

Control & Governance of the Police: Commonwealth Innovations in Policy and Practice

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Introduction

As a public service, the police must address the demands and needs of the public, in line with the principles of efficiency, accountability and respect for human rights. Like any other agency of state, as well as to the people the police are accountable to government. In practice, across the Commonwealth, police leaders tend to answer directly to elected public representatives in the *Executive* branch of government, whether at a local, state or national level – and often operate in very close proximity to political leaders.¹ Government has a legitimate and very central role to play in setting the strategic direction and broad policy priorities for the police, on behalf of the people they represent. In the framework of democratic policing, the prime responsibility of the government remains confined to providing a well-resourced, well-led, well-trained police organisation, and to imposing suitable checks on the powers of the police to ensure that they discharge their functions in accordance with law, and are held accountable when they act outside or above law.

By its very nature, policing is a highly controversial and very important aspect of governance, and its relation to politics is both close and complex. Though there is no room for ambiguity in the principle that democratic governments (and individual politicians) cannot use their authority over the police to promote specific political interests, or even worse for corrupt or illegitimate ends. Yet, in jurisdictions with weak or absent checks and balances, the pull of introducing private interests and/or political agendas into the daily running and operations of the police can dominate – resulting in illegitimate interference in policing often accompanied with disastrous consequences for both governance and human rights. There are countless manifestations of illegitimate interference in policing, and very broadly, some experiences across the Commonwealth include: manipulating police recruitment, promotion and dismissal practices to suit political purposes, bringing political elements into crime control and investigation, or using the strong hand of the police to endanger political stability in the worst cases.

Commonwealth countries continue to wrestle with these tensions, and in doing so, some have established innovative, unique arrangements or built new institutions to help mitigate the relationship between the state (namely the executive) and the police. This paper seeks to highlight selected initiatives from across the Commonwealth that work to prevent illegitimate interference in policing.

Appropriate Political Direction

The distinction between *appropriate political direction* from a government to the police, and *inappropriate political interference* in operational policing matters is an immensely significant one, both in terms of the way it is expressed in law and policy, as well as in practice. One important step in establishing truly appropriate political direction to the police is to define, in law, the parameters of government's role in relation to the police. In the more archaic police legislation of the Commonwealth, government's legitimate role is not always fully articulated, or at all. A clear delineation of roles, responsibilities and relationships between the police and the executive that are laid down in law helps to pinpoint accountability. It also minimises the possibility of unfettered interference seeping into policing matters and influencing its

functioning. Importantly, executive control must be kept out of police operational matters to protect the police's operational autonomy, and the law must reflect this distinction. Requiring public participation in framing policy also inhibits partisan impositions on policing.

Modern Police Acts frame a policy-directing role for government in a variety of interesting ways. In this context, "policy" for the police broadly includes preparing policing plans, setting standards and performance measuring indicators, and establishing strong accountability mechanisms. Some modern Police Acts refer to the guiding or directional role of government in terms of the '*responsibilities of Ministers*' and lay down (more or less clearly) how these responsibilities should be discharged. Some of the best legislative formulations of government's role come from the United Kingdom. For example, the system of control and accountability that governs the 43 forces of England and Wales is often called 'the tripartite structure of police accountability' which rests on a separation of power. This complex system, laid down in the *Police Reform Act 2002*, distributes governance and policy setting responsibilities over the police between the Home Office, the local police authority, and the chief constable of the force – precisely to create buffers between the police services and the state. It provides accountability to Parliament through the Home Secretary and to local communities through the local Police Authorities, which are local public bodies. In fact, Section 1 of the *Police Reform Act 2002*², entitled Powers of the Secretary of State, establishes the very specific responsibilities of the Home Secretary, and thereby the executive branch, in relation to the police. The law makes it the *duty* of the Home Secretary to frame a National Policing Plan every year – a policing policy plan in other words – by formalising centrally-imposed "key priorities" within a national plan. Using this device, the Home Secretary determines universal policing objectives, directs police authorities to establish performance targets, and determines cash grants for police authorities. Similarly, the *Police (Northern Ireland) Act 2000* carefully apportions responsibility for policing between the Executive (through the Secretary of State), police leadership (represented by the Chief Constable) and the Policing Board (an independent public body). The law explicitly assigns the duty to develop long-term objectives and principles to the Secretary of State, for medium-term objectives and priorities to the Policing Board, and for shorter-term tactical and operational plans to the Chief Constable.³

A few other examples include South Africa, where the Constitution makes it the "political responsibility" of the Cabinet Minister responsible for policing to "*determine the national policing policy* after consulting the provincial governments and taking into account the policing needs and priorities of the provinces".⁴ In Australian states which have civilian oversight bodies to oversee the police, the Police Minister often collaborates with the oversight agencies when determining policy matters.

Appropriate direction can also speak to police reform and the Commonwealth has seen Ministers initiating important reform processes, by calling for inquiries and prescribing new policy. One specific example goes back to late 2004, when the Minister of Internal Security of Papua New Guinea ordered a complete review of the Royal Papua New Guinea Constabulary in response to escalating unrest, violence and use of firearms. He established an Administrative Review Committee, which found and publicised systemic failures in the working of internal police accountability mechanisms, as well as significant evidence of illegitimate political interference.⁵ More generally, official Commissions usually called by government to look extensively into policing – in Commonwealth countries as diverse as India, the United

Kingdom, Australia, Canada, South Africa and Uganda – have produced path-breaking reports and extensive recommendations, including the creation of external oversight bodies, on police reform.

The importance of establishing a policy-directing role for government is crucial to set objective criteria and policy priorities for policing, which above all reflect the safety needs and crime concerns of the public. Setting criteria and establishing clear strategic direction, through policing plans for instance, is integral for government to effectively monitor police performance, be attune to the most pressing crime concerns, build local partnerships, and measure police use of public funds. Prioritising particular public safety and crime areas for special police attention may help the police itself to develop specialist expertise in responding to particular types of crime. Most importantly, any measures to direct government's role in relation to the police must be put in place with a view to preventing undue interventions into any aspect of policing, and guard against the creation of covert arrangements or mutual dependencies that can shut out public scrutiny.

Independent Voices in Policing Policy

While governments have a legitimate and central part to play in holding the police to account, their ability to interfere in policing and introduce inappropriate political direction is made much easier when other mechanisms of accountability and oversight are absent. In order to ensure a respectable distance between the executive and police, several Commonwealth countries have created innovative institutional arrangements precisely to facilitate appropriate direction and guard against illegitimate interference. Various named service commissions, police boards or authorities, and with differing mandates and composition, these bodies have all been created with a view to insulating the police from unwarranted external influence. Comparatively across the Commonwealth, the newer models of these bodies are bold in both composition and scope: many include citizen representation, and have wide powers to shape policy, set budgets, examine police behaviour, and assess performance – taking significant policing matters out of the strict confines of solely executive control. Though it is important to stress that like Ministers in most countries, these bodies can only provide policy guidance to police organisations, who retain their professional operational discretion.

Service Commissions

Service Commissions, predominant in the Commonwealth Caribbean and Pacific small states, are autonomous government bodies that oversee disciplinary and management matters in police agencies. While older models of service commissions usually limit their composition to people drawn from the executive, they are designed to be an independent voice in matters of police governance and administration, which is not controlled by any other person or authority. To this end, service commissions were established precisely to limit undue political interference in selection, promotion, transfer and removal of police officers. Occasionally, they also double as appeal mechanisms for police officers seeking redress from internal disciplinary or labour disputes. In practice, however, the dominant role of the Head of State in many small states in the Caribbean and Pacific allows them to wield their power in appointing commission members which can leave space for potential political patronage. On a more optimistic note, Nigeria's Police Service Commissions is one of the most potentially powerful new Commissions in the world. Established in 2001, its membership includes human rights advocates, women, businesspeople and media persons, as well as a retired Justice of the Superior Court. Coupled

with the statutory obligation to establish a complaints investigation department, as an independent Constitutional body, it has the power to discipline, dismiss, and refer cases of police officers for criminal prosecution. The National Police Commission of Sri Lanka is responsible for the appointment, transfers, promotions and disciplinary matters relating to all police officials except the Inspector General of Police (IGP).

Policing Boards/Authorities

In England and Wales, Northern Ireland, as well as Canada, Police Boards or Police Authorities diffuse executive control over the police. These bodies seek to give the police a measure of independence or protection from direct political control and interference, mostly by ensuring that these semi-independent bodies with community representation, rather than only elected politicians, provide policy direction and approve police budgets.

Developed in response to a long history of conflict, Northern Ireland's Policing Board is one of the most powerful bodies of this kind, and is responsible for delivering an efficient and impartial police service. The Policing Board is an independent public body made up of 19 members, both political and independent. Its duty and powers come from the Police (Northern Ireland) Acts 2000 and 2003. In order to gauge police effectiveness in tackling crime for instance, the Board is mandated to set objectives and targets for police performance and monitor progress against these, to monitor trends and patterns in crimes committed in Northern Ireland, to facilitate public-police cooperation to prevent crime, and to provide policing advice. The Board has made admirable moves to entrench the community's voice in policing matters by creating the District Policing Partnerships (DPPs) in conjunction with local councils in March 2003. The DPPs are made up of independent members (members of the public) and political members (local councillors), who represent their district on their local councils. DPPs liaise with the local Police Service of Northern Ireland District Commanders to formulate local policing plans, ensuring that community needs and concerns are embedded in policing policy. The Board itself decides the performance objectives and targets for the police only after it has consulted the DPPs, as well as key opinion-formers such as church leaders, community representatives and business people. Further, the Board elicits public opinion about policing issues through independent opinion surveys administered for it by the Northern Ireland Statistics and Research Agency. Notably, the Board is also mandated to make certain that the police are aware of and meet human rights standards in all areas of its work, by ensuring the police adhere to the Human Rights Act 1998 and to the police Code of Ethics, overseeing the working of the internal police complaints and discipline system, holding overall accountability over the Chief Constable, and managing the Independent Custody Visiting System.

Similar to Northern Ireland's DPPs, the local Police Authorities of England and Wales, comprised of elected local councillors, magistrates and members of the public, frame local policing priorities and determine the arrangements for consultation between the police and public. The Police Authorities advise on budgeting and resource allocation, and produce a three-year strategic plan consistent with the National Policing Plan. Canada's various police services are answerable to local Police Boards, which are essentially civilian bodies comprised of local councillors and residents. Though their mandates may vary, most are responsible for determining staffing levels, budgeting and performance indicators, as well as crucial matters of discipline and the hiring of Police Chiefs.

Appointment and Management of Police Chiefs: Commonwealth Best Practice

The exercise of operational direction and daily management usually rests with the Head of Police, and the necessity to insulate this position from being vulnerable to excessive political interference is vital. Serious breaches of law and accountability arise out of inappropriate relationships of patronage that develop where there are no objective procedures and criteria for the appointment and management of police chiefs.

While there are no universal formulas, the power to hire and fire police chiefs must, at minimum, be prescribed by clear and fair procedures. Where possible, the input of additional institutions such as Service Commissions or civilian oversight bodies can be integrated, adding transparency and civilian participation to this important process. The highest police post must also be protected by secure tenure.

The established procedure in England and Wales, Northern Ireland and Canada demands and relies to a large extent upon civilian input. In these jurisdictions, the local policing authorities are responsible for the appointment of the Head of Police, subject to ratification by the Minister in charge in some cases. The authorities can call for suspension or early dismissal on public interest grounds. In New South Wales and Queensland (Australia), the process of appointment is also significantly collaborative, requiring input from civilian oversight bodies. The Commissioner of the Queensland Police Service, for instance, is appointed by the Governor in Council, “on a recommendation agreed to by the chairperson of the Crime and Misconduct Commission”.⁶ The agreement of the Minister for Police for the state also has to be sought. In New South Wales, the Governor appoints the police chief on the recommendation of the State Police Minister, after the Police Integrity Commission and internal disciplinary department of the New South Wales Police have done a background check on the shortlisted candidate.⁷ The Commission and the internal department have to submit a report of their findings to the Minister, and the Minister must then obtain a statutory declaration from the candidate that s/he has not knowingly engaged in any form of misconduct. The Crime and Misconduct Commission and the Police Integrity Commission are both independent civilian oversight bodies with vast powers over the police.

In Conclusion

Democratic governments are expected to refrain from inappropriate political interference in *operational* policing matters, and from introducing party political elements into the day-to-day running of the police. Rather, government must shape an efficient, accountable and responsive police service – which can be done through preparing policing plans in consultation with the public, setting clear standards and performance indicators, or creating accountability mechanisms. Police in democracies should have some *operational* discretion, when they apply policies and laws, but they must always use this discretion judiciously and in the public good, not to further their own agendas. It is precisely for the exercise of this discretion that they are held to account.

¹ For example, a state Police Chief will account to a Premier or Chief Minister of the state (and in some cases also to a state Policing or Justice Minister), and the chief of a national police organisation will usually account to a Cabinet Minister in the national government.

² This becomes Section 36(A) of the Police Act 1996

³ Sections 25-26, *Police (Northern Ireland) Act 2000*

⁴ The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), *Article 206 (1)*

⁵ Government of Papua New Guinea and Institute of National Affairs (2004), *Report of the Royal Papua New Guinea Constabulary Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa*, pp. 38-39

⁶ Section 4.2(1), *Police Service Administration Act 1990* (Queensland, Australia)

⁷ Section 24 (6a), *Police Act 1990* (New South Wales, Australia)