

Roundtable on Police Reforms

Policing in Conflict: Towards Better Policing in Pakistan

24-25 November 2011

Islamabad

Facilitated by

Commonwealth Human Rights Initiative, Individualland and
Centre for Peace and Development 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 across the Commonwealth. CHRI was founded in 1987 by Commonwealth profession associations; it is headquartered in New Delhi, India since 1993, and has offices in Accra, Ghana and London, UK. CHRI advocates for better respect for, protection and promotion of international human rights standards and ensuring greater adherence to Commonwealth Harare principles. Issues relating to accountability and participation in governance – access to justice and access to information – are at the heart of CHRI's work. It also overviews the human rights situation in countries of the Commonwealth, looking especially at human rights defenders, compliance with international treaty obligations and monitoring the performance of Commonwealth members of the United Nations Human Rights Council.

The individual land is a liberal space that views the world from the prism of political, economic and cultural liberalism paradigm and believes firstly in the individual, secondly in individual freedom and then consequently social responsibility but from the reference point of the individual. Individual land is a space for liberal, secular individuals who believe that the state is for the individual and not vice versa, minimum government is more than enough, private entrepreneurship is the vehicle and root of creativity and progress, markets need to be open and globalization to be embraced. In other words, the individual land is unabashedly a liberal space in cyber world meant for liberals all over the world.

The Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan) is an independent, non-partisan and a not-for-profit civil society organization working on issues of peace and development in Pakistan. It is registered UNDER SECTION 42 of the Companies Ordinance, 1984 (XLVII of 1984). It was established in September 2003 by a group of concerned citizens who realized that there was a need to approach the issues of peace and development in an integrated manner. The CPDI-Pakistan is a first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch and Legislative Watch and Development.

Copyright© CHRI, New Delhi, December 2011

Design and Layout – Aspire Design, New Delhi

Conference Report

Written by
Devyani Srivastava

TABLE OF CONTENTS

Introduction

Background, Objective and Design

1. Policing in Conflict: Problems and Challenges

Present Day Policing Challenges Confronting Pakistan

Government Response to Police Reform: Understanding the Resistance to Reform

2. Police That We Want: Lessons for Pakistan

Principles of Better Policing

Case Study – Police Reform in Northern Ireland: Lessons for Pakistan

Applying the Lessons to Pakistan: Scope and Challenges

3. Balancing National Security, Oversight and Accountability

Security and Accountability: Are These Mutually Exclusive?

The Northern Ireland Experience: Insights

4. National Security, Accountability and Oversight in Pakistan

Legislative Response to National Security Concerns in Pakistan

Pakistan's Experience with External Police Oversight Bodies

5. The Way Forward

What Can Civil Society Do?

Annexure 1: Agenda

Annexure 2: List of Participants

INTRODUCTION

This report summarises the discussions, key concerns raised and recommendations during the round-table consultation on policing in conflict held in Islamabad on 24-25 November 2011. The consultation was organised by the Commonwealth Human Rights Initiative in collaboration with Individualland and the Centre for Peace and Development Initiative. The central motivation for holding the consultation was to take forward the debate on police reforms in the country. Participants of the consultation included human rights/civil society organisations, police, representative of the National Police Bureau, the Human Rights Commission of Pakistan, legal professionals, government officials and select media representatives.

Background, Objective and Design

The consultation was structured around the belief that democratic, citizen-centric policing is central to the pursuit of peace. Coercive, unaccountable and repressive policing not only undermines the rule of law but also lies at the heart of several problems that plague conflict-affected nations (high rate of crime, pervasive sense of insecurity, fragile inter-ethnic relations, warlordism, among others). Better policing, one that is capable of emerging as an “upholder” of law rather than as an “enforcer” is crucial to achieve equity and justice in society.¹

In Pakistan, human rights abuses by the police are rampant. Torture, deaths in custody, enforced disappearances, honour killings and police encounters are reported routinely. Ill-equipped and poorly trained, the police have in many instances either abdicated their responsibilities or directly perpetrated human rights violation. Poor policing standards are also believed to have contributed to the spread of militancy.

Yet, efforts to reform the police in Pakistan have at best neglected human rights standards and at worse reinforced a coercive approach seen as necessary to counter security challenges. For instance, the Police Order, 2002 that introduced several practices of modern democratic policing including the formation of external oversight bodies, has not really been implemented by any of the four provinces. Instead, the provinces of Sindh and Balochistan have replaced the Police Order, 2002 with new police legislations that are closer to the 1861 Police Act and fail to include many of the progressive principles of citizen-centric policing.

¹ The principles and framework of such an approach is dwelt at length in the book by Mary O'Rawe and Dr Linda Moore, *Human Rights on Duty: Principles for Better Policing- International Lessons for Northern Ireland*, Committee on the Administration of Justice, Belfast, Northern Ireland, 1997.

Worse, police and the paramilitary forces have been vested with enormous powers under the Anti-Terrorism Act (ATA), 1997 without adequate safeguards and accountability measures. The ATA severely dilutes legal standards on protection of human rights, thereby directly facilitating gross violations and abuses. Additionally, lack of resources and investment by the state and international community, lack of commitment by the political leadership towards police reforms and the historical culture of the use of police for political ends have variously hampered police reform efforts. This means the predominance of military operations as the preferred mode of establishing law and order.

The past few years, however, has seen a growing recognition of the linkage between police reforms and human security at all levels. The Pakistan government is investing more on the police by allocating higher police budgets and raising the salaries of police personnel; the international community is now focusing on police modernisation, as reflected in the revised terms of engagement of the US with Pakistan (Kerry-Lugar Bill); and the police leadership in Pakistan itself has been amenable to reforms.

In this light, the organisers of the roundtable felt that the time was ripe to debate on best ways to improve the police response to conflict. In pushing forth the demand for police reforms, care must, however, be taken to ensure that an enhanced role for the police, necessary as it is, does not result in greater powers and less accountability. To deliberate on this, the consultation sought to:

- Review police reform measures undertaken in Pakistan with a focus on initiatives taken in response to security challenges.
- Discuss the principles of better policing that must guide reform initiatives.
- Assess Pakistan reform measures against international as well as constitutional standards on human rights.
- Review their impact on civil liberties.
- Make recommendations on strengthening civil society advocacy around these issues.

For additional insights on the nature of police reforms in a conflict-affected area, the consultation also brought in a perspective from Northern Ireland. By no means do the organisers believe that lessons from another jurisdiction can be imported wholesale to Pakistan; nor is it the intention to suggest any ideal model of policing. But it is hoped that there is much to be gained from analysing the strengths and weaknesses and drawing lessons from similar struggles elsewhere.

Accordingly, the report begins with a review of the challenges facing Police Order, 2002 and the reasons for its failure. It then moves to analysing the police reform experience in Northern Ireland, highlighting the new police oversight bodies introduced and lessons that can be drawn in Pakistan's case. Next, the imperative of special security legislations and the danger of reduced accountability standards is summarised in some detail before focusing specifically on Pakistan's anti-terrorism legal framework and the experience of independent police accountability bodies. Finally, the report summarises the key recommendations for strengthening advocacy around police reform.

SESSION 1

POLICING IN CONFLICT: PROBLEMS AND CHALLENGES

Presentation on present day policing challenges confronting Pakistan²

Presentation on police reforms and future challenges³

Discussion on government response to police reform

Present Day Policing Challenges Confronting Pakistan

1. The police in Pakistan continue to be an instrument of political oppression. The strong control of the political executive over the police force in Pakistan lies at the heart of poor policing. The police are controlled by the politicians, while the politicians are controlled by the military. Recruitment, punishments, rewards and postings are mainly based on patronage and not on merit. Instead of emerging as an independent, professional and fair service post-independence, control of the political masters over the police has only tightened further. This is partly attributed to the retention of the 1861 Police Act that continues to govern policing in the country (in spirit if not in letter).⁴ The Act was designed to enable the political masters of the time to use the police to keep a check on the masses and control any unruly behaviour and dissent. The continuing existence of the legislation till today is symptomatic of the reluctance of the political executive to give up that control.

2 Mr Khateeb Ahmed, Chairman, SHEHRI-CBE, Karachi

3 Syed Irshad Hussain, IG (Retired) and Consultant, National Police Bureau, Pakistan

4 In July 2011, Sindh province restored the 1861 Police Act and repealed the Police Order, 2002. See Tariq Khosa, "Repeal of the Police Act: Sindh steps back to 19th century", *The News*, 15 July 2011, at: <http://www.thenews.com.pk/Today-sPrintDetail.aspx?ID=57835&Cat=2>. Shortly after, Balochistan too brought back the 1861 Police Act. See Tariq Khosa, "Balochistan blindly follows Sindh towards 19th century policing", *The News*, 25 August 2011, at: <http://www.thenews.com.pk/Todays-News-2-64572-Balochistan-blindly-follows-Sindh-towards-19th-Century-policing>.

2. Politicisation of the police played out in a gruesome manner in the recent sectarian killings in Karachi. To be sure, other factors including ethnic divisions and political rivalries contributed to the violence. But the failure of the police and the degree of politicisation of the force played a crucial role. This was noted by the Supreme Court in the *suo moto* case on the Karachi violence. While mentioning the failure of the police to deliver, the Court attributes it in part to the fear perpetrated by the Muttahida Quami Movement (MQM) regime in retaliation against the role played by the police in targeting MQM workers in 1992 under “operation clean up”. But subsequently, at least 92 police officers/officials are believed to have disappeared and whose whereabouts are yet to be known. **Another reason, as noted by the Court, for the failure of the police is that the recruitments were made on political considerations.** Many police officers have managed to occupy their posts for extraneous considerations and senior officers in the rank of SSP, SP and DSP were inducted into the force from other organisations without following any rules or undergoing training for the purpose of policing.⁵ The IGP of the state himself has pointed out that 30-40 per cent of the police force is non-cooperative either because they have secured their appointments on political considerations or they have associated themselves with different groups, including political parties, with vested interests in Karachi’s affairs.
3. The Pakistan police is not equipped to deal with internal security threats of the kind confronting the country at present. For a population of 165 million, it has a total police strength of 354,221, a ratio of 1:466. Of the major cities in the country, Karachi has the worse ratio of 1:700.⁶ Its forensic facilities are equally dismal. Pakistan has one DNA testing laboratory currently functioning in Islamabad. Provincial governments have been authorised to establish forensic laboratories in the capitals but these are yet to take off.
4. Corruption in the force runs across the ranks but is most glaringly reflected in the high-handedness of constables. According to the National Corruption Perception Survey, 2010, Transparency International Pakistan, the police were found to be the most corrupt sector. The most common kinds of corruption included money paid to register FIRs, money paid for traffic violations, and money paid to be released from false arrests among others. The most common actors involved include Duty Police Officers and Investigation Officers.

Government Response to Police Reform: Understanding the Resistance to Reforms

5. Despite these problems, successive governments in Pakistan have neglected police reforms. Since independence, 25 commissions were set up to address the issue of reforms, none of whose recommendations were implemented owing to lack of political will and resistance from vested interests. The Police Order, 2002, introduced as part of Musharraf’s reform agenda, was deeply resisted by provincial governments. The resistance was in part against the policies of a dictator, but more importantly, it was their reluctance to relinquish control over the police. The Order sought to make the police operationally autonomous while also introducing external over-

5 *Watan Party and another v. Federation of Pakistan*, Suo moto case No. 16 of 2011 and Constitution Petition Case No. 61 of 2011, Supreme Court of Pakistan.

6 Syed Irshad Hussain, IG Police (R), presentation on police reforms during consultation, National Police Bureau, Ministry of Interior, Government of Pakistan

sight bodies by way of ensuring accountability. There was strong support for the Order within the police, but to no avail. The Order has been subjected to massive amendments. Out of 187 articles, 87 were amended in 2004 and 2006, and these institutionalised political interference in policing. All police chiefs objected to the amendments but they were politically motivated and bureaucratically supported.

6. The Police Order, 2002 also suffered because of confusion over federal versus provincial jurisdiction on policing. At the time of passing the Order, questions arose on whether the federal government had the authority to legislate over policing. This is, however, noted to be a spurious argument. Mr Afzal Shigri, former Deputy Inspector General points out that the 1861 Police Act was also a central law and its legal status was accepted as such in independent Pakistan.⁷ Till 2002, no province opposed the 1861 Act on the grounds that policing was a provincial subject; nor did they object to its inclusion on Federal Government Statutes. Policing has been interpreted as deeply rooted in the Code of Criminal Procedure, and thus considered part of “matters incidental or ancillary to the Code as stated in the Concurrent List.”
7. Confusion over the 2002 Order arose because at the time of its promulgation, it was placed under the Sixth Schedule of the Constitution and therefore could not be repealed, altered or amended without the previous sanction of the President. This condition expired by 31 December 2009, after which parliament and the provincial assemblies were authorised to amend the Order without the sanction of the President. The expiry though pertains only to this condition and not the Order itself. The impression that the Order too expired by the end of 2009 and that provinces are free to make their own police acts is not correct. This legal position was further upheld by the Chief Justice in the hearing of the suo moto case in Karachi on 11 November 2011 which reaffirmed that the Police Order, 2002 is a federal law and cannot be replaced by the provincial assemblies.⁸
8. Despite a clear stand on provincial governments having no authority to repeal a federal law, Sindh and Balochistan governments repealed the Police Order, 2002 and replaced it with the 1861 Police Act. This was done under the influence of the bureaucracy and against the wishes of the police chiefs, reflecting clearly the strong influence of the bureaucracy and its sway on policies. The decision to repeal stands challenged on two grounds: first, that the Police Order, 2002, being a federal law cannot be repealed by provincial governments; and second, that the 1861 Act further violates the separation of the judiciary and executive enshrined in the 1973 Constitution (Article 175) and upheld by the Apex Court in several instances. The 1861 Act revolves around the position of the District Magistrate but that position stands abolished as part of the administrative reforms introduced by Musharraf, under which the judicial powers of the District Magistrate were transferred to the Judicial Magistrate, the administrative tasks to the elected Nazims and the policing oversight to the District Police Officer created under the Police Order, 2002.
9. Besides the resistance from the bureaucracy, another factor impinging on police reforms is the lack of support from the army. On the one hand, the police are being increasingly called on to be at the forefront of the fight against terrorism while, on the other hand, the army is extremely

⁷ Lahore High Court, Writ Petition No 16244/2002 dated 28/2/2003. See “Legal Status of Police Order 2002: The Need for a Uniform Police Law in Pakistan”, Paper submitted by Afzal Shigri, Deputy Inspector-General before parliament, 10 February 2010.

⁸ Umar Cheema, “Who controls the police, centre or provinces?” *The News*, 12 September 2011, at: <http://www.thenews.com.pk/Todays-News-2-67175-Who-controls-the-police-Centre-or-provinces>.

reluctant to share intelligence with the police. Considerable expertise on counterterrorism is held with the army. They need to share it with the police, particularly in urban settings. Pakistan needs to create a nationwide facility for police response. The police crumble in front of the terrorist. While we try to make police accountable for its misdeeds, we also need to recognise the service of those who are sacrificing their lives.

10. Another issue that has a direct bearing on police reforms is judicial reforms, without which police performance is unlikely to improve. Lower courts in particular have failed in fulfilling their oversight responsibilities. The law requires that a person be produced before the Magistrate within 24 hours of arrest, and detention beyond this period is possible only with the court's orders. Production of a detainee before the Magistrate is a step whereby the court gets the opportunity to review the basis of detention, the treatment meted out to the detainee and ensure that the detainee is aware of his/her rights on arrest, such as that of access to a lawyer of choice. In practice, however, pre-trial detentions last for years, and often the detainee has no access to a lawyer. Oversight at this stage by the court can reduce several violations committed by the police. However, owing to case overload, political pressure and lack of lawyers, the courts fail in their responsibilities.⁹
11. Other factors identified that impede effective policing include lack of will and support within the armed forces for police reforms; lack of incentives within the police organisation towards better and lawful policing; the predominance of culture over law in society, leading to reluctance by the police to take action against customs that go against the law; lack of a multidisciplinary approach to problem solving; and lack of flow of knowledge both among the officials and the public.

9 For more details on reforming Pakistan's judiciary, see International Crisis Group (2010), *Reforming Pakistan's Criminal Justice System*, 6 December.

SESSION 2

THE POLICE THAT WE WANT: LESSONS FOR PAKISTAN

Presentation on the principles of better policing¹⁰

Presentation on political context and police reform in Northern¹¹

Open discussion on applying the principles and lessons to Pakistan

Principles of Better Policing¹²

12. The components listed by the participants ranged from a helpful, friendly, approachable, responsive police organisation to one that is accountable, lawful, fair, just and acts as upholders of human rights. These components were then juxtaposed with principles of democratic policing practised in other jurisdictions and those enshrined in the Police Order, 2002.

Case Study – Police Reforms in Northern Ireland: Lessons for Pakistan

13. The history of conflict in Northern Ireland followed by the process of police reforms as part of the peace agreement has several relevant lessons to the present situation in Pakistan. Throughout the long years of sectarian division and violence in Northern Ireland, policing was emblematic of excessive violence, discriminatory behaviour and lack of accountability. The Royal Ulster Con-

¹⁰ Maja Daruwala, Director, Commonwealth Human Rights Initiative

¹¹ Aideen Gilmore, Independent expert on policing and human rights, Northern Ireland

¹² For more information on the principles of better policing, see "Police Accountability: Too Important to Neglect, Too Urgent to Delay," CHRI, 2005; "The Police That We Want: A Handbook for Oversight of Police in South Africa," Center for the Study of Violence and Reconciliation and Open Society Justice Initiative, 2005

stabulary (RUC) in Northern Ireland was highly unrepresentative – as against 60 per cent of Protestant population in Northern Ireland, 93 per cent of the RUC was Protestant. The RUC was very much a police “force” rather than a police service; police officers were (and still are) heavily armed with live fire and plastic bullets. Police stations were highly fortified and there was no sense of approachability. There were numerous deaths resulting from the use of lethal force by the RUC, but no member of the force was ever convicted for the use of lethal force.

14. There were also extensive allegations – in many cases with credible evidence – of collusion between the intelligence unit of the RUC known as the Special Branch which operated as a “force within a force” and paramilitary organisations. The police operated under an emergency law framework that conferred wide powers which were often abused and used in a discriminatory manner, in particular those that gave the power to stop, search and question without reasonable suspicion. The experience of the Catholic community was that these powers were exercised mostly against their community and ordinary people going about their daily chores were harassed.¹³ Overarching all this was the lack of accountability. There was no effective external complaints mechanism; no legal accountability; no disciplinary action; no political accountability; and no public accountability because there was no engagement with the community. **The result was a widespread lack of confidence, particularly (but not solely) among the Catholic community, in the police and their ability or willingness to uphold the rule of law.**
15. The declaration of ceasefire by the IRA in the early 1990s gave way to political negotiations which eventually culminated in the multiparty peace agreement in 1998. Triggers for the peace process were many but it was clear that policing would be part of the negotiations as it was part of the problem. There was therefore an opportunity and momentum to open discussions across civil society. **Civil society also played a crucial role in pushing for reforms. One of the strategies adopted by them was to highlight the obligations of the UK government under various international human rights treaties. This worked to a considerable extent.**
16. The fact that the agreement was made between the Irish and the British governments gave it some degree of legitimacy and the status of an international treaty. There was also an agreement that if there was to be lasting peace, all parties to the agreement must agree to the whole package of reforms without caveat. Though a new policing policy was not spelled out in the peace agreement it was agreed that an independent commission would be formed and the agreement gave it terms of reference that spoke of a new beginning to policing. **This was the Patten Commission.**¹⁴
17. A significant part of the Patten Commission was the process of consultations it followed. The Commissioners travelled widely, going to villages across Northern Ireland to hear people’s experiences with the police. Several aspects were deeply contested, starting from whether to disband RUC or only change it, adopting the name police “service”, the symbols of police, external complaints body even at local levels and so on. The wealth of information gathered subsequently informed the recommendations on policing, **encapsulated in their report titled “A New Beginning: Policing in Northern Ireland”.** The report put forward 175 recommendations to establish

¹³ See “Harassment: it’s part of life here”, CAJ, 1994, at: <http://www.caj.org.uk/contents/568>.

¹⁴ The Independent Commission on Policing in Northern Ireland was set up as part of the Peace Agreement reached in Belfast on 10 April 1998 and headed by Christopher Patten, former Governor of Hong Kong and a former Cabinet Minister.

an efficient, acceptable and accountable police service, one that can “enjoy widespread support from, and is seen as an integral part of the community as a whole.”

18. Two independent institutions were created to strengthen police accountability. These were the Policing Board and an Ombudsman, both of which played a crucial role in overcoming the trust deficit in the organisation. The Policing Board comprising 19 members, including elected assembly members and independent members from civil society was established. The Board was envisaged as a body to oversee and guide the democratic functioning of the police service by determining policing plans and objectives and monitoring the performance of the organisation against set goals. Its main functions included preparing annual policing plans, determining annual police budgets, monitoring police performance against the annual plan and most importantly, appointing chief police officers and civilian equivalents. The policing plan would be determined on the basis of government priorities and crime trends/patterns, thereby serving as a link between people’s expectations and government policies.
19. Along with the Policing Board that serves as a central institution, District Policing Partnership (DPP) Boards were also recommended in every district to monitor the performance of police in their districts. DPPs were also to include elected and independent members and essentially serve as advisory and consultative bodies. They would be responsible for holding public consultations at the district level so that people’s concerns could become part of the process of determining policing priorities.
20. In addition to the Police Board, the Patten report recommended establishing a Police Ombudsman as a body to hold the police accountable to law. The Ombudsman was envisaged as an external oversight body to provide an accessible, fair, impartial and independent mechanism to handle public complaints against the police. This was regarded as an important step towards strengthening police accountability as a whole in Northern Ireland. Notably, the Ombudsman was seen as a body not only to react to specific complaints but also to monitor trends of misbehaviour and abuse by police officers, such that recommendations can flow from the data gathered on ways to strengthen police management. These, along with many other reform measures included in the report, brought about a significant turn-around in the people’s confidence in the police. Today, even though pockets of instability continue to exist, there is overall stability in Northern Ireland.
21. Another notable aspect of the Patten Commission was its recommendation regarding the composition of the Northern Ireland Police Service. As mentioned above, the police was unrepresentative of society; it thus lacked legitimacy and was seen as one community policing another. As a compromise to disbanding the RUC (to which there was deep resistance), a retirement package was developed to replace several existing officers, create vacancies, and reconstitute the police. This involved downsizing the police service over an initial three-year period by offering generous lump-sum payments along with pension enhancement to regular police officers, and introducing a new recruitment strategy to change the composition of the police service over a period of ten years. The key aspect of the new recruitment strategy was the 50-50 rule whereby equal number of Protestants and Catholics were to be drawn from the pool of qualified candidates.

22. These changes have been seminal and are hopefully irreversible, but it does not mean that all is perfect. The composition has changed significantly to around 70 per cent of Protestants and 30 per cent of Catholics in the service. There is still some way to go to make it fully representative, and there considerable readjustments have to be made for the new internal dynamics and culture of Catholics and Protestants working together in the police. It is important also to monitor levels of retention; for example, in one year 100 officers left and 75 were of these were Catholic. There may be many reasons for this but it could show discontent. The composition of the police leadership is another indicator where there has been little change in terms of representation.

Applying the Lessons to Pakistan: Scope and Challenges

23. First, that police reforms constitutes an essential component of reduction to conflict. **Since the beginning, police reforms were intrinsically linked to the peace agreement.** Considerable discussion was centred on the role of the police as part of the political negotiations. According to polls, 98 per cent were in agreement that a reformed police must be part of the peace agreement.
24. Second, that while strong and fair legislations are vital to reform, it is equally important to have mechanisms for monitoring implementation. In Northern Ireland, a person was officially charged with overseeing the implementation of every recommendation of the Patten Commission which helped put information into the public domain. Continuously ensuring the integrity of new mechanisms set up and retaining public confidence is vital. Civil society organisations such as the Committee on the Administration of Justice (CAJ) also played a crucial role. CAJ was active in seeking information, monitoring the work of the Ombudsman and the Police Board, and produced several commentaries during the time. This also put pressure on the police, since they were being watched, which itself increases accountability
25. Third critical aspect was the centrality of human rights – the Patten Commission's report was clear that human rights are necessary for good policing and policing protects human rights. This was vital and most important and a former chief constable has noted that human right legislation helps police as much as the public – security and human rights are interdependent and it is a win-win situation.
26. Fourthly it is important to continue monitoring the situation to ensure that the institutions established are working effectively. For example, in Northern Ireland the first Ombudsman was well regarded and did a commendable job. However a recent report highlighted that the appointment of the second Ombudsman who was seen as more sympathetic to the police was manipulated; the criteria was changed at the last minute so that he could qualify. This, along with other irregularities, led to his stepping down.

SESSION 3

BALANCING NATIONAL SECURITY, OVERSIGHT AND ACCOUNTABILITY

Presentation on security and accountability¹⁵

Presentation on key insights from Northern Ireland¹⁶

Open discussion

Security and Accountability: Are These Mutually Exclusive?

27. In the past twenty years, and particularly since 9/11, countering terrorism and other non-state internal security threats and violence has emerged as the biggest challenge for states across the world. A common feature of states' response is undermining of fundamental rights, human values and due processes that lie at the heart of the international legal system. States claim that the nature of contemporary terrorism threats warrants a departure from accepted legal norms and that human rights have to be seen against this light.¹⁷ Lack of accountability of state action is justified against the duty of the state to protect its citizens from terrorist threats.
28. The binary approach to security and human rights has proved to be counterproductive. This was the key finding of the Eminent Panel of Jurists appointed by the International Commission of Jurists to look into this issue.

¹⁵ Maja Daruwala, Director, CHRI

¹⁶ Aideen Gilmore, Independent expert on policing and human rights, Northern Ireland

¹⁷ International Commission of Jurists, *Assessing Damage: Urging Action*, Report of the Eminent Jurist Panel on Terrorism, Counter-Terrorism and Human Rights, 2009

Key insights from the Northern Ireland Experience

29. This assessment also lay at the heart of the peace process in Northern Ireland. It was held by many that human rights abuses fed and fuelled the conflict in Northern Ireland. The Northern Ireland experience shows conclusively that human rights safeguards should be maintained and strengthened. Specifically, the conflict offers three key lessons.

First, special terrorism legislations introduced in Northern Ireland proved to be counterproductive. The dilutions of due processes in the laws including long detention periods, denial of bail, lack of access to a lawyer, removal of right to silence and wide search and arrest powers given to police officers fuelled the conflict further. For example, the internment policy of the UK government in the early 1970s was subsequently acknowledged by a UK army official as a failure which led to increased violence and recruitment to the IRA.

Instead, incorporating human rights standards and remedies (such as those provide under the Human Rights Act, 2000) at the height of the conflict would have had two benefits: one, it would have helped reduce the scope for human rights abuses because the police and military would be more aware of their roles and duties in protecting people's rights while discharging their powers and functions; and second, the remedies provided to victims under the 2000 Act, if available earlier, might have reduced the sense of alienation that the minority community faced in Northern Ireland.

Second, anti-terrorism laws that are meant to be temporary end up being long-term and permanent. Northern Ireland's laws were called provisional but were renewed every year. One of the requirements under international law is that derogations from fundamental rights should occur only in emergency situations. But these were renewed and eventually converted into permanent legislation. This shows that so-called emergency special powers, once they become part of legislative framework, are very hard to remove. The UK government committed to the "normalisation" of legislative framework in 2005, but in 2007 a justice bill was passed that included at the very end a section called "Powers" which re-introduced many of these powers. Therefore, Northern Ireland still has widely drawn stop and search powers, extended periods of detention without charge or non-jury trial. These powers are now part of the criminal justice system. The Northern Ireland experience is that once such powers are introduced, governments are very reluctant to let them go.

It is crucial that states exercise utmost caution while introducing special security legislations; that they follow a balanced and transparent procedure; and that such laws and accompanying derogations can be justified on the grounds of protecting the human rights of all of society. Whatever measures are introduced must be legal, necessary and proportionate.

Third, anti-terror legislations completely corrupt the criminal justice system and erode public trust. In Northern Ireland, alongside the Patten Commission, a review of the entire criminal justice system was also undertaken. But while the Patten Commission followed a consultative process, the justice sector review was done primarily by bureaucrats. It made around 275 recommenda-

tions including changes to the prosecution service and the judiciary to make them more open and transparent. However, importantly, the review was hindered because it did not look into the anti-terror laws which had corrupted and undermined the criminal justice system. Statistics show that people's confidence in the justice sector is still very low. This is the extent of damage done by anti-terror legislations and tells us how slow the process of rebuilding trust is.

30. The legal framework on counterterrorism places the entire onus on the accused and the victim, but more so, on the accused. The victim can at least expect support from within the community, but the accused stands alone against the prosecution. It is the helplessness of the accused in custody that calls for serious attention on guarding passionately the rights of accused against the system.

SESSION 4

NATIONAL SECURITY, OVERSIGHT AND ACCOUNTABILITY IN PAKISTAN

Presentation on special security and anti-terrorism legislations¹⁸

Discussion on independent oversight bodies¹⁹

Open discussion

Legislative Response to National Security Concerns in Pakistan

31. Among the most important responses of the Pakistan government to the security threat from violent non-state actors was special security and anti-terrorism laws. A slew of these were passed since independence, including The Security of Pakistan Act, 1952, West Pakistan Maintenance of Public Order Ordinance, 1960, Suppression of Terrorist Activities (Special Courts) Act, 1975 (repealed), Special Courts for Speedy Trial Ordinance, 1987, Terrorist Affected Areas (Special Courts) Ordinance, 1990, Terrorist Affected Areas (Special Courts) Act, 1992, the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance, 1998 (struck down by the Supreme Court) and the Anti-Terrorism Act (ATA), 1997.
32. Such legislations were enacted for two main purposes: *prevention* of terrorist acts and to provide for *speedy trial* of heinous offences. **To do so, however, they violate due process and the prin-**

¹⁸ Asad Jamal, Advocate associated with the Human Rights Commission of Pakistan

¹⁹ Mr Ahmad Chinoy, Chair, Citizen Police Liaison Committee, Karachi had to leave unfortunately and hence was unable to make a presentation. However, the discussions included performance of oversight bodies established under the Police Order 2002

principles of fair trial enshrined in Pakistan's Constitution. Right to due process and fair trial (Article 10-A) was inserted under the Fundamental Rights Chapter (Chapter 1, Part II) of the Constitution through the Eighteenth Amendment, 2010, according to which: "for the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process." **The principle was also reaffirmed by the Supreme Court of Pakistan** according to which the meaning of "due process" is the same as contained in the American Constitution: the application of doctrine with reference to precedents.²⁰ **Principles of fair trial are further protected in the Constitution under Article 10** which provides safeguards to arrest and detention including the right to be informed of the grounds of arrest, the right to consult a legal practitioner of choice, and the right to be produced before a Magistrate within 24 hours of such arrest, after which detention is to be authorised by the court; **Article 9** which guarantees right to life and liberty; **Article 13** which provides protection against double punishment and self-incrimination; and **Article 14** which prohibits torture for the sake of extracting evidence.

33. As a signatory to various international conventions – Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, and Convention on the Rights of the Child, 1989 – the Pakistan government is under obligation to protect and uphold fundamental rights.
34. In seeking to provide speedy justice, such laws severely compromise the principle of "presumption of innocence until proven guilty", a cardinal principle of natural justice and fair trial. The 1975 Act presumes the accused guilty if he is found in possession of any article which can be used in the commission of the offence he was accused of committing, or when apprehended "in circumstances which tend to raise a reasonable suspicion that he has committed such an offence...".²¹ Under the ATA, 1997, the onus of proof is on the accused when he is charged with failure to disclose to a police officer "his belief or suspicion" that a person has committed an offence under the ATA.²² Similarly, the onus is also on the accused in cases where he is charged with disclosing to another person "anything that is likely to prejudice an investigation" or "interferes with material which is likely to be relevant to an investigation."²³
35. The ATA further compromises fair trial guarantees by allowing *trial in absentia*. Under the regular criminal law, the general rule is that all evidence is to be taken in the presence of the accused (Section 353, Code of Criminal Procedure). Section 19 (10) of the ATA, however, authorises the Anti-Terrorism Courts to proceed with the trial in the absence of the accused if the court is satisfied that the absence is "deliberate and brought about with a view to impeding the course of justice".
36. Further, in the interest of speedy trial, such laws provide for very short investigation periods. For instance, the 1975 Act ensured "speedy" trials by not granting adjournments unless "necessary

20 *Sharaf Faridi and 3 others v. The Federation of Pakistan* (PLD 1989 Kar.404); *Fauji Foundation and another v. ShamimurRehman* (PLD 1983 SC 457).

21 Section 8, Suppression of Terrorist Activities (Special Courts) Act, 1975.

22 Section 1-L, Anti-Terrorism Act, 1997.

23 Section 21-A, 6-8, Anti-Terrorism Act, 1997.

in the interest of justice”.²⁴ It also provided that once the accused appeared before the court, the remaining trial could proceed even if the accused subsequently absconds.²⁵ The ATA, 1997, goes a step further, in that it requires investigation of offences triable by the Anti-Terrorism Court to be completed within seven working days (Section 19(1)) and any default by the investigating officer is liable to be punished for contempt of court (Section 19(2)). The trial judge is barred from granting more than two consecutive adjournments and convicted persons have only seven days to appeal the judgement (Section 25(3)).

37. Such short deadlines for a convict in the trial or appellate courts effectively exclude the provision of sufficient time to prepare a proper defence in trial or on appeal. The provisions on time frame contravene the due process rights of the accused/convict which are ensured by international human rights law, and the Pakistan Constitution.
38. The ATA also allows for *admissibility of confessions* made before police officers as evidence in court (Section 21(H)) even though Pakistan’s own law of evidence declares such confessions inadmissible.²⁶ Such a prohibition exists to avoid use of torture and excessive force to extract confessions by police officers and to provide a layer of oversight by the judiciary at this stage. Permitting their admissibility as evidence in court amounts to the police becoming the judge, jury and the executioner.
39. Under the ATA, law enforcement personnel may arrest suspects and enter and search houses without warrant (Section 5(2)(ii) & (iii)). The Act also increases police and other law enforcement personnel’s powers to use force for the purposes specified in the Act (Section 5(1)). This may include the power to shoot to kill. The ATA also makes conditions for releasing the accused on bail more stringent (Section 21).
40. **How effective are the anti-terror laws?** Since 1990, there have been 800 incidents of terrorism in Punjab, of which 475 have actually been prosecuted. A total of 2,300 suspects were named in those cases, and about 2,200 arrested. Of those arrested, about 1,650, or 75 per cent, were acquitted by the courts owing to a lack of evidence against them.²⁷ The question then arises: Why enact “special” laws to try acts or omissions which are already offences under existing criminal law? Why enact “special” laws which scale back the rights of the accused to fix problems which are essentially caused by other factors, not least the general inefficiency in the judicial system, lack of judges and want of more capable investigation?

Pakistan’s Experience with External Police Oversight Bodies

41. Several independent oversight bodies were set up under the Police Order, 2002 to strengthen democratic governance and accountability of the police. These include: the National Public Safety Commission responsible for overseeing the functioning of the police, determining policing priorities/plans, and undertaking performance evaluations; the Federal Police Complaints Authority mandated to receive public complaints against any federal law enforcement agency; and external

²⁴ Section 5(2), Suppression of Terrorist Activities (Special Courts) Act, 1975.

²⁵ Section 5(4), Suppression of Terrorist Activities (Special Courts) Act, 1975.

²⁶ Section 38, Qanoon-i-Shahdat Order, 1984.

²⁷ “Flawed anti-terrorism strategy; 75% terror suspects set free in Punjab”, *Express Tribune*, 17 October, 2011, at: <http://tribune.com.pk/story/275661/flawed-anti-terrorism-strategy-75-terror-suspects-set-free-in-punjab/>.

independent complaint commissions both at the provincial level – the Provincial Public Safety and Police Complaints Commission (PPSPCC) and the district level – District Public Safety and Police Complaints Commission (DPSPCC) responsible not only for overseeing the functioning of the police and evaluating performance, but also as a complaint body against police misconduct, negligence or abuse of authority.

42. Part of the reason for the breakdown of the public safety commissions is their complex composition. For instance, the DPSPCC's were to comprise of nine members, of which three were to be elected by the local Zila Council as introduced by the Local Government Ordinance, 2001. But in early 2010, all four provinces suspended the elected local bodies and reverted to the system of civil servants being in charge of the administration. With these changes, many DPSPCCs became dysfunctional.
43. Another major problem with the public safety commissions is their weak powers. Unlike other jurisdictions, where recommendations provided by such bodies are binding on the government, the public safety commissions in Pakistan do not enjoy such powers. As a result, even the functioning commissions have little impact. For instance, a policing plan was prepared in six districts of Khyber Pakhtunkhwa, of which only three were approved.

THE WAY FORWARD

The concluding session focused on two issues: ways to improve the police reform agenda, and ways to bolster the efforts of the civil society in Pakistan towards better policing. Underlying the discussion was a unanimous consensus that there is an urgent need for civil society to play a greater, more active role in demanding accountability from the government.

44. In terms of the *police reform agenda*, greater emphasis needs to be placed on measures to improve and strengthen the crime prevention capacity of the state. For instance, policies targeting drug-related offences must have a strong focus on rehabilitation services and facilities to reduce recidivism, while police officers need training in dealing with victims of drug abuse. Welfare protection schemes too must be considerate to the need of the entire family of a particular witness. The current attitude of providing a constable by way of securing the witness is clearly inadequate. Police training needs to focus much more on human rights protection and their significance for security.
45. The Government of Pakistan needs to increase spending on modernising the police force. Currently, 90 per cent of the police budget is spent on salaries with very little left for improving police stations and equipping them with better facilities.
46. An issue that deserves special attention is policing in the Federally Administered Tribal Areas (FATA). The administrative system in FATA comprises the Political Agent, the elders of the tribes and civil armed forces. The Political Agent is responsible for implementing law with the help of the tribal elders. Law and order is governed by the Frontier Crimes Regulations (FCR) enacted as a special law in 1871 which vests the administration of the Agencies in the hands of the Po-

litical Agent selected from the Pakistan Civil Service. The Agent “supervises over trials, awards punishment and administers justice without even a possibility of revision by a regular court of law”. Neither the Code of Criminal Procedure nor the Pakistan Penal Code applies to FATA. Some amendments to the FCR were introduced in August 2009 that curtailed the bureaucracy’s arbitrary powers of arrest and detention and accorded the right to bail to prisoners. While these amendments are a welcome step, justice will continue to elude the region as the Political Agent’s decisions cannot be appealed in court and defendants do not have any legal right to defence.

47. In terms of strengthening the efforts of civil society, it is important to go beyond the project-specific and issue-specific approach and adopt a more holistic approach on reforms. For this, there is a need for greater interactions between various human rights organisations vested in systemic reforms of police. This will not only be useful in developing a more holistic understanding of reforms but also in building such a network of organisations into a power pressure group. **A great beginning was made with the formation of the Pakistan Forum on Democratic Policing, a coalition of civil society organisations working towards achieving better policing.**
48. There was also considerable support for a regional platform, bringing together resource persons and like-minded professionals to facilitate information sharing. Such a platform would enable those vested in systemic reform to share their experiences, initiatives, activities and draw lessons from other experiences from the region. In this way, the platform will help in profiling innovative, region-specific and/or community-driven initiatives and add to the literature on police accountability in the developing world. To this end, there was great support for the **Network for Improved Policing in South Asia**, a website formed in 2009 and spearheaded by CHRI.

ANNEXURE 1

List of Participants

AHMED, Khateeb
SHEHRI-CBE
Email: info@shehri.org

ARIF, Maryam
War Against Rape
Email: maryamarif@hotmail.com

ARIF, Shabana
Rozan, Islamabad
Email: Shabana@rozan.org

BANNACH, Katrin
Project Director, India
Friedrich NaumannStiftung
Email: katrin.bannach@fnst.org

CHINOY, Ahmed
Chairman, Citizen Police Liaison Committee
Karachi

Email: ahmedchinoy@gmail.com

DARUWALA, Maja

Director, Commonwealth Human Rights Initiative

New Delhi, India

Email: maja@humanrightsinitiative.org

GILMORE, Aideen

Independent Policing Expert, Northern Ireland

Email: aideengilmore@gmail.com

HAJI, Nazim

SHEHRI-CBE

Email: nazimhaji@gmail.com

HAROON, Anisa

Chairperson

National Commission for the Status of Woman

Email: info@ncsw.gov.pk

HUSSAIN, Syed Irshad

IG, National Police Bureau

Islamabad

Email: irshad2669@yahoo.com

IRAM, Khola

Principal Advisor GIZ Gender Responsive Policing Project

Email: khola.iram@gmail.com

JAMAL, Asad

Lawyer and Associate, Human Rights Commission of Pakistan

Email: asadjamal2006@gmail.com

KHALIQ, Bushra

Asian Human Rights Commission

Email: bushra.khaliq@yahoo.com

MEHMOOD, Khalid

Society for the Protection of the Rights of Child

Email: Islamabad@sparcpk.org

MUHAMMAD, Nehar

Executive Director

Psycho-Social Research, Advocacy and Rule of Law
(PAROL)

Email: nnehar@hotmail.com

NAZ, Samina

Communications & Media Specialist,

Aurat Foundation

Email: snaz@af.org.pk

Peerzada, Sayyed A. Safi

Rabta program, Rozan

Email: rabta@rozan.org

SHAH, Syed Kamal

Retired Secretary, Ministry of Interior

Email: syedkamalshah13@gmail.com

SADIQ, Ehsan

DIG, Security, Islamabad

SRIVASTAVA, Devyani

South Asia Police Program

Commonwealth Human Rights Initiative, New Delhi, India

Email: devyani@humanrightsinitiative.org

TAMOURI, Sultan Azam

DIG Operations

Islamabad

Email: star.buzzzz@yahoo.com

WILLIAM, Johan

Director Regional Office

National Commission for Justice and Peace

Email: petncjp@yahoo.com

ZAMAN, Aly

Sr. Analyst, International Crisis Group

Email: zbarlas@crisisgroup.org

DAY 1: THURSDAY 24 NOVEMBER 2011

0900-0930

Registration

Inaugural Session

9:30 – 9:50 am	Welcome address and objectives of conference	<ul style="list-style-type: none"> * Ms Maja Daruwala, Director, Commonwealth Human Rights Initiative (CHRI) * Mr Amer Ejaz, Executive Director, CPDI * Shaukat Ali Ashraf, Coordinator Individualland
9:50 – 10:00 am	Introduction of participants	
10:00 –10:15 am	Tea/Coffee Break	

Session 1: Policing in Crisis

10:15 –10:45 am	Present day policing problems and challenges Problems faced by the police on the ground including shortage of staff, disproportionate police-population ratio, training, poor infrastructure	Khateeb Ahmad SHEHRI-CBE
10:45 – 11:30 am	Open discussion	Moderated by: Mr Amer Butt, Executive Director, CPDI
11:30 –12:00 pm	Government's response to police reform Main provisions of the Police Order, 2002, and subsequent amendments; do these address the problems police face on the ground?	Mr Ahmed Chinoy, Chairman, Citizen Police Liaison Committee, Karachi
12:00 – 1:00 pm	Open discussion Debating the factors hindering effective policing	Moderated by: Ms Maja Daruwala, Director, CHRI
1:00 – 2:00pm	Lunch	

Session 2: The Police that We Want

2:00 - 2:30 pm	The police that we want Principles of democratic policing	Ms Maja Daruwala, Director, CHRI
2:30 – 3:15 pm	Open discussion Debating the principles listed above	Moderated by: Mr Shaukat Ali Ashraf, Coordinator IL
3:15 – 3:45 pm	Police reform in Northern Ireland Assessment of the larger political context, factors that triggered resolution and how better policing was central to the process	Ms Aideen Gilmore, Independent Policing Expert, Northern Ireland
3:45 – 4:00 pm	Tea/Coffee Break	
4:00 – 5:00 pm Open discussion Applying the principles to Pakistan: scope and challenges Moderated by: Yahya Ahmad, Individualland		

DAY 2: FRIDAY 25 NOVEMBER 2011

Session 3: Balancing National Security: Oversight and Accountability

9:30 – 10:00 am	Operational responsibility and accountability Concepts of executive oversight over policing, functional autonomy, performance assessment as key to accountability	Ms Maja Daruwala, Director, CHRI
10:00 – 10:45 am	Open discussion Challenges to operational responsibility in Pakistan	Moderated by: Ms Shabana Arif, Rozan
10:45 – 11:00 am	Tea/Coffee Break	
11:00 – 11:30 am	Legislative response to national security concerns: Overview of recent amendments and laws	Asad Jamal, Advocate Human Rights
11:30 – 12:00 pm	Security and accountability: Are these mutually exclusive	Ms Aideen Gilmore, Independent Policing Expert
12:00 – 1:00 pm	Open discussion	Moderated by: CHRI and IL
1:00 – 2:00 pm	Lunch	

Session 4: For the Future

2:00 – 2:30 pm	Pakistan's experience with Independent oversight bodies Reasons for its failure	Ahmed Chenoy, Chairman, Citizen Police Liaison Committee
2.30 – 3.00 pm	Police reforms and future challenges	Mr Syed Irshad Hussain, IG Police (Retired), Consultant to National Police Bureau
3.00 – 3.45 pm	Open discussion	Moderated by: Maja Daruwala, CHRI
3.45 – 4.00 pm	Tea/Coffee Break	
4.00 – 5.00 pm	Interactive session on Moving Forward: What in this context should civil society be thinking about	Moderated by: CHRI, CPDI and IL together
5.00 – 5:30 pm	Concluding remarks and vote of thanks	

[illegible]

[illegible]

Facilitated by

Commonwealth Human Rights Initiative, Individualland and
Centre for Peace and Development Initiative