of the Commission or a Committee, or to so influence any member of the Commission or a Committee, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

The NPC appointments are for a three-year term and members will be required to step down if they decide to hold a political office.<sup>28</sup> The powers of the NPC are found under Article 155G and include:

- the appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector General of Police (this power shall be exercised in consultation with the Inspector General of Police);
- establishing procedures for the investigation of any public complaints 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.

Although the NPC put its foot down and rejected the politically motivated transfer orders of 60 officials in 2002,<sup>29</sup> the Commission invited much criticism by initially delegating its powers of transfers back to the IGP<sup>30</sup> who was empowered to further delegate these powers. Since the NPC was created to insulate the police from political pressures it was argued by some that the delegation of its powers back to the head of the police (who is still appointed by the political executive) would frustrate that purpose. Admitting that it



was difficult for the NPC to administer the police organisation, commentators argued that instead of exercising its authority to delegate powers to the IGP, the NPC should have delegated its powers to a Committee of the Commission (not consisting of members of the Commission), that it could appoint.<sup>31</sup>

In 2004, the 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 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 appointment, promotions, disciplinary control and transfer of all officers of and above the rank of Inspector of Police, the NPC retained all its powers.

With the changes made in 2004, the 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 the NPC changed for the worse.

## 5.4.2 The Constitutional Council and Dilution of NPC

In March 2005, the term of the original members of the CC expired. Although the Prime Minister and the Leader of Opposition had provided the President with new names for the Council, the minority parties failed to agree on the name of the member to be nominated by them. When the minority parties continued to fail to nominate a member, President Rajapakse chose to unilaterally appoint members to the Commissions, including the Police Commission, instead of appointing the already nominated members to the CC. With strong allegations that the appointees are the supporters or personal friends of the President, the Commissions have lost much of their credibility.<sup>32</sup>

Under pressure from the opposition and civil society to demonstrate a commitment to the 17<sup>th</sup> Amendment, President Rajapakse has ordered a Parliamentary Select Committee to review the amendment and assess how it can be fixed. However, while the Committee considers the 17<sup>th</sup> Amendment, the President has stated that the Constitutional amendment will not be applied.<sup>33</sup> This logic strikes many as strange; it has been stated that it is the equivalent of not prosecuting murder cases because you have decided that you are going to reconsider the definition of murder.<sup>34</sup> There is nothing stopping the government from following the dictates of the 17<sup>th</sup> Amendment while a review is underway except a complete disinterest in minimising political interference.

After the tenure of the original NPC lapsed on 24 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). During that time, there 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 are being transferred for offending powerful figures through their strict enforcement of the law."<sup>35</sup>

Shortly thereafter President Rajapakse made his unilateral appointments to the Commissions and on 10 April 2006, selected Neville Piyadigama as the Chairperson of the NPC. This was a controversial appointment because of Mr Piyadigama's close relationship to the President.<sup>36</sup> Mr Piyadigama's record as Chairperson has been equivocal. Although a public complaints procedure was finally gazetted during his



tenure (see below), it is widely felt that the NPC has not sufficiently fulfilled its role as articulated by the 17<sup>th</sup> Amendment. For instance, it has been suggested that the NPC ought to wield far more disciplinary control over the police force than it currently does.<sup>37</sup>

In both its first and second terms the NPC's functioning has been hampered by lack of financial resources, inadequate investigative powers and lack of cooperation from the police department.<sup>38</sup> In addition to these systemic constraints, the current NPC's willingness to address allegations of police involvement in abductions and "disappearances" has been questioned. In response to an inquiry from Human Rights Watch, the NPC stated that it had received "several complaints" on abductions and "disappearances," but "most of these abductions and disappearances are allegedly by paramilitary elements, Karuna group, the army or unidentified men, or cases of missings."<sup>39</sup> The NPC maintained that "there are no specific allegations about police involvement" in these crimes. The NPC also mentioned that when the commission receives reports of police inaction in response to such complaints, it refers such cases to senior officers "concerned to expedite inquiries," and monitors the progress in such cases.<sup>40</sup> The NPC, however, did not provide Human Rights Watch with any statistics or further details regarding such instances.

But it is not just the public that is sceptical of the NPC's ability to safeguard rights. The constabulary are also disenchanted with the NPC's performance. According to a survey conducted by Transparency International – Sri Lanka, 66.8% of police constables and sergeants are dissatisfied with the NPC, whereas only 18.7% are satisfied. This is problematic as it is the junior officers that are most subject to the corrupt orders of superiors and need assistance from an institution such as the NPC.<sup>41</sup>

### 5.4.3 Police Complaints Investigation Division (PCID)

The 17<sup>th</sup> Amendment to the Constitution introduced a public complaint mechanism to the National Police Commission. Article 155G(2) requires that the NPC establish a procedure for entertaining, investigating and redressing complaints against police personnel and the police service. However, initially an effective public complaints mechanism did not exist, mainly because the NPC referred complaints to the IGP, who in turn referred the cases to the Special Investigation Unit.<sup>42</sup>

Instead, during its first term, the NPC appointed nine district coordinators (mostly retired policemen) to deal with complaints.<sup>43</sup> During that year the NPC registered 1078 complaints. As a result of the disciplinary action taken against the errant police officers, thirteen were charge sheeted and one was interdicted.<sup>44</sup>

At the beginning of 2007, the NPC finally gazetted rules for the PCID. However, the rules were not nearly as progressive as had been hoped. Rule 17 stipulated that officers found responsible in the investigations will continue to remain in the hands of the IGP "in accordance with applicable departmental procedures" rather than referred for rigorous legal sanctions.<sup>45</sup>

After the creation of the necessary rules, the 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.<sup>46</sup> 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 the NPC.



## Procedure to Remove the IGP

Since the Constitutional Council is no longer the independent entity envisioned by the 17<sup>th</sup> Amendment, the Presidential appointment of the IGP as provided by Article 41C is not subject to any non-politicised scrutiny. However, although it is a difficult process, Section 3 of the *Removal of Officers (Procedure) Act, No. 5 of 2002* permits the removal of the IGP from office if he or she is:

- (a) Adjudged an insolvent by a court of competent jurisdiction;
- (b) Unfit to continue in office by reason of ill health or physical or mental infirmity;
- (c) Convicted of an offence involving moral turpitude, treason or bribery;
- (d) Found guilty of misconduct or corruption;
- (e) Found guilty of gross abuse of power of his office;
- (f) Found guilty of gross neglect of duty;
- (g) Found guilty of gross partiality in office; or
- (h) Ceases to be a citizen of Sri Lanka.

Under (a), (b), (c), or (h), the IGP can be removed by the President.<sup>47</sup> But under (d), (e), (f), or (g), a Committee of Inquiry (composed of a Supreme Court Justice, Chair of the NPC, and an eminent lawyer/public administrator agreed to by the Speaker, Prime Minister and Leader of the Opposition) must look into the matter and report its findings to Parliament.<sup>48</sup> If an absolute majority of parliamentarians vote in favour of removal, then the IGP is forthwith removed from office.<sup>49</sup>

## 5.5 Another Attempt at Reform: Sweden & Sri Lanka

In addition to the reform processes described above, the Swedish Government also undertook an attempt to help improve the functioning and processes of the Sri Lanka Police (SLP). This collaborative effort, entitled “Enhancing the Capacity of Civilian Policing in Sri Lanka”, commenced in 2005 when the ceasefire between the GoSL and the LTTE was still in place. The objective was to: 1) improve crime investigations, including crime scene examinations; 2) strengthen the respect and promotion of ethnic integration and human rights in SLP and; 3) increase the management capacity of SLP.<sup>50</sup>

However, the increased hostility between the GoSL and the LTTE made the program untenable. It was found that “the interest in fundamentally reforming SLP and shifting the focus from national security to civilian policing dwindled with the onset of the war. The change of government as well as of the higher management of SLP also contributed to a decreased interest in reform.”<sup>51</sup> The Swedish Government found that the interest and political space within SLP for any substantial pro-peace and pro-human rights reform in the context of civil war was extremely limited. It was felt that even those regarded as “reform-minded” seemed to have only a very limited interest in engaging with human rights issues or police reform.<sup>52</sup> As a result, after a comprehensive review was completed and a conclusion reached that the fighting will only intensify in the short-term, the Swedes withdrew from the project and decided to focus their governance and development efforts in Africa rather than Sri Lanka.<sup>53</sup>





The effort to implement better policing in Sri Lanka has stalled. Attempts to reform the police in Sri Lanka, like the 17<sup>th</sup> Amendment and the Swedish initiative, have fallen victim to the overriding focus and attention placed on battling the LTTE in the North. The ongoing military offensive has dictated governance decisions in all sectors, particularly in policing. For instance, in cases where military strategy may come into conflict with investigations into alleged abuses, the investigation may simply not be allowed.<sup>54</sup> Similarly, the increasing use of the military to carry out normal policing functions means that the distinction between security forces and police is so blurred that it is incredibly difficult to ascertain who to hold accountable for the well-documented disappearances and abductions that security agents have become notorious for.<sup>55</sup> It appears that there is very little hope for police reforms to advance in any meaningful way till the civil war between the GoSL and the LTTE abates.

## 5.6 Does International Pressure Work?

With a very large, and influential, Tamil diaspora spread throughout the world, Sri Lanka is at times quite sensitive to how the international community views its human rights record. For instance, after a disturbing number of serious attacks throughout 2005 and 2006, there was great international pressure for the Government of Sri Lanka (GoSL) to properly investigate the incidents. As a result, the GoSL established a Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights to look more closely into 16 serious cases, including ones that involved security forces. In order to add greater legitimacy to the proceeding, an International Independent Group of Eminent Persons (IIGEP) was tasked to assist the Commission “with the view to satisfying that such inquiries are conducted in a transparent manner and in accordance with basic international norms and standards pertaining investigations and inquiries.”<sup>56</sup>

However, notwithstanding the international pressure to have the Commission of Inquiry be transparent and effective, the legitimacy of the endeavour was questioned almost from the beginning. On 15 June 2007, the IIGEP issued a statement indicating that it was very concerned that the Attorney General was going to lead evidence at the Commission. It cited this as a serious conflict of interest, holding that the Commission “does not seem to have taken sufficient corrective measures to ensure that its proceedings are transparent and conform with international norms and standards of independence, impartiality and competence.”<sup>57</sup> When the GoSL did not improve its approach, the IIGEP became increasingly frustrated and then announced on 6 March 2008, that it was terminating its involvement with the Commission of Inquiry.<sup>58</sup> It described the original police investigation of the Trincomalee<sup>59</sup> incident as “flawed and incompetent” and questioned why the deficiencies of the first investigation went undetected, ignored, and possibly abetted, by the responsible government authorities.<sup>60</sup>

The international community has also attempted to wield influence with 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 select other countries) is afforded special trading privileges with the EU if it ratifies 27 international conventions dealing with environmental, labour and human rights standards. Under this arrangement, trading related to 7000 products is covered. This means 300,000 direct jobs in Sri Lanka’s apparel industry, and 700,000 indirect jobs.<sup>61</sup> The value of this trading agreement to Sri Lanka is over 1 billion USD. However, despite the upsurge in violence recently, the EU announced in October 2008 that it was provisionally renewing GSP+ for an additional three years, pending a review to be conducted within one year’s time to determine whether Sri Lanka is in compliance with the EU human rights requirements.<sup>62</sup>



In a major “victory” for human rights advocates, Sri Lanka ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994 and subsequently passed the CAT Act of No. 22 of 1994. To ensure efficient prosecution in torture cases, the government created the Prosecution of Torture Perpetrators Unit (PTP Unit) within the Attorney General’s department. However, this unit only exists on paper and does not have its own permanent staff. Torture cases that fall within the jurisdiction of the PTP Unit are handled by five counsels who also take on other criminal cases.<sup>63</sup>

It is clear that instead of making a diligent effort to investigate and prosecute human rights abuses, various Sri Lankan governments over the years have responded to international criticism by simply setting up different mechanisms that merely give the impression of addressing human rights violations. The creation of these mechanisms allow the government to claim it is taking action, while in reality, to date, all of them have failed to halt the crisis of “disappearances.”<sup>64</sup> As a consequence of its inaction on human rights issues, the Human Rights Council rejected Sri Lanka’s bid to serve a second term on the Council.<sup>65</sup> It remains to be seen whether the international community’s firm stance holds steady and if it does, whether it can have the effect of modifying Sri Lanka’s behaviour.<sup>66</sup>





## 5.7 Recommendations

### Government of Sri Lanka (GoSL)

1. **Seek a political solution to the current conflict.** It is incredibly difficult to implement reform during a time of war. Therefore, in order to achieve any success in democratising the police, it is important to scale back the military offensive and pursue a long-term political solution that involves some form of power devolution to the provinces.
2. **Respect the 17<sup>th</sup> Amendment.** The non-partisan effort to depoliticise governmental institutions in 2001 was a step in the right direction. The refusal of the Rajapakse administration to abide by the 17<sup>th</sup> 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 17<sup>th</sup> Amendment are still pending, the GoSL should immediately appoint the Constitutional Council in accordance with procedures laid down in the 17<sup>th</sup> Amendment.
3. **Explicitly address the culture of impunity that plagues Sri Lanka.** In order to ensure a transparent and accountable police force, the GoSL must demonstrate a commitment to prosecuting human rights abusers that wear the SLP uniform. For instance, the Attorney General should not be leading evidence at the Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights. Absent the political will to engage in unbiased inquiries of wrongdoing, police reform in Sri Lanka will never get off the ground.
4. **Strengthen the National Police Commission (NPC).** Independent of whether the 17<sup>th</sup> Amendment is followed, the GoSL should make a commitment that the Chairperson appointed for the next term of the NPC (due in 2009) will be an independent and not a well-known associate of the President. This will vastly improve the credibility of the NPC.

### Sri Lanka Police (SLP)

5. **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 SLP.
6. **Formally entrench the notion of command responsibility into policing practices.** Therefore, 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 had been 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.

7. **Centralise internal discipline in one unit.** Having various aspects of internal discipline reside with the Special Investigations Unit, the Disappearance Investigation Unit, and the Attorney-General's Torture Unit results in a fractured approach to ensuring accountability. Centralising internal discipline in one unit, with the participation of independent members so as to increase the credibility of the body, will rationalise the existing system.
8. **Strengthen the SLP's Human Rights Division (HRD).** Providing the 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 should encourage the police to view them as allies, rather than opponents, in effective policing.
9. **Improve efforts to integrate the SLP.** Using recruitment as a means to include more under represented Tamils in the SLP, and 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.
10. **Articulate guidelines that sincerely reject torture as a legitimate investigative tactic.** The frequent use of torture in police stations throughout Sri Lanka demonstrate a firm belief on the part of the SLP that torture is an effective method to elicit information from witnesses and suspects. Legal sanctions alone will never eliminate the use of torture. There must be an explicit understanding and acceptance on the part of police that torture does not work because information secured from such tactics is notoriously unreliable.
11. **Improve training of investigative techniques.** Better familiarity with forensic science and crime scene examination procedures will help to professionalise the SLP.

## National Police Commission (NPC)

12. **Strengthen the Public Complaints Investigation Division (PCID).** The current rules governing the PCID are far too deferential. Rule 17 of the PCID, stipulating that malfeasant officers will continue to have their fate determined by the IGP in accordance with applicable departmental procedures, does little to change the currently dysfunctional system. Rather, the PCID should examine ways wherein it can provide complainants with redress, as provided under Article 155G(2) of the 17<sup>th</sup> Amendment.
13. **Fill personnel vacancies.** Despite the fact that the NPC receives a number of complaints, it is understaffed.<sup>67</sup> A move to fill vacancies will increase its capacity to robustly investigate allegations of torture and police misconduct.
14. **Do more to limit political interference.** At the moment, police officers do not have confidence that the NPC is willing or able to address the endemic politicisation of transfers





and promotions.<sup>68</sup> In order for it to do its job effectively it is imperative for the NPC to have the respect of police officers.

## Civil Society Organisations (CSOs)

15. **Undertake efforts to encourage community policing.** Facilitating conflict resolution at the local level would obviate the need for formal police intervention. A joint CSO-SLP initiative in this regard might do a great deal to rehabilitate the mistrust that currently exists between the police and the public. The creation of Citizen's Committees in Ratnapura district provides a successful template on how to include the community in making neighbourhoods more secure.<sup>69</sup>
16. **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 CSOs to publicly articulate the importance of having a democratic police force in Sri Lanka. In the absence of any dialogue, nothing constructive can be accomplished.
17. **Develop police-specific documentation centres.** By keeping proper and accurate records of practices that have proved effective in professionalising the police, complaints filed against the SLP, and 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.







# Endnotes

## Chapter 1: Introduction

- <sup>1</sup> Maldives has been omitted due to an inability to conduct primary research in that jurisdiction.
- <sup>2</sup> Maldives also passed its first Police Act in 2008. However, CHRI has been unsuccessful in securing an English version of the Act.
- <sup>3</sup> Human Rights Watch (March 2008), *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, v.20, no.2(c): <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0> as on 12 November 2008; International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157, p. 8: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1> as on 12 December 2008; Odhikar (2008), *Human Rights Report: Odhikar Report on Bangladesh*, p. 38: <http://newsfrombangladesh.net/dbimages/241473-0-Odhikar%20annual%20human%20rights%20report%202008.doc> as on 20 March 2009; Human Rights Watch (July 2008), *Being Neutral is Our Biggest Crime*, pp. 54-58: <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0> as on 17 October 2008.
- <sup>4</sup> For a detailed discussion of democratic policing and why it is important, please refer to Chapter 2 of Rauch J., Prasad D., Mehta S., and Canineu M.L. "Police Accountability: Too important to neglect, too urgent to delay", 2005, *CHRI report by the International Advisory Commission of the Commonwealth Human Rights Initiative*: [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2005/chogm\\_2005\\_full\\_report.pdf](http://www.humanrightsinitiative.org/publications/chogm/chogm_2005/chogm_2005_full_report.pdf).
- <sup>5</sup> United Nations Office of the High Commissioner for Human Rights (1997), *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police*, Chapter IX: <http://www.unhcr.ch/html/menu6/2/training.htm> as on 11 December 2008.
- <sup>6</sup> Commonwealth Human Right Initiative and Kenya Human Rights Commission (2006), *The Police, The People, The Politics - Police Accountability in Kenya*: [http://www.humanrightsinitiative.org/publications/police/kenya\\_country\\_report\\_2006.pdf](http://www.humanrightsinitiative.org/publications/police/kenya_country_report_2006.pdf).
- <sup>7</sup> United Nations International Police Task Force (1996), *Commissioner's Guidelines for Democratic Policing in the Federation of Bosnia-Herzegovina*.
- <sup>8</sup> 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, p. 15: [http://www.justiceinitiative.org/db/resource2?res\\_id=102519](http://www.justiceinitiative.org/db/resource2?res_id=102519) as on 13 September 2008.
- <sup>9</sup> Marenin, O. (2005), *Restoring Policing Systems in Conflict Torn Nations: Process, Problems, Prospects*, Democratic Control of Armed Forces, June 2005.
- <sup>10</sup> Ibid, p. 29.
- <sup>11</sup> Van Zant, E. (2005), "Better Policing: Tracking the problems besetting the Bangladeshi police services means overcoming a long history and great shortage of funds", *ADB Review*: [http://www.adb.org/Documents/Periodicals/ADB\\_Review/2005/vol37-2/better-policing.asp](http://www.adb.org/Documents/Periodicals/ADB_Review/2005/vol37-2/better-policing.asp) as on 12 December 2008.
- <sup>12</sup> Greene, J. R. (2006), *The Encyclopedia of Police Science*, 3<sup>rd</sup> edition, CRC Press, p. 271: [http://books.google.ca/books?id=HIE\\_zF1Rv7MC&dq=The+Encyclopedia+of+Police+Science&printsec=frontcover\\_&source=bl&ots=fVss9CXj5K&sig=q12KHMfXkRP89LHfu84dgTFqLJE&hl=en&ei=bubqSZLJPNCgkQX4jeCICA&sa=X&oi=book\\_result&ct=result&resnum=4#PPA713.M1](http://books.google.ca/books?id=HIE_zF1Rv7MC&dq=The+Encyclopedia+of+Police+Science&printsec=frontcover_&source=bl&ots=fVss9CXj5K&sig=q12KHMfXkRP89LHfu84dgTFqLJE&hl=en&ei=bubqSZLJPNCgkQX4jeCICA&sa=X&oi=book_result&ct=result&resnum=4#PPA713.M1) as on 24 November 2008.
- <sup>13</sup> Edrisinha, R., Olander, K., and Orjuella, C. (December 2007), *Review of Development Cooperation between Sri Lanka Police and Swedish National Police Board*, p. 10; Laksiri, F. (2005), *Police-Civil Relations for Good Governance*, Colombo: Social Scientists' Association.
- <sup>14</sup> Swami, P. (2006), "Bias and the Police", *Frontline*, v.23, Issue 24, December 2-15: <http://www.hinduonnet.com/fline/fl12324/stories/20061215002503300.htm> as on 13 November 2008.
- <sup>15</sup> Nataranjan, M. (2005), "Status of Women Police in Asia", *The Journal for Women and Policing*, Issue No.17, pp.45-47: <http://www.auspol-women.asn.au/issue%2017.pdf> as on 1 December 2008.



<sup>16</sup> Usman, A. (2009), "HRCP launches report on human rights situation in 2008: a year of challenges", *The Daily Times*, 7 April 2009: [http://www.dailytimes.com.pk/default.asp?page=2009%5C04%5C07%5Cstory\\_7-4-2009\\_pg7\\_23](http://www.dailytimes.com.pk/default.asp?page=2009%5C04%5C07%5Cstory_7-4-2009_pg7_23) as on 8 April 2009.

<sup>17</sup> \_\_\_\_ (2008), "Bangladesh transit route for heroin trafficking", *The Bangladesh News*, 7 March 2008: <http://www.bangladeshnews.com.bd/2008/03/07/bangladesh-transit-route-for-heroin-trafficking/> as on 17 September 2008.

<sup>18</sup> Human Rights Watch (July 2008), *Being Neutral is Our Biggest Crime*: <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0> as on 17 October 2008.

<sup>19</sup> There were major terror attacks in Jaipur (13 May 2008), Ahmedabad (28 July 2008), New Delhi (13 September 2008), Guwahati (30 October 2008) and Mumbai (26-28 November 2008).

<sup>20</sup> Human Rights Watch (March 2008), *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, v.20, no.2(c): <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0> as on 12 November 2008.

## Chapter 2: Bangladesh

<sup>1</sup> Shahjahan, A.S.M. (2006), "Police Reform: A Bangladesh Concept", *Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms*, p.40.

<sup>2</sup> Bangladesh ranked as the most corrupt country in the world in 2005 ([http://news.bbc.co.uk/1/hi/world/south\\_asia/4353334.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4353334.stm)) and often finishes in the top ten ([http://www.ti-bangladesh.org/index.php?page\\_id=216](http://www.ti-bangladesh.org/index.php?page_id=216))

<sup>3</sup> Interview with Manzoor Hasan, Director, Institute of Governance Studies (BRAC), Dhaka, 12 August 2008.

<sup>4</sup> Article 58(D), *Constitution of Bangladesh 1972*.

<sup>5</sup> \_\_\_\_ (2008), "Bangladesh voter's list eliminates all ghost names: study", *Agence France-Presse*, 25 December 2008: <http://www.google.com/hostednews/afp/article/ALeqM5jTYGbEHjDVc-SIY4PEhksmFYuq-Q> as on 25 December 2008.

<sup>6</sup> Odhikar (2007), *Human Rights Concerns: Odhikar Report on Bangladesh*, p. 18.

<sup>7</sup> Odhikar (2008) *Human Rights Report: Odhikar Report on Bangladesh*, p. 38: <http://newsfrombangladesh.net/dbimages/241473-0-Odhikar%20annual%20human%20rights%20report%202008.doc> as on 12 October 2008.

<sup>8</sup> Odhikar (2007), *Human Rights Concerns: Odhikar Report on Bangladesh*, p. 19.

<sup>9</sup> Human Rights Watch (2008), *The Torture of Tasneem Khalil: How the Bangladesh Military Abuses Its Power under the State of Emergency*, p. 5: <http://www.hrw.org/reports/2008/bangladesh0208/index.htm> as on 14 August 2008.

<sup>10</sup> Odhikar (2002), *Reasonable Suspicion vs. Unreasonable Impunity: The abuse of Section 54 of the code of the Criminal Procedure and section 86 of the Dhaka Metropolitan Police Ordinance 1976*, p. 12.

<sup>11</sup> *Ibid.*, p. 22.

<sup>12</sup> 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](http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf) as on 23 October 2008.

<sup>13</sup> *Ibid.*

<sup>14</sup> Interview with Mr Hubert Staberhofer, Programme Manager of Police Reform Programme (UNDP), Dhaka, 10 August 2008.

<sup>15</sup> United Nations Development Programme (2004), *Needs Assessment Report 2003: Towards Police Reform in Bangladesh*, p. 2.

<sup>16</sup> Police Reform Programme (2008), *Police Services in Selected Model and Non-Model Thanas* (Dhaka), p. 1.

<sup>17</sup> Police Reform Programme website, "About Us": <http://www.prp.org.bd/AboutUs.htm> 12 September 2008.

<sup>18</sup> *Ibid.*

<sup>19</sup> Many commentators in Bangladesh firmly believe that "the police should have access to the development budget and not simply the revenue budget". This was articulated during interviews with Mr Shahjahan, Former IGP of





Bangladesh Police (9 August 2008 in Dhaka), Mr Tripura, National Programme Director, Police Reform Programme (9 August 2008 in Dhaka) and Mr Mahfuz Anam, Editor of *The Daily Star* (11 August 2008 in Dhaka).

<sup>20</sup> Van Zant, E. (2005), "Better Policing: Tracking the problems besetting the Bangladeshi police services means overcoming a long history and great shortage of funds", *ADB Review*. [http://www.adb.org/Documents/Periodicals/ADB\\_Review/2005/vol37-2/better-policing.asp](http://www.adb.org/Documents/Periodicals/ADB_Review/2005/vol37-2/better-policing.asp) as on 12 December 2008.

<sup>21</sup> Greene, J. R. (2006), *The Encyclopedia of Police Science*, 3<sup>rd</sup> edition, CRC Press, p. 271: [http://books.google.ca/books?id=HIE\\_zF1R\\_v7\\_M&dq=The+Encyclopedia+of+Police+Science&printsec=frontcover&source=bl&ots=fVss9CXj5K&sig=q12KHMfxkRP89LHfu84dgTFqLJE&hl=en&ei=bubqSZLJPNCgkOX4jeCICA&sa=X&oi=book\\_result&ct=result&resnum=4#PPA713,M1](http://books.google.ca/books?id=HIE_zF1R_v7_M&dq=The+Encyclopedia+of+Police+Science&printsec=frontcover&source=bl&ots=fVss9CXj5K&sig=q12KHMfxkRP89LHfu84dgTFqLJE&hl=en&ei=bubqSZLJPNCgkOX4jeCICA&sa=X&oi=book_result&ct=result&resnum=4#PPA713,M1) as on 24 November 2008.

<sup>22</sup> Shahjahan, A.S.M. (2007), "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.

<sup>23</sup> Police Reform Programme website, "FAQs": <http://www.prp.org.bd/Menufaq.htm> as on 12 September 2008.

<sup>24</sup> Institute of Governance Studies, BRAC University (2008), *The State of Governance in Bangladesh 2007: Expectations, Commitments, Challenges* (Dhaka), p. 45: Available at [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.

<sup>25</sup> Interview with Mr Hubert Staberhofer, Programme Manager of Police Reform Programme (UNDP), Dhaka, 10 August 2008.

<sup>26</sup> Police Reform Programme (2008), *Police Services in Selected Model and Non-Model Thanas* (Dhaka), p. 31.

<sup>27</sup> Police Reform Programme (2007), *An Interim Evaluation Report on the Model Thanas* (Dhaka), p. 12.

<sup>28</sup> Ibid.

<sup>29</sup> Police Reform Programme (2008), *Police Services in Selected Model and Non-Model Thanas* (Dhaka), p. 7.

<sup>30</sup> Ibid., pp. 43-45.

<sup>31</sup> Interview with Ms Salma Ali, Executive Director of Bangladesh National Woman Lawyer's Association, Dhaka, 8 August 2008.

<sup>32</sup> Interview with Mr Hubert Staberhofer, Programme Manager of Police Reform Programme (UNDP), Dhaka, 10 August 2008.

<sup>33</sup> Khosa, Tariq, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008.

<sup>34</sup> Police Reform Programme website, "Main page": <http://www.prp.org.bd/> as on September 2008.

<sup>35</sup> 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](http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf) as on 23 October 2008.

<sup>36</sup> Police Reform Programme (2008), *Community Policing: National Strategy for Bangladesh* (Dhaka), p. 7.

<sup>37</sup> \_\_\_\_ (2008) "3 robbers beaten to death", *Bangladesh News*, 10 August 2008: <http://www.bangladeshnews.com.bd/2008/08/10/3-robbers-beaten-to-death/> as on 12 October 2008.

<sup>38</sup> Interview with Mr Hubert Staberhofer, Programme Manager of Police Reform Programme (UNDP), Dhaka, 10 August 2008.

<sup>39</sup> Ibid.

<sup>40</sup> Institute of Governance Studies BRAC University (2006), *The State of Governance in Bangladesh 2006: Knowledge, Perceptions, Reality* (Dhaka), p. 70: [http://www.igs-bracu.ac.bd/UserFiles/File/archive\\_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf](http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/State%20of%20Governance%20in%20Bangladesh%202006.pdf) as on 23 October 2008.

<sup>41</sup> What is interesting about section 44(2)(c) is that it does not acknowledge that one of the NPC members (Chief of Police) is the very same person that is the subject of this discussion regarding removal. Will he/she have a vote in this matter, when there is an obvious conflict of interest? The provision is silent on this matter. This is notable because decisions of the NPC 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 them.



<sup>42</sup> Islam, S. (2008), "Ministry asks police HQ for further consultations", *The Daily Star*, 5 February 2008: <http://www.thedailystar.net/story.php?nid=22081> as on 6 February 2008.

<sup>43</sup> Police Reform Programme (2008), *Community Policing: National Strategy for Bangladesh* (Dhaka), p. 25.

## Chapter 3: India

<sup>1</sup> Entry 2 (List II), Seventh Schedule, *Constitution of India*, 1950.

<sup>2</sup> Entry 8 (List I), Seventh Schedule, *Constitution of India*, 1950.

<sup>3</sup> *National Investigation Agency Act*, 2008 (India).

<sup>4</sup> People's Watch (2008), *Torture and Impunity in India*, p. 1: <http://www.pwtm.org/tortureandimpunitybook.htm> as on 11 November 2008.

<sup>5</sup> For a detailed discussion of the history of police accountability in India, please see Joshi, G. (2003), *Police Accountability in India*, Commonwealth Human Rights Initiative: [http://www.humanrightsinitiative.org/programs/aj/policy/papers/gpi/policy\\_accountability\\_in\\_india.pdf](http://www.humanrightsinitiative.org/programs/aj/policy/papers/gpi/policy_accountability_in_india.pdf) as on 12 December 2008.

<sup>6</sup> (2006) 8 SCC 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> For example, Sikkim is a state that can be considered "partially compliant" based on the affidavit it filed on 3 January 2007. Non-compliant at that time was Andhra Pradesh, as evidenced by the affidavit it filed on 29 December 2006.

<sup>9</sup> For example, Orissa asked for a 6 month extension in the affidavit it filed on 20 December 2006.

<sup>10</sup> Section 32A(2), *Bombay Police (Gujarat Amendment) Act*, 2007 (India).

<sup>11</sup> Section 40(c), *Assam Police Act*, 2007 (India).

<sup>12</sup> Section 35, *Uttarakhand Police Act*, 2007 (India).

<sup>13</sup> Section 54, *Punjab Police Act*, 2007 (India) states that these bodies "may" be set up.

<sup>14</sup> On a comparative note, the mandate articulated by the Court is consistent with the mandates of similar police oversight bodies in South Africa, Northern Ireland, and England and Wales (which all include the investigation of deaths in police custody).

<sup>15</sup> Section 71(2), *Uttarakhand Police Act*, 2007 (India).

<sup>16</sup> Section 66, *Tripura Police Act*, 2007 (India).

<sup>17</sup> Section 78, *Assam Police Act*, 2007 (India).

<sup>18</sup> Rajasthan Police website, "Police Performance and Public Performance": <http://rajpolice.nic.in/indexfrm.htm> as on 1 December 2008.

<sup>19</sup> *Ibid.*

<sup>20</sup> \_\_\_\_ (2005), "PM's address to Superintendents of Police Conference", 1 September 2005: <http://pmindia.nic.in/speech/content.asp?id=182> as on 1 December 2008.

<sup>21</sup> Defined by the Ministry of Home Affairs as "offences that have inter-State and/or international/trans-national ramifications and which affect national security through activities aimed at destroying the sovereignty, integrity and unity of India and/or thwarting the economic progress and development of the country."

<sup>22</sup> See Annexure A, B, and C of Prakash Singh's affidavit submitted to the Supreme Court of India on 10 November 2008 (I.A. No. 39 of 2008 in Writ Petition (Civil) No. 310 of 1996) where he reproduces the portions of reports drafted by the National Human Rights Commission, the PADC and the Bureau of Police Research & Development. These portions address the issues raised by the creation of a federal agency.

<sup>23</sup> *Ibid.*

<sup>24</sup> Defined by the Ministry of Home Affairs as "offences that have inter-State and/or international/trans-national ramifications and which affect national security through activities aimed at destroying the sovereignty, integrity and unity of India and/or thwarting the economic progress and development of the country."



<sup>25</sup> Section 6(3), *National Investigation Agency Act 2008* (India).

<sup>26</sup> Emphasis added.

<sup>27</sup> Local self-governing bodies at the village level.

## Chapter 4: Pakistan

<sup>1</sup> The Police Order, 2002 was an Executive decree issued by General Pervez Musharraf, the Chief of Army Staff, in his capacity as Chief Executive (while the constitution was suspended), a position he had assigned to himself after a successful *coup d'état* in 1999. See Chief Executive's Order No. 22 of 2002. The original law is available at: [http://www.nrb.gov.pk/publications/police\\_order\\_2002.pdf](http://www.nrb.gov.pk/publications/police_order_2002.pdf). The amended version is available at [http://www.nrb.gov.pk/publications/Police\\_order\\_2002\\_with\\_amendment\\_ordinance\\_2006.pdf](http://www.nrb.gov.pk/publications/Police_order_2002_with_amendment_ordinance_2006.pdf) as on 16 November 2008.

<sup>2</sup> The National Reconstruction Bureau was established in November 1999, shortly after Musharraf gained power. The legal and constitutional basis of the NRB remains questionable. See Cohen, Stephen (2004) *The Idea of Pakistan* (Brookings Institution Press) at pp.155-157.

<sup>3</sup> Suddle, Muhammad Shoaib (2006) "Reforming the Police Forces of South Asia", *Strengthening the Criminal Justice System* (Asian Development Bank) at pp. 51-53: <http://www.adb.org/Documents/Books/Strengthening-Criminal-Justice-System/strengthening-criminal-justice-system.pdf> as on 12 December 2008.

<sup>4</sup> Articles 3 and 4, *Police Order, 2002* (Pakistan).

<sup>5</sup> Provincial Police Officer is the new designation for the Inspector General of Police, who sits atop the police hierarchy of a province.

<sup>6</sup> *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 *Local Government Ordinance, 2001*.

<sup>7</sup> 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 Pakistan Muslim League (Q) Member of Provincial Assembly (Punjab).

<sup>8</sup> Centre for Peace and Development Initiatives (2005), *District Public Safety and Police Complaints Commission*, p. 1.

<sup>9</sup> Ministry of Law, Justice and Human Rights, Access to Justice Program Management Unit (2007), *Good Governance in Public Grievance Redress Processes and Procedures: The Case of Public Safety and Police Complaints Commission*, p. 4.

<sup>10</sup> International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157, p. 8: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1> as of 12 December 2008.

<sup>11</sup> Article 44(1)(a), *Police Order, 2002* (Pakistan).

<sup>12</sup> Article 44(1)(e), *Police Order, 2002* (Pakistan).

<sup>13</sup> Article 44(1)(h), *Police Order, 2002* (Pakistan).

<sup>14</sup> Article 44(1)(l), *Police Order, 2002* (Pakistan).

<sup>15</sup> Article 44(1)(m)(ii), *Police Order, 2002* (Pakistan).

<sup>16</sup> Article 44(1)(m)(iii), *Police Order, 2002* (Pakistan).

<sup>17</sup> Ministry of Law, Justice and Human Rights, Access to Justice Program Management Unit (2007), *Good Governance in Public Grievance Redress Processes and Procedures: The Case of Public Safety and Police Complaints Commission*, p. 4.

<sup>18</sup> *Ibid*, pp. 4-5.

<sup>19</sup> *Ibid*, p. 7.

<sup>20</sup> Article 38(1)(a), *Police Order, 2002* (Pakistan).

<sup>21</sup> International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157, p. 12: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1> as of 12 December 2008.



<sup>22</sup>Chattha, Abid Hussain, Presentation at *From Force to Service: Towards Better Policing in Pakistan*, Joint CHRI-CRCP Consultation, Islamabad, 17 July 2008.

<sup>23</sup>Abbas, Sarkar, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008. Mrs Sarkar Abbas is a member of the National Public Safety Commission.

<sup>24</sup>Ibid.

<sup>25</sup>Ministry of Law, Justice and Human Rights, Access to Justice Program Management Unit (2007), *Good Governance in Public Grievance Redress Processes and Procedures: The Case of Public Safety and Police Complaints Commission*, p.6.

<sup>26</sup> Article 80(1)(b), *Police Order*, 2002 (Pakistan).

<sup>27</sup> Article 80(1)(c), *Police Order*, 2002 (Pakistan).

<sup>28</sup> Article 80(2)(a), *Police Order*, 2002 (Pakistan).

<sup>29</sup> Article 80(2)(f), *Police Order*, 2002 (Pakistan).

<sup>30</sup> Article 80(2)(j), *Police Order*, 2002 (Pakistan).

<sup>31</sup>A full list of PPSPCC functions can be found at Article 80 of *Police Order*, 2002 (Pakistan).

<sup>32</sup>Abbas, Sarkar, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008.

<sup>33</sup>Ibid.

<sup>34</sup>Ibid.

<sup>35</sup> Khosa, Tariq, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008. Mr Khosa was Director General of the National Police Bureau during the time of the presentation and is currently working as Director General of the Federal Investigation Agency.

<sup>36</sup> Article 92(1), *Police Order*, 2002 (Pakistan).

<sup>37</sup> Article 92(2), *Police Order*, 2002 (Pakistan).

<sup>38</sup> Article 92(3)(d), *Police Order*, 2002 (Pakistan).

<sup>39</sup> Article 92(3)(i), *Police Order*, 2002 (Pakistan).

<sup>40</sup>Abbas, Sarkar, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008.

<sup>41</sup> National Public Safety Commission (April 2008) *Annual Report 2006*, Publisher: National Police Bureau, p. 23.

<sup>42</sup> Ibid, pp. 23-24.

<sup>43</sup>Abbas, Sarkar, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008.

<sup>44</sup> Article 160, *Police Order*, 2002 (Pakistan).

<sup>45</sup> National Police Bureau, National Police Management Board: <http://www.npb.gov.pk/npmb/composition.asp> as on 14 November 2008.

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<sup>47</sup>Abbas, Sarkar, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008.

<sup>48</sup> Article 168, *Police Order*, 2002 (Pakistan).

<sup>49</sup> Interview with Mr Sharfuddin Memon (Chair of CPLC, Karachi): <http://www.edupk.com/pow/modules.php?name=News&file=article&sid=172> as on 1 July 2008.

<sup>50</sup> Mehta, S. (2007), *Feudal Forces: Democratic Nations – Police accountability in Commonwealth South Asia*, Commonwealth Human Rights Initiative, p. 83: [http://www.humanrightsinitiative.org/publications/police/feudal\\_forces\\_democratic\\_nations\\_police\\_accountability\\_in\\_cw\\_south\\_asia.pdf](http://www.humanrightsinitiative.org/publications/police/feudal_forces_democratic_nations_police_accountability_in_cw_south_asia.pdf) as on 18 November 2008.

<sup>51</sup> Suleman, Shaukat Ali, Presentation at *From Force to Service: Towards Better Policing in Pakistan*, Joint CHRI-CRCP Consultation, Islamabad, 17 July 2008. Mr Shaukat Ali Suleman is the Deputy Chief, CPLC (Karachi).

<sup>52</sup> Interview with Mr Sharfuddin Memon (Chair of CPLC, Karachi): <http://www.edupk.com/pow/modules.php?name=News&file=article&sid=172> as on 1 July 2008.





- <sup>53</sup> International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157, p. 19: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1> as on 12 December 2008.
- <sup>54</sup> Citizen's Police Liaison Committee (Lahore), Members of CPLC, Lahore: <http://www.cplc-lahore.gop.pk/cplc-members> as on 12 December 2008.
- <sup>55</sup> Citizen's Police Liaison Committee (Karachi): <http://www.cplc.org.pk/content.php?page=2> as on 20 October 2008.
- <sup>56</sup> Citizen's Police Liaison Committee (Karachi), Members of CPLC, Karachi: <http://www.cplc.org.pk/content.php?page=3> as on 20 October 2008.
- <sup>57</sup> Enforcement of law and order has been recognized as a provincial subject in Pakistan. Further, the subject of Police is not mentioned in any of the two legislative lists (Federal Legislative List and Concurrent Legislative List), thus it falls in the category of residuary powers which are understood to be in the provincial domain under Article 142(c) of the Constitution of Pakistan. Though, the tendency of the superior courts in Pakistan has been to give the entries in the legislative lists the widest possible amplitude and liberal construction. Therefore, it is quite possible that items 1 and 2 on the concurrent legislative list, namely criminal law and criminal procedure, would be interpreted to include the subject of police.
- <sup>58</sup> International Crisis Group (2004), *Devolution in Pakistan: Reform or Regression?*, Asia Report N°77, p. ii: [http://www.crisisgroup.org/library/documents/asia/south\\_asia/077\\_pakistan\\_devolution.pdf](http://www.crisisgroup.org/library/documents/asia/south_asia/077_pakistan_devolution.pdf) as on 1 December 2008.
- <sup>59</sup> Traub, J. (2009), "Can Pakistan Be Governed?" *New York Times*, 31 March 2009: <http://www.nytimes.com/2009/04/05/magazine/05zardari-t.html?pagewanted=4&ref=global-home> as on 31 March 2008.
- <sup>60</sup> International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157, p. 6: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1> as on 12 December 2008.
- <sup>61</sup> Article 33(1), *Police Order*, 2002 (Pakistan).
- <sup>62</sup> Article 33(3), *Police Order*, 2002 (Pakistan).
- <sup>63</sup> Article 35(1), *Police Order*, 2002 (Pakistan).
- <sup>64</sup> Abro, R. (2009), "Restoration of commissioner system: Sindh government finalises modalities", *The Daily Times*, 17 January 2009: [http://www.dailytimes.com.pk/default.asp?page=2009%5C01%5C17%5Cstory\\_17-1-2009\\_pg12\\_1](http://www.dailytimes.com.pk/default.asp?page=2009%5C01%5C17%5Cstory_17-1-2009_pg12_1) as on 17 January 17, 2009; \_\_\_\_ (2008), "Punjab wants police under bureaucracy", *The Peninsula*, 4 October 2008: [http://www.thepeninsulaqatar.com/Display\\_news.asp?section=World\\_News&subsection=Pakistan+%26+Sub-Continent&month=October2008&file=World\\_News2008100411612.xml](http://www.thepeninsulaqatar.com/Display_news.asp?section=World_News&subsection=Pakistan+%26+Sub-Continent&month=October2008&file=World_News2008100411612.xml) as on 4 October 2008.
- <sup>65</sup> \_\_\_\_ (2009) "NRB recommends reversal of magistracy", *The News International*, 16 January 2009: [http://www.thenews.com.pk/top\\_story\\_detail.asp?ld=19666](http://www.thenews.com.pk/top_story_detail.asp?ld=19666) as on 17 January 2009. However, there are some that believe having the *Zila Nazim* write the PER is even more problematic than having a bureaucrat do so. It is suggested that the *Zila Nazim* holds too much influence over the DPO under the current arrangement and the DPO can be susceptible to undue political interference. See International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157 at page 6 for a more detailed discussion: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1>.
- <sup>66</sup> \_\_\_\_ (2009) "NRB recommends reversal of magistracy", *The News International*, 16 January 2009: [http://www.thenews.com.pk/top\\_story\\_detail.asp?ld=19666](http://www.thenews.com.pk/top_story_detail.asp?ld=19666) as on 17 January 2009.
- <sup>67</sup> International Crisis Group (2004), *Devolution in Pakistan: Reform or Regression?*, Asia Report N°77, p. 2: [http://www.crisisgroup.org/library/documents/asia/south\\_asia/077\\_pakistan\\_devolution.pdf](http://www.crisisgroup.org/library/documents/asia/south_asia/077_pakistan_devolution.pdf) as on 1 December 2008.
- <sup>68</sup> Abro, R. (2009), "Restoration of commissioner system: Sindh government finalises modalities", *The Daily Times*, 17 January 2009: [http://www.dailytimes.com.pk/default.asp?page=2009%5C01%5C17%5Cstory\\_17-1-2009\\_pg12\\_1](http://www.dailytimes.com.pk/default.asp?page=2009%5C01%5C17%5Cstory_17-1-2009_pg12_1) as on 17 January 17, 2009; \_\_\_\_ (2008), "Punjab wants police under bureaucracy", *The Peninsula*, 4 October 2008: [http://www.thepeninsulaqatar.com/Display\\_news.asp?section=World\\_News&subsection=Pakistan+%26+Sub-Continent&month=October2008&file=World\\_News2008100411612.xml](http://www.thepeninsulaqatar.com/Display_news.asp?section=World_News&subsection=Pakistan+%26+Sub-Continent&month=October2008&file=World_News2008100411612.xml) as on 4 October 2008.
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<sup>72</sup> Centre for Peace and Development Initiatives (2005), *District Public Safety and Police Complaints Commission*, p. 4.

<sup>73</sup> International Crisis Group (2008), *Reforming Pakistan's Police*, Asia Report N°157, p. ii: <http://www.crisisgroup.org/home/index.cfm?id=5570&l=1> as on 12 December 2008.

<sup>74</sup> Khosa, Tariq, Presentation at *Police Reform in Pakistan: Beyond Analysis*, Joint CHRI-HRCP Consultation, Lahore, 28 November 2008.

<sup>75</sup> Ibid.

<sup>76</sup> Dogar, A. (2009), "Will needed to change police culture: Motorway IGP", *The News International*, 16 April 2009: <http://www.thenews.com.pk/print1.asp?id=172764> as on 16 April 2009.

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<sup>78</sup> Ibid.

<sup>79</sup> Chattha, Abid Hussain, Presentation at *From Force to Service: Towards Better Policing in Pakistan*, Joint CHRI-CRCP Consultation, Islamabad, 17 July 2008.

## Chapter 5: Sri Lanka

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<sup>3</sup> Ibid., p. 11.

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- <sup>21</sup> 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.
- <sup>22</sup> 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. And while there are penalties if an officer does not follow the rules, the ordinance does not provide for any external review of misconduct or provide internal procedures for disciplinary proceedings.
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- <sup>30</sup> 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, Colombo: Law and Society Trust.
- <sup>31</sup> Article 155(J)(1), 17<sup>th</sup> Amendment, *Constitution of the Democratic Republic of Sri Lanka, 1978*: The Commission may, subject to such conditions and procedures as may be prescribed by the Commission, delegate to the Inspector-General of Police or in consultation with the Inspector-General of Police to any Police Officer, its powers of appointment, promotion, transfer, disciplinary control and dismissal of any category of police officer.
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- <sup>34</sup> Interview with Mr Lasantha Wickramatunga, Editor of Sunday Leader, Colombo, 17 June 2008.
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- <sup>40</sup> Ibid.
- <sup>41</sup> Welliamuna, J. C. (2006), *In Pursuit of 'Absolute Integrity': Identifying Causes for Police Corruption*, Transparency International – Sri Lanka, p. 76.
- <sup>42</sup> Ibid., p. 36.
- <sup>43</sup> Pinto-Jayawardena, K. (2007), "An Unfulfilled Promise: Critical Scrutiny of the National Police Commission of Sri Lanka", *LST Review*, Volume 18, Issue 238, August 2007, p. 17.
- <sup>44</sup> National Police Commission (2006), *Annual Report 2006*, p. 37.
- <sup>45</sup> 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 DIGG, 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.
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- <sup>49</sup> Section 18 of the *Removal of Officers (Procedure) Act, No. 5 (2002)*.
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<sup>60</sup> International Independent Group of Eminent Person website, "Press Releases: 6 March 2008": <http://www.iigep.org/press-releases.htm> as on 12 November 2008.

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<sup>63</sup> \_\_\_\_ (2005), "Persisting problems and outstanding issues, An alternative report to the Committee Against Torture" presented by the *Law & Society Trust, Sri Lanka and Asian Human Rights Commission*, Hong Kong, October 7, 2005. From 1994-2004, there were no convictions under the CAT Act and since then, there have been only 3 convictions till date.

<sup>64</sup> Human Rights Watch (March 2008), *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, v.20, no.2(c), pp. 102-103: <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0> as on 12 November 2008.

<sup>65</sup> Tighe, P. (2008), "*Sri Lanka Loses Bid for UN Human Rights Council Seat*", 22 May 2008: <http://www.bloomberg.com/apps/news?pid=20601091&sid=ajQ846Zx3do8&refer=india> as on November 12, 2008.

<sup>66</sup> For greater detail on Sri Lanka's human rights record, please refer to CHRI's publication, "*Easier Said Than Done: A report on commitments and performances of the Commonwealth members of the UN Human Rights Council 2007-2008 Edition*" (to be published in 2009), R.I. Ilango and L. Mathieson (Ed.), Commonwealth Human Rights Initiative.

<sup>67</sup> National Police Commission (2006), *Annual Report 2006*, p. 32.

<sup>68</sup> Weliamuna, J. C. (2006), *In Pursuit of 'Absolute Integrity': Identifying Causes for Police Corruption*, Transparency International – Sri Lanka, pp. 81-82.

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# 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. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

**HUMAN RIGHTS ADVOCACY:** CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

## **ACCESS TO INFORMATION:**

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

## **ACCESS TO JUSTICE:**

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

**Prison Reforms:** The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

**Judicial Education:** CHRI facilitates judicial exchanges focusing on access to justice for the most vulnerable. Participating judges get a rare opportunity to hear from activists and experts, focus on pressing issues specific to their region and familiarize themselves with recent legal and procedural, as well as social and scientific, developments relevant to their judicial work. The work was begun with INTERIGHTS some years ago. CHRI now works independently to orient lower court judges on human rights in the administration of justice.

From the Khyber Pass to the Burmese border, and from the Himalayas to the Pearl of the Orient, 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*. That report delved deeply into the theory of democratic policing and why it is a desirable model for the region. Its examination of policing in South Asia revealed a state of law enforcement wholly unsuitable and devoid of public confidence. Even as some weak attempts have been made to reduce the politicisation of police, increase its accountability, and improve its management, implementation has been poor because governments are reluctant to fully and urgently engage on desperately needed reform.

The problems relating to police are patent and well documented, including by CHRI in *Feudal Forces: Democratic Nations*. The present report does not provide a laundry list of the ills that affect policing in South Asia. Rather, its purpose is to provide greater detail on the current state and pace of police reforms in Bangladesh, India, Pakistan and Sri Lanka and the concrete steps that can be undertaken to transition policing in the region from a force to a service.



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