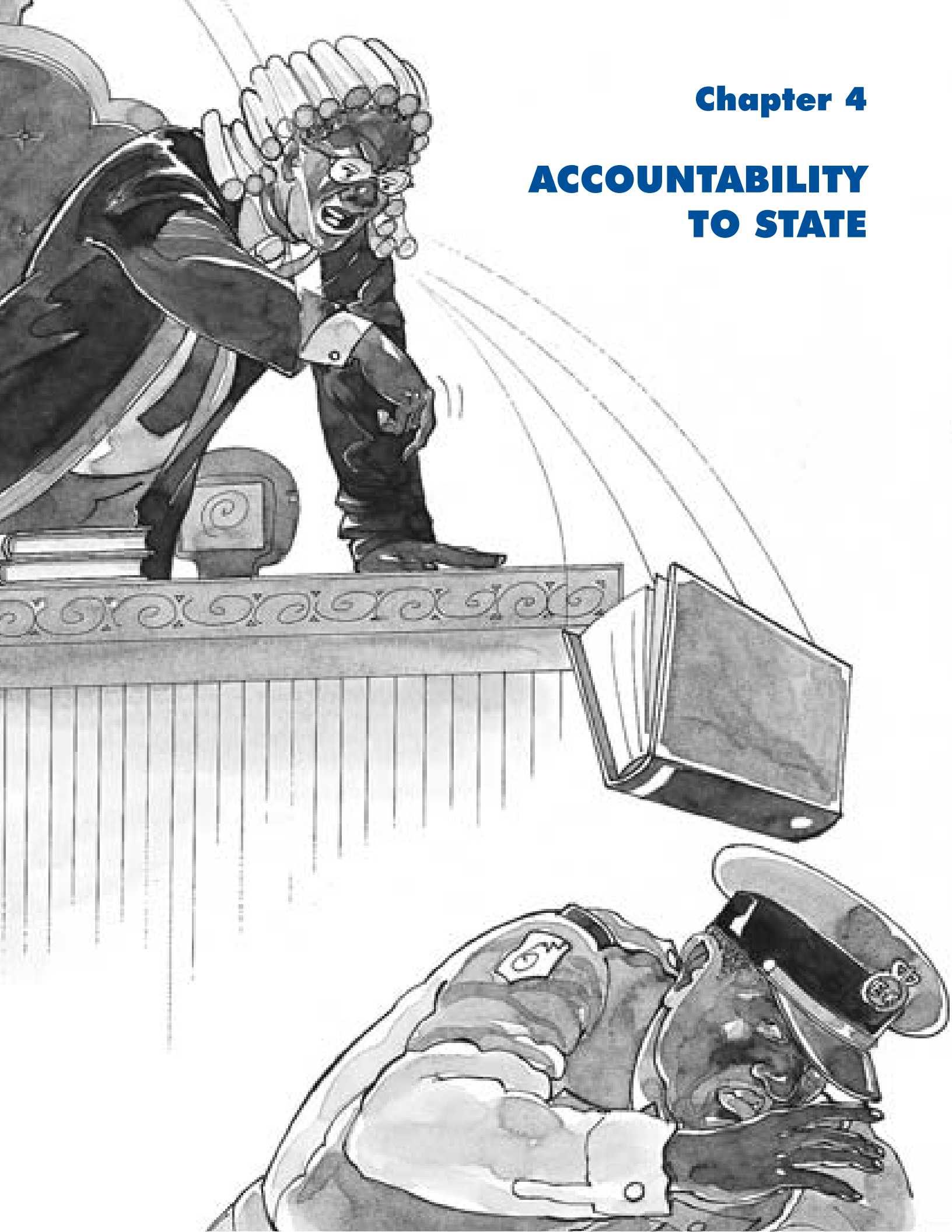


Chapter 4

ACCOUNTABILITY TO STATE



It is the government's duty, on behalf of the people it represents, to equip and finance the police as well as set its priorities and strategic directions. In turn, as with all agencies in a democratic state, the police are accountable to the government. The Commonwealth recognises that all three pillars of governance - the executive, parliament and the judiciary - each have a specific and defined role to play in ensuring democratic governance and therefore good policing. Indeed, "each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights, and the entrenchment of good governance based on the highest standards of honesty, probity and accountability."¹⁰⁷

Each branch of government has a responsibility to contribute to democratic oversight and police reform. Their ability to hold police properly to account depends partly on the relative strengths of each institution and their relationships with each other. For instance, overbearing unchecked executive control can create powerful, patronised yet dependent police wholly in thrall of that master and consequently unmindful of parliament and disobedient to the judiciary. On the other hand, carefully constructed arrangements that are designed to maintain the correct tension between police and government protects the police from excessive interference from any quarter and protects the public from poor and abusive policing.

Government is entitled to provide clear policy direction, prepare policing plans, set standards or performance indicators, and establish strong accountability mechanisms. Equally, the operational discretion provided to the police is to be used judiciously in an unbiased manner, always in support of the rule of law and public good, and never for private gain or to further political agendas. Learning lessons from past conflict, the recommendations of the Sierra Leone Truth Commission include a set of Principles of National Security stating that: "Neither the security services as a whole, nor any of their members, may, in the performance of their duties, act against a political party's legitimate interest; or promote the interest of any political party."¹⁰⁸ Unfortunately, however, in the absence of checks and balances, the pull of introducing party political elements into the day-to-day running of the police is often too great. As a result examples of political interference in policing abound across the Commonwealth.

Responsibility or Independence?

Police reform proponents often argue that "operational independence" for the police is a protection against the problem of wrongful political interference. However, a recent Commission of experts in Northern Ireland into policing observed that the term "operational independence" is not found or defined in any country's legislation.¹⁰⁹ They argued that this measure against illegitimate political interference should be termed "operational responsibility" rather than "operational independence" since independence could leave room for an unscrupulous Police Chief to argue that s/he does not have to be subject to any scrutiny for operational matters, under the guise of remaining independent. By contrast, responsibility implies to a greater extent that the Chief of Police must never be exempted from inquiry or review.

The distinction between appropriate political direction from a government to a police force and inappropriate political interference in operational policing matters is important to establish in law, policy, and practice. However, it can be a difficult line to draw and requires both police and government to share an understanding of the distinction. Clear and independent systems of accountability make it easier for police officers to assess and resist illegally motivated or inappropriate orders. Well-functioning accountability systems also generate the sort of public goodwill that makes it more difficult for governments to mistreat police officers for political reasons without public outcry.

Guiding Destinies: Political Interference

The use of police for illegitimate and blatantly political ends not only impedes the professionalism of the police organisation, it can also endanger political stability and, in the worst cases, lead ordinary people to suffer serious rights violations.

In Sierra Leone, one such event was the appointment of the Police Commissioner as deputy leader of the ruling political party, the National Reformation Council, and also as a member of its Military Council. This brought the police decisively into politics and shaped the police into a ready tool of state terror against any political opponent. Without security of tenure, the police needed to constantly please their political patrons to keep their jobs. During this time, recruitment, promotion and dismissal were all decided on arbitrary and secret grounds. Those with political patronage concentrated on improving their own lot and those without lost all motivation.¹¹⁰

Partisan policing in the Fiji Islands has been cited as providing support to the illegal coup that toppled the elected coalition government in May 2000. After Prime Minister Chaudhry and members of his coalition government were taken hostage, coup supporters targeted Indo-Fijian families in racially motivated attacks. While many police personnel were commended for bravery in assisting the public, others have been described as aiding and abetting the coup supporters by terrorising and robbing farmers, often to feed the coup organisers.¹¹¹ The Police Commissioner at the time, Isikia Savua, has been investigated for involvement in the coup.

Where accountability is weak or marginalised, strength of conviction and personal integrity are needed to trump political machinations. Under threat from an impending no confidence vote in 2001, incumbent Prime Minister of Vanuatu, Barak Sope, sought police help to stage a coup and declare a state of emergency. The Police Chief's refusal to be drawn into the illegal plan allowed the constitutional order to be maintained.¹¹²

POLICE ACCOUNT TO THE EXECUTIVE

In most Commonwealth countries, the police answer directly to a specially designated Minister who is part of the executive wing of government and who is the political head of the organisation. On the other hand, the Chief of Police is the administrative head responsible for day-to-day management, finances and operations. Where police establishments are decentralised, the local Chief answers directly to the responsible Minister, Premier or Chief Minister of the state, or the Mayor of a city. In order to ensure some distance between the executive and the police, different systems have created police service commissions, police boards, and other authorities. Their mandates and composition vary between jurisdictions.

Service commissions 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 still designed to be an independent voice in matters of governance and administration, which is not controlled by any other person or authority. To this end, service commissions were established precisely to limit potential political interference in selection, promotion, transfer, and removal of police officers. Occasionally, they also double as appeal mechanisms for police 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, providing space for potential political patronage.

Each branch of government has a responsibility to contribute to democratic oversight and police reform.

Newer models are bolder in both composition and scope: many include citizen representation; and have wider powers to shape policy, set budgets, oversee ethics, examine behaviour, assess performance and go beyond making recommendations. Above all, these are mechanisms that entrench community-driven oversight of police agencies. Nigeria's Police Service Commission, for instance, 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 for criminal prosecution. The Police Service Commission can also develop and implement policy. In time for the 2003 general elections, the Commission collaborated with the Centre for Law Enforcement Education Nigeria and the Open Society Justice Initiative to develop guidelines on police conduct and monitored police behaviour during the elections.¹¹³ The Commission has the potential to significantly contribute to policing standards.

Developed in response to a long history of conflict, Northern Ireland's Policing Board is one of the most powerful bodies of this kind. It is not only responsible for delivering an efficient police service, but is also mandated to help the police fulfil the statutory obligations in the Human Rights Act 1998. The Board can launch its own inquiries into any aspect of police work even without the agreement of the Chief Constable, giving it a more active management and oversight role than most other boards.

The 43 forces of England and Wales are governed by a tripartite structure that seeks to balance the tension between assuring both national standards and local priorities, as well as ensuring community involvement.¹¹⁴ This system distributes responsibilities between the Home Office, the local police authority, and the chief constable of each force. The Home Secretary, who reports to Parliament, sets out centrally imposed "key priorities" for all, which are formalised within a National Policing Plan. In each county, local police authorities made up of councillors, magistrates and members of the public frame policing priorities, determine arrangements for consultation between the police and the public, and advise on budgeting and resource allocation. In practice, Chief Constables are also expected to respond to policies and circulars of the Home Office and Her Majesty's Inspectorate of Constabulary. There are frequent debates concerning the balance of power between these three partners.

Canada's decentralised police services are answerable to provincial police boards that are essentially civilian bodies¹¹⁵ comprised of municipal councillors and local residents. Though their mandates vary slightly, most are responsible for determining staffing levels, budgeting and performance indicators, as well as crucial matters of discipline and the hiring of Police Chiefs. The Toronto Police Services Board, for instance, is mandated to create guidelines for the police to better handle public complaints, as well as to review the Chief of Police's management of the complaints system. Notably, it is the Police Services Board that deals with complaints against the Chief or Deputy Chiefs, bringing accountability of the highest level into civilian hands.¹¹⁶

Appointment and Management of Police Chiefs: Who's the Boss?

Serious breaches of law and accountability arise out of inappropriate relationships of patronage that develop where there are biddable service commissions, no objective procedures and criteria for the appointment and removal of police chiefs, and inadequate oversight processes. Kenya, where the President holds sole power to appoint and remove the Commissioner, is a case in point.¹¹⁷ A former Commissioner describes being suddenly called to see the President and handed a one-paragraph letter that read: "Owing to the confidence I have in you, I have appointed you the Police Commissioner with immediate effect. I hope you won't betray my trust." That done, the President immediately had his predecessor arrested and placed in maximum-security detention and then ordered the new Commissioner to work.¹¹⁸

India is another country where nepotism is a deciding factor in the appointment of Director Generals of Police. The process has been reduced to state Chief Ministers handpicking their preferred candidates for the role rather than basing the selection on seniority and merit, which is what the actual policy prescribes. In the Maldives, the Constitution in fact declares the President "the Head of State, Head of Government and the Commander-in-Chief of the Armed Forces and the Police of the Maldives." In the absence of any police Act and any oversight mechanism, reports of police violence and repression of dissent are unsurprising.

In some countries the power to hire and fire is vested solely in the Head of State, or is the prerogative of the Cabinet or Minister responsible for police. Elsewhere, particularly in the Pacific and the Caribbean, the Head of State decides either in consultation with or at the recommendation of the Service Commission. For instance, in Malaysia, the Solomon Islands and Vanuatu, the Head of State appoints the police chief after consulting the Police Service Commission. In a slight variation, in Trinidad and Tobago, it is the Police Service Commission, on the advice of the Prime Minister, which selects the police chief. In the Bahamas, the Head of State appoints the police chief after consultation with the Leader of the Opposition. The Constitution of Guyana requires that the President consult with the Police Service Commission and the Leader of the Opposition in order to appoint the Commissioner of Police. However, much of the worth of consultation is negated in the Caribbean Commonwealth countries - except Barbados - because the Head of State has a constitutional veto over the appointment, meaning that the power of Service Commissions is, in practice, restricted by the

Making a Move

Transfers are a potent weapon for "managing" inconvenient police personnel. Transfers are routinely used in South Asia as a means of relocating bad elements without subjecting them to punishment, which of course increases impunity. There is little recourse to appeal for unjust postings. Even more often, transfers are used as a means of harassing police officers that do not toe a certain political line. Examples emanate from across the Commonwealth's unreformed and strongly discretionary jurisdictions.

In the Caribbean, politicians have reportedly manipulated promotions and transfers, according to individuals' support for the ruling parties.¹¹⁹ In Trinidad and Tobago, for example, an Assistant Police Commissioner alleged in his affidavit challenging a transfer, that the transfer was a direct consequence of his refusal to comply with the wishes of senior members of the ruling political party.¹²⁰

During riots in 2002 in the Indian state of Gujarat, Hindu fundamentalists with the backing of the state government targeted members of the Muslim minority¹²¹ and the Gujarat Police was indicted for failing to protect innocent citizens. Subsequently, police officers who had tried to stop the attacks were punitively transferred.¹²² One Police Superintendent had successfully thwarted an attack on a school and rescued 400 students. He registered criminal cases against the attackers despite pressure from local leaders to turn a blind eye. Instead of being rewarded for his correct actions, he was transferred five times in a year.

Sri Lankan Good Practice

In Sri Lanka, appointments to the National Police Commission and National Human Rights Commission and of the Inspector General of the Police (IGP) are made by the Constitutional Council to limit executive control. The Constitutional Council was established in 2002¹²⁵ and consists of 10 members: the Prime Minister, the Speaker of Parliament, the leader of the opposition, one nominee from the President, five nominees recommended jointly by the Prime Minister and the leader of the opposition and one who represents minority parties.

The Council and National Police Commission create a mechanism to check political interference in the matters of appointments, transfers and disciplinary actions against the police. The National Police Commission is responsible for the appointment, transfers, promotions and disciplinary matters relating to all police officials except the IGP, and the Council approves the decision of the President for the appointment of the IGP. Political interference in policing has been reduced in the country since the creation of these bodies.¹²⁶ Unfortunately though, the Council has been dysfunctional for over a year - and without it, other commissions are unable to replace members. The Chair of the National Police Commission has said that growing crime and violation of law and order in the country is because the Constitutional Council is not functioning.¹²⁷

Head of State's prerogative. Uniquely, in Nigeria the President must consult the Police Council, made up of State Governors from across the country, before appointing or removing the Inspector-General of Police.

In other countries, the appointment process is more collaborative, often requiring input from civilian oversight bodies. In the Australian state of Queensland, the Commissioner is appointed by the Governor "on a recommendation agreed to by the chairperson of the Crime and Misconduct Commission"¹²³, with the approval of the Minister for Police. In New South Wales, another Australian state, the Governor appoints the police chief on the recommendation of the state Police Minister, after the Police Integrity Commission and internal disciplinary department have done a background check on the candidate and s/he has made a statutory declaration that s/he has not knowingly engaged in any form of misconduct.¹²⁴

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. In Australia, Canada and the UK for instance, chiefs of

police work under an employment contract which ensures they cannot be arbitrarily dismissed, and the law states a fixed period of service for this position.

Policy, Strategic Direction and Budgets

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. Requiring open consultations before policy is set also inhibits partisan impositions on policing by the rulers of the day.

Across the Commonwealth, the role of government in directing policy and the direction of the police is framed in a variety of ways. While some have clarified roles into distinct spheres of executive and police responsibility, others have maintained roomy definitions of executive prerogative. These tend to allow obtrusive interventions into all aspects of policing, as well as the blurring of responsibilities, and the creation of covert arrangements and mutual dependencies that can shut out public scrutiny and weaken the ability of parliament and the judiciary to perform their own legitimate oversight. In India, government control over police is vested in provincial governments and merely referred to as

"superintendence" - a term not defined in the legislation. This has led to broad discretion in the appointment and removal of police chiefs, constant interference in recruitment, promotions, transfers, dismissals and disciplinary actions, and meddling in daily crime control and investigation. The extent of illegitimate political interference has weakened the control and command structure of many forces, making them dysfunctional and vulnerable to malign influences.

One specific area where the executive can guide the direction of the police is in budget allocations. The executive is usually responsible for providing estimates, while the legislative branch of government passes the budget; and both branches share oversight responsibilities. Allocations indicate government priorities and how money is apportioned within the organisation indicates where the emphasis of policing will lie. For example, more money for weapons, cars and paramilitary units and relatively little for development and training is indicative of more concern being put on patrolling and controlling rather than on improving internal accountability. In decentralised systems, where the federal government supplements local budgets, money disbursed to local police forces can influence local policing and can "reward" political loyalty and disadvantage opposition areas.

Some modern police Acts refer to the guiding or directional role of the executive in terms of the "responsibilities of Ministers" and lay down (more or less clearly) how these responsibilities should be discharged. This is broadly the pattern in Australia, New Zealand, Canada, South Africa, England, Wales and Northern Ireland. In South Africa, 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"¹²⁸ while the National Commissioner "must exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing."¹²⁹ In setting forth the institutional arrangements for supervision and control, the new police law in Northern Ireland reflects careful attention to the apportionment of responsibility between the Executive, police leadership (represented by the Chief Constable) and the Policing Board. It explicitly assigns responsibility for developing 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.¹³⁰

Elsewhere, along with broad executive authority, Ministers are specifically permitted to prescribe regulations that more rightfully belong to administrative functioning. For instance, in most Commonwealth countries - Belize, Fiji Islands, the Gambia, Malaysia, and Uganda to name just a few - Ministers can make regulations on procedures for conducting disciplinary proceedings and some can deal with appeals from officers. In Vanuatu, senior officers aggrieved by disciplinary decisions of the Police Service Commission can appeal to the Minister; and in Namibia any police official reduced in rank or discharged can appeal to the Minister. Malawi's Police Act allows the Minister to appoint police officers of or above the rank of Inspector. These arrangements are susceptible to illegitimate political interference if the system of checks and balances is weak and the executive dominates.

It is also true that Ministers may initiate reform processes. In late 2004, the Minister of Internal Security in 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 systemic failures in the working of internal police accountability mechanisms, as well as significant evidence of illegitimate political interference.¹³¹ Often, such initiatives are in response to patterns of abuse. For instance, in Zambia, following allegations of torture of individuals detained in connection with a 1997 coup attempt, the Home Affairs Minister announced a comprehensive police reforms strategy, including human rights training for the police and new legislation establishing an independent Police Complaints Authority.¹³²

Monitoring Adherence to Policy

In democracies, the police deliver a service - so police operations need to be checked against pre-determined aims and objectives. A comprehensive accountability system requires the police to report to governments on their plans for achieving policy goals, as well as the results obtained. The police should also report on the way they deliver their services and also how they use public funds. Good practice on measuring police performance exists within the Commonwealth, including dedicated mechanisms and institutions, such as:

Her Majesty's Inspectorate of Constabulary (England and Wales)

Her Majesty's Inspectorate of Constabulary conducts inspections to ensure agreed standards are achieved and maintained, that good practice is spread and that performance is improved. Apart from giving advice and support to the tripartite partners that oversee policing, it reports on issues such as corruption, visibility, reassurance and diversity.¹³³ Its first comparative performance "baseline assessment" of each force sparked public debate as to whether chief constables rated as "poor" should be dismissed.¹³⁴ It also conducts Best Value Inspections with the British Government's Audit Commission, which focus on financial accountability.

Police Standards Unit of the Home Office (England and Wales)

Working closely with the Inspectorate, the recently established Police Standards Unit has been created to identify and disseminate good practice, and also to intervene to improve performance where a force requires "remedial actions."¹³⁵ As a device for holding individual police forces accountable for their performance, and a means of comparing different police services' performance, the Unit has developed the influential Police Performance Assessment Framework¹³⁶ to "provide an effective, fair framework for comparing police performance and provide a firm basis for effective performance management".¹³⁷

Secretariats for Safety and Security (South Africa)

South Africa's national and provincial Safety and Security Secretariats¹³⁸ are largely composed of civilian staff who advise provincial and national Police Ministers on policy matters from a non-police perspective. They monitor conduct, investigate complaints and evaluate functioning¹³⁹ and have a specific mandate to promote democratic accountability and transparency within the service.¹⁴⁰ Ideally, these Secretariats should be valuable additions for accountability, however, lack of resources and independence from the police - problems shared by many oversight bodies across the Commonwealth - have reduced

their effectiveness. The National Secretariat is funded from the police budget which effectively reduces it to being a unit of the police. This is inconsistent with its function of creating accountability and comparing the performance of different services and is one of the reasons that the Parliament in South Africa has called for a review of these bodies.¹⁴¹

POLICE ACCOUNT TO THE JUDICIARY

The judicial system is entrusted with the protection of human rights and freedoms. Courts also ensure that acts of the executive and laws made by parliament comply with and promote international human rights standards.¹⁴² They also protect citizens from the excesses of the state and its agents by bringing to book perpetrators of human rights violations and breaches of law, as well as by ensuring that victims obtain sufficient redress.

Accountability for policing may require the judiciary to enunciate and lay down standards of acceptable behaviour, punish infractions and, at times, reign in the executive. Judges in the Commonwealth have been active in doing all three and have been admirably feisty in jurisdictions where access to justice is often difficult. In Commonwealth countries where the executive branch dominates, the independence of the judiciary - a central factor in whether it can provide effective oversight over the police - is either barely discernable or constantly under threat. In Brunei, virtually all the powers of governance are vested in the Sultan, negating any separation of powers that may nominally exist in the Constitution.¹⁴³ In many countries, the executive erodes the independence of the judiciary by controlling or limiting its powers. In Pakistan, the Constitution provides for an independent judiciary but, in January 2000, the President - a military general who came to power by staging a coup - ordered the country's highest-ranking judges to swear allegiance to his regime. Several refused and lost their jobs.¹⁴⁴ In Malaysia, many feel that the judiciary has not recovered its independence after being subjected to a sustained campaign of government harassment in the late 1980s. The recent memory of political intimidation continues to inhibit judges from censuring the executive.¹⁴⁵

In some Commonwealth countries, the executive branch has been especially zealous in warding off judicial oversight in matters of internal security, making impunity for the police more likely. Tanzania's Prevention of Terrorism Act holds that a police officer shall not be held liable, in civil or criminal suits, for death or injury caused by use of necessary force in accordance with the Act. In many countries, special permissions need to be sought before a public servant can be indicted and prescribed short time limits for bringing cases before courts defeat the objective of fundamental rights protection. For instance, in Sri Lanka, the Constitution sets a time limit of one month to bring a case alleging a fundamental rights violation.¹⁴⁶

Judges help maintain high standards of policing when they throw out cases and refuse convictions because of procedural aberrations - including arrests without proper cause or warrant, force used to extract confessions, illegal searches and wrongful recovery of goods. To protect due process where there is persistent misbehaviour, judges may produce their own guidelines and procedures for police. In Mauritius and Zambia, "Judges' Rules"



The police are subject to the same law as the average citizen, but their unique role means that proven misconduct by an officer may be judged more harshly than that of other lawbreakers.

regulate how statements are recorded and presented and lay down procedures for dealing with arrested persons. These procedures include informing those arrested of their rights and allowing access to legal counsel. In Botswana, detainees' rights are protected by the *juge d'instruction* system, which requires that statements to the police must be obtained legally. This protects the right of a detained person to use a lawyer while voluntarily making a statement.¹⁴⁷ Concerned with the frequency of custodial violence in India, the Supreme Court has evolved specific arrest guidelines for police officers who can be held in contempt for not abiding by them. For instance, only female police personnel may arrest women suspects (except in exceptional cases) to ensure that women are not harassed.¹⁴⁸ The Court has also laid down guidelines for how the police should treat victims of sexual abuse.¹⁴⁹

Patterns of abusive police practices brought to light in court cases have prompted important investigations and reforms to be initiated. The aftershocks of a controversial trial of a fatal shooting by a New Zealand police officer in 2000 led to a thorough, independent review of the Police Complaints Authority, as well as the police's internal "use of force" policy. In 2003, the Bangladesh High Court laid down strict guidelines for how the police should conduct their powers of arrest - a procedure which is commonly abused - in line with key civil liberties.¹⁵⁰ The policy intervention by the Court was a consequence of a judicial inquiry into the death of a student who allegedly died in custody after being tortured by the police.

The police are subject to the same law as the average citizen, but their unique role as law enforcement officers means that proven misconduct by an officer may be judged more harshly than that of other lawbreakers. The courts often impose stronger sentences and heavier compensation against police because of their special position of public trust and the severe consequences of any breach. The trend for heavy compensation claims is growing. In South Africa, between 1995 and 1998 the police service paid out over USD\$7.8 million in the approximately 300 civil claims that were laid against police members annually.¹⁵¹ In 2002, the cost of civil claims against police in New South Wales

was USD\$69 million, and the Victorian Police paid out USD\$7.7 million.¹⁵² In both Australian states, the majority of actions were brought after people suffered serious injuries involving police misconduct and were not for mere technical breaches of law.¹⁵³ In jurisdictions where civil suits are permitted, the increasing financial risk involved in settling large compensation claims may well be an incentive to reform management and re-train abusive police organisations.

Fighting the Good Fight

Judges struggle to uphold fair trial guarantees in difficult circumstances. Malaysia's Internal Security Act 1960, for example, explicitly prevents judicial review of detentions.¹⁵⁴ Despite this, in 2002 the Federal Court ruled that the police decision to forbid access to an attorney in fact violated the Malaysian Constitution.¹⁵⁵

A subsequent case once again saw the Court assert its right to review the government's decision to deny a detainee access to counsel.¹⁵⁶ The police had failed to explain the grounds for denying lawyers access and the Court ordered that the detainee be allowed to meet with his attorney. That meeting never took place: when the attorneys next tried to meet with their client, they were told he was in hospital.¹⁵⁷

Prosecutors Tackling Police Abuses

Experience across the Commonwealth indicates that it can be notoriously hard to bring members of the police before a court, particularly in criminal matters. In this regard, the office of Public Prosecutions plays an important role. Public Prosecutors have the discretion to decide whether to prosecute police officers accused of abuses. Decisions may be made after receiving the findings of an independent police complaints system, as happens in South Africa, or after evidence of police abuses comes to light in regular criminal trials. Across the Commonwealth, it is a prevailing practice to conduct a judicial inquiry if a person died in police custody. In many countries, the findings of such inquiries go to the Director of Public Prosecution and may result in the prosecution of any officers involved.

However, lack of resources and corruption often diminish the effectiveness of the prosecutorial system. In many cases, the independence of prosecutors is compromised by being government appointed, poorly supervised, or subjected to political machinations. In the Caribbean, for instance, it is common to appoint Directors of Public Prosecutions on contract, subject to renewals by the executive - despite numerous Caribbean constitutions¹⁵⁸ requiring their secure tenure. The difficulties of bringing police to justice are particularly acute when the suspect is a fellow police officer and police both investigate and prosecute.

Choice of whether or not to open a case or not does not assist in setting consistent standards of police accountability. Strong allegations of bias favouring the police have arisen in Jamaica. In 1999, Patrick Genius was allegedly detained and shot dead by police. The Director of Public Prosecutions decided not to press charges even after autopsy reports strongly suggested an execution by two gunshots to the back of the head and the coroner's jury had decided there was police involvement. The Supreme Court nevertheless maintained that the Director of Public Prosecutions was neither required to give reasons for his decision, nor was he under an obligation to review it.¹⁵⁹

Some countries have created specialist units or special powers to investigate police misconduct. In Cyprus, the Attorney General can appoint investigators to look into offences committed by state officials. The Cabinet also retains the parallel authority to appoint its own investigators with the same powers as police investigators to inquire into offences. Victims, lawyers and representatives of human rights groups, journalists or Members of Parliament may submit complaints. The findings of an inquiry are presented to the Attorney General who can decide to prosecute.¹⁶⁰

In Sri Lanka, where years of civil conflict have caused the death or disappearance of thousands of people, varied mechanisms to monitor and make recommendations have evolved. Presently, the Attorney General's Department has two different units: a Missing Persons Commissions Unit considers criminal proceedings against disappearances; and the Prosecution of Torture Perpetrators Unit co-operates with the Police's Criminal Investigation Department to prosecute, monitor and advise on torture cases.¹⁶¹ Despite this, a coalition of domestic and international civil society groups points out that "the performance of the AG's department on this matter is a serious disappointment to family members of missing persons, and to local and international human rights organisations. The fact that there has been little progress in prosecution almost a decade after these horrendous crimes were committed is testimony of the inability and unwillingness of the AG's department to effectively and efficiently deal with the issue.... More specifically, there is political unwillingness to deal with senior police, military and political figures who were responsible for causing these disappearances."¹⁶²

POLICE ACCOUNT TO THE LEGISLATURE

Three vital functions of parliament are to make and review laws, represent citizens, and hold the executive arm of government accountable for policy implementation. Parliaments play a policy-making role insofar as they refine and pass legislation and approve budgets. They also monitor policy implementation through the views of the electorate and by assessing performance. Parliament has the power to question police wrongdoing, to correct systemic faults by passing new laws, to seek accounts of police performance, and to keep policing under constant review.

The challenge for legislators at all levels of government is to bring the values of accountability, transparency and participation firmly to bear on policing.¹⁶³ Effective parliamentary accountability must be one of the hallmarks of truly democratic policing. The quality of this depends on the relative power of parliament, as well as the capacity of Members of Parliament (MPs) to effectively engage with the issues under discussion. Individual elected representatives - whether they are MPs, members of state legislatures or local councils - have many opportunities for influence. The opposition in particular, are in a prime position to hold the government to account for decisions and policies relating to policing.

In some countries, where executive influence over the police is acknowledged as one of the spoils of office and police reform efforts have been repeatedly blocked, questioning police performance or talking of reform on the floor of the House is often brief and superficial. Elsewhere, parliaments are so weak or even criminalised that they cannot legitimately conduct their oversight duties. In India, for example, the oversight credibility of parliament and the state legislatures is undermined by the fact that so many Members of Parliament stand accused of criminal offences.

The challenge for legislators at all levels of government is to bring the values of accountability, transparency and participation firmly to bear on policing. Effective parliamentary accountability must be one of the hallmarks of truly democratic policing.

Efforts are in fact on in many countries - including Fiji Islands, Solomon Islands, Vanuatu, Pakistan, Trinidad and Tobago - to amend police Acts and refine police accountability mechanisms. Other parliaments already have, or are in the process of passing, legislation to establish broader bodies, such as National Human Rights Commissions. Legislators are provided with special opportunities to radically reform criminal justice systems, including the police, during constitutional reform processes, or at times when there is great public interest in policing. South Africa's Constitutional Assembly and Northern Ireland's peace process are two examples where legislators were offered such opportunities.

Elsewhere, parliaments have innovated devices to better monitor police performance in traditionally neglected areas. In Tasmania, Australia, after the state government issued its 1994 Domestic Violence Policy Statement, legislation was introduced requiring police to provide estimates of time spent responding to domestic

violence and related crimes. This was done in order to accurately gauge the efficiency of police in providing support to victims. Additionally, this made the use of police resources transparent to the public and legislature.¹⁶⁴

In Search of the Truth

In situations of post-conflict, parliaments sometimes establish special "transitional justice" mechanisms to deal with past conflicts and abuses. Usually called Truth Commissions, these can be an opportunity to mark the end of a period of police impunity, learn from past mistakes and establish new rules for policing. The South African Truth and Reconciliation Commission offered police officials amnesty from prosecution in exchange for full disclosure about gross violations of human rights that they had committed under apartheid. Over 300 police officials applied for amnesty and the vast majority received it.¹⁶⁵

The Sierra Leone Truth Commission¹⁶⁶ found: unprofessional police behaviour in handling and investigating incidents, widespread extortion of complainants, police taking sides in disputes, and daily violations of basic rights. Police were found to have participated in unlawful incarceration, brutal torture in order to extract confessions, and violent suppression of anti-government demonstrations. The Sierra Leone Truth Commission also found that successive governments had abused their authority over the security forces and unleashed them against their political opponents in the name of national security.

The National Reconciliation Commission of Ghana found that the Military Forces, the Police Service and the Prison Service were the main perpetrators of violations during conflict periods, with 17% of violations attributed to the police.¹⁶⁷ The Commission observed that "under the civilian and military regimes between 1957 and 1992, the mode of arrest and detention by the police was considered the most common form of abuse of civil liberties. Arrests and detentions were used as a technique of intimidation. The police was also accused of taking bribes and misusing their powers to suppress civilian population."¹⁶⁸ The Commission proposed reforms to the structure, organisation and operation of the police, and highlighted the need to build police-community partnerships.¹⁶⁹ Like elsewhere, the Ghanaian Commission placed the linked issues of human rights and police accountability on the government's agenda.

Opportunities for oversight of police affairs include question time, debates, drawing attention motions, and private members bills, which, though very often defeated, spur debate and introduce innovations. Special commissions of inquiry may also be established to pursue particularly serious concerns. While these devices draw occasional attention to the more dramatic aspects of policing, it is the more mundane regular features like departmental reviews, budget sessions and accounts audits that provide opportunities for thorough examination of police functioning, as well as the detailed work in committee, that have a serious impact on creating a better service. In South Africa, the significance of committees as vehicles of democratic governance is well recognised. Committees are empowered to summon anyone to give evidence under oath or produce a document, receive petitions or submissions from any interested parties, and conduct public hearings.

Money Matters

Budgets come out of public money, usually approved by parliament and spent according to estimates provided prior to approval. Details such as disbursement and adjustments are governed by rules and procedures, which are examined by finance managers and auditors and then reported upon. However, how scrupulously this is done depends on factors such as the strength of financial oversight bodies of the state, the level of public access to financial information, the extent to which the executive and parliament continuously monitor expenditure and whether they ensure that, at the very least, there is no misappropriation or leakage.

To keep everyone honest, most Commonwealth governments have a powerful, constitutionally embedded and independent Auditor-General or the equivalent of such a role. Audits detect corruption, incorrect expenditure, diversion of funds for unintended purposes, and financial irregularities (for example if funds provided for forensic equipment have been spent on vehicles instead). The Auditor-General's report is usually tabled in parliament and the Public Accounts Committee, which is usually headed by a member of the opposition, is tasked with examining the Auditor General's report on how the police spent its money.

In many legislatures, these important finance committees have the power to summon ministers, members from other committees, police officials, experts and interested civil society groups to provide information, analysis and clarifications. Concerned with making continuous improvements in policing, legislatures are increasingly linking expenditure to actual performance and requiring this written into legislation. In South Africa, the Public Finance Management Act mandates submission of detailed annual reports to the parliament. These reports describe how expenditure in practice matched up to the planned budget and what progress was made in reaching performance targets.

The comments and recommendations on the Auditor's report provide an appraisal of the police department's own accounting presentations and give the legislature another opportunity to hold the police accountable. However, in practice insufficient funding, staff, and infrastructure often restrict the power and independence of audit machinery. Their impact is also reduced by lack of expertise and inattentiveness of parliamentary bodies, lack of public knowledge and debate, and delay and apathy of bureaucrats. Across the Caribbean, the Offices of Auditors-General are poorly financed and as a result, their own reporting is consistently late: out of eight Caribbean countries only St Kitts and Nevis can boast of punctual reporting and Antigua and Barbuda's reports have been as much as twelve years in arrears.¹⁷⁰

Parliamentary committees vary in composition, duration and mandate but some may specifically develop, review and amend relevant laws, scrutinise budgets, examine the police department, and maintain effective surveillance over its functioning. They may also be tasked with reporting on a single aspect of police behaviour. The work of other committees on human rights, international treaty ratification, accounts and assurances also collectively impact on the level of accountability of the police in a jurisdiction. For example, Zambia's Committee on Legal Affairs, Governance, Human Rights and Gender oversees and scrutinises activities of related ministries and can make recommendations for the protection of human rights in the system of criminal justice. To ensure that recommendations are observed, some parliaments - as in Canada and the UK - require that a response is given by government within a specified time.

The very act of setting up a committee signals concern and the need for change. Concerns over election violence prompted Uganda's parliament to set up a committee to investigate the causes and make recommendations to improve the electoral process. It urged that the police Act be amended to prescribe strict disciplinary action against any officer guilty of any role in election violence or for not taking any action against perpetrators.¹⁷¹ This was decided after the committee concluded that only civilian police units should be deployed during elections as other armed forces were more prone to being misused for partisan political interests. Others have kept constant improvement of accountability mechanisms high on the agenda. For example, the UK Commons Select Committee on Home Affairs conducted an extensive review of the Police Reform Bill 2002 (much before it reached the House of Commons for debate) and continued to consistently track the reform process.

The most effective oversight comes from committees that include members from diverse political, social and gender backgrounds. Oversight is also more effective when committees have broad powers to summon and investigate, to scrupulously record their deliberations and make timely final reports back to the larger body of the legislature, sit in open session for the most part, and to proactively seek and encourage public participation through hearings and oral and written submissions. In Trinidad and Tobago, a Joint Select Committee examining proposed legislation to give greater independence and enhanced powers to external oversight bodies that are responsible for policing received over fifty written submissions from the public. This was due to the substantial public interest in the subject. Close examination undertaken in the full glare of publicity increases accountability and can heighten public suspicion about the possible lack of sufficient distance between police leaderships and government. In Queensland, Australia, the initiatives of the Parliamentary Criminal Justice Committee played a major role in shaping the Crime and Misconduct Act 2001. Recognising the complexity of issues, the Committee held public hearings and invited submissions concerning the best way to deal with complaints against the police and the controls that could be applied by an external agency. Its final recommendations are now encapsulated in the Crime and Misconduct Act.

Despite the prime position and the many opportunities that legislative bodies have in designing a democratic police organisation and holding it to account, the reality in many countries is that legislatures may be the weakest mechanisms of police accountability. Reasons range from the long histories of fractured parliamentary democracy interrupted by military dictatorships, one party rule and prolonged conflict, to the pressures of party

politics and vote banks that indebt elected representatives to strong executives and cohort police. In many regions, the trend toward "big-party" or coalition politics is diminishing the space for genuine political pluralism. The demands of party discipline tend to stifle backbenchers, cripple the opposition, and reinforce the ascendancy of ruling parties. In insecure environments, populist calls for tough policing coupled with international pressure emanating from the "war on terror", may tempt representatives into making popular short-term choices at the expense of long-term increased accountability.

The oversight role of even the most conscientious legislator can be handicapped in many jurisdictions by the lack of research and secretariat support or by the effort required to make stubborn and inflexible bureaucracies comply with recommendations. In 2000, Commonwealth Secretary-General Don McKinnon expressed his concern that parliament was being subordinated when he said: "...almost everywhere the balance has swung much too far in the direction of the executive and away from the legislature" and stressed that parliament's "vital function of scrutiny, its task of making the executive accountable, must be safeguarded and strengthened."¹⁷²