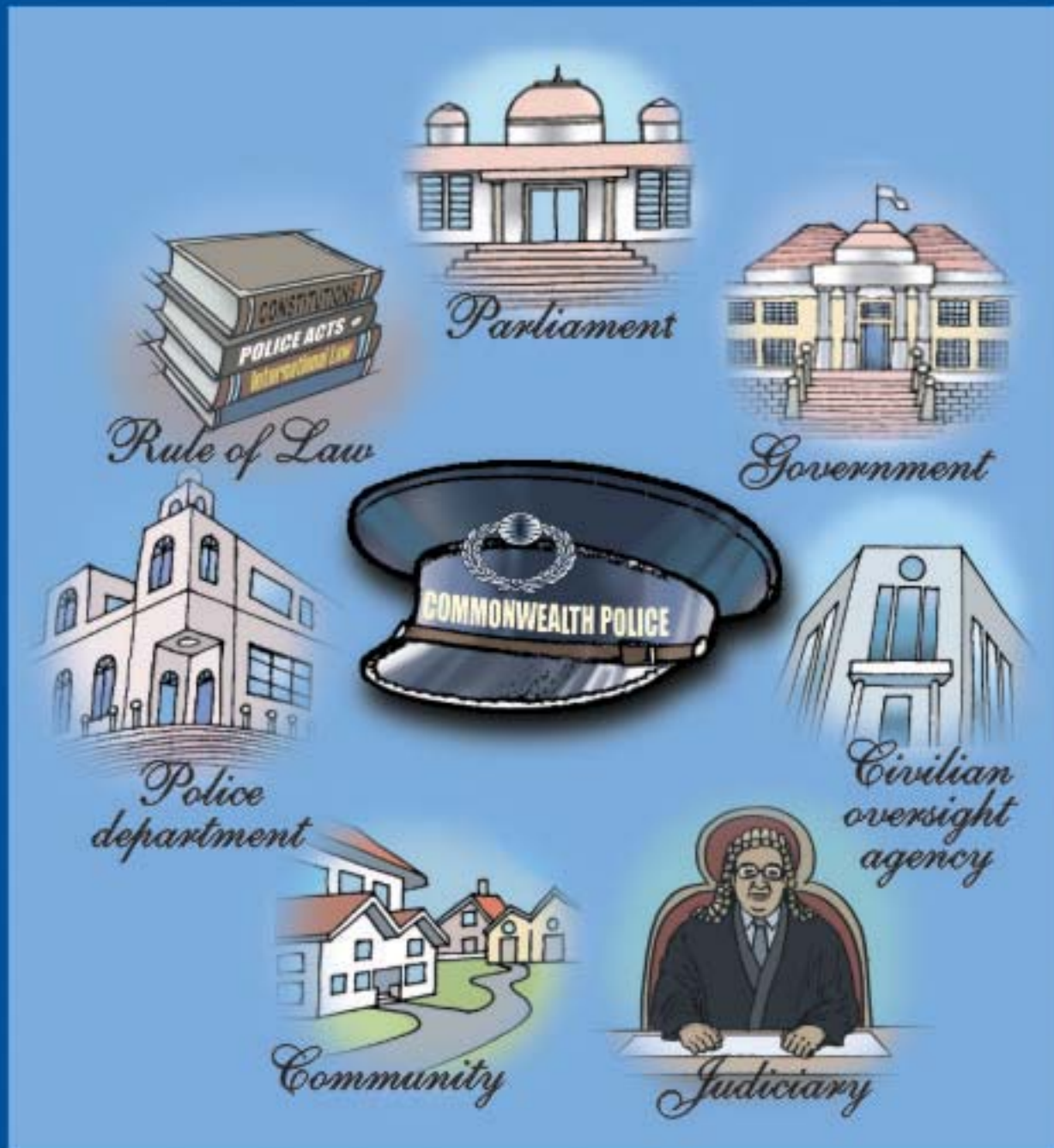


# POLICE ACCOUNTABILITY: TOO IMPORTANT TO NEGLECT, TOO URGENT TO DELAY



# COMMONWEALTH HUMAN RIGHTS INITIATIVE

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

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

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

The nature of CHRI's sponsoring organisations\* - journalists, publishers, broadcasters, lawyers, legal educators, health professionals, and parliamentarians - allows for both a national presence in each country and an international network. Notably these professionals are also strategic constituencies, which can effectively steer public policy in favour of human rights by incorporating human rights norms into their own work and acting as a conduit for the dissemination of human rights information, standards and practices. In addition, these groups bring knowledge of local situations, can access policy makers, highlight issues, and act in concert to promote human rights.

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

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

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# **Police Accountability: Too Important to Neglect, Too Urgent to Delay**



The 2005 report by the International Advisory Commission of the Commonwealth Human Rights Initiative, Chaired by Sam Okudzeto

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## FOREWORD

Every two years, the Commonwealth Human Rights Initiative brings out a report to the Commonwealth Heads of Government Meeting, drawing attention to issues of current human rights concern. CHRI's 2005 report is on police accountability and calls for police reform.

The conduct of the police is an important barometer of the state of governance, and their performance can significantly shape the social health of nations. Police, whether in a democratic or dictatorial regime, perform much the same functions. What distinguishes good from bad policing is the commitment to protect the civil and political freedoms of individuals, while helping to create an environment that will maximise the enjoyment of economic, social and cultural rights as well.

The price that democracies pay for unreformed, unaccountable policing is high. Overall human and national security is compromised in a global environment often prone to terror without and insurgency within. Access to justice, already remote for many, is further distanced from the population at large. The rights of the vulnerable like women, children, minorities, refugees and the vast population of poor that inhabit the Commonwealth go unrealised. Corruption, violence and fear thrive and the rule of law remains an aspiration on paper when it should be the demonstrable assumption on which all people can base their everyday lives.

The elements of reform are many and the Commonwealth is rich in excellent examples of how accountability has been achieved. However, there is also a stubborn reluctance in some jurisdictions to move away from "regime" to "democratic" policing. A deal of the tardiness associated with initiating reform and ensuring accountability comes from the inability of in-country police and political bosses to access knowledge about the nuts and bolts of how it can be accomplished.

In advocating for stronger efforts at police reform, this report showcases good practices in accountability. It provides practical suggestions about how reforms can be undertaken and the values on which policing in the Commonwealth must be premised in order to be effective.

The Commonwealth must explicitly acknowledge that police reform and accountability are crucial to realising democracy and development. It must commit itself to developing Commonwealth Principles on Policing that underpin best practices and provide member countries with assistance in reforming laws and crafting institutional arrangements that will eliminate abuse and corruption, and ensure the highest standards of policing.



**Sam Okudzeto**  
**Chair, CHRI's International Advisory Commission**

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**Maja Daruwala**  
**Director, CHRI**

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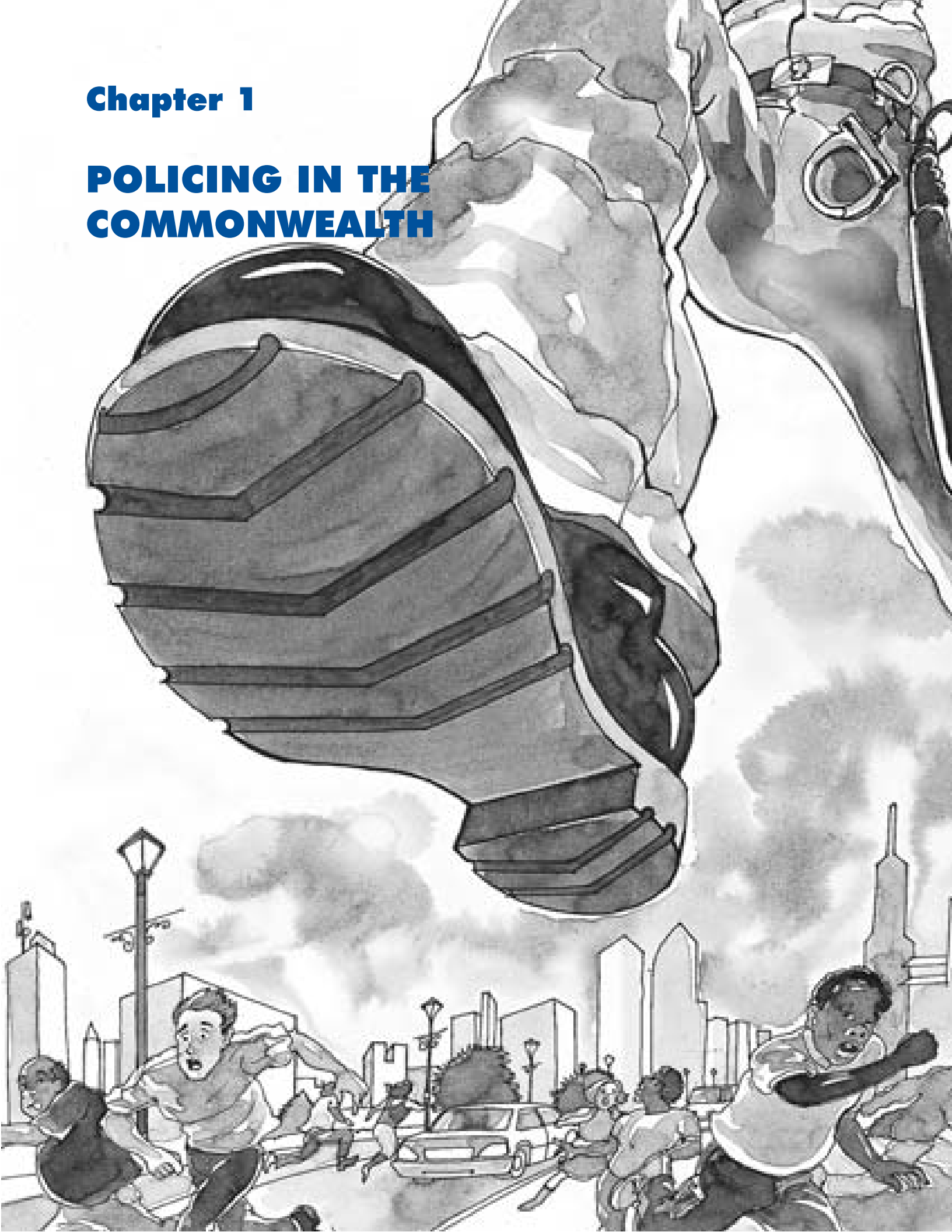
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## Chapter 1

# POLICING IN THE COMMONWEALTH





Some of the best policing in the world is found in the Commonwealth, and also some of the worst. But by and large, its 1.8 billion people do not have the policing they deserve. Police reform is too important to neglect and too urgent to delay.

In too many countries, governments are failing in their primary duty to provide the public with an honest, efficient, effective police service that ensures the rule of law and an environment of safety and security. Today, membership to the Commonwealth is premised on countries practising democracy - and democratic governance requires democratic policing. The only legitimate policing is policing that helps create an environment free from fear and conducive to the realisation of people's human rights, particularly those that promote unfettered political activity, which is the hallmark of a democracy.

Nevertheless, barring a few honourable exceptions, there is too much wrong with policing in the Commonwealth for the association and its member states to persist in closing their eyes to the fact that the continued presence of unreformed policing - powerful, unaccountable, coercive, biased, and corrupt - remains a badge of a long gone colonial subservience rather than a mark of confident sovereignty.

Common colonial antecedents provide Commonwealth police structures a core resemblance but post-colonial histories have shaped present day policing in each country. The strengths and capabilities of police in the Commonwealth are now as diverse as the association itself. Sizes vary from less than 500 in tiny Dominica to more than a million in India. More importantly, population to police ratios vary: in South Africa for instance, there is one police officer per 404 people<sup>1</sup>; whereas in Bangladesh, it's one officer for every 1,200 people<sup>2</sup>. Some have huge financial and human resources to back them, while others must struggle to afford even basic stationery. Some - for example, Nigeria, Kenya and Canada - usually carry no lethal arms while others like South Africa, Jamaica, Sierra Leone and Northern Ireland routinely go armed. Some, like Malaysia, Trinidad and Tobago, and Fiji are strongly centralised while others are decentralised to state, provincial or local levels, such as Nigeria and the United Kingdom (UK). Some countries have a combination of national, state and local police forces. Canada and Australia, for instance, both have a federal police organisation, as well as state-level police organisations and Canada also has municipal police organisations. South Africa has one national police service and five separate municipal police services. India has 35 police forces and a proliferating number of paramilitaries and specialist forces, some directly under the control of the states while the ones at the centre fall under central government control.

The evolution of policing values has also been influenced by individual national histories. In a few countries policing has benefited from relative affluence and long unbroken periods of peace and stability. Elsewhere policing has been negatively influenced by long periods of dictatorship, apartheid, one party rule, coups, internal conflicts, overweening executives, militarisation and politicisation and everywhere policing is now being shaped by the recent preoccupation with terrorism. But perhaps above all, poor policing in unreformed jurisdictions has been perpetuated and even fostered by the temptation of ruling regimes - elected or self-perpetuating - to retain a force wholly in its control and designed to suppress opponents and dissent with a heavy hand. Such police have proved especially valuable apparatus in retaining power at election time when rivalries and threat perceptions are heightened. The regime bias in policing has helped ruling elites topple governments as has happened in the Solomon Islands, retain them in the Maldives and assist in keeping them safe from challenge in many more.

## WHAT AILS THE POLICE

As enforcers of the law, the police are commonly seen as the trusted embodiment of law, meant to protect the innocent, find the guilty and bring them to trial, and promote the means and ends of justice. They are expected to act righteously and rigorously in defence of the rule of law and adhere to its letter and spirit. But sadly, all too often police across the Commonwealth are cited for wrongdoing that ranges from individual misbehaviour to institutional criminality. Some of the commonest complaints against police - cited year after year by national and international human rights observers, other states, and experienced by the citizenry itself - are illustrated below.

### Due Process

Routine disobedience to procedural law is perhaps one of the most common feature of abuse of power. This includes detaining people without reasonable cause, or for longer than permissible without bringing them before a magistrate, or secreting them away in unknown 'safe houses' - or even taking innocent family members hostage to coerce those wanted for questioning to turn themselves in. The Law Commission of India's observation that "complaints of abuse of power of arrest is continuing unabated in the country and very often it is the poor and persons without official or political clout who become the victims of police excesses"<sup>3</sup> could be true of many jurisdictions where supervision and control over policing is lax.

Illustratively, so-called "Friday arrests" in Cameroon avoid the statutory need to bring the accused before a magistrate within 24 hours. Detainees must cool their heels in lockups till at least Monday when the court will sit. If arrests are made on private complaints, a little "speed money" will bring release.<sup>4</sup> In Kenya, citizens testified to a "total lack of security" in their daily lives because of the involvement of police in criminal activities and complained about arrests without warrant, illegal searches and seizures.<sup>5</sup>

According to a 2004 survey on Police-Community Relations in Ghana, many of those arrested were not informed of charges, 67% were not provided an opportunity to contact a lawyer, and 44% were presumed guilty from the time of arrest.<sup>6</sup> In the same year, a similar study in Mozambique found that 90% of the 2700 prisoners in Machaya Prison were not permitted access to legal counsel: an indictment on the police as well as the criminal justice system more broadly.<sup>7</sup>

### In The Name of Security

Only too swiftly after the September 11 attacks in America, new anti-terror laws have been enacted in many Commonwealth countries. Deplored by human rights groups the world over, these laws give police more procedural leeway, more powers to act on suspicion and more subjective discretion than accord with stringent and hard won international and national standards. The possibilities for abuse have increased manifold with vaguely-worded definitions of new offences, sweeping powers to hold people without charge or trial, often on the basis of secret evidence, and prolonged incommunicado detention - a factor that is well known in facilitating torture. These new laws come in addition to the basket of coercive powers that preventive detention, national security and official secrets laws already give police.

Inevitably, the cumulative effect of these concessions has made significant inroads into due process protections. Where policing is already suspect, the all-encompassing mandate to 'fight terror' means there is ever more chance for abuse of power and more impunity for already abusive police forces. Even in strictly monitored jurisdictions, increased seizure, surveillance, tapping, interception, stop and search powers and preventive detention have caused outcries of misuse, racial profiling and victimisation of certain groups. In jurisdictions with already flimsy accountability mechanisms and fragile civil liberties protection such laws are a licence for abuse of police power, are regularly used to by-pass the rules of criminal justice systems and further embed extremely questionable police practices.

## Brutality and Torture

Torture is absolutely forbidden in all circumstances. Yet, regular reports from all the regions of the Commonwealth show that it is a commonplace, everyday incident of custody. Illustratively, in Cyprus police stand accused of "kicks and punches to the body and head; banging heads against a wall; blows with truncheons or wood bats; placing a pistol to the head and issuing death threats; and applying electric shocks to the body, particular the arm and ear."<sup>8</sup> Beaten and burned on arms and legs whilst being questioned in Cameroon, a suspect was then forced to drink kerosene and set on fire.<sup>9</sup> The variety and inventiveness of torture is chilling and includes: rape, electric shocks, destruction of soft tissue with pliers, chilli powder put in body orifices, burning with cigarettes, repeated dunking of the head in water, being hung by the thumbs or ankles, or being kept tied and crouching, or on ice for hours, and regular beatings with iron bars and bamboo sticks. In Mozambique, in the first five months of 2005 alone at least two prisoners died in custody due to police beatings.<sup>10</sup>

Levels of abuse seem to have few boundaries and the incidence of torture shows little sign of decrease. In fact quite the opposite: in Uganda, for example, there is documented evidence of an increase in torture.<sup>11</sup> In Trinidad and Tobago, complaints to the Police Complaints Authority of "battery" by police officers doubled over two years.<sup>12</sup>

### A First Hand Account

This account of 50 days behind bars in a small cell with 15 others by a Bangladeshi journalist charged with sedition for his part in making a film about the country's political situation typifies the intolerance for free expression, bias towards the ruling regime and conditions in custody in many countries.

"There was one squat toilet in the floor of the cell and neither soap nor drinking water. We were told to drink from the toilet tank. On the third day I got dysentery. We slept without blankets on the bare concrete floor. The mosquitoes were relentless... Every few hours I would be woken up and pulled from the cell to answer questions."

"I should kill you," the high-ranking Dhaka policeman said. He drew his pistol from his holster, shoved me to the floor and pressed the muzzle to my temple. "You are a traitor. You have betrayed your country. How dare you describe the nation as a haven for al-Qaeda and the Taliban?" "The same high-ranking officer who brandished his pistol would force me to sit on the floor with my legs extended so he could thrash my left kneecap with his baton."<sup>13</sup>

Police often make excuses for torture, citing the gravity of the circumstance, lack of alternate means for detecting crime or obedience to orders from above. But refusal to acknowledge its presence and the lengths to which police will go to hide it, clearly show that they know it is a crime. Sometimes the attempt to twist the tale is so bizarre that it allows for a hint of dark - if bitter - humour. In a case being investigated by the Ombudsman of Belize, a construction worker who survived a weekend in jail narrated his story: "I was beaten with boots, hit with a baton, electrocuted, gagged, tied up with rope, and taped up during the almost three-hour agonising period. And to add more insult to my injuries the two officers wanted me to write and sign a suicide letter."<sup>14</sup>

Of particular concern is the tacit acceptance by governments of such behaviour. The recent willingness of the UK government, for instance, to allow, in certain circumstances, evidence that may have been obtained under torture in third countries<sup>15</sup> has shocked, and sent a signal of encouragement for such practices and lowered standards. Torture is inexcusable in any circumstance and all countries of the Commonwealth have recognised this at the international level. Its widespread presence as an institutional device evidences the deep malaise within unreformed and unaccountable police systems.

## **Extra-Judicial Executions**

When outside the strict ambit prescribed for the use of force, killing in the course of policing is nothing less than murder. However, there are all too frequently reports of police resorting to extra judicial killings as a 'quick fix' device. Faced with mounting public frustration at their inefficacy in controlling crime or low-level conflicts, police seek to solve deep-rooted security and societal challenges by simply liquidating the problem without the need to go through the "inconvenience" of the legal process. Illustratively, in Jamaica, faced with high levels of violent crime, the police kill over 100 people each year.<sup>16</sup> During its first 100 days, Nigeria's Federal anti-crime taskforce "Operation Fire for Fire" killed 225 criminal suspects after shoot-on-sight orders in "difficult circumstances."<sup>17</sup>

The patterns of extra judicial killings bear striking similarity across the Commonwealth, as do police versions of events. The police invariably point to clear and present danger, the presence of armed resistance and dangerous suspects against whom the police responded with proportionate force and in self defence - providentially killing all. Undoubtedly, police often work with little support in dangerous situations and this lends credence to their stories, but too many times "dangerous suspects" turn out to be children, pregnant women, poor peasants, peaceful protestors or unarmed opponents and dissidents. Sometimes the victims may indeed be well known criminals or "most wanted", but the circumstances of their demise are too often suspect. Support for using illegal methods is evidenced by proud public pronouncements by seniors that the police have killed over 1500 "suspected armed robbers"<sup>18</sup> or the assertion that the presumption of innocence is just "semantics".

The inclination to take short cuts and usurp the role of judge, jury and executioner is also encouraged when senior leaderships express obvious scorn for established judicial processes. In Pakistan, the Deputy Inspector General Police justified an upswing in encounter killings with, "... police encounters, though inhuman and a clear violation of human rights and law of the land, are the only way to bring heinous crimes under control as the judicial system is too cumbersome to bring

### **Janice Allen, Public Enemy aged 13**

The story of Janice Allen of Jamaica is not untypical of incidents in too many countries of the Commonwealth. Thirteen-year-old Janice was shot in the back in a "shoot-out". She died of her injuries - allegedly after police refused to take her to hospital. A year after the killing, an investigation clearly showed that it was a policeman's bullet that killed Janice. Following the killing, Janice's family received death threats and intimidation from police. In 2001, Janice's brother was arrested without charge and detained incommunicado for over 12 hours. The family was denied access and not given information about his arrest.<sup>19</sup> There were also attempts at bribery as the family was offered money to not pursue the matter.<sup>20</sup>

In the preliminary enquiry the firearms register, a vital piece of evidence, was brought to court with the relevant pages missing. After prevarication and delay had held up the trial for four years, the Crown Council trial lasted just one hour. No firearms register was produced on the excuse that it had been burnt in a fire yet no evidence was given to show that there had actually been any fire. The identification parade had been faulty and the investigating officer was off the island and not expected to return. No finding of guilt was returned.

the criminals to justice."<sup>21</sup> The State's extreme reluctance or outright refusal to bring the police to book also indicates a willing tolerance for policing outside the law. In Jamaica, for instance, 650 people have been killed since 1999, and yet not a single police officer has been convicted of an unlawful killing while on duty.<sup>22</sup>

Police often justify "tough" policing by pointing to popular demand. However, once its brutality and consequences for the public are revealed, support dwindles rapidly and levels of insecurity increase as the public now fear arbitrary police actions in addition to high crime rates. In Jamaica the special unit created to deal with situations of extraordinarily high violent crime had to be disbanded due to excessive brutality by its officers.<sup>23</sup>

## **Corruption**

Along with other institutional weaknesses, corruption has become an embedded part of police functioning in too much of the Commonwealth. In 2004, the public in Cameroon, Ghana, Kenya, Malaysia, Nigeria, Pakistan and South Africa viewed their police as among the most corrupt public service sectors.<sup>24</sup> In Ghana, 68% of respondents believed that extortion or bribery was frequent, and 92% admitted to paying a bribe.<sup>25</sup> In Kenya, police officers are the most frequently bribed public officials, "at an average of 13 bribes per client per year."<sup>26</sup> In Nigeria, despite the government's campaign against corruption, citizens reported daily demands for bribes from armed police at roadblocks throughout major cities.<sup>27</sup> In South Africa, certain inner-city areas notorious for high levels of illegal immigrants, sex workers and drug dealers have been dubbed "ATMs (Automatic Teller Machines) for corrupt cops."<sup>28</sup> A 2005 government report on Malaysia's police ranked the police as the government's most corrupt agency.<sup>29</sup>

### **Yielding to Temptation**

Police corruption has a stubborn persistence even in more affluent jurisdictions. In Australia, Commissions of Inquiry in the 1980s, 1990s and most recently in 2003 have pointed to endemic police corruption in the states of Queensland, New South Wales and Western Australia.

In Toronto, Canada, in January 2004, six police officers from the drug squad were charged with extortion, theft, assault, conspiracy, attempt to obstruct justice and perjury following the largest corruption investigation in the history of Canadian policing, which lasted two and a half years.<sup>30</sup> The probe was ordered after provincial prosecutors dropped more than 200 drug cases and many of the accused drug offenders filed civil suits alleging drug squad officers beat them and stole their money. The affidavits filed in the court by the investigators alleged that "some police officers made up informants, stole hundreds of thousands of dollars, and were willing to launder money."<sup>31</sup> In the same year a plainclothes unit had to be disbanded in response to a major investigation into allegations that police officers had either demanded or accepted cash and sexual favours from downtown bars and restaurants in exchange for help in acquiring liquor licences or tips on upcoming police raids.<sup>32</sup> Criminal charges of corruption were laid against the president of the Toronto Police Association and by July 2004, the Toronto Police Service laid a total of 55 new disciplinary charges against eight officers in relation to these allegations.<sup>33</sup>

The poorly functioning criminal justice systems of the South Asian region, which houses three-quarters of the Commonwealth's population, provides many an opportunity for the entrepreneurial police officer. It is estimated that police in Bangladesh alone earned nearly USD\$250 million in bribes in one year.<sup>34</sup> A bribe is often a prerequisite to registering a crime - or for looking away - and payments can help "steer" investigations. Aware that the proper and prompt registering of a case will guide its directions and the discretionary use of police investigative powers will decide its outcomes, police are often amenable to adding or omitting a name, a time, a place, or facts for a reasonable consideration.<sup>35</sup> Paying police to humiliate opponents and to avenge personal grievances is not uncommon and, in Pakistan, station house officers have been cited for operating arrest-for-ransom operations and have even established unsanctioned stations to increase illicit revenue collection.<sup>36</sup>

Scarce resources meant for public benefit are also diverted and purloined for private gain. Official vehicles routinely ferry family or influential contacts instead of being available for official work; weaponry is hired out into criminal hands; and overstretched personnel are deputed to work at domestic chores and as orderlies for seniors while crowded slums and high crime areas are under-policed for want of staff. Valued innovations such as toll-free hotlines for the public to report crime become private property as police use them to receive personal calls on a reverse charge basis, as has been reported in Papua New Guinea.<sup>37</sup>

Corruption has wider ramifications than diverting much-needed resources and fumbling investigations. Corrupt police personnel encourage and foster individual crime; suborn justice; sustain organised crime and the exploitation of victimised groups such as trafficked women, children, and refugees; and through their complicity, have been linked to encouraging insurgency and terrorist activities. In 2004, Jamaica experienced the highest level of violent crime in its history and police irregularities in the issue of gun licenses are said to have increased the rate of murder in the country.<sup>38</sup>

The existence of so much corruption and consequent police criminality demonstrates the inability or unwillingness of superiors and authorities to tackle the problem. Not least because of their own involvement: in Sri Lanka, a senior Deputy Inspector General who was in fact the police ombudsman, was himself faced with corruption charges when he could not account for USD\$30,000 in assets.<sup>39</sup>

## **Bias and Discrimination**

The guarantee of equal protection before the law is a fundamental Commonwealth value. Even-handed policing is both a legal obligation imposed by international and national law and a public expectation. Nevertheless actual and perceived bias in law enforcement remains a major cause for concern in Commonwealth policing. Apart from the predisposition of many police forces to act as instrumentalities of whichever regime is currently in power, the composition of an organisation often ensures that it carries within itself the long standing prejudices of the society it polices.

Police organisations in the Commonwealth are not, for the most part, representative of the rich diversities in the population. Lack of racial, religious, regional diversities affects the way routine policing is done, to whom services are provided, how conflict is handled and

The guarantee of equal protection before the law is a fundamental Commonwealth value. Even-handed policing is both a legal obligation imposed by international and national law and a public expectation.

particularly affects the ability of the poor, minorities, women and vulnerable groups to access justice. Many police forces are attempting to consciously redress traditional imbalances. Efforts have been made in Northern Ireland to ensure both Catholics and Protestants are more evenly recruited. South Africa's affirmative action policies are geared to redress racial imbalances inherited from apartheid. To improve race relations the British Government has placed a duty on police services to promote diversity.<sup>40</sup> The New Zealand police have been one of the first government departments to respond to a national policy effort to take ethnic perspectives into account. With a strategic ethnic advisor in place the police actively seek to recruit across communities.<sup>41</sup>

### **Discrimination Against Minorities: It's Everywhere**

Almost everywhere, minorities - whether ethnic or religious - and vulnerable groups such as the poor and women, experience a more crushing weight of policing. Just a handful of examples include:

- In the UK, in 2003 black people were six times more likely to be stopped and searched than white people.<sup>42</sup>
- The ongoing conflict between Greek and Turkish Cypriots manifests itself in differential treatment for detainees by police and prison officers - in the Central Prison in Nicosia, for instance, there is little response to complaints by Turkish Cypriots and some are even denied medical care.<sup>43</sup>
- Fear and distrust between Guyanese of African, Hindu and Amerindian descent is mirrored in fear and suspicion of the police, which is considered biased towards the Afro-Guyanese majority, and discriminatory against the Indo-Guyanese.<sup>44</sup>
- In Australia, Indigenous people are 16 times more likely to be imprisoned than non-Indigenous adults;<sup>45</sup> in the state of New South Wales, they are 12 times more likely to be charged with assault;<sup>46</sup> and while indigenous people account for only 2% of the total population, indigenous people made up approximately one-third of the deaths in police custody in 2003.<sup>47</sup>
- In South Africa, as recently as 2005 the South African Human Rights Commission found that the Khomani San, a marginalized and poor indigenous community living in the Kalahari Desert, are subjected to discrimination and harassment by the South African Police Service.<sup>48</sup>

Despite some positive change, asymmetries remain in many countries. To illustrate a single one: the composition of police organisations across the Commonwealth is overwhelmingly male. Modernising organisations are trying to redress the balance. Sierra Leone's newly constituted police force already has 15% women and at 28.6%, the South African Police Service has the highest representation of females in any police service in the world.<sup>49</sup> But others lag behind. In India, for example, women make up only 2.2% of one of the largest police forces in the world.<sup>50</sup>

Such skewed compositions play their part in poor policing. Crimes against women abound across the Commonwealth but are too often met with very poor response, with stereotypes and traditionalist attitudes prejudicing the way the predominantly male bastion handles cases. Rapes, domestic violence and trafficking are all under-policed not only because silence, suffering and shame prevent them being brought forward, but also because of the



unsympathetic response they commonly receive. Victims of domestic violence are routinely belittled and even the presence of special legislation mandating police to protect its victims does not prevent women being turned away and refused relief. Women in custody are often vulnerable to sexual abuse - and increasing occurrences of such incidents prompted India to pass legislation that creates a presumption that where a woman is in custody, any sexual intercourse amounts to rape unless proven otherwise by the custodian.<sup>51</sup>

Across South Asia, often socially acceptable forms of violence against women such as forced marriages of minors, dowry deaths and rape as a means of family revenge are often left to the rough justice of the community or hushed up with police connivance, unless highlighted in the media. In Bangladesh for example, the low rate of convictions for violence against women is blamed on the inability of police officers to investigate cases.<sup>52</sup> In Pakistan, despite strong campaigning by women's groups, deep resistance remains within the police establishment to act vigorously against the premeditated murder of women, which are widely viewed as "honour killings." Elsewhere, even otherwise exemplary forces are not immune from individual aberration and confirm that gender bias is slow to change. In New Zealand, a Royal Commission of Inquiry was recently established to investigate allegations of rape by police officers and how the complaints were handled by police.<sup>53</sup>

Where bias and discrimination in policing is accepted and left unattended, public alienation and non-cooperation undermines the security environment and makes policing harder and harsher, creating a downward cycle of events that often leads to open conflict or quiet and continuous victimisation.

## CONSEQUENCES OF POOR POLICING

Perhaps the greatest public resentment and disappointment over bad policing is reserved for impunity - the safety from punishment provided by authorities and supervisors to errant police and the lack of accountability. In addition, this includes a boundless tolerance for poor performance in delivering safety and security and protecting the rule of law.

When deprived of the assurance of state protection, people do not have the confidence to approach the police and instead increasingly opt for self-help. While the rich may choose to buy the expensive services of the booming private security industry to protect themselves, vigilantism becomes a viable option for the poor.<sup>54</sup> Disaffected communities breed violence and the inability of police to tackle public resentment with finesse and diplomacy further exacerbates the situation, sometimes spiralling it out of the sphere of negotiation into open confrontation. The rule of law is undermined and the economic development process is impeded.

Bad policing also affects civil liberties not only because people are not able to go about their work and leisure free from fear, but also because it increasingly prompts governments to pass restrictive legislation full of



discretions that put ever more power into the hands of the police without holding them strictly to account. While it is ordinary people who are most affected by poor policing, politicians who think they have control over the police may also find themselves vulnerable to police arbitrariness when they are no longer in power.

Excuses for not stopping impunity are many and varied. Dangerous times, insurgency, or civil conflict are often used as a reason for giving police free reign - based on the rationale that questioning police excess will somehow undermine their authority at a time when it is particularly vital for them to look invincible. This ignores the fact that violence and abuse of power are not restricted to moments of high national emergency but are everyday occurrences. Arguments are put forward that prosecution and frequent disciplinary proceedings will demoralise the organisation. This puts a few bad people above the whole population, as well as above the law. In their own defence, the police will often shun responsibility for wrongdoing by assuming helplessness in the face of "orders from above", ignoring the fact that their mandates are strictly limited to obeying only lawful direction.

Once condoned, habits of impunity become so deeply rooted within the organisation that the best personnel cannot function without impediment and the worst find themselves protected in a way that demoralises the bulk of ordinary good police personnel from working with honesty and commitment.

## **WHO IS AFRAID OF POLICE REFORM?**

In the end, the frequent unfair protection afforded to police evidences a close nexus between bad policing and bad governance. Given that the police are largely governed by the political executive - and in many jurisdictions closely controlled by them - impunity persists not by accident, but by design. Too often, police officers are not held to account only because of patronage they enjoy from various elites and the mutual benefits derived from this. Despite strong evidence that poor policing contributes to the notable sense of lawlessness and insecurity felt by citizens around the Commonwealth, resistance to change has been stubborn and persistent.

Despite strong evidence that poor policing contributes to the notable sense of lawlessness and insecurity felt by Commonwealth citizens, resistance to change has been stubborn and persistent. The main obstacle to reform is the lack of political will.

Again, the justifications are many and may include an honest lack of finances, personnel and know-how. Tardiness in bringing about change also comes from the inability of in-country police and political bosses to access knowledge about the nuts and bolts of how accountability can be achieved. Lack of safe platforms for dialogue on challenge and response, context and innovation, problems and solutions can also impede initiatives for change. The inability to undertake comprehensive reforms encompassing the whole criminal justice system is also sometimes used as an excuse not to attempt even the most elementary efforts. But the greatest resistance comes from the same powerful elements that benefit from the status quo and the main obstacle to reform is surely the lack of political will.

### **Where There is No Will... No Way!**

The response to the cry for better policing is a telling marker of the political will to reform and the levels of resistance encountered. In 1997, no less than the Home Minister of India wrote a letter urging every state's Chief Minister to begin the process of reforming their police. This occurred in light of a series of reports published between 1979 and 1981 that had looked at all aspects of policing, found them wanting and made cogent recommendations for reform. Not a single Chief Minister replied and less than a handful have taken meaningful steps in the quarter century since these reports were published to do more than make tinkering changes. The comprehensive 8-volume report that carefully analyses many of the same frailties, causes and effects that plague policing in Commonwealth jurisdictions lies firmly buried. Periodically, other commissions and investigations add to the literature on the need for reform but little by way of seminal change has been persuaded. Police performance remains unsatisfactory and unmeasured against the vast amounts spent by the central government to the states each year to 'modernise' the force. In desperation two public spirited ex-police officers have finally gone to the Supreme Court asking the court to instruct the government to implement the recommendations of the National Police Commission especially those related to insulating the police from illegitimate political pressures.<sup>55</sup>

## **POLICE REFORM EXISTS IN THE COMMONWEALTH**

The reform of law and order and justice systems is only possible if governments - and the public at large - accept that reform is necessary and important. Though too many resist change, the Commonwealth has some inspiring examples of governments and police hierarchies making concerted efforts to bring about reform - and succeeding in the face of strong resistance and limited budgets.

Some police organisations have undergone varying degrees of modernisation. In the more affluent democracies, emphasis has been placed on streamlining police organisations to make them more effective and ensure value for money. This has often been accompanied by "culture change" programmes that contribute to changing attitudes and behaviour to align them with human rights and a more appropriate service orientation. In Canada, the combination of a highly diverse population, a liberal rights culture, and decentralised local policing has led to some of the most progressive developments in community policing and local-level accountability. Tightly controlled Singapore has nevertheless developed a trusted and community friendly police. Ironically, the UK, which introduced policing to most Commonwealth countries, has developed a policing model diametrically opposite to the one it left in place in its former colonies.

Impetus for reform has come from public concern over rising crime, or from incidents of police abuse or failure, accompanied by a willingness to learn and address changing contexts. The end of conflict in Northern Ireland, for instance, brought with it the need to re-build popular confidence in a police force that was seen as partisan and brutal. Despite resistance from within, the occasion provided a moment for redesigning a new kind of police capable of sustaining support from the community as a whole.

Similarly allegations of institutional racism in Canada and Britain pushed governments to re-examine and dramatically improve recruitment policies, training and community relationships. In Australia, persistent corruption in some of its state forces and a disproportionate number of deaths in custody of indigenous people led to several reform commissions and the adoption of sophisticated police accountability practices. Similarly,

countries such as Fiji, Nigeria, South Africa and Sierra Leone that have undergone dramatic transitions from authoritarianism to democracy, have begun to showcase some of the seminal lessons for police reform.

### **Global Collaboration on Policing**

The interest of international donor agencies in police reform is on the rise, with more and more Commonwealth countries receiving aid packages that require or support police reform, often as one component of sector-wide criminal justice reform. The World Bank and a host of other donors have assisted countries to produce Poverty Reduction Strategy Papers which often involve strengthening criminal justice systems within a larger poverty-reduction scheme. Many Commonwealth countries are implementing police reforms related to justice-sector programmes of the Poverty Reduction Strategies. These countries include Lesotho, Kenya, Tanzania, Bangladesh, Pakistan, Sri-Lanka, Guyana and Dominica.

In the Pacific - Fiji, Solomon Islands, Papua New Guinea and Vanuatu - donor-driven police reform programmes are led primarily by AusAid, the Australian government development agency. These programmes focus on reforming Police Acts, strengthening internal investigative capacities and providing training in key operational areas as part of a wider governance strategy for the region.

Post-conflict countries, such as Mozambique, Sierra Leone and South Africa demonstrate the immense impact that donors can have in shaping police reform during a transition to peace. The imprint of donors during a transition can, however, be as problematic as earlier colonial legacies if donors themselves are not adhering to best practices in international development work.

Despite the globalisation of ideas about policing, much has been learned from the attempts to export "models" from the developed world. There is a healthy reluctance to accept first-world models in most parts of the Commonwealth, and a sensitivity to the need for policing to respond to specific local conditions. Regional collaboration include regional associations of Police Chiefs in the Pacific, Southern Africa and the Caribbean that meet regularly to discuss key policy and operational issues. The Pacific, in particular, has taken trans-national policing even further, with a Regional Assistance Mission to the Solomon Islands. The Mission is Australian-led, involving New Zealand, Fiji, Papua New Guinea, Tonga, Samoa, Vanuatu, Kiribati and the Cook Islands, and its operation is endorsed by the Solomon Islands government as well as all of the Pacific Island Forum member states. In its first phase, it involved about 330 police officers, backed by around 1800 military personnel, working to disarm the militants and cleanse the Royal Solomon Islands Police Force of its criminal members.

### **From Regime to Democratic Policing**

Over the past three decades, the notion of policing has evolved from a narrow preoccupation with protecting the security of the state and its rulers to including a broader concern with ensuring "human security" for all.<sup>56</sup> The protection of human security places emphasis on policing by state and non-state actors, such as community groups and private security businesses, that together create an environment where freedom from fear and freedom from want is respectively assured and contributed to.

Reform requires a shift from "regime" policing to "democratic" policing: an approach founded on principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of dissent, protection of individual and group rights, and encouragement of human potential. Democratic policing not only protects democratic institutions and supports an environment where democratic activities can

flourish but also demonstrates democratic values in its own institutional structures and processes. Ideally, holistic reform requires attention not only to police but also to the criminal justice system.

Across the Commonwealth, reforms have ranged from replacing outdated police Acts with new legislation that reflects the country's constitutional imperatives, to putting in place new management systems that work to improve police performance and move the police from a state force to a public service. Depending on the context, police reforms have entailed wholesale review and redefinition of role and function as well as organisational restructuring aimed at making the organisation less militaristic and hierarchical and more merit based. Reform has sought to change the internal sub-culture in matters of ethics and discipline and has focussed on bringing about changes in attitude aimed at shifting the police from its frequently fortress-like mentality to becoming inclusive and responsive.

Other changes have been to recruitment to make it more representative. Training has gone beyond the military march and baton drill to inculcating knowledge of human rights, nurturing initiative, honing new skills and creating professional specialisations. Reform has also addressed service conditions of rank and file and paid attention to their career advancement based on good performance rather than patronage.

Reform has also harnessed technology, reassessed available financial and human resources and devised strategies to make optimum use of these scarce resources while paying particular attention to putting in place rigorous oversight systems that ensure financial integrity. Vital to new systems is their ability to insulate police from illegitimate outside interference and permit officers functional autonomy coupled with management responsibility for delivering good policing services to the community. This has involved careful demarcation of roles between political authorities and other security agencies.

At the heart of all reform efforts lies the need to create effective mechanisms of accountability: the strength and impartiality of these mechanisms creates strength and credibility for the police.

### **What's in a Name?**

It is not without significance that most Commonwealth Acts refer to police organisations as "police forces" but some use the term "police services" - for example South Africa, Ghana, Lesotho, Trinidad and Tobago, Australia, Canada, parts of England and Northern Ireland. Each has gone some way to "democratising" its police.

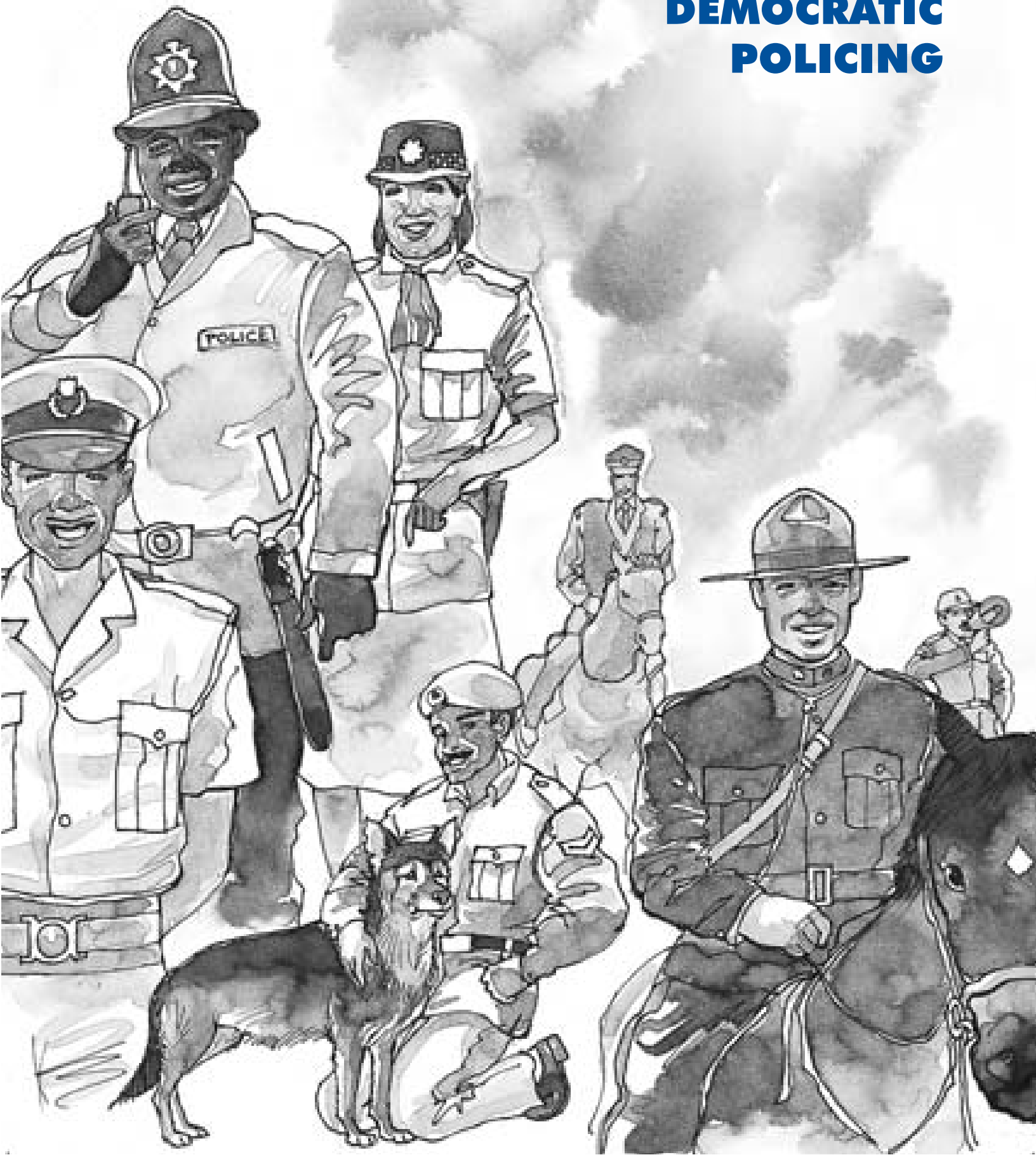
Since the word "force" had unhappy connotations of violence in 1965, after independence Trinidad and Tobago abolished the designation of a "Police Force" replacing it with "Police Service". Cosmetic though it may be, name changes signify the underlying aspirations of what the public wants of its police - that the police exist to serve the public and not to control them. Within the organisation, the name change is intended to ground a change in attitude to a more "service-oriented" approach in which the police see themselves as servants of the community rather than merely those who impose order. Name changes also underline the fact that the police are a public service paid for through taxes and are accountable to the people for the performance they deliver.

At the heart of all reform efforts lies the need to create effective mechanisms of accountability and performance evaluation that can transform police organisations from oppressive engines of a few powerful interests to a service for all. The best initiatives at improving structure, processes and management can have no meaning unless underpinned by strong guarantees of improved accountability.

Where it has taken root, democratic policing is subject to multiple layers of accountability: transparent internal police mechanisms deal with discipline, ethics and performance standards while external oversight extends across parliament, the judiciary and the executive, to the community and newer independent institutions such as human rights commissions and ombudsmen. Working in tandem, the strength and impartiality of each of these mechanisms creates strength and credibility for the police.

## Chapter 2

# DEMOCRATIC POLICING





Democratic nations need democratic policing. Democratic policing is based on the idea of the police as protectors of the rights of citizens and the rule of law, while ensuring the safety and security of all equally. It rejects any resemblance to the regime policing of colonial times. Colonial style policing was based on the idea of police as protectors of a government foreign to the people.

Under the colonial approach, the police:

- answer predominantly to the regime in power and its bureaucracy and not to the people;
- are responsible for controlling populations, rather than protecting the community;
- tend to secure the interests of one dominant group; and
- are required to remain outside the community.

In contrast, democratic policing requires the police to:

- create the security environment which best promotes democracy;
- espouse only such methods of functioning that accord with the rule of law and do nothing to damage it; and
- order their organisational design to best achieve these ends, as well as demonstrate from within itself adherence to the principles of good governance.

Democratic policing follows from and gives practical meaning to the Commonwealth's promise of democracy and good governance. It is applicable to any context in the Commonwealth, rich or poor, large or small, diverse or homogenous. Even where police Acts have not been revamped and do not explicitly speak of the new and expanded role of the police, policing has to be reinterpreted in light of the new constitutional mandates that today put the citizen at the centre of the State's concern and place the highest value on human rights.



Increasingly, the fundamental purpose of policing is seen as being the protection and vindication of the human rights of all. In creating a new policing framework that could contribute to healing the wounds in Northern Ireland, the Independent Commission on Policing insisted that the police must "...uphold the laws that safeguard the lives of citizens. There should be no conflict between human rights and policing. Policing means protecting human rights.<sup>157</sup> As a result, the law provides an oath of office, which includes the commitment to faithfully discharge duties while "upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs".<sup>58</sup>

As the primary agency responsible for protecting human security, the police are particularly responsible for turning the promise of human rights into reality. The failure of the police to properly perform their duties has a significant effect on the ability of citizens to enjoy the full spectrum of all their human rights and can also impact negatively on the ability of governments to deliver on their mandates.



Respect for human rights is also central to the actual conduct of police work - how the police do their work. Unlike any other agency of government, the police are given wide powers, including the authority to use force against citizens. This power to infringe on citizens' freedoms carries with it a heavy burden of accountability. Good systems of governance require that the police account for the way they carry out their duties, especially for the way they use force. This ensures that the police will carefully consider the methods that they use to protect peace and order, and that incidents of police misconduct or abuse of their powers will be dealt with harshly.

## HALLMARKS OF DEMOCRATIC POLICING

Democratic policing is both a process - the way the police do their work - and an outcome. The democratic values of the Commonwealth lay down a sound framework for this.

A 'democratic' police organisation is one that:<sup>59</sup>

- **is accountable to the law, and not a law unto itself.** The rule of law is not meant for just the people while the police and government remain immune. Democratic policing requires that the police act within their boundaries and within international laws and standards. Actions of the police are always subject to court scrutiny and those who break the law face consequences both through internal disciplinary systems and the criminal law.
- **is accountable to democratic government structures and the community.** To ensure that the police do not become overly controlled by or identified with a single seat of power, democratic police independently answer to all three branches of governance, as well as to the community.
- **is transparent in its activities.** Most police activity should be open to scrutiny and subject to regular reports to outside bodies. People must be able to find out about the formulation of policy, manner of functioning and areas of priority. Information about individual behaviour, as much as broader operations, must be in the public domain.
- **gives top operational priority to protecting the safety and rights of individuals and private groups.** The police must primarily serve the people and be responsive to the needs of individuals and members of groups - especially those who are vulnerable and marginalised. In diverse and fragmented societies, police organisations must be responsive and respectful across social divides and always uphold the law without bias.

"In a democratic society, the police serve to protect, rather than impede, freedoms. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised. A democratic police force is not concerned with people's beliefs or associates, their movements or conformity to state ideology. It is not even primarily concerned with the enforcement of regulations or bureaucratic regimens. Instead, the police force of a democracy is concerned strictly with the preservation of safe communities and the application of criminal law equally to all people, without fear or favour"

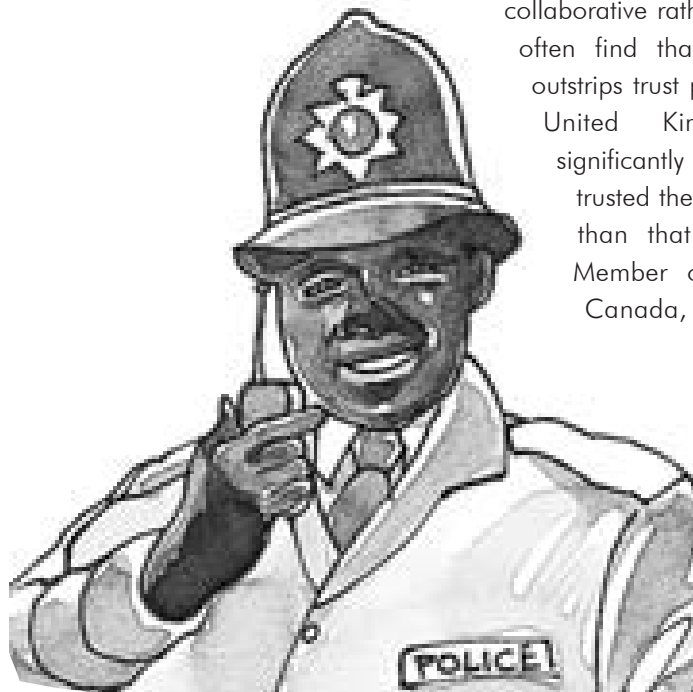
- United Nations International Police Task Force, 1996.

- **protects human rights.** This requires police to protect the right to life and dignity of the individual, as well as the exercise of democratic freedoms - freedom of speech, freedom of association, assembly and movement. They must also ensure freedom from arbitrary arrest, detention and exile, and impartiality in the administration of the law.
- **provides society with professional services.** As an organisation with huge powers in which the public places enormous trust, the police must be governed by a strong code of ethics and professional conduct and be answerable for delivering high quality services.
- **is representative of the communities it serves.** Police organisations that reflect the population they serve are more likely to enjoy their confidence and cooperation and earn the trust of vulnerable and marginalised groups who most need their protection.

A democratic approach to policing benefits the community, police officers, and governance alike. Openness allows the community to understand the challenges faced by police; and constant dialogue helps set common priorities. Responsibility for safety then becomes a shared objective and the police become allies in keeping the peace rather than instruments of government oppression. Community cooperation is more assured and information is more likely to be shared - as a result, crimes are better prevented and more easily solved.

With better performance comes a more positive public image and a boost to the morale and professional pride of the staff of an organisation that is doing an inherently difficult job.

Surveys in countries whose police take a more collaborative rather than coercive approach often find that trust in the police far outstrips trust placed in politicians. In the United Kingdom, for example, significantly more people said that they trusted their local police officer (82%) than that they trusted their local Member of Parliament (44%).<sup>60</sup> In Canada, a government survey conducted during 2003 found that 82% of people had a "great deal" or "quite a lot" of confidence in the police, while only 43% had a similar level of confidence in the federal parliament.<sup>61</sup>



## ACCOUNTABILITY IN PRACTICE

A key feature of democratic policing - in line with the checks and balances that characterise democratic systems of governance - is that the police are formally held to account in a variety of ways for their performance as much as for any wrongdoing. They must also be made to bear the consequences.

There are commonly four types of accountability or control over police organisations:

### Government (or state) control:

The three branches of governance - legislative, judicial and executive - provide the basic architecture for police accountability. In a thriving and active democracy, the police are likely to be regularly held accountable in all three halls of state. For instance, police chiefs are often required to appear in the legislature and answer questions from the elected representatives of the citizenry. Or they may be subject to questioning by other branches of government such as Auditors-General or Finance Departments. Where there is a strong and independent judiciary, cases may be brought in courts regarding police wrongdoing, with possible compensation for those affected, or to verify or amend decisions made by police officials.

### Independent external control:

The complex nature of policing and the centrality of police organisations to governments require that additional controls are put in place. Institutions such as National Human Rights Commissions, Ombudsmen and public complaints agencies can oversee the police and limit police abuse of power. At least one such independent, civilian body is desirable in any democracy, although many Commonwealth countries in fact enjoy the services of a number.

### Internal control:

All "well functioning accountability systems are grounded, first and foremost, on internal police mechanisms, processes, and procedures."<sup>62</sup> Reliable disciplinary systems, appropriate levels of training and supervision, and systems for monitoring, evaluating and recording performance and crime data all create the necessary apparatus to hold policing to a high standard.

### Social control or "social accountability":

In a democracy, holding the police accountable is not merely left to formal institutions that represent the people, but is also the right of ordinary people themselves. The media, community groups (such as crime victims, business organisations, and local civic or neighbourhood groups), and individuals all monitor and comment on police behaviour to spur them to better performance.

A democratic approach to policing benefits the community, police officers, and governance alike. Responsibility for safety then becomes a shared objective and the police become allies in keeping the peace rather than instruments of government oppression.

There is no hard and fast rule about the form that good police accountability must take. Much depends on the circumstances of each country and the nature of the existing relationship between the police and the community. CHRI advocates that the basics of sound accountability required in most circumstances are vigilant internal processes and procedures coupled with external oversight by the three wings of government plus one independent body.

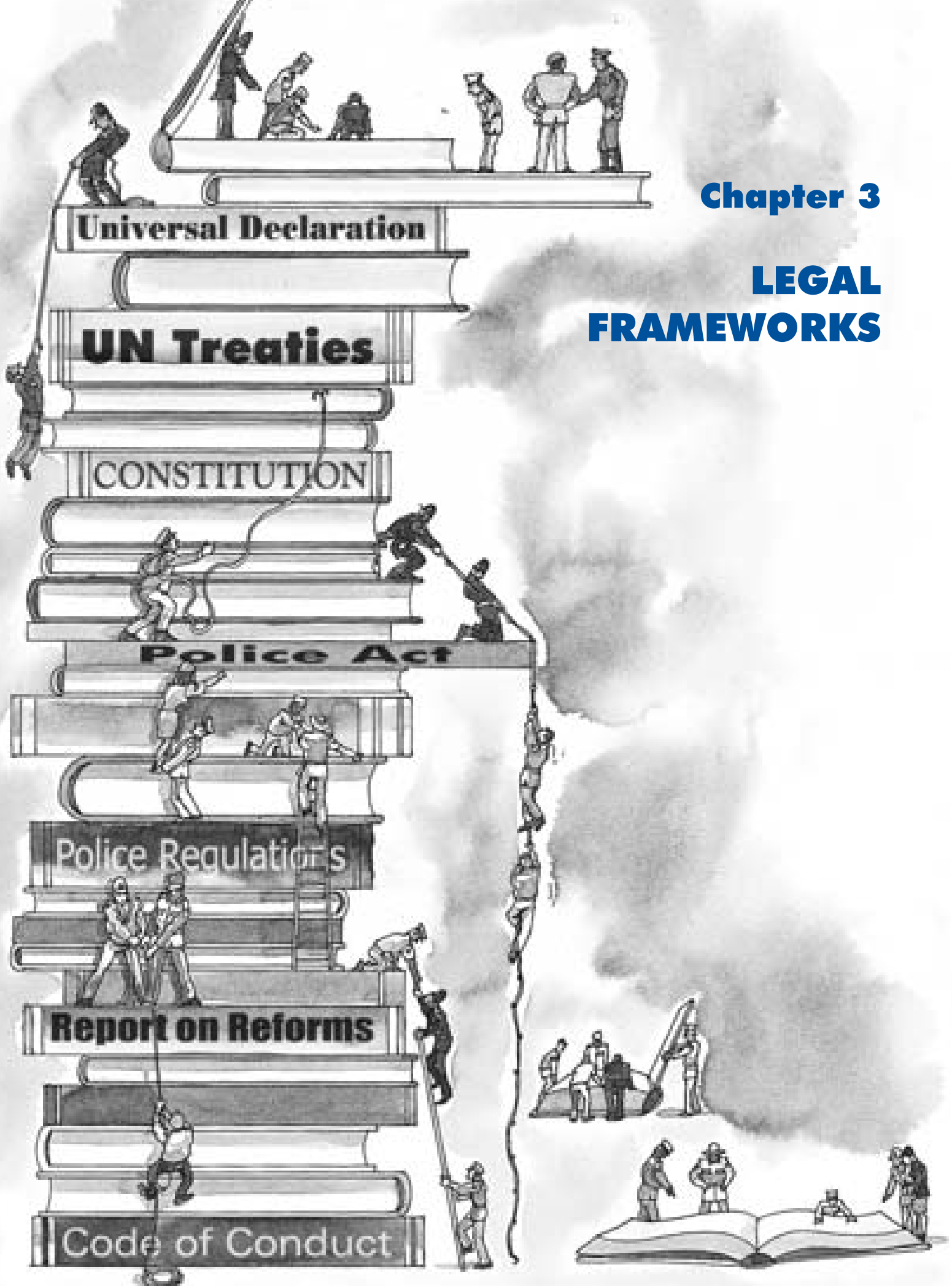
### **A Model for Police Accountability: 3 + 1**

An effective model includes oversight by:

- democratically elected representatives (in national parliaments if police are structured at the national level, in state legislatures if police are organised at the state level, and in local councils if policing is organised at the local level);
- an independent judiciary;
- a responsible executive (through direct or indirect policy control over the police, financial control, and horizontal oversight by other government agencies such as Auditors-General, Service Commissions and Treasuries); and
- at least one independent statutory civilian body, such as an Ombudsman or a Human Rights Commission or, ideally, a dedicated body that deals with public complaints about the police.

## Chapter 3

# LEGAL FRAMEWORKS





The need for police to be accountable for their actions has long been recognised in international and domestic law. Numerous United Nations (UN) declarations and treaties have entrenched norms of accountability and these are reflected in regional, Commonwealth and domestic standards. Many such norms and standards - whether they originate from the UN, the Commonwealth or regional groupings such as the African Union, the European Union, the Pacific Islands Forum, or the Organization of American States - speak directly to policing.

As members of the United Nations, all Commonwealth countries recognise the UN system of international law and standards, premised on peace, justice and the protection of human rights. Most Commonwealth countries have signed or ratified international treaties, although it is true that even legally binding declarations, let alone solemn promises and model guidelines, cannot in themselves bring about in-country police reform. Nonetheless, it is important to recognise that a combination of international laws and standards, as well as national legal regimes, exist to provide a strong framework for accountable and democratic policing.

## **INTERNATIONAL STANDARDS: HUMAN RIGHTS, RULE OF LAW AND ACCOUNTABILITY**

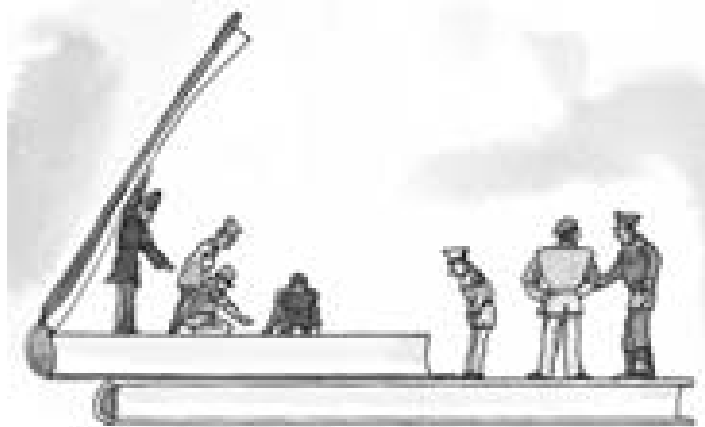
The Universal Declaration of Human Rights (UDHR), the seminal human rights document that all Commonwealth countries have agreed to, makes clear: "Everyone has the right to life, liberty and security of person."<sup>63</sup> This right, which is directly related to good policing, is at the core of the global human rights framework, encapsulated in the International Bill of Rights. Governments are expected to use the UDHR to guide their legislative, judicial and administrative practice. In particular, police organisations are expected to know and enforce the UDHR and uphold, defend and protect people's civil and political rights and freedoms, as well as foster an environment that will promote their economic, social and cultural rights.

### **The International Bill of Rights**

The International Bill of Rights comprises the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Ratification of these treaties oblige states to abide by the International Bill of Rights and any state denying those living within its borders the guarantee of all the rights articulated in the International Bill of Rights is contravening international law.

The rights outlined in the International Bill of Rights can be limited in certain circumstances, such as those related to morality, public order and the general welfare in a democratic society. However, there are certain rights that can never be suspended or limited, even in emergency situations. These non-derogable rights are: the right to life; freedom from torture; freedom from enslavement or servitude; protection from imprisonment for debt; freedom from retroactive penal laws; right to recognition as a person before the law; and the right to freedom of thought, conscience and religion.

The principles laid down in the UDHR have been refined and re-stated in legally binding treaties<sup>64</sup> that place specific legal obligations on all those involved in law enforcement. These international laws on human rights have been further expanded and reinforced in regional human rights instruments. Africa, Europe and the Americas each have their own human rights charter, along with associated mechanisms to ensure compliance,<sup>65</sup> 25 Commonwealth members have adopted the additional human rights obligations in these regional charters.<sup>66</sup>



The international framework is premised on human rights and the rule of law. The preamble to the UDHR specifically states that "...it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."<sup>67</sup> This requires the existence of known rules that are fair and just in themselves and equally applied to all without discrimination and that the state obeys these rules, is not arbitrary or oppressive, and has in place effective mechanisms to ensure that the rule of law is upheld.

The role of the police is crucial in upholding the rule of law. Article 9.1 of the International Covenant on Civil and Political Rights, for instance, states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." This requires the police to rigorously ensure that due process in investigation, interrogation, and arrest is a reality; and the international framework thus creates standards against which to measure police accountability in-country.

The legal obligations that apply to the police, through binding treaties of the UN, are supported by resolutions and declarations of the international community that are intended to clarify and guide implementation. Most notable of these is the UN Code of Conduct for Law Enforcement Officials. This specifically requires that "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."<sup>68</sup> It requires the police to uphold the rule of law, ensure the safety of citizens, be responsible, accountable and protect democratic values.<sup>69</sup>

When adopted more than 25 years ago, this Code of Conduct laid down three core features of acceptable policing: "Like all agencies of the criminal justice system, every law enforcement agency should be representative of, and responsive and accountable to the community as a whole."<sup>70</sup> A representative police organisation requires that staffing reflect the ethnicity, gender, language, caste and religious composition of the population it serves. Responsiveness demands that the police serve the people and not just the government. Most vital is the principle of accountability, which runs through these codes and principles and is a key feature of democratic policing.

A strong basis for accountability within police organisations is laid down by the obligation that officers have to report breaches of the UN Code of Conduct to appropriate or superior authorities. Equally, a key principle of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>71</sup> is that "Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use."<sup>72</sup> This places a significant responsibility on supervisory ranks to oversee the actions and decisions of police under their command, especially where force may be used; and requires clear managerial accountability in police establishments.

The UN Basic Principles also provide for accountability to courts, as well as for internal disciplinary mechanisms, particularly where injury or death is caused. While some countries have developed their own Codes or Guidelines for ethical conduct of officers and use of force, which are articulated in police training manuals or laid down by judgements of

Courts, too few Commonwealth governments have actually implemented the international standards in national legislation, and far too few respect the international rules in practice.<sup>73</sup>

As with the United Nations, human rights form the bedrock of the Commonwealth. However, Commonwealth declarations and communiqués offer only broad objectives for the creation of a more equitable and democratic society, rather than enforceable law. As realistic objectives, these statements set out a road map for states and the agencies of the Commonwealth - such as the Commonwealth Secretariat - to work toward, requiring practical steps be taken to ensure that national environments are conducive to meeting agreed goals and that obstacles to realising human rights and good governance are removed.

### **Working Together Globally**

New levels of global co-operation in policing increasingly insist on implementing agreed international policing standards at the national level and taking steps to promote accountability and good human rights practice in policing worldwide. All Commonwealth countries, except the Pacific nations of Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu, are members of the International Criminal Police Organisation (INTERPOL), an association of cooperating states. INTERPOL has made clear that its premier goals of "mutual assistance and suppression of crime" must only be achieved in the spirit of the Universal Declaration of Human Rights<sup>74</sup> and that "all acts of violence or inhuman treatments, that is to say those contrary to human dignity, committed by the police in the exercise of their judicial and criminal police duties, must be denounced to justice".<sup>75</sup> Members of INTERPOL are expected to endorse and translate into practice its global human rights and anti-corruption standards to improve accountability and oversight of policing.

The 1991 Harare Commonwealth Declaration - the most significant of the Commonwealth statements because membership of the association requires countries to abide by it - includes promises to work for "...fundamental human rights, including equal rights and opportunities for all citizens...[and]...entrench the practices of democracy, accountable administration and the rule of law."<sup>76</sup> The important principle of accountability is a recurrent theme in Commonwealth declarations. Most recently, in 2003, while reaffirming the Commonwealth's fundamental values, Heads of Government again called for "...a political culture that promotes transparency, accountability and economic development."<sup>77</sup> Broad promises of "equality", "transparency", "accountability", "democracy", "good governance", "protection of human rights", "elimination of corruption" and "the rule of law" indicate the matrix upon which policing must rest.



The Commonwealth Expert Group on Development and Democracy in 2003 stated that Commonwealth governments should commit themselves to ensuring a "police force that responds to the law for its operations and the government for its administration" and that this should be "fully held to account."<sup>78</sup> In 2002, Commonwealth Law Ministers also mandated the Commonwealth Secretariat to assist in training for police officers in order to entrench greater respect for human rights.<sup>79</sup> This has been done by the Human Rights Unit of the Secretariat through the development of a training manual for police in West Africa. However, the Commonwealth has yet to make a definitive statement about the centrality of the police to realising its objectives.

### **Using Commonwealth Structures to Realise Local Police Accountability**

Standing alone, the Commonwealth machinery offers limited means to distil its objectives into workable and specific policies for individual member states beyond the policy discussions at the biennial Commonwealth Heads of Government Meetings (CHOGM). Only the UN conventions and standards have any legal enforceability. Therefore, it is fundamental that the Commonwealth call on member countries to ratify, implement and abide by these international treaties governing law enforcement and human rights. Also essential is developing a reporting mechanism to monitor whether individual countries have taken steps towards fulfilling the promises made in communiqués. Without this, the value of the Commonwealth association comes into question.

There is no peer review mechanism in the Commonwealth, and the biennial CHOGM meetings do not yet review implementation of countries' human rights commitments. In practice, governments in the Commonwealth often fail in their duty to protect their citizens' rights and security. Worse, some governments derogate from the rule of law and continue to use abusive policing practices, including detention without fair trial and torture. The Commonwealth must acknowledge the importance of human security, and leaders must ensure that crime and internal instability are addressed within the framework laid down by Commonwealth principles.

The Commonwealth Ministerial Action Group (CMAG), comprised of a rotating group of Foreign Ministers, investigates serious or persistent violations of the principles enunciated in the Harare Commonwealth Declaration. CMAG has traditionally taken a narrow perspective on its mandate, focusing on the unconstitutional overthrow of governments rather than on the broader principles of democracy, human rights and rule of law. The powers of CMAG permit only limited measures leading to the suspension or expulsion from the association - and then only in instances of grave or persistent violation.<sup>80</sup> Civil society groups can petition CMAG and make submissions about violations of the Harare principles, including violations related to police misconduct.

Cumulatively, the international legal framework, as well as the many standards, resolutions and guidelines that nations have solemnly agreed to, require policing across the Commonwealth be implemented in ways that promote and do not violate human rights. In particular, the international community has sought to lay down binding norms to address common problems that beset policing.

## Torture Is Absolutely Prohibited

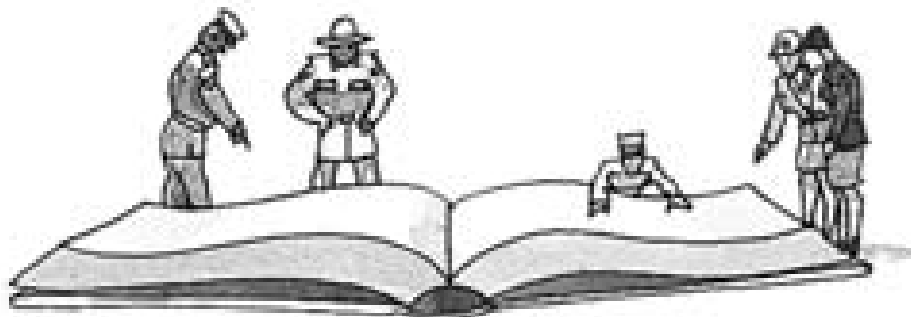
The prohibition of torture is absolute, no matter the circumstances. The right to be free from torture is protected under the International Bill of Rights, and any state denying these rights to those living within its borders is contravening international law. The UDHR states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>81</sup> This is reinforced by the binding provisions of the International Covenant on Civil and Political Rights (ICCPR) and, in more detail, in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) - the seminal international treaty on torture.

The prohibition of torture is absolute, no matter the circumstances.

The CAT defines torture as any act committed by state agents or persons holding positions of authority, such as the police, by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purposes of obtaining information or confession, punishment, intimidation or for any reason based on any kind of discrimination. The right to be free from torture cannot be suspended or limited in any circumstance - even in war, threat of war, political instability or public emergency - and it can't be defended on the basis of orders from superiors. Torture cannot be used to obtain information or a confession, nor to intimidate or punish.

Governments must treat the use of torture as a criminal offence; make all efforts to prevent torture; explain that it is prohibited in police training and instructions to police; thoroughly investigate allegations; and ensure that victims and witnesses who complain of torture are protected and get compensation and rehabilitation.

Together, the provisions of the CAT and ICCPR provide an extremely strong basis for holding police officials to account if they commit or permit torture. However, it is a matter of grave concern that 24 members of the Commonwealth have not yet ratified or acceded to the CAT and only three out of 53 nations have ratified the CAT Optional Protocol which allows visits to places of detention by independent bodies.<sup>82</sup> Eighteen members have not even ratified or acceded to the basic ICCPR (see Annexure B). This indicates not only the lack of commitment by a significant portion of the Commonwealth to upholding the basic principles that bind the association, but also reflects the parlous state of policing in many countries.



## Use of Force Must be Minimum and Moderated

The most symbolic and extreme power given to the state by the people in a democracy is the exclusive right to use force to secure peace and order. Internationally, recognition that this power must be moderated led to the development of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which limits use of force to when it is strictly necessary for lawful law enforcement purposes and, above all, that it must be proportionate.<sup>83</sup> The circumstances in which deadly force may be used are strictly limited.<sup>84</sup>

### Police Shootings in South Africa

For many years, police officers in South Africa were allowed to shoot suspected criminals under the Criminal Procedure Act<sup>85</sup>, even when there was no direct threat to the officer or the public. This contravened the UN Basic Principles, as firearms may be used only when there is serious threat to life. It was only after the transition to democracy in South Africa that efforts were made to end this breach of international standards. In 1998, Parliament drafted a new Section of the Act consistent with international human rights law and the new Constitution, but it was never implemented.

In 2002, the Constitutional Court ruled that the old law violated the right to life and was in breach of international law; and criticised the Government for not implementing the revision. The Government now has to properly ensure that the directions of the Constitutional Court and international standards on the use of force and firearms are entrenched by regulations and incorporated into police training.

The UN Basic Principles recommend that governments safeguard their citizens by ensuring there is an independent administrative or prosecutorial authority that decides when force is to be used; that it is properly reported every time firearms are used; and that it is made a criminal offence for law enforcement agencies to use disproportionate force. Significantly, superiors in command who have permitted the use of illegal force, done nothing to stop it, failed to report it, or tried to suppress the facts are to be held responsible as well. In order to protect those who refuse to obey illegal orders, the Basic Principles recommend no criminal or disciplinary sanction be imposed on a police officer who refuses to carry out an order to use force and firearms which is not in compliance with the UN Code of Conduct and the Basic Principles.

Governments are urged to have in place measures that predispose police to use minimum force. These must also be periodically reviewed. The Basic Principles recommend that governments provide police establishments with non-lethal and defensive alternatives to guns; lay down what weapons may be carried and when; carefully select who can use firearms; and ensure that they are proficient in their use as well as cognisant of human rights, ethics and the prohibition of force in the investigation process.

### Step-by-Step

The Basic Principles offer a step-by-step procedure for officers to follow before the use of force or firearms can be justified as legal. It requires the police to:

- apply non-violent means as far as possible before resorting to the use of force and firearms;
- only use force and firearms in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- minimise damage and injury as well as respect and preserve human life;
- provide prompt assistance and medical aid to any injured person whenever unavoidable use of force was applied, and to notify this person's relatives or close friends as soon as possible;
- promptly report to a superior officer any incident involving injury or death caused by the use of force and firearms; and
- never use firearms except in situations that involve self-defence or defence of others against imminent threat of death or serious injury, to prevent the perpetration of a serious crime involving threat to life, to arrest a person presenting such a danger and resisting the police authority, to prevent that person's escape, and only when less extreme means are insufficient.

### Zero Tolerance for Corruption

Corruption is generally defined as an act of abuse of power for personal gain or for the advantage of a group or class. In recent studies uncovering the magnitude of corruption across the globe, the police have fared very badly, coming high on everyone's list of most corrupt state institutions. Corruption is incompatible with the profession of law enforcement and systemic corruption within the police obstructs its fundamental purposes. Instead it promotes criminality, insecurity and impunity - the very evils the police aim to quell.

Taking particular note of the corroding effects of corruption on effective policing, INTERPOL has adopted Global Standards to Combat Corruption in Police Forces/Services, which promote high standards of honesty, integrity and ethical behaviour and asks members to detect, hold accountable and "bring to justice police officers and other employees of police

forces/services who are corrupt."<sup>86</sup> The UN Code of Conduct explicitly requires law enforcement officials to not be corrupt and to combat corruption when they encounter it.<sup>87</sup> The UN and INTERPOL also require states to establish independent, well-funded monitoring and oversight mechanisms that are able to carry out investigations and bring to justice those who engage in corruption and dishonesty.<sup>88</sup>

By ratifying a human rights treaty, a state is legally obliged to bring in-country laws and policies in line with the agreed international standards and make the rights a reality.

The UN has now agreed on a Convention Against Corruption, which has been signed by 27 Commonwealth members and ratified by Kenya, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Sri Lanka and Uganda. Under it, governments will be obliged to make sure their public services, including the police, have safeguards that promote efficiency and transparency including legislating corruption as

a criminal offence. Regional conventions - the Inter-American Convention against Corruption and the African Union Convention on Preventing and Combating Corruption - also apply to 14 Commonwealth members, and require that states take effective measures to punish public officers, including police officers, for acts of corruption.<sup>89</sup> With the new Convention Against Corruption in place, signatory countries are taking steps to begin cleaning up in a difficult terrain. Nigeria recently arrested a former Police Chief on 70 corruption charges, involving theft, money laundering and extortion. He is accused of stealing money from the police force and spending it on shares and property.<sup>90</sup>

### **The Commonwealth and Corruption**

The Commonwealth regularly highlights the need to eliminate corruption. In 1997, an Expert Group developed the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption and in 1999, Heads of Government agreed that corruption must be tackled comprehensively at national and international levels. They suggested several steps relevant to police organisations including:<sup>91</sup>

- imposition of controls on funding of political parties that might prevent bribery of public sector officials (including police);
- reforms aimed at maximising transparency and certainty in administrative processes;
- improving the management, efficiency and delivery of public services, including the introduction of codes of conduct with appropriate sanctions for breaches;
- open and transparent processes for budget preparation, execution and monitoring;
- rigorous accounting, financial reporting and independent auditing systems; and
- regular consultation and collaboration with civil society.

In 2003, Heads of Government identified the Commonwealth Secretariat's work on "strengthening democratic institutions, culture and processes" as an antidote to systemic corruption; endorsed the UN Convention against Corruption; and mandated a Commonwealth working group to focus on a specific area of corruption.<sup>92</sup>

## **INTERNATIONAL STANDARDS IN PRACTICE**

By ratifying a human rights treaty, a state is legally obliged to bring in-country laws and policies in line with the agreed international standards and make the rights a reality. The state is also required to report periodically to the bodies that monitor treaties on progress towards compliance with treaty obligations. If effective, this reporting system would significantly reduce persistent human rights violations and ensure regular scrutiny of progress, including in policing.

In practice, however, these monitoring bodies are hampered by regular delays, reluctance to share complete details, and unwillingness to implement recommendations. For example, reporting to the UN Human Rights Committee, which oversees the implementation of the ICCPR, reveals persistent delays - the UK's fourth report, due on January 2002, was only

received in November 2003; while New Zealand's third periodic report was submitted after a 3-year delay; and in 2005 the Committee noted that Kenya's second report was more than 18 years late and did not contain sufficient information on practical measures taken to implement the ICCPR, nor on their effectiveness.<sup>93</sup>

### **Using International Instruments for Local Police Accountability**

Under the international human rights regime, responsibility lies with the state - and it is the state that must account for violations by police officers of citizens' human rights. When binding international standards are violated or ignored by police, individuals and organisations can use international mechanisms to create awareness of the problem, and to introduce (or speed up) in-country processes for accountability and reform. Some of the UN Committees<sup>94</sup> will accept information from non-governmental organisations, other UN agencies, intergovernmental organisations, academic institutions and the media. Some of the treaty committees can also accept complaints from individuals whose rights have been violated.<sup>95</sup>

The Commission on Human Rights also asks experts to study particular human rights issues, and has a system of 'special procedures'. These procedures have occasionally brought police-specific violations of human rights - brutality, summary executions and bias - to global attention. The confidential '1503 procedure' allows complaints to be made about violations of human rights and fundamental freedoms. The Commission discusses the issue with the offending government, and then decides on the recourse it will take. NGOs can activate the '1235 Procedure', which forms the basis for an annual public debate on gross human rights violations committed by a particular government. If the state does not take steps to improve the situation, one possible - though extreme - consequence might be an ECOSOC<sup>96</sup> resolution condemning that state for the violations. These high-profile international resolutions are intended to shame the state into correcting the situation.

In Sri Lanka, where police have been involved with large-scale disappearances<sup>97</sup> and where "torture is frequently resorted to...by the police, especially during the first days following arrest and detention of suspects"<sup>98</sup>, five organisations submitted information on the systematic practice of torture to the UN Committee Against Torture. As a consequence, a member of the Committee's Working Group on Enforced or Involuntary Disappearances visited the island in 1999 and the intervention played a significant role in forcing the establishment of accountability mechanisms like the Human Rights Commission, the National Police Commission, the Disappearance Investigation Unit and the Prosecution of Torture Perpetrators Unit.

While ratification of international treaties and standards is important, it is of little value without local implementation, and promises made by heads of government on the international stage have no meaning without effective domestic action. Ratification requires that specific systems be put in place to ensure that police will comply with the high standards of an international agreement, for example, to abolish torture. In many cases, this involves overhauling old and infirm criminal justice systems and prioritising police reform - often too hard a political decision for many Commonwealth governments to take.

## NATIONAL FRAMEWORKS

While international standards can support greater accountability, the reality is that accountability begins at home. International instruments provide a framework for democratic policing, but in practice, national constitutions and police laws are more immediately relevant to the conduct of police officers and organisations. As such, it is vital that legislation establishes a clear and effective domestic environment to entrench police accountability. Besides establishing the structure of police organisations, some Commonwealth constitutions also define specific arrangements for their accountability; and these can facilitate more democratic policing. Setting up oversight bodies such as Ombudsmen, National Human Rights Commissions and Police or Public Service Commissions in Constitutions provides stable guarantees for a more accountable police organisation.

Well-framed constitutional provisions on policing and accountability shape sound policing systems. These are likely to be free from political interference because Constitutions are far more difficult to amend than any other law, thus making tampering with police arrangements more difficult. The Constitutions of all Caribbean Commonwealth states provide for Public or Police Service Commissions to deal with personnel issues in their police organisations, including the critical accountability devices of discipline and dismissal. Most Constitutions in the South-East Asian and Pacific countries of the Commonwealth provide for similar bodies to deal with staff issues. The Constitutions of Ghana, Sierra Leone, The Gambia, and Nigeria provide for Police Councils<sup>99</sup> that are intended to ensure that the police have sufficient personnel, resources and equipment to undertake their operational role, leaving the head of police responsible for command and control of police operations.

In the absence of entrenched Constitutional provisions, policing is governed by Acts of parliament, which set out the objectives of policing, structure, hierarchy, responsibilities, and powers. The Maldives is the only country in the Commonwealth that currently does not have a police Act and the police are run through orders given by the Police Chief, in close coordination with the President, who is the Commander in Chief of domestic security agencies. Most Commonwealth countries' police Acts are published in English, except Cyprus (in Greek) and Mozambique (in Portuguese).

Typically, the scope of police powers and responsibilities cover: prevention and detection of crime; apprehension of offenders; maintenance of public order; protection of persons from injury or death; protection of property from damage; and provision of essential services in emergencies. Since much police legislation in the Commonwealth is antiquated - in some cases, pre-dating the Universal Declaration of Human Rights - most police Acts make no

### **Recent Constitutions Pay More Attention To Police Accountability**

Uganda, Nigeria, South Africa and Fiji have some of the more recent Constitutions in the Commonwealth. Newer Constitutions tend to place greater emphasis on police accountability, providing greater detail about police arrangements, perhaps as a reaction to past police abuse. For example, the 1994 Nigeria Constitution specifically requires police officers to observe, respect and implement provisions regarding fundamental rights and civil liberties, and also provides a framework for dealing with complaints against the police. The new Uganda and Fiji Constitutions establish Human Rights Commissions that act as watchdogs over human rights violations by all government agencies, including violations by the police. The post-apartheid South African Constitution establishes oversight offices of a Public Protector and a Human Rights Commission, as well as an independent agency to deal with public complaints against the police.

reference to the protection of human rights and civil liberties, and tend to focus instead on colonial-style "maintenance of law and order." Old legislation need not necessarily be problematic, if it is amended to incorporate international standards and the basic requirements of rights-based democratic policing.

<b>Police Acts More Than Half A Century Old</b>		
<b>Jurisdiction</b>	<b>Name of Act</b>	<b>Date</b>
India	Police Act	1861
Bangladesh	Police Act	1861
Sri Lanka	Police Ordinance	1866
Western Australia (Australia)	Police Act	1892
Jamaica	Constabulary Force Act	1935
Dominica	Police Act	1940
Malawi	Police Act	1946
St. Vincent and the Grenadines	Police Act	1949
The Gambia	Police Act	1950
Bombay (India)	Bombay Police Act	1951
Belize	Police Act	1951
Antigua and Barbuda	Police Act	1952
Tanzania	Police Force Ordinance	1953

An explicit mandate to protect human rights leaves no room for ambivalence even if it is not always practiced. The 2004 Amendment to the Malta Police Act sets a new standard for progressive police legislation, encapsulating a modern understanding of the role of police officers within a wider appreciation of fundamental human rights, fair trial principles

in particular.<sup>100</sup> The 1990 Police Services Act of the Ontario Provincial Police, Canada, explicitly points out that in its functioning, the police service must recognise the importance of safeguarding the fundamental rights guaranteed by Canadian laws, the need for sensitivity in a multicultural society, and the need of the police to be representative of the community.<sup>101</sup> The 2003 Act in Northern Ireland provides an oath of office that includes upholding human rights; and while the 2002 Pakistan Police Order does not use the expression "human rights"<sup>102</sup> it mentions, as one of the duties of the police force, the "protection of life, property and liberty of citizens."<sup>103</sup>

Newer legislation does not, however, always mean progressive policing. For example, the Police Acts of Malaysia (1967) and Uganda (1994) grant absolute non-liability for police officers for any act done under authority of a warrant and oblige courts to judge in favour of police officers in such cases.<sup>104</sup> This may allow a police officer who has a warrant authorising an arrest to argue that the excessive use of force

A law alone is often too blunt an instrument to provide appropriate solutions to the daily dilemmas faced by police officers on the ground and by police leaders engaging with governments and communities; but the law provides the framework for the difficult exercise of police discretion.



used in making that arrest cannot be questioned and the mere existence of the warrant means that a court must find him/her not guilty of any wrongdoing. Sometimes the impunity granted by police legislation is extremely wide, particularly in times of emergency, which creates a serious weakness in systems for police accountability.

### **Emergency Measures**

Limitations or caveats in the Constitution or Police Act particularly related to suspending certain rights in times of emergency often result in a de facto culture of impunity. In Bangladesh, the Special Powers Act provides for immunity from prosecution or other legal proceedings for anything done in good faith under this Act.<sup>105</sup> The Joint Drive Indemnity Act 2003 indemnifies the members of the joint forces, including the police "designated to carry out responsibilities in aid of civil administration during the period between 16 October 2002 and 9 January 2003" for "arrests, searches, interrogation and [other] steps taken" during this period. The executive had ordered a joint operation by the police and the army to tackle high crime and over 40 deaths were attributed to the security forces, and many people reported torture. Similarly, Sri Lanka passed a law indemnifying the police for any act done in good faith to restore law and order between August 1977 and December 1988.<sup>106</sup>

Alternatively, progressive police legislation, such as that of the Australian states of New South Wales and Queensland, make sure that policing is conducted with guaranteed oversight. Permanent civilian oversight bodies with substantial powers and strong, professional internal disciplinary systems are provided for in a framework for accountability that is not easily displaced. The concept of "operational autonomy" is also contained in many progressive Commonwealth Police Acts, usually by vesting the police chief with responsibility and ultimate accountability for operational and administrative decisions, which aims to insulate the police from illegitimate political directions.

Taking examples from the most progressive police legislation in the Commonwealth, it is possible to identify key elements of a strong legal framework for democratic policing and police accountability. These include:

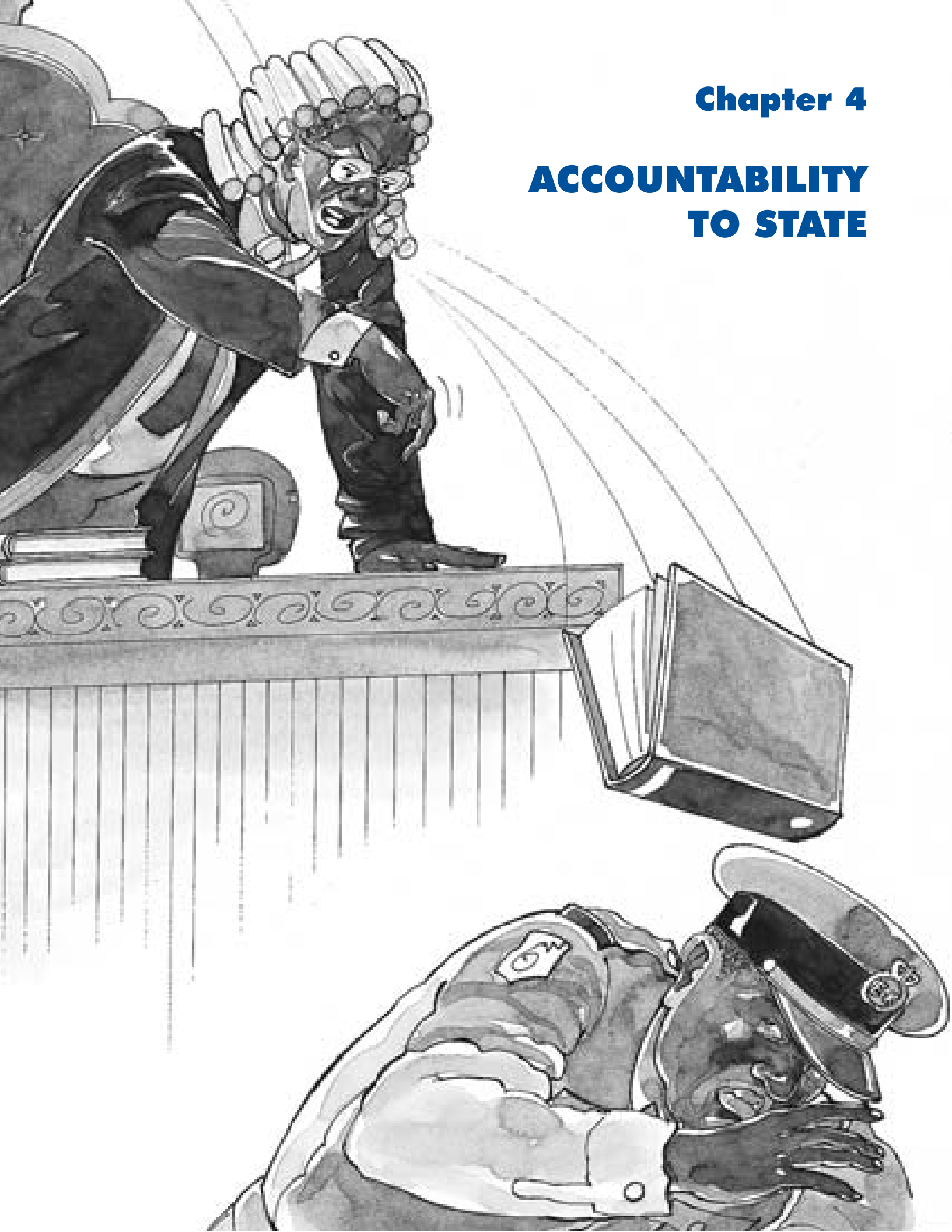
- a human rights mandate in the definition of police duties;
- clear procedures of democratic control and supervision that encompass the principles of natural justice and the rule of law;
- fair, adequate and strong internal disciplinary systems inside police organisations;
- cooperation between internal and external mechanisms of police accountability;
- at least one independent agency to receive complaints about the police;
- multiparty oversight over the police by elected representatives in parliaments, legislatures or local councils; and
- mandatory interaction between the police and the public.

Legislation provides only the formal guidelines for policing. Good policing requires far more than merely a good law and, in fact, is possible even where police legislation is less than perfect. A law alone is often too blunt an instrument to provide appropriate solutions

to the daily dilemmas faced by police officers on the ground and by police leaders engaging with governments and communities; but the law provides the framework for the difficult exercise of police discretion. In a proper democratic system, police accountability solely to the law is not sufficient - police must also be accountable to communities, government agencies and independent oversight bodies. It is only this complex web of oversight and accountability that will guarantee the kind of policing that the vision of the Commonwealth promises.

## 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."<sup>107</sup>

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."<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup>

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.<sup>111</sup> 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.<sup>112</sup>

## 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.<sup>113</sup> 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.<sup>114</sup> 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 bodies<sup>115</sup> 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.<sup>116</sup>

## 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.<sup>117</sup> 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.<sup>118</sup>

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.<sup>119</sup> 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.<sup>120</sup>

During riots in 2002 in the Indian state of Gujarat, Hindu fundamentalists with the backing of the state government targeted members of the Muslim minority<sup>121</sup> 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.<sup>122</sup> 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 2002<sup>125</sup> 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.<sup>126</sup> 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.<sup>127</sup>

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"<sup>123</sup>, 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.<sup>124</sup>

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"<sup>128</sup> 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."<sup>129</sup> 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.<sup>130</sup>

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.<sup>131</sup> 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.<sup>132</sup>

## **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.<sup>133</sup> Its first comparative performance "baseline assessment" of each force sparked public debate as to whether chief constables rated as "poor" should be dismissed.<sup>134</sup> 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."<sup>135</sup> 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 Framework<sup>136</sup> to "provide an effective, fair framework for comparing police performance and provide a firm basis for effective performance management".<sup>137</sup>

### **Secretariats for Safety and Security (South Africa)**

South Africa's national and provincial Safety and Security Secretariats<sup>138</sup> 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 functioning<sup>139</sup> and have a specific mandate to promote democratic accountability and transparency within the service.<sup>140</sup> 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.<sup>141</sup>

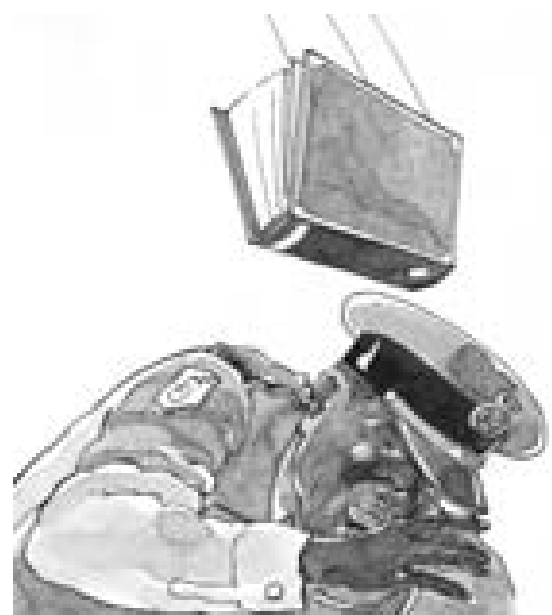
## **POLICE ACCOUNT TO THE JUDICIARY**

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.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup> 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.<sup>145</sup>

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.<sup>146</sup>

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.<sup>147</sup> 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.<sup>148</sup> The Court has also laid down guidelines for how the police should treat victims of sexual abuse.<sup>149</sup>

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.<sup>150</sup> 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.<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup> 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.<sup>154</sup> Despite this, in 2002 the Federal Court ruled that the police decision to forbid access to an attorney in fact violated the Malaysian Constitution.<sup>155</sup>

A subsequent case once again saw the Court assert its right to review the government's decision to deny a detainee access to counsel.<sup>156</sup> 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.<sup>157</sup>

## 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 constitutions<sup>158</sup> 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.<sup>159</sup>

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.<sup>160</sup>

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.<sup>161</sup> 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."<sup>162</sup>

## 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.<sup>163</sup> 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.<sup>164</sup>

### **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.<sup>165</sup>

The Sierra Leone Truth Commission<sup>166</sup> 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.<sup>167</sup> 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."<sup>168</sup> The Commission proposed reforms to the structure, organisation and operation of the police, and highlighted the need to build police-community partnerships.<sup>169</sup> 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.<sup>170</sup>



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.<sup>171</sup> 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."<sup>172</sup>

## Chapter 5

# INTERNAL ACCOUNTABILITY





overnment is duty-bound to hold the police to account. But it is the responsibility of the police themselves to ensure that internal systems guarantee discipline, performance and all round good policing. Conventionally, internal systems rely almost exclusively on police investigating other police. Their effectiveness reflect the degree of commitment the police have to holding themselves to the highest standards.

Two mechanisms define internal accountability. The first is the disciplinary environment, which is made up of both the formal apparatus for censuring misconduct and the informal culture which pervades the establishment. This is the first line of defence against police misconduct. The second is the comparatively new technique of performance management that aims to assess police efficiency through target setting and statistical analysis. When working well together, these two mechanisms lay the foundation for an effective police service that the public can trust.

## **EXISTING SYSTEMS**

For the most part, disciplinary systems within the Commonwealth are similarly designed and their specifics are to be found in police laws and regulations. Everyday discipline relies on the chain of command and supervisory officers summarily deal with minor violations of regulations. But once there is suspicion of more serious wrongdoing, the internal system broadly divides into four parts: complaint, investigation, hearing, and appeal.

In almost all jurisdictions, whether the investigations are done within or outside the policing organisation, the need to maintain an unbroken chain of command means that in the end it is the chief of police who has the final say in resolving complaints internally, forwarding them to be handled by external bodies, following up on recommendations and deciding whether criminal proceedings should be taken up. In some countries, the chief of police also functions as a channel of appeal. Complaints against police personnel can come from a variety of sources: victims of misconduct; other police officers; or even, as in England and Wales, from people who have witnessed misconduct but are not necessarily connected to the victim. How the complaint is dealt with depends on its gravity and the seniority of the person against whom it has been laid. Again, while minor offences and those committed by juniors are investigated by an immediate superior, more serious offences are usually investigated by agencies outside the immediate chain of command such as an internal investigation unit within the police organisation, an ad-hoc disciplinary committee composed of senior police officers (as operates in Cyprus for instance), or an external complaints agency.

Like any rule-bound process, internal disciplinary proceedings are expected to follow due process and allow the accused to know the charges, mount an adequate defence, examine witnesses, rebut evidence and appeal the decision. In Malta, these rights are constitutionally protected, with the officer given the full right to make written representations, be present at oral hearings, and be assisted by a lawyer if desired. In India and Bangladesh, internal rules are clear that all disciplinary inquiries are subject to the laws of natural justice - the officer in question is presented with a charge sheet and given adequate time to prepare a defence.

Types of sanctions depend on the seriousness of the offence and range from censure, docking pay, stopping leave, suspension or demotion, through to dismissal and recommending criminal charges. However, in many jurisdictions, wide discretions allow disciplining authorities considerable leeway in prescribing punishment.

To foster a sense of equity, proportionate sanctions are important, as well as providing recourse for officers to appeal disciplinary decisions. Most countries have channels for appeals built into their disciplinary systems. In many systems this appeal rests with an independent body outside the police chain of command, such as the Public Service Board of Appeal that operates in many Commonwealth Caribbean countries.<sup>173</sup> Sometimes, these appeal boards have a quasi-judicial status, as in the case of the Police Appeals Tribunal in England and Wales.<sup>174</sup> However, this right to external appeal is far from universal: in both Singapore<sup>175</sup> and Papua New Guinea<sup>176</sup>, a junior officer may only appeal a disciplinary decision to the Police Commissioner, against whose decision there is no further appeal.

## **Internal Disciplinary Units**

Discipline is promoted in Commonwealth police organisations by a variety of methods, from simple supervisory oversight and the chain of command to dedicated internal investigations units. Internal disciplinary units range from teams with a general mandate to maintain professional and ethical standards, to specialised wings that investigate specific abuses such as corruption or unlawful violence. Most take complaints from both the public and other police officers and have delegated authority from the chief of police to conduct investigations and advise on what, if any, disciplinary action to take.

In some countries, specialised internal units with very specific mandates have been created in response to reoccurring and glaring abuses. In Sri Lanka, which has one of the highest rates of disappearances, the Disappearances Investigations Unit (DIU) was established in November 1997 to facilitate institution of criminal proceedings against law enforcement officers involved in disappearances. Jamaica's Bureau of Special Investigations looks into alleged police corruption and all cases of shooting by the police, a task earlier carried out by the general Internal Affairs department. India's separate police establishments have vigilance departments mainly focussed on investigating police corruption.

Some police organisations use internal disciplinary units as monitoring instruments as well. The police restructuring process in Sierra Leone in 2000 created the Professional Standards Department that conducts unannounced spot checks on the streets. Early successes included the arrest of officers for setting up unlawful checkpoints to increase opportunities for soliciting "tips" or bribes. The "secret visitor" system in Cyprus involves unannounced visits to police stations by plainclothes police personnel who do not reveal their police affiliation and then report back to the police management on the behaviour of staff at that station. However, such monitoring units are not popular within the police and are often under-resourced as a result.

## **WEAKNESSES IN PRACTICE**

In their design, internal disciplinary systems are usually comprehensive in structure and scope. In practice though, the rigid hierarchies of many Commonwealth police organisations, harking back to their days as tools of colonial governments, do impact upon discipline. The most serious stumbling block in assuring public trust and accountability is the sense that internal discipline is not implemented effectively. In most countries, if disciplinary processes were implemented as set out in law and in adherence with the principles of natural justice, there would be far fewer problems. Tackling the problems with police disciplinary systems is not simply a matter of revising processes, but largely of remoulding police culture to make it work for democratic and accountable policing.

## Implementation

There is little that is ambiguous about the parameters of behaviour expected from the police as the standards are well defined by international legislation, constitutions, in-country laws, codes of conduct, police charters, vision statements, and detailed rules and regulations that govern all aspects of policing. These provide direction about issues that range from small disciplinary infractions like dress codes to larger operational policies like the use of force, ensuring police keep within the strict letter of the law on every occasion.

However, the frequency of bad behaviour and poor performance within Commonwealth police organisations indicates that internal standard setting and compliance systems are either badly implemented or deliberately disregarded. In Sri Lanka, for instance, the Supreme Court has criticised the police for failing to put in place adequate procedures for the investigation of complaints.<sup>177</sup> The lack of police officer confidence in their own disciplinary procedures was highlighted in a 2003 survey of the South African Police Service, which found that 82% of those interviewed thought they would not be dismissed if found guilty of taking a USD\$16 bribe in return for not making an arrest.<sup>178</sup>

### Dangerous Liaisons

In May 2004, the murder of a key police informer disrupted a major taskforce investigation into police corruption in Victoria, Australia. Terrence Hodson was murdered in his bed along with his wife in an execution style killing just before he gave evidence against two detectives charged in serious corruption cases. The victim had aided drug investigators in at least six cases. An internal police intelligence report detailing his role and significance in the investigations had allegedly been leaked to the underworld shortly before he was murdered.<sup>179</sup> Following the murders, the media revealed that other taskforce investigators and their families had also been threatened. The state government had to seriously re-evaluate the security of the witnesses involved in the corruption investigations.<sup>180</sup>

When witness intimidation occurs, investigations are derailed and may produce an illegitimate outcome. While effective witness protection programmes go a long way toward protecting the integrity of internal accountability systems, very few countries in the Commonwealth have them in place.

Research shows that an inherent problem is getting police officers to cooperate with internal disciplinary investigations. The particular institutional culture within the police means officers will often close ranks against investigations. Glaring cases of bias add to public certainty that internal investigations are "steered" to favour police. For example, despite credible reports that the death of a Bangladeshi labourer was caused by three police officers, the police resisted investigating for as long as they could. They finally appointed a police investigating team only after considerable public pressure. However, this investigation exonerated the accused and subsequently no one has been charged with the murder.<sup>181</sup>

Investigators themselves may be unwilling to take on the difficult task of tackling other officers. Further, they may be unclear about process, short on evidence or doubtful whether investigations will ever reach their logical end point. As in any investigation, the outcome of

an internal inquiry will hinge largely on the quality and timeliness of investigations: the greater the delay in investigating, the harder it is to credibly establish the facts of the case.<sup>182</sup> In Papua New Guinea, the ineffectiveness of the disciplinary system means as many as 85% of complaints against the police go unresolved.<sup>183</sup> In the South Asian context, illegitimate external (often political) interference in police disciplinary matters can mean that internal procedures are simply ignored, particularly in cases where investigating police misconduct

may consequently indict external players as well. Officers, whether guilty or not, are often simply transferred in response to allegations of misconduct, without being subject to a formal disciplinary process. In the worst cases, investigators may be more inclined to believe accused officers in preference to complainants.

## Leadership

Police managers are crucial to setting standards of internal accountability and enforcing discipline. Their leadership sets the tone for the prevailing culture and their commitment to creating finely tuned internal processes will determine their worth. Where police forces are designed for unquestioning obedience, internal discipline should pose little problem. However, the comments of Kenya's Standing Committee on Human Rights typify problematic patterns: "Despite public statements from the Commissioner of Police on efforts to reform the Police Department and to deal firmly and effectively with police officers who have committed abuses, the disciplinary sanction imposed on officers found guilty of brutality are frequently inadequate. Officers are rarely prosecuted for using excessive force. Investigations of numerous cases alleging torture...revealed that the "Code of Silence", in which officers fail to report brutality, destroy evidence or threaten witnesses in an effort to cover up abuses, commands widespread loyalty, contributing to a climate of impunity."<sup>184</sup>

Rigid hierarchies and strict separation between seniors and juniors can also generate double standards in systems where there is a sharp segregation in the way discipline is meted out. Many systems allow senior officers wide discretions while restricting opportunity for representation, appeal, or complaint to outside authorities. This, along with loose processes and uncertain standards of proof, translates into arbitrariness. Complete separation of disciplinary processes means that senior management themselves may not invest in making sure there is a good internal system in place because they are not personally affected by it. In those jurisdictions with service commissions, juniors are usually investigated and punished by supervisory ranks or special units within the mainstream of the establishment, while senior officers are able to make their case before the service commission. This formula operates in Tanzania, Singapore, Fiji Islands, Solomon Islands and much of the Commonwealth Caribbean. Where these agencies are themselves weak or vulnerable to political pressures, opportunities arise for playing outside the rules of the game.

Where rank rather than gravity of offence decides how misconduct will be addressed, it can also breed resentment and a sense of inequity in the lower ranks. New South Wales

### Divergent Disciplinary Proceedings in Tanzania

- The bulk of disciplinary complaints are filed against the rank and file<sup>185</sup> who can appeal to the IGP, while senior police can appeal to the President.
- Punishments may be imposed without a disciplinary inquiry being held for constables and non-commissioned officers whereas senior officers have to be informed prior to the punishment being meted out.
- Senior police officers may have an advocate or any public officer represent them in disciplinary proceedings, while an inspector may have a fellow inspector or senior officer represent him.<sup>186</sup> The rank and file have no right of representation although it is not prohibited.
- Grave offences concerning senior officers are held in camera and not open to the public,<sup>187</sup> however, the same anonymity is not granted to junior officers.
- Further, the rank and file, who make up the bulk of the police, have a limited channel of redress within the force.<sup>188</sup> Disciplinary hearings against them are conducted by an individual not a panel, and that individual is their senior officer.

and Queensland in Australia have dealt with this by clearly defining "major" and "minor" offences and ensuring it is the severity of the offence, rather than rank, that determines the mode and venue of the investigation. Elsewhere, however, the decision about whether an offence is major or minor is left to the police leadership allowing for distortions in the investigative process.

### Breaking Ranks

Intimidating fellow officers for "blowing the whistle" is not cowed even by seniority. In the summer of 2003, a Cape Town Police Commissioner actively campaigning against corrupt police personnel went public with evidence of a plot to have him executed. His claims were supported by the Independent Complaints Directorate, which affirmed that the Commissioner had received death threats, probably stemming from a contract put on his head by corrupt police working with local gangs.<sup>189</sup>

Without laws providing protection for whistleblowers, police officers wanting to complain against other police officers are often dissuaded from even beginning the process. In an effort to support whistleblowers, the Queensland Police have created an Internal Witness Support Unit within its Ethical Standards Command that provides advice and support to members of the service who identify and report misconduct. The program has developed a reputation within other areas of the Queensland public sector as an example of best practice.<sup>190</sup>

### Secrecy

Strongly protective of the personnel under their command, police managers are loathe to wash dirty linen in public. This masks the large number of robust disciplinary actions that are routinely taken and the often rigorous and timely steps the police take to maintain discipline, assure performance and punish the guilty. Secrecy contributes to the accountability deficit, feeds the sometimes unfair notion that institutional arrangements are designed to shield police officers from the consequences of bad behaviour, and does nothing to reassure the public that disciplinary procedures are robust - even when action is actually taken against wrongdoers.<sup>191</sup> Even in countries where internal disciplinary procedures work relatively well, there is often little trust. A review of the New Zealand police complaints system found that the majority of disciplinary investigations were carried out properly, but in the public mind most were perceived to be biased in favour of police.<sup>192</sup>

When there is little information available regarding disciplinary proceedings or the prosecution of police criminality, the public will have little faith in the system that will hear their complaints. In Swaziland, for example, there appears to be an internal police complaints and discipline unit, but there is no public information about whether it even handles complaints.<sup>193</sup> This is particularly a problem in Commonwealth countries where the police structure is unclear to the community and even more so where specialist and paramilitary units operate on the peripheries of regular policing.



## MAKING CULTURES AND SYSTEMS WORK FOR ACCOUNTABILITY

No system is perfect, but some of the best systems in the Commonwealth for delivering police accountability combine dedicated external complaints agencies with the expectation that the police will continue to tackle the majority of disciplinary breaches. Adequate budgets, the availability of enough people with specialised skills, and strong political will are at the heart of success.

Promoting a mature, collaborative relationship between the police and complaints authorities, ombudsmen and national human rights commissions, is a powerful way in which police leaderships can signal their commitment to taking discipline seriously. Across the Commonwealth, these agencies often have a hard time securing police cooperation for their investigations. For example, in Malawi, the Inspector General of Police at one stage ordered his staff not to appear before the country's Ombudsman after the Ombudsman called for an end to police brutality. The impasse was resolved only when the Minister for Home Affairs intervened.<sup>194</sup>

Police leaderships can take a central role in buttressing the work of internal disciplinary units by ensuring sufficient resources and moral support. All Caribbean Police Acts in fact contain provisions that specifically vest the Commissioner of Police with the responsibility to ensure that internal complaints units are supplied with sufficient staff and facilities to receive, record and investigate complaints. With such an important role played by supervisory cadres in creating positive change, it is important they are supported, including to upgrade their skills. This includes providing opportunities to learn specialisations, such as communications, conflict resolution and management. A recent initiative in the Pacific, for example, brought together police middle managers from the islands of Fiji, Tonga, Samoa, Kiribati and Vanuatu to study for a diploma in police management.<sup>195</sup>

While a negative culture is a major factor in stopping disciplinary systems from working, creating a positive environment is just as important as well-designed processes for the management of police behaviour.<sup>196</sup> Activities that break down barriers between ranks and build a positive culture in which everyone feels valued and trusted help ensure adherence to common norms. In Botswana, senior police managers have undertaken a series of workshops with juniors to help them put the Police Chiefs of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO)<sup>197</sup> Code of Conduct into practice on the ground.

Extending transparency bolsters credibility. In many Commonwealth jurisdictions, figures for the number of complaints against police officers received and resolved each year are released. Going beyond figures and telling the stories behind acts of misconduct reinforces the notion that leaderships will not protect or tolerate misbehaviour. In the long run, laying bare the anatomy of internal mechanisms and outcome builds faith both in the public and within the police.



It is the responsibility of the police themselves to ensure that internal systems guarantee discipline, performance and all round good policing.

## MANAGEMENT REFORM

Internal accountability mechanisms come into play after an act of misconduct and will usually only be as good as the culture within which they are embedded. Changing the way police organisations function - from forces into services where the citizen "customer" is king - requires attention to the whole system rather than being addressed in a piecemeal fashion.

Modern policing systems require modern management structures. Good management is grounded in principles of good governance and accountability, both individual and organisational. As modern systems of accountability are based on objective criteria, they reward merit and professionalism, constantly review performance and quickly repair weaknesses so that little room is left for misconduct.

The best techniques foster an ethos in which the rights of citizens are upheld and promoted. Delivering on its key responsibility to provide communities their right to safety and security requires the police organisation to focus its vision, structure, processes and actions toward ensuring optimum efficiency in tackling problem areas. Modern management techniques help shape a seamless system that ensures every aspect of policing is accountable.

Commonwealth police organisations are increasingly adopting management principles developed in the world of business, which are yielding good results.<sup>198</sup> One of the most valuable aspects of this management model is the extent to which it can be measured numerically and, through periodic examinations of performance, give a picture of the value for money the police are providing.

"Performance management" uses statistics to look at the police in terms of the results they deliver. The outcomes most often measured are those that address the issue of police effectiveness, particularly the contribution the police make both to tackling criminality and creating a safe environment for the public. Typical measures include crime figures or

opinion poll data regarding public confidence in the police. Such data is then used for two purposes: internally as "management information" to help police leaders focus on improving areas where performance is poor; and externally as a means of explaining police performance to the public. Both can be powerful accountability tools: the former as a way of highlighting problems inside the organisation (by comparing individuals or units and by identifying trends, say in complaints against the police); the latter as a way of expressing the results the police achieve in objective terms, which can then act as the basis for discussion about how to improve the way the police work.

The use of police performance statistics as a means of driving improvements is a relatively recent practice. In some cases, the

### Five Values

- Clarity - every police officer knows what the organisation is trying to achieve and the role each plays in delivering this;
- Transparency - senior managers' decisions are made openly, after consulting with staff and the community as appropriate and enabling outside scrutiny if necessary;
- Visibility - within operational limits, the activities of police staff are perceptible to colleagues, superiors and the community;
- Responsibility - every member of the organisation is held personally accountable for his or her actions. This includes fairly judged rewards for good behaviour and results achieved, as well as sanctions for bad behaviour or poor performance; and
- Empowerment - responsibility is devolved to the lowest level possible to enable decisions to be taken as close to the front line as practicable.

performance data is used only as an internal management tool, while in others, the data is published in an effort to shame under-performers into improvement. For example, the focus of much of the current police reform programme in England and Wales is on performance improvement. Every police force has centrally-set targets for a range of policing work, for example, reducing key crimes such as burglary, vehicle crime and robbery. The UK Home Office reviews performance against these targets regularly. Each force's performance is compared against that of its peers (as part of the Home Office's Policing Performance Assessment Framework) and some of these comparisons are published on the Home Office website and thus are open to public scrutiny. Funding is linked to performance - with good performance resulting in increased resources - providing further incentives for police forces to perform against their targets. Although it is early days yet, there are clear signs that police forces are feeling the impact and are focusing their efforts on those areas against which they are being measured.

In South Africa, the Performance Chart System (PCS) was implemented in 2003-4 to gauge and communicate the police's progress and results. The system is able to compare the performance of South Africa's 1,200 police stations and 9 provinces. Performance is assessed monthly, on the basis of an index that measures progress in seven areas: crime prevention; crime reaction; crime investigation; crime information, skill development and professional conduct; vehicle management; and efficiency. The PCS also allocates grades (1 star to 5 star) and ratings (A+ to E-) to all police stations, areas and provinces according to their results. By establishing a relatively transparent, and competitive internal environment, managers and rank and file focus on results and continuously improving their ratings.

In many countries where habits of data collection are not embedded and data collection is incomplete or inaccurate, adopting statistical systems may prove difficult.<sup>199</sup> Where resources are limited, the number of measures of performance can be kept to a minimum and focus on just the priorities that police and the community have identified together. In England and Wales, for example, levels of burglary and vehicle crime were selected as key measures for the police after public consultation identified them as areas that affected people the most.<sup>200</sup> The police can use existing methods of supervision to ensure that police officers do not have the opportunity to manipulate the figures - by reviewing diaries and notebooks for example - and systems for auditing performance data can be aligned with those for auditing finances. This happens in England and Wales, where the Audit Commission is responsible for both functions.

Though a valuable addition to holding police to account for performance, there are a number of caveats that need to be considered when adopting appraisal systems that are heavily based on statistics. Notably, improving the performance of controlling crime must not be seen as license to curb respect for human rights or adherence to accepted standards. Other considerations include:

- **When people are measured on particular criteria, they will focus on those points, perhaps to the exclusion of others.** This can be a particular problem for organisations such as the police, where personnel are often required to carry out a range of activities not all of which can or should be measured.
- **When people are measured, they may behave perversely in order to meet their targets.** The police are as good as any other organisation at manipulating figures to present themselves in the best possible light. In some cases, dishonest boosting of the

numbers has cast performance management in a bad light: there are numerous cases across the Commonwealth of the police refusing to record complaints in order to reduce crime figures, arresting the innocent to boost arrest figures, and intimidating or bribing witnesses in order to secure more convictions.

- **Performance data is often very technical and can be difficult to interpret.** This is so for the police themselves, but it is doubly difficult for the public. At this point, interpretation becomes important. Where there is a robust press or active civil society voice which can interpret the figures, then published performance data can be a powerful catalyst for improvements in the police. Where these are not present, however, it can be easily overlooked and therefore, next to useless.
- **Data needs to be analysed with care and tells only half the story.** Statistics can't capture cultural, societal, and human factors that affect police performance. Performance assessments of both organisation and individual must not be based solely on data, and in particular data alone should not be a justification for promotions, reprimands or dismissals.

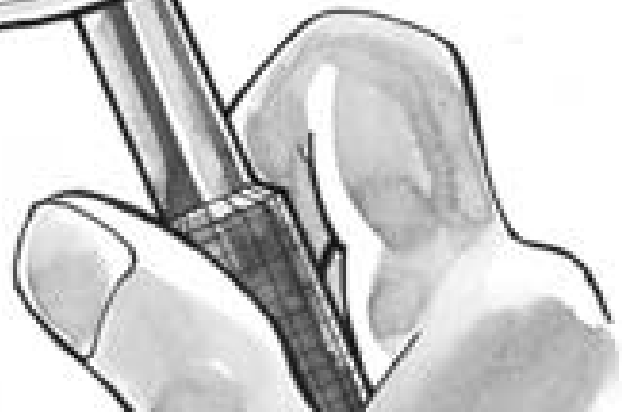
Although performance management generally takes account of entire police organisations, for results-based systems to be most effective, they need to be made relevant to individual officers. This is normally done through career management, particularly using a good appraisal system.<sup>201</sup> In modern organisations - and the police are no different - individuals who have performed well are rewarded. Equally, individuals who fail to deliver good results, and in particular those whose discipline record is poor, are not. A fair and transparent appraisal system, with clear standards for promotion or other rewards, is a key part of human resource management in a professional organisation and can be seen as the carrot to the disciplinary system's stick.

Although not a panacea for all police ills, good management practice is a significant and essential part of the framework for holding the police to account. However, these newer models are more often seen in affluent countries, largely because they are expensive, dependent for accuracy on sophisticated technologies often out of reach elsewhere, and less successful when implemented sporadically. The effective functioning of these systems also assumes large active constituencies, a supportive governmental architecture, and formalised community oversight mechanisms with the power to call the police to account for short falls. Nevertheless, the absence of many of these conditions cannot be an excuse for attempting little or nothing. The principles on which modern management philosophy is based - transparency, a relentless focus on key results, and a willingness to reward and punish for good and poor performance respectively - can be transplanted to even resource-poor areas and are critical to police accountability.



## **Chapter 6**

# **EXTERNAL ACCOUNTABILITY**





ountries across the Commonwealth have sought to augment government and internal accountability systems with other external or civilian - meaning non-police - oversight mechanisms. As governments increasingly embrace the philosophy of democratic policing, attempts are on to make policing more transparent, involve outsiders, build public confidence, allay fears of bias, assure impartiality of investigation, make the receipt of complaints easier, reduce abuse of power and misconduct, change the internal culture and ensure ever better performance. It is hoped that new external civilian oversight systems will complement existing mechanisms and together create a web of accountability from which it is increasingly difficult for police misconduct to escape without consequences.

Some of the best practice in civilian oversight comes from within the Commonwealth. Various named<sup>202</sup> and designed, such bodies fall into two broad categories: organisations exclusively dedicated to investigating, reviewing and monitoring police related complaints; and agencies such as ombudsmen and national human rights institutions with broader mandates that embrace oversight of police as well. Thirty-six countries in the Commonwealth have ombudsmen<sup>203</sup> and twenty jurisdictions have national human rights institutions<sup>204</sup> but there are fewer specialised police complaints agencies.

Ombudsmen primarily investigate cases of maladministration by government bodies but are increasingly expanding their scope to broader issues, including human rights and corruption, and hence intensifying their scrutiny of the police. In the Fiji Islands, the link between the Ombudsman and human rights protection is very clear - the Ombudsman is also the constitutionally mandated Chairperson of the Fiji Human Rights Commission. In Ghana, the Commission on Human Rights and Administration of Justice is actually a combination of a National Human Rights Institution and an Ombudsman. In Papua New Guinea, the office of the Ombudsman has recently established a specific Human Rights Unit, and it appears police complaints will be a key area of its work. In Malawi, the Ombudsman is mandated to investigate and take legal action against government officials responsible for human rights violations, including police brutality.

National human rights institutions, usually known as human rights commissions, investigate complaints against the police as part of their overall mandate to promote and protect human rights. Apart from the general power to investigate cases of human rights violations, many Human Rights Commissions, such as in Sri Lanka, India, Tanzania, Uganda and Malaysia, also have the right to visit and report on places of detention.

### **Special Powers: Human Rights Commission of Mauritius**

While other Human Rights Commissions investigate complaints about police officers as part of their broader role, the mandate of the Mauritian National Human Rights Commission provides it with strong oversight powers over the police. It is explicitly authorised not only to investigate complaints against the police, but also to supervise their internal complaints management system. Notably, whenever anyone complains about an act or omission of a police officer, the Chief of Police must forward the complaint to the Human Rights Commission, and inform it of any criminal or disciplinary proceedings taken or intended. The Commission can ask for more information and if the police decide not to take any criminal or disciplinary proceedings, the Commission itself can enquire into the matter.<sup>205</sup>

Civilian police complaints agencies that exclusively investigate complaints against the police have often been set up in response to policing problems that arose during long periods of violence. In Northern Ireland and South Africa for example, police-community relations were completely eroded by the conflict. In countries such as Sri Lanka, systemic discrimination against minorities, poor policing and egregious human rights violations that were highlighted by the international community have prompted governments to create these bodies. Elsewhere, as in Trinidad and Tobago and Guyana, the civilian oversight agencies were put in place following instances of brutal and abusive police practices rose.

The track record for establishing such agencies varies across the Commonwealth. Many countries with documented poor policing, such as Bangladesh, Swaziland and Mozambique, have none of these mechanisms while others like Malaysia and Maldives have opted to have just one. India has a National Human Rights Commission as well as separate state human rights commissions<sup>206</sup> but does not have a single dedicated civilian oversight mechanism for its 35 police forces, many of which are frequently cited for excessive violence and abuse of power. On the other hand, some countries that have adopted democratic policing practices have these agencies at national or sub-national levels or both. In Canada, for instance, each police service (except in Prince Edward Island) has a dedicated civilian oversight agency in addition to an oversight agency for the federal Royal Canadian Mounted Police.

Where multiple oversight agencies contribute to police accountability, a system of coordination and referrals carves out jurisdictions and protects against overlapping, duplication, and contradictory recommendations. In South Africa, which has both a Human Rights Commission and an independent police complaints agency, the Commission refers all police-related complaints to the latter. New South Wales, Australia, has a system of classifying and managing complaints that allocates specific roles and responsibilities to the Police Integrity Commission, the Police Service and the Ombudsman. The state Police Service retains first responsibility for investigating most complaints "to foster high standards of professionalism and integrity, and to make it primarily responsible for its own discipline."<sup>207</sup> The Ombudsman oversees these investigations and can ask the Commissioner of Police to review the outcome or can directly investigate the complaint. Meanwhile the Police Integrity Commission is mandated to address serious matters of corruption and misconduct, particularly if these are systemic. This may involve establishing joint inquiries with the police or referring cases back for investigations - in such cases, it also monitors police investigations.

Complaints to oversight bodies can come through many channels: from the public, referred from the police establishment itself, or additionally as in South Africa, from the Minister in charge or even Parliament. Complaints authorities may also initiate their own inquiries independently of any specific complaint being made. Elsewhere, as in New South Wales, certain categories such as deaths in custody and those involving racism within the police are compulsorily referred to the civilian oversight body.

Much of how effectively complaints authorities, ombudsmen's offices and human rights commissions perform their functions depends on how truly separate they are from police and executive influence, and how autonomous and well embedded their status is in the country's legal architecture. Their effectiveness also depends upon the width and clarity of their mandate, the scope of their investigative powers, the composition and competence of their leadership and staff, and the adequacy and sources of financing. A particularly crucial



factor is their ability to compel obedience to their recommendations and the attention and clear support their reports and findings receive at the hands of the government and police. These minimum requirements have been internationally recognised and summed up in the Paris Principles<sup>208</sup> for National Human Rights Institutions, but they also apply equally to any oversight agency. The Commonwealth has also compiled National Human Rights Institutions Best Practice. Unfortunately though, not all civilian oversight agencies in the Commonwealth abide by even these very basic standards.

### **Minimum Requirements for a Successful Oversight Body**

- **Independence:** should be independent of the executive and the police and empowered to report directly to Parliament.
- **Sufficient powers:** should have the authority to independently investigate complaints and issue findings. This requires concomitant powers to conduct hearings, subpoena documents and compel the presence of witnesses including the police. It should also be able to identify organisational problems in the police and suggest systemic reforms.
- **Adequate resources:** should have sufficient funds to investigate at least the more serious complaints referred to it. Skilled human resources to investigate and otherwise deal with complaints should also be available.
- **Power to follow up on recommendations:** should be empowered to report its findings and recommendations to the public, and to follow up on actions taken by the police chief in response to its recommendations. It should also be able to draw Parliament's attention to instances where police take no action.

## **INDEPENDENT MOORINGS**

The main purpose of setting up civilian oversight mechanisms is to ensure that complaints against the police will not be influenced in an untoward or biased manner, particularly by the executive. Independence is determined by the extent to which the body is at arms length from the executive and the police. Firm constitutional or statutory underpinnings that clearly lay out jurisdiction, purpose and parameters, such as in South Africa and Ghana, protect the body from political whim. In contrast, the Human Rights Commission in the Maldives was until recently based on Presidential decree and therefore wholly subject to executive control. It is hoped that its new statutory status will make it an effective mechanism for oversight.

Even when oversight agencies are legally independent, political pressure can be applied in other ways. Starving voices critical of the government of financial resources is one effective way of hobbling their activities. In Cameroon, for example, the Human Rights Commission's funding was dramatically reduced for two years after it criticised government abuses in a confidential report in 1992. Similarly, Zambia's Human Rights Commission lost the government premises it was promised after it commented on the torture of coup detainees in 1996.<sup>209</sup> Financial independence is ensured when budgets are approved by parliament not the executive, and then administered by the commission itself without interference. One of the reasons that some human rights commissions, like in Uganda, are autonomous, critical of government and have been able to address cases of police brutality, is that the



law mandates the parliament - not the executive - to allocate adequate resources and facilities for the Commission to function effectively.

Independence and credibility are also improved when the oversight body comprises leadership and staff drawn from outside government and police, such as the Independent Police Complaints Commission in England and Wales, which is staffed entirely by civilians.<sup>210</sup> Elsewhere, the closed processes and narrow pool from which leaderships and staff are chosen have seriously eroded perceptions of impartiality. In India, where policing is seen to be particularly malleable in the hands of the political executive, the nomination of a previous head of a federal police organisation as a member of the National Human Rights Commission has recently been challenged in the highest court.

Lack of skills can hamper the work of oversight bodies, particularly in small countries. In one case in Sri Lanka in 2003, the Human Rights Commission found allegations of torture of a minor to be false. When the case was reviewed by the Commission following international criticism, it found that not only were the torture allegations well-founded but also that the Commission's investigator had been biased towards the police, and appeared to lack necessary training.<sup>213</sup> In such cases where the skill pool is small, oversight agencies sometimes second skilled police investigators. However, without civilian superiority in staffing, the perceived bias that police personnel may hold towards their own networks and culture, particularly if they then return to the police establishment following their secondment, may, in the public mind, offset the benefits of their investigative skills.

## **STRONG POWERS**

Strong investigative powers are a key factor for the success of oversight agencies. The most effective oversight bodies require not only powers to investigate independently but also to call for evidence and compel police co-operation. They must also be able to make recommendations about individual cases as much as systemic improvements that will be acknowledged and acted upon. Apart from the power to compel the presence of witnesses including police, as well as subpoena documents, the Police Integrity Commission of New South Wales, Australia, has the right to obtain search warrants, listening device or telecommunications interception warrants, and ensure witness protection.<sup>214</sup>

It is almost inevitable that there is a tension between the police establishment and an oversight mechanism but when this tension turns into outright disobedience and disregard, it undermines accountability. For example, in 2004 several staff of Sri Lanka's Human Rights Commission were threatened and manhandled when they visited a police station to

### **Shining a Light on Corruption**

Strong leaderships can come out on top even in unsupportive environments. Vanuatu's first Ombudsman enjoyed tremendous public confidence because of her fierce campaign against corruption. Her success created enough political upset for the Cabinet to think of repealing the Ombudsman Act and the Prime Minister even argued that Melanesian culture did not allow women to criticise men.<sup>211</sup> Undeterred by this, not only did the Office of the Ombudsman vigorously publish public reports, it used innovative ideas to ensure that their findings were disseminated widely. Given that only about half of Vanuatu's population is literate, she used radio and public appearances to criticise police<sup>212</sup> for persistent slackness, indiscipline, arrogance and ignoring their legitimate duty. Every new Ombudsman report was followed by a press release and a radio interview with the official(s) implicated in the report. In campaigning against domestic violence she encouraged women to report any police inaction to the Ombudsman's Office. Despite public support for her work, the government of Vanuatu did not renew her contract when her term ended in 1999.

investigate complaints of torture.<sup>215</sup> In Guyana, despite a statutory requirement to submit a Criminal Investigation Department file to the Police Complaints Authority when an officer has unlawfully killed or wounded a citizen, the police consistently failed to do so. In 1991, the police submitted 29 such reports, a year later this was down to only nine and in the five years between 1995 and 2001 they submitted just two files - despite increased reports of police abuses.<sup>216</sup> In order to deter such behaviour, in countries such as Uganda and Tanzania, wilful obstruction and interference is an offence.<sup>217</sup>



In some jurisdictions, the law itself restricts the investigative abilities of oversight agencies. In Tanzania, the President can direct the Human Rights Commission not to investigate if there is a real and substantive risk of "prejudicing national defence or security".<sup>218</sup> Similarly, in Botswana, the Ombudsman cannot investigate "action taken for the purpose of protecting the security of the state or investigating crime". The Ombudsman is also forbidden to investigate "action taken with respect to orders or directions to the...Police Force or members thereof."<sup>219</sup>

In a few countries, oversight agencies have no powers at all to undertake investigations of their own and can only review police investigations into complaints. In Trinidad and Tobago, this has led the Police Complaint Authority's chairperson to lament that public

confidence in the Authority is lacking because "complainants... view the role of the Authority merely as a 'post box', receiving complaints, forwarding them to the Police, receiving reports and forwarding them to the complainants."<sup>220</sup>

Experience indicates that nowhere do oversight agencies investigate all public complaints against the police. Most agencies have a system for categorising complaints and retain powers to investigate those that are either serious (involving death, torture, or racial bias) or in the wider public interest. Others are usually sent back to the police for investigation but supervised by the agency. However, some agencies such as the Police Complaints Authorities in Jamaica, Guyana and New Zealand, and Sri Lanka's National Police Commission, delegate all investigation of complaints back to the police. Whether done for practical reasons of staff shortage or on the more philosophical rationale that the police must retain primary responsibility to ensure their own internal systems work, total delegation can erode credibility. Where police are perceived as corrupt, brutal or biased, total delegation - especially when not accompanied by rigorous supervision of competence and progress - decreases the rationale for even having an external civilian agency.

### **An Improved Approach To Public Complaints**

Some countries that are committed to democratic policing practices continuously seek to improve their policing by ensuring increased accountability at all levels. In England and Wales, the Independent Police Complaints Commission, which has investigative powers, recently replaced the earlier Police Complaints Authority, which did not have these powers and had suffered criticism for its apparent lack of effectiveness.

Established in 2004, the Commission has wide powers to oversee the functioning of the police and investigate complaints. Although the primary role of investigating wrongdoing remains with the police, the Commission can supervise or direct these investigations and approve the police's choice of investigator. The police have an obligation to refer all very serious cases to the Commission, which can either investigate a case itself, or control and direct the police's handling of it. The Commission has already carried out 29 independent investigations and managed 120 other serious complaints against the police.<sup>221</sup>

For those not satisfied with the outcome of the police investigations, the Commission acts as an appellate mechanism. Police must comply with its findings on appeal matters, including taking disciplinary action if instructed. It has upheld more than 20% of appeals by the public about the way a complaint was dealt with by a local police force.<sup>222</sup> The Commission also audits how the police handle complaints, can issue statutory guidance on this, and has already set new improved standards for the police on handling complaints.

Best practice indicates that apart from investigating individual complaints, oversight bodies also need to be able to review patterns of police behaviour and the functioning of internal discipline and complaints processing systems. Without these powers to monitor and review trends, they may end up receiving repeated individual complaints about similar forms of police misconduct, without being able to identify and address their root causes.

In New South Wales, Australia, the Police Integrity Commission in 1998 expressed concerns about how the Police Service was investigating Category 1 complaints.<sup>223</sup> This category includes cases that involve corruption, serious criminality or warrant dismissal, as well as those in which it is unlikely that there will be public confidence in an internal police investigation. The Police Integrity Commission investigates most such cases, but it can refer them back to the police for investigations. Based on a qualitative audit of 81 internal investigations, the Commission recommended that the Police Service change its existing complaints management system. As a result, the police organisation has set up Complaint Management Teams tasked with allocating resources for investigations, as well as monitoring and evaluating the quality of investigations in every local area command (where the bulk of investigations are done). An internal Complaints Management Unit has also been set up to monitor and approve all Category 1 investigations prior to these being finalised and reported to oversight agencies.

## ADEQUATE MONEY

Even with a plethora of powers, oversight bodies are constrained in their ability to hold the police accountable without sufficient financial resources. Even if not being withheld for illegitimate political reasons, shortage of funds can be a serious limiting factor. Executives baulk at the costs of maintaining multiple agencies, but the costs of a civilian oversight agency often amount to no more than a small fraction of the whole policing budget. Even small states like Lesotho have decided that creating a specialist agency to deal with police complaints is worth the investment when examined against the cascading benefits that can result from better policing. In many small states where resources do not permit the creation of a specialised agency, existing bodies like the office of the ombudsman or national human rights institutions with wider human rights or good governance mandates can play a valuable role in improving overall police accountability. Experts argue<sup>224</sup> that creating a specialist division within these multifaceted bodies, solely dedicated to dealing with the police, would be the most effective approach.

### Starved of Funds...

The chronic under-funding of Jamaica's Police Public Complaints Authority has prompted its chief to agree publicly with radio commentators that "a civilian led Authority is potentially a potent instrument, but if it is starved of funding, starved of staffing to really do its job effectively, all we are engaged in is form and not substance."<sup>225</sup> The Authority investigates a small fraction of the total cases of fatal police shootings in any year, insufficient to make any significant impact. Despite an annual average of 140 fatal shootings by the police, the Authority only investigated 26 fatal shootings in the 2001-02 year.<sup>226</sup> Though armed with the powers to do so, it lacks resources to oversee police investigations and struggles to obtain co-operation from police.

## MAKING RECOMMENDATIONS

Experience shows that even independent oversight agencies with sufficient resources and strong investigative powers have proven ineffective if the police and governments routinely ignore their recommendations. Yet there are very few civilian oversight mechanisms like the Ugandan Human Rights Commission<sup>227</sup> and the Independent Police Complaints Commission in England and Wales<sup>228</sup> that can make binding decisions.

Even where these agencies cannot make binding decisions, impact is felt if they have strong powers to monitor police implementation of recommendations and to call for explanations from government when recommended remedial steps or reforms are not acted upon. Sadly, most of the police complaints agencies in the Commonwealth (including those in New Zealand, Jamaica, St. Lucia, Guyana and Trinidad and Tobago) lack effective powers to follow up on their recommendations, with the result that the police may choose to disregard them. A similar situation prevails with most ombudsmen and national human rights institutions, causing public hopes of effective remedies to be quickly lost.

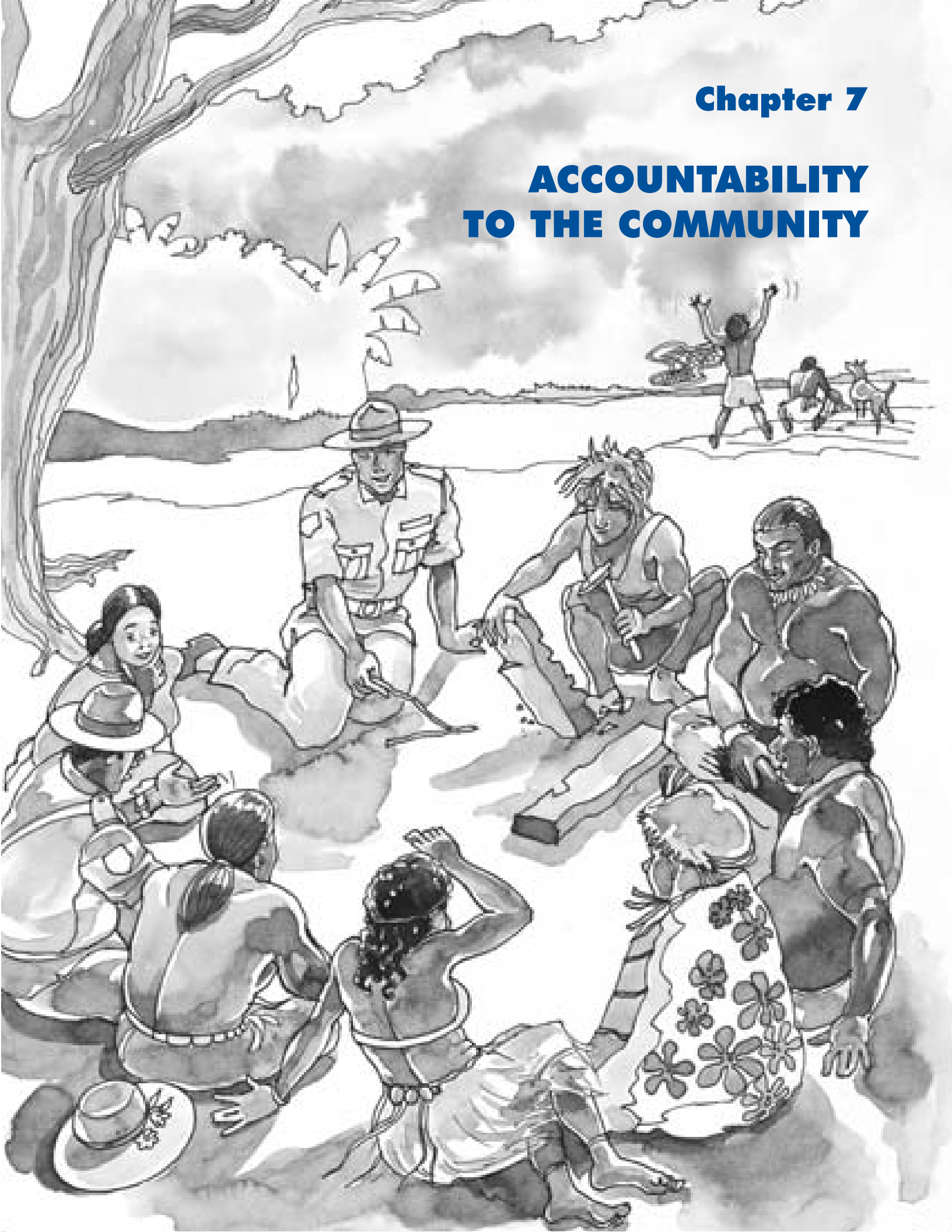
In a few Commonwealth jurisdictions, however, the law requires the concerned Minister or police department to publicly respond to the recommendations of the external agency, making delays or inaction by the police and executive more difficult. In Tanzania, the police organisation has three months to advise the Human Rights Commission in writing about what it is going to do, while in India the government has one month to react to Commission reports. In Canada, the chief of the police must report on action taken on recommendations by the Commission for Public Complaints Against the RCMP (Royal Canadian Mounted Police). If the police reject the Commission's findings, a reasoned response must be sent to the Commission and to the concerned Minister, who also receives the Commission's response. Along with the Commission's annual report to Parliament, this ensures that the differences between the police and the Commission are statutorily brought to Parliamentary attention. This approach has been effective: about 80% of the Commission's adverse findings and recommendations are accepted by the police.<sup>229</sup> A similar approach in New South Wales, Australia, to seek a report about action taken has been successful in delivering results: of the 56 recommendations made prior to 2002-2003, over 90% were supported by the New South Wales Police and nearly half had been implemented.<sup>230</sup> Where the police have failed to comply with its recommendations, the Commissioner of Police must provide reasons.<sup>231</sup>

Where the government fails to abide by or inordinately delays implementation of recommendations, some Human Rights Commissions (including Tanzania and India) are empowered to approach the courts to get their recommendations enforced. After police had been strongly indicted for complicity in anti-Muslim violence in the state of Gujarat in 2002, the Indian National Human Rights Commission recommended that the police organisation and state government properly investigate cases, but the state government failed to do so. The Commission approached the Supreme Court in a particularly grave case where eye-witnesses had been threatened and so changed their testimony, resulting in the acquittal of the accused. On the basis of statements and investigations of the Commission, the Court ordered the state government and the police to review around 2,000 cases that had been closed by the police.<sup>232</sup>

Commonwealth countries are increasingly aware that the presence of at least one external, independent civilian agency to ensure independent and unbiased investigations into allegations of police abuse and non-performance can send the message that the police will be held accountable for wrong doing. Civilian agencies that are solely dedicated to dealing with complaints against the police have been the most successful in holding the police to account because as single focus agencies, they can develop expertise in policing issues and investigative techniques and, with greater knowledge, have increased capacity to analyse patterns of police conduct and performance. In any case, how ever independent oversight is structured, political will and strong leadership of both the police and the independent bodies is essential for building a truly accountable and responsive policing system.

## Chapter 7

# ACCOUNTABILITY TO THE COMMUNITY





fundamental tenet of democratic policing is accountability to the community that it serves - in other words, it requires the consent and cooperation of those being policed. People need to feel sure that they can trust the police, that the police will prioritise their concerns, and that they will not be subject to abuse or corruption - not only because this acknowledges that in democracies police serve citizens, but also because this connection makes policing more effective. As Sir John Stevens, former Commissioner of the London Metropolitan Police, put it: "Central to identifying problems and the solutions to local crime and disorder issues is effective community consultation....An organisation that truly reflects the needs of communities will inspire the trust and confidence and support of the people it serves. There is no other way to take things forward to ensure good, effective policing."<sup>233</sup>

Involvement of the community in efforts related to the broader issues of human rights, democracy and governance - in which policing is situated - is essential. Heads of Government recognised this as recently as 2003 when they stated that one of the objectives they seek to promote is "active participation of civil society"<sup>234</sup> and in 2002 they acknowledged "the need for stronger links and better two-way communication and coordination between the official and non-governmental Commonwealth."<sup>235</sup> Unfortunately, the Commonwealth as an association has been less prompt in actuating these high principles, and experiences in-country have also been mixed.

Appreciation that the quality of policing affects the lives of every citizen has prompted individual activists and organisations to work towards better policing. Many have developed specialisation in the subject while others demand police accountability through the prism of their own special interests. Businessmen, doctors, farmers, taxi drivers, women's groups, traders, crime victims, marginalised people, rights and governance groups, anti-corruption associations, media, academics, activists and volunteers, and even police associations themselves, to mention but a few, all work at local, regional, national and international levels to fashion a police that is professionally effective in providing safety and security, respectful of rights and a sympathetic ally in daily life.

### What is "Civil Society"?

There are many and varied definitions of "civil society". In the Commonwealth<sup>236</sup>, the term civil society is used to describe organised groups of citizens, who come together voluntarily to pursue those interests, values and purposes termed the "common good".

Experiences of public engagement with the police vary widely across the Commonwealth. Where police agencies have undergone reforms, public participation has been an important part of the process and in some places, such as South Africa, this has even been institutionalised in community-police partnerships. In other jurisdictions, engagement is still nascent, hampered by distrust and ignorance on both sides. The public feel that the police prefer their isolation, are closed and not informative; while the police feel that the community and civil society groups are unappreciative of the difficult circumstances they work under, unrealistic in expectations, and ignorant of the realities of policing.

## DOING DIFFICULT AND DANGEROUS WORK

In an effort to deflect attention from the message to the messenger, regimes often demean those highlighting police wrongdoing and calling for accountability and reform. Human rights groups in particular face hostility based on the misunderstanding that they are pressing for agendas that favour "criminals" when, in fact, they are inevitably law-based in their work, and promoting greater adherence to the rule of law. For example, former President Moi warned Kenyans to be wary of non-governmental organisations (NGOs) "pretending to fight for human rights" and accused them of wanting to "destabilise the

country" and to "cause confusion through foreign-funded seminars."<sup>237</sup> Top officials in Jamaica have on occasion accused human rights defenders of illegal interference, being "enemies of the police force" and insinuated that they work with criminal gangs.<sup>238</sup>

### **Threats to Human Rights Defenders**

The international community has recognised that human rights defenders work at great risk to life and liberty and have been victims of extra-judicial executions, disappearances, death threats, detentions and harassment by state agents. The 1998 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>239</sup> lays down a series of principles and standards aimed at ensuring that states fully support the efforts of human rights defenders and ensure that they are free to conduct their legitimate activities without hindrance or fear of reprisals.

Unfortunately, the Declaration has had limited practical effect in countries where human rights defenders are in constant danger and examples abound of intimidation and violence. Reacting to outspoken criticism of police brutality by a well-known talk show host and politician, a high-ranking police officer in Belize publicly stated he would do something to both him and his wife, a practicing human rights lawyer, if he did not stop making critical comments about the police. True to his word, shortly thereafter the police charged the couple with drug-related offences.<sup>240</sup>

There are many countries in the Commonwealth where human rights organisations either cannot function at all, or only do so with great difficulty. In Cameroon, observers have criticised the country's NGO laws for allowing the government to deny NGOs the authorisation to operate or eliminate them by decree.<sup>241</sup> In the Maldives, it has so far been impossible to register a human rights NGO. Elsewhere in the recent past, in countries like Kenya, Zambia<sup>242</sup>, Bangladesh<sup>243</sup> and India, civil society has had to fight off laws that threaten sources of funding as well as their autonomy to function without government interference.

In Swaziland, space for critical comment about the government or the police is severely restricted. Despite a court order to the contrary, the police did not hesitate to break up a group of demonstrators carrying a petition to a Commonwealth conference. A police commander reportedly told union leaders: "Your court order does not matter, because the bottom line is you are not going there."<sup>244</sup> Similarly, in Malaysia, civil society is not easily tolerated - ironically, even when it supports the government's own recommendations. In 2004, police used water canons laced with chemical irritants to end demonstrations that were held in favour of the recommendations of a royal commission into police reform that hoped to put an end to police corruption and brutality.<sup>245</sup>

### **PERSEVERANCE PAYS**

Despite many obstacles, individuals and groups across the Commonwealth continue to advocate for policing that is more effective in protecting lives and property, and in upholding the rule of law. Those interested in policing have often found it useful to build coalitions and liaise with experts from other fields, jurisdictions and countries, particularly to build skills, share knowledge and exchange good practice. Altus<sup>246</sup>, for example, is a recent alliance of academic centres and well-established NGOs spanning five continents. By offering a platform to showcase new comparative knowledge about safety and justice, as

### To Train or Not to Train...

Police training is the state's responsibility. Nevertheless in countries where NGOs have little access to police, training in human rights, women's or child rights, gender sensitivity, and leadership are all welcome means of engaging positively with the police. Police may be amenable to this kind of engagement on "soft" or "exotic" subjects with NGO groups and "experts" of varying ability, even if more as a sop to public pressure rather than genuine institutional commitment. Many NGOs in different contexts share an increasing ambivalence about the merits of participating in police training unless these one-off orientation programmes or experimental series are initiated with the clear objective of becoming part of the regular curriculum and a factor in changing future practice and performance.

well as cross-cultural research methods and tools, it seeks to help NGOs around the world to work more effectively with governments and play a larger role in shaping rights-based solutions to injustice.

In seeking greater accountability, some organisations engage, some confront, and some do both depending on the circumstance. London First, a membership organisation of big businesses, sponsors "joint mentorships" that pair business leaders with police commanders to exchange views and expertise. In Nigeria, the CLEEN Foundation's activities span research, legislative advocacy and grass roots work. Even while encouraging the private sector, civil society and law enforcement agencies to pool resources and tackle a range of justice issues, it retains its focus on police accountability through its own reports and working relationship with Nigeria's Police Service Commission. At the same time it works cooperatively

with police in the provinces to create community liaison groups that demonstrate community policing strategies as an effective way of reorienting the Nigerian Police Force, reducing community-police violence and improving safety.<sup>247</sup>

Similarly, international groups such as Amnesty International and Human Rights Watch working with in-country groups have kept the issue of abusive policing, government complicity, impunity and poor standards on the global radar for many years. Domestic groups are also increasingly using international forums for this. Apart from assisting victims carry their testimonies to various treaty monitoring bodies, NGOs across the Commonwealth have successfully used "shadow reports" to UN bodies to augment facts and challenge government versions of events presented to the committees that monitor the

implementation of treaties. These are often noted during discussions and mentioned in Concluding Observations. Where committee recommendations ask countries to implement steps to further human rights protection before their next periodic report, NGOs have used these recommendations to pressure reform at home.

Naming and shaming creates deep embarrassment at the international level but often has only a moderate impact - if at all - at home. This is where the primary resistance to change exists and the demand for police accountability often falls on deaf ears. In order to effectively pressure governments to reform the police, experience has shown that it is essential to confront those in power with hard evidence of policing problems, rather than unsubstantiated statistics and easily dismissable anecdotal stories.





## MONITORING AND DOCUMENTING

Civil society groups traditionally seek accountability by documenting patterns of police abuse. The genuine difficulties of policing are often left outside the discourse, yet engagement requires knowledge of the legal underpinnings of policing, the technical rules and regulations and also their realities. Without this sophistication, it is easier for the police to dismiss the value of engaging with a public that cannot understand the complexity of its work.

With many police services now publishing their plans and targets, as well as complex data on performance, civil society organisations are beginning to analyse, simplify and disseminate these publications. The Institute for Security Studies in South Africa undertakes applied research, training and capacity building, and also monitors trends and policy implementation. It also collects, interprets and disseminates information that was previously held only by the police.<sup>248</sup>

However, information is power and the powerful guard it zealously. Much that confirms wrongdoing is closely held by the government and the excuse of ill-defined "security concerns" allows protective governments and resistant police organisations to restrict the release of information. In many places, the seal of "confidential" stamped on a file removes even the most innocuous information away from the public domain. In some countries even the rules and regulations governing police are deemed to be outside the purview of public scrutiny, even though they form the standard against which police performance can be judged. Unfortunately, the worse the situation, the more difficult it often is to get information. For example, when public fear of crime was very high in South Africa, the government refused to publish crime statistics and placed a moratorium on their release. It took court action by newspaper groups and NGOs to succeed in pushing the government to provide the data.<sup>249</sup>

### Right to Information: A Powerful Tool

In the few Commonwealth countries that have them<sup>250</sup>, access laws have helped unearth considerable relevant information that should rightfully be in the public domain.<sup>251</sup> Canada's CBC News used access to information laws to procure a police videotape that recorded racial slurs made by police officers before they shot dead an aboriginal protestor. The broadcast resulted in a public apology to the community and a public inquiry.<sup>252</sup>

In Mumbai, India, a lone advocate used access to information laws to substantiate widely held suspicions of illegitimate political interference in police transfers. It was revealed that in a single year, the Police Chief had received no less than 143 requests from politicians recommending favourites to different posts. Many came from the offices of Chief Minister or the Deputy Chief Minister of the state. An analysis showed that the transfers were nearly always away from conflict zones, or into areas where there were better chances to make money from bribes. This led to 135 police officers being issued warning letters for trying, against regulations, to bring pressure from outside the department for personal gain.<sup>253</sup>

## CREATING AWARENESS AND BUILDING PUBLIC OPINION

Sustained support for reform and accountability comes only when there is a broad domestic constituency that understands and supports the concept of responsive and accountable policing. Civil society organisations use a variety of techniques to achieve this. In societies with much poverty and little education, lack of knowledge of one's own rights and the limitations of police power is a major obstacle. Many groups therefore sensitise the police and educate the public. This includes providing legal awareness about constitutionally guaranteed freedoms; rights on arrest; rights of special groups like indigenous peoples, the disabled, gays and lesbians; and the steps to take when police overreach their powers. For example, the Uganda Association of Women Lawyers has a partnership with the police to provide training on gender sensitisation, law enforcement matters and human rights. Moving from mere awareness-raising to building the critical mass of public opinion that will move governments to reformative action, though, is a difficult next step.

Public opinion is often more easily swayed to calling for "tough policing" than for reform that will bring about systemic changes. In a climate vitiated by violence, it is not surprising that there is overwhelming approval for tough policing, which is often a euphemism for lawless policing. These attitudes present a significant challenge for those campaigning for human rights-oriented police reform in high-crime or conflict settings. Experiences of heavy-handed police being able to get away with bad practices leave a legacy of impunity: habits of brutality and acceptance of lawlessness that seep into the organisational psyche and continue to haunt communities. It is therefore essential to show the harmful long-term consequences of tough policing, along with explaining that following human rights standards does not mean being "soft" on crime.

### Victims Push for Police Reforms

Crime victims and victims groups give a human face to the problem of unaccountable policing and have been important catalysts in shaping public opinion. Media attention to the sustained suffering of a single family in England finally created the political will within government to bring about changes to address institutional racism within police.

Stephen Lawrence was a black youth killed in an unprovoked racist attack in 1993. For years, the Metropolitan Police of London appeared to pay little attention to his murder and provided little or no information to his grieving parents about the progress of investigations. Explaining their treatment at the hands of the police, Mrs Lawrence said: "It is clear to me that the police come in with the idea that the family of black victims are violent criminals who are not to be trusted."<sup>254</sup>

Nevertheless, the family persevered for years. They complained to the Police Complaints Authority that the first police investigation had been bungled, and then took it to the Home Secretary. A special inquiry in 1999 made wide-ranging recommendations to increase the responsiveness and accountability of the police and the Crown Prosecution Service. The police publicly apologised to Stephen's parents, and admitted to faulty investigations. Much of the new civilian oversight structure in the UK owes its establishment to the case and the consequent recommendations.<sup>255</sup>

Besides its central function of conveying information to the community, the media is well recognised for its enormous influence in shaping public opinion. Information about crime and misfortune are saleable and crime stories abound. The emphasis, however, is often on the sensational rather than the prosaic structural and process issues that underlie poor policing. In the absence of in-depth analysis of how police accountability can be brought about, the public is deprived of a platform for informed debate and advocacy. To remedy this, many groups are training the media on the intricacies of policing and accountability. Informed reporting and sustained campaigns after the initial excitement of a scandal has blown over can exert significant political pressure on policy-makers.

## ENGAGING WITH LAWMAKERS

Creating political will to move the agenda forward requires constant engagement with law makers, whether it is through drawing attention to policing issues through protest marches, candlelight vigils, pamphlets, radio plays or through policy level interventions. Timing is crucial in these efforts. From getting police reform into political manifestos at election time; holding winners to their promises; providing submissions to parliamentary committees; to intervening at all levels of the law making and scrutiny processes where police functioning is up for discussion, opportunities abound. In seeking accountability, advocates have sought ratification of treaties, the creation of oversight bodies, and enactment of laws that promote accountability and transparency such as the right to information, whistle-blower protection and anti-corruption measures. They have also argued for and contributed to designing laws governing the police that align with constitutional and international standards. At the very least, civil society groups have demanded the right to be heard and the right to participate in policy processes concerning policing and community safety.

Members of the opposition are natural allies in pushing for accountability. In Guyana, a confession by a police informant included strong allegations that the then Home Minister was in contact with a death squad composed of serving and former police officers. This led to relentless pressure from Guyana's media, human rights organisations, and the Opposition that the Government should institute an independent investigation into the Minister's alleged involvement. The Opposition staged a walk out threatening not to return until an independent inquiry had been put in place. They even appealed to the UN Secretary General and kept up the pressure until the Minister agreed to step down temporarily and the President set up a Commission of Inquiry.<sup>256</sup>

## COMMUNITY POLICING

Concerns about safety and security have pushed governments to relocate police more firmly within local communities and build trust and cooperation at that level. More and more countries are experimenting with "community policing". While some, like South Africa, UK and Canada, have institutionalised it through law or entrenched practice, most are still testing it. Although there is no agreed definition, community policing "signifies a collaboration between the police and the community, which identifies and solves

### Proactive Media Can Push for Reforms

To discover whether racism was still a problem in the British police, a BBC reporter went undercover as a trainee in the Greater Manchester Police for several months. The subsequent television documentary, entitled *The Secret Policeman*, focused on racial discrimination and asked questions about individual and institutional accountability. The public exposure contributed to bringing about broad systemic changes, including a re-examination of race and diversity issues in training and recruitment. Racist officers were dismissed and police chiefs were forced to develop strategies to address institutional racism. Local Black Police Associations were consulted to identify issues and Her Majesty's Inspectorate of Constabulary was asked to evaluate racial equality schemes in all the police organisations.



## Bringing the Police and Communities Together

NGOs in many Commonwealth countries are experimenting with community policing, bringing communities and police together to share concerns and solve problems. Experience indicates that in many developing countries governments may not be willing to commit to such programmes unless they can be convinced of its benefits. In these situations, NGOs have sometimes initiated pilot projects that demonstrate success and provide models for further implementation.

The Commonwealth Human Rights Initiative (CHRI) embarked on a community policing experiment in the newly formed state of Chattisgarh, India, in 2002. This experiment aims to build a dialogue between the police and the community at the local level, which, if successful, could be reproduced across the state. The experiment is running at two police stations where the beat-level police personnel and the local community meet on a twice-weekly basis. Another monthly meeting is facilitated by CHRI where the beat officers and the community liaison group representatives meet with the senior officers of the station to discuss problems that cannot be sorted out at the beat-level meetings. Prior to CHRI's intervention, the beat system was not working and the senior officers were unknown to the community. The dialogue has brought some transparency and accountability: at the meetings, problems are recorded and at subsequent meetings both the police and the members of the community report on actions taken. A form of participatory policing is emerging, where the community together with the police decides where and when patrols are necessary and there is information sharing about local safety problems. The project has the full support of the state police department and the state Government, which is willing to replicate the model if it is shown to succeed.

community problems.<sup>1257</sup> Its underlying philosophy is that "the dynamics of crime are often highly localised, that police require community cooperation to fight crime effectively, and that police should be providing a service to the people and be accountable downward to citizens for their performance as well as upwardly accountable to the government."<sup>1258</sup>

Sustaining community policing initiatives requires determined effort by dedicated catalytic forces, either within the police or from civil society. In Uganda, efforts of Community Liaison Officers have strengthened the links between the police and the communities they serve, encouraged NGOs to work on community safety, and decreased domestic violence.<sup>259</sup> In Malawi, district or sub-district Community Police Forums<sup>260</sup> comprising police and community representatives discuss policing priorities and have put in place several victim support and lay visitor schemes, whereby independent members of the community are empowered to make sudden and unannounced visits to detainees in police custody and report on conditions of detention.<sup>261</sup>

Several factors determine the success of partnerships: police leaderships need to be open to significant change in front-line policing; traditionally-centralised police organisations are required to shift decision-making and responsibility downward and recognise that it is street-level officers who have to make the new community policing approach work; and police and public have to interact as equals and with a sense of shared values. In societies where power relationships are extremely uneven and social exclusion is an everyday reality, community policing has to consider diversity and not be hijacked by dominant groups. Without this sensitivity, there is a danger that already marginalised groups will be further victimised by the alliance between police and local privilege. In Nigeria, for example, "businesses have built police posts, installed them on or near their own premises, and donated them to the police. This has the effect of making police services contingent on who can pay for them."<sup>262</sup> Although this kind of partiality for certain groups may not have been the intention of community policing projects, the bias it demonstrates can lead some to condemn the entire venture. These experiments with "community policing" or "partnership policing" in many parts of the Commonwealth have created new opportunities for engagement in processes of changing police organisations.

Despite the mixed reception for police reform initiatives across the Commonwealth, there is room for optimism. Growing global concern with crime and security has created fertile ground for new dialogues about police performance and accountability. As people increasingly feel insecure and unsafe, they become interested in knowing how the government and the police plan to protect life and property and the need for deeper engagement between the government, police and the community becomes more urgent.

## CONCLUDING RECOMMENDATIONS

CHRI is committed to promoting a model of democratic policing in which the police are:

- subject to the rule of law and responsible to protect human rights;
- accountable to a variety of institutions;
- transparent about policies, decisions and actions taken in most spheres of their work;
- responsive to the people they serve; and
- representative of the people they serve.

This is the model of policing that democracy demands and governments are duty bound to provide. Reforming policing across the Commonwealth requires changing and refining laws, putting in place innovative institutional arrangements, and altering the culture within police organisations. With the requisite political will and concerted efforts and cooperation of governments, police officials, and civil society it is entirely achievable.

CHRI makes a series of priority recommendations to different target groups:

### **Commonwealth Heads of Government must:**

In their CHOGM communiqué:

- recognise that the Commonwealth principles of accountability, transparency, participation, adherence to the rule of law, respect for diversity and democratic functioning apply to the security and justice sectors, including police organisations;
- explicitly acknowledge that democratic policing is crucial to realising democracy and development;
- commit the Commonwealth to developing Commonwealth Principles on Policing drawn from its core principles and international standards; and
- undertake to apply these principles to policing in their own countries.

Mandate the Commonwealth Secretariat to further better policing through:

- providing member countries with technical assistance to reform laws, craft institutional arrangements and adopt practices that will eliminate abuse, corruption and ensure better accountability;
- providing the Human Rights Unit with adequate resources to engage with police organisations, focusing on adherence to human rights standards;
- undertaking a series of Commonwealth-wide exchanges for police ministers, police personnel, experts and civil society designed to encourage the spread of good practice in democratic policing; and
- catalysing the formation of a Commonwealth Association of Police Officers that can mutually assist and share ideas.

In addition, Heads of Government must:

Solemnly agree to ratify international human rights treaties within a finite time frame and develop a mechanism at CHOGMs to report on and monitor implementation of past commitments.

Affirm compliance with the standards of policing required by the International Bill of Rights, the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms.

**Member countries must:**

Acknowledge that it is the foremost duty of a state to ensure people's right to safety and security and thereby to provide a police organisation that is efficient, effective and adheres to the rule of law.

Review and recast police laws, rules and regulations, especially those that pre-date the 1948 Universal Declaration of Human Rights, so as to incorporate and further the principles of democratic policing.

Re-examine internal security laws to minimise the possibility of impunity and remove obstacles to prosecution or victim compensation and civil suits for police wrongdoing.

Protect whistleblowers from harm and victimisation through legislation and supportive systems.

Strengthen traditional executive, legislative, and judicial oversight of police; and put in place and support multiple additional independent civilian oversight mechanisms, such as an ombudsman, human rights commission, anti-corruption body or dedicated police complaints agency as appropriate.

Ensure - through institutional arrangements such as strong, autonomous police service boards, commissions and authorities - that executive oversight does not illegitimately interfere with operational independence of the police.

Publish annual performance targets and evaluation measurements against which adherence to human rights, value for money, performance and community satisfaction can be publicly judged.

Design transparent and merit based procedures that can be measured against objective publicly-known criteria for representative and non-discriminatory recruitment, selection, and appointment of leadership and rank and file.

Ensure good service conditions for police and fair accountability procedures applicable to all.

Initiate, *in collaboration with police organisations*, procedures and mechanisms designed to involve civil society groups and the community at large in creating policy, determining priorities, setting targets and evaluating performance.

Re-examine, *in collaboration with police organisations*, training content, methodology and frequency to emphasise human rights awareness.

**Police leaders and police organisations must:**

Ensure that upholding the rule of law and protecting human rights and democratic values are core values of policing integrated into its vision, policies and procedures, reinforced through training, and demonstrated in its work.

Send a strong signal to all within and outside that as an organisation of high professional standards, the police will perform well, be open and approachable, and not tolerate abuse of power, corruption, neglect of duty, suborning the law, or any misconduct, nor will it protect wrongdoing.

Ensure that internal accountability mechanisms are well resourced and are fair and firm, enjoying the support and confidence of the public as well as police personnel.

Cooperate with external oversight mechanisms.

Ensure that the police organisation is representative of the population it serves; in particular by improving the representation and retention of minority groups and women, ensuring the work environment is suitable to their particular needs and providing equal career opportunities to all.

Ensure maximum possible transparency to build public confidence in the police and trust in police-community relationships.

### **Civil society must:**

Equip itself to campaign for police reform and accountability by understanding the police, its environment, relevant laws, its resources, responsibilities and that of the government and oversight bodies.

Assess police functioning in accordance with national and international standards and continuously challenge and draw attention to police wrongdoing.

Demand and publicly disseminate information about policing to create a democratic discourse, participate actively in policy processes and public debates on policing issues to challenge the perception that policing is a technical issue only to be discussed by those in uniform.

Engage in partnerships with the police to bring about community involvement and improve community safety.

### **Donors must:**

Require that accountability and human rights issues be integrated into all donor-supported police reform programmes.

Take firm measures against recipient governments that use police to curb civil liberties and consistently do not adhere to international human rights standards in practice.

## **ANNEXURE A**

### **Which International Laws and Standards Affect Policing?**

#### **Universal Declaration of Human Rights (UDHR)**

The 1948 UDHR is a fundamental source for legislative and judicial practice across the world, and a basis for all other international treaties and conventions discussed below. The UDHR defines the duty of governments to protect people's human rights, and lays down principles or standards for all nations to follow.

#### **Standard Minimum Rules for the Treatment of Prisoners**

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the Economic and Social Council in 1957, these rules set out principles and good practice in the treatment of prisoners and the management of institutions. The Rules were among the first international instruments for the protection of the rights of those accused of committing a criminal offence.

#### **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**

Adopted in 1965, ICERD reaffirms that all human beings are born free and equal in dignity, and should be entitled to equal protection of the law against any discrimination. Signatory states take responsibility for prohibiting and eliminating racial discrimination in all its forms. The UN Committee on the Elimination of Racial Discrimination was established under this Convention to monitor how the states have fulfilled their undertakings. The Committee also accepts complaints from one state about racial discrimination by another state.

#### **International Covenant on Civil and Political Rights (ICCPR)**

The 1966 ICCPR widened the range of rights established by the UDHR and established the UN Human Rights Committee to monitor implementation.

#### **Optional Protocol to the International Covenant on Civil and Political Rights**

Also adopted in 1966, this optional protocol sets up systems for the Human Rights Committee to receive and consider communications from individuals who claim to be victims of human rights violations by any signatory states.

#### **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

Adopted in 1979, CEDAW defines discrimination against women and provides the basis for the realisation of equality between women and men. States which ratify CEDAW are legally bound to put its provisions into practice. It establishes the Committee on the Elimination of Discrimination against Women, which can receive and consider communications or complaints about gender discrimination from individuals or groups.

#### **UN Code of Conduct for Law Enforcement Officials**

Adopted in 1979, this code sets out basic standards for policing agencies across the world. It requires police officials in signatory states to recognise the rights set out in the UDHR and other international conventions.

#### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

Adopted in 1984, the CAT prohibits the use of torture or any other inhuman or degrading treatment in attempting to obtain information from a suspect. It is one of the most important declarations to be observed by police officials in the exercise of their duty. The CAT establishes the Committee against Torture, which can consider individual complaints and complaints about torture from one state about another.

#### **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")**

Adopted in 1985, the Rules are intended to be universally applicable across different legal systems, setting minimum standards to be observed in the handling of juvenile offenders. These rules require that law enforcement agencies respect the legal status of juveniles, promote their well-being, and avoid any harm to young suspects or offenders.

#### **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

Adopted in 1985, this Declaration defines victims and their rights, and aims to ensure that police, justice, health, social services and other personnel dealing with victims are able to provide proper and prompt aid.



### **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**

Adopted in 1988, the Body of Principles reaffirms that no one in any sort of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or to any form of violence or threats.

### **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions**

Recommended by the Economic and Social Council in 1989, this document defines principles concerning the arbitrary deprivation of life, and sets up measures to be taken by governments to prevent, investigate and take legal proceedings in relation to extra-legal, arbitrary and summary executions. The Principles should be taken into account and respected by governments within the framework of their national legislation and practices.

### **Convention on the Rights of the Child (CRC)**

Adopted in 1989, the CRC recognises the rights of children, including child suspects, and requires that every child alleged to have infringed the penal law should be treated in a manner consistent with the promotion of the child's sense of dignity and worth. A Committee on the Rights of the Child was established, but it does not accept individual cases.

### **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

Adopted in 1990, during the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, these principles set up a series of human rights standards regarding the use of force and firearms by law enforcement officials. They function as the global standards for police agencies worldwide, although they are not enforceable in law.

### **United Nations Standard Minimum Rules for Non-Custodial Measures ("The Tokyo Rules")**

Adopted in 1990, the Tokyo Rules are basic principles set up by the United Nations in order to promote the use of non-custodial measures in punishment, as well as minimum safeguards for persons subject to alternatives to imprisonment.

### **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

Adopted in 1990, these rules are intended to establish minimum standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

### **Declaration on the Protection of All Persons from Enforced Disappearance**

Adopted in 1992, this body of principles arose from deep concern in the United Nations that in many countries there were persistent reports of enforced disappearance caused by officials of different levels of the government, often police officials.

### **Declaration on the Elimination of Violence against Women**

Adopted in 1993, this Declaration requires governments to develop policies that will eliminate violence against women; and sets standards for governments and law enforcement agencies to combat such violence, particularly sexual violence.

### **Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles")**

Set of internationally recognised standards created to guide states in the setting up of effective human rights commissions. The Paris Principles were endorsed by the United Nations General Assembly in December 1993.

### **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms**

Adopted in 1998, this Declaration sets down principles to ensure that states support the efforts of human rights defenders and ensure that they are free to conduct their legitimate activities without fear of reprisals.

### **United Nations Convention against Corruption (CAC)**

Adopted in 2003 but not yet in force, the CAC calls for international cooperation to prevent and control corruption, and to promote integrity, accountability and proper management of public affairs and property.

## ANNEXURE B

### Ratification of International Conventions<sup>263</sup>

COUNTRY	ICCPR	ICCPR	ICCPR	CRC	ICERD	CAT	CAT	CEDAW	CEDAW	CAC <sup>264</sup>
		-OP 1	-OP 2				-OP		-OP	
Antigua & Barbuda	N	N	N	Y	(d)	(a)	N	(a)	N	
Australia	Y	(a)	(a)	Y	Y	Y	N	Y	N	(s)
The Bahamas	N	N	N	Y	(d)	N	N	(a)	N	
Bangladesh	(a)	N	N	Y	(a)	(a)	N	(a)	Y	
Barbados	(a)	(a)	N	Y	(a)	N	N	Y	N	(s)
Belize	(a)	N	N	Y	Y	(a)	N	Y	(a)	
Botswana	Y	N	N	(a)	(a)	Y	N	(a)	N	
Brunei Darussalam	N	N	N	(a)	N	N	N	N	N	(s)
Cameroon	(a)	(a)	N	Y	Y	(a)	N	Y	Y	(s)
Canada	(a)	(a)	N	Y	Y	Y	N	Y	(a)	(s)
Cyprus	Y	Y	(a)	Y	Y	Y	(s)	(a)	Y	(s)
Dominica	(a)	N	N	Y	N	N	N	Y	N	
Fiji Islands	N	N	N	Y	(d)	N	N	Y	N	
The Gambia	(a)	(a)	N	Y	(a)	(s)	N	Y	N	
Ghana	Y	Y	N	Y	Y	Y	N	Y	(s)	(s)
Grenada	(a)	N	N	Y	(s)	N	N	Y	N	
Guyana	Y	(a)	N	Y	Y	Y	N	Y	N	
India	(a)	N	N	(a)	Y	(s)	N	Y	N	
Jamaica	Y	*	N	Y	Y	N	N	Y	N	
Kenya	(a)	N	N	Y	(a)	(a)	N	(a)	N	(r)
Kiribati	N	N	N	(a)	N	N	N	(a)	N	
Lesotho	(a)	(a)	N	Y	(a)	Y	N	(a)	Y	
Malawi	(a)	Y	N	(a)	(a)	(a)	N	(a)	(s)	(s)
Malaysia	N	N	N	(a)	N	N	N	Y	N	(s)
Maldives	N	N	N	Y	(a)	(a)	N	(a)	N	
Malta	(a)	(a)	(a)	Y	Y	(a)	Y	(a)	N	(s)
Mauritius	(a)	(a)	N	(a)	(a)	(a)	N	Y	(s)	(r)
Mozambique	(a)	N	(a)	Y	(a)	(a)	N	(a)	N	(s)
Namibia	(a)	(a)	(a)	Y	(a)	(a)	N	(a)	Y	(r)
Nauru	(s)	(s)	N	(a)	(s)	(s)	N	N	N	
New Zealand	Y	(a)	Y	Y	Y	Y	(s)	Y	Y	(s)
Nigeria	(a)	N	N	Y	(a)	Y	N	Y	Y	(r)

COUNTRY	ICCPR	ICCPR -OP 1	ICCPR -OP 2	CRC	ICERD	CAT	CAT -OP	CEDAW	CEDAW -OP	CAC <sup>264</sup>
Pakistan	N	N	N	Y	Y	N	N	(a)	N	(s)
Papua New Guinea	N	N	N	Y	(a)	N	N	(a)	N	(s)
Samoa	N	N	N	Y	N	N	N	(a)	N	
Seychelles	(a)	(a)	(a)	(a)	(a)	(a)	N	Y	(s)	(s)
Sierra Leone	(a)	(a)	N	Y	Y	Y	(s)	Y	(s)	(r)
Singapore	N	N	N	(a)	N	N	N	(a)	N	
Solomon Islands	N	N	N	(a)	(d)	N	N	(a)	(a)	
South Africa	Y	(a)	(a)	Y	Y	Y	N	Y	N	(r)
Sri Lanka	(a)	(a)	N	Y	(a)	(a)	N	Y	(a)	(r)
St. Kitts & Nevis	N	N	N	Y	N	N	N	(a)	N	
St. Lucia	N	N	N	Y	(d)	N	N	(a)	N	
St. Vincent & The Grenadines	(a)	(a)	N	Y	(a)	(a)	N	(a)	N	
Swaziland	(a)	N	N	Y	(a)	(a)	N	(a)	N	
Tanzania	(a)	N	N	Y	(a)	N	N	Y	N	(s)
Tonga	N	N	N	(a)	(a)	N	N	N	N	
Trinidad & Tobago	(a)	*	N	Y	Y	N	N	Y	N	(s)
Tuvalu	N	N	N	(a)	N	N	N	(a)	N	
Uganda	(a)	Y	N	Y	(a)	(a)	N	Y	N	(r)
United Kingdom	Y	N	Y	Y	Y	Y	Y	Y	Y	(s)
Vanuatu	N	N	N	Y	N	N	N	Y	N	
Zambia	(a)	(a)	N	Y	Y	(a)	N	Y	N	(s)

**Key:**

Y = signed and ratified

\* = signed but later denounced

N = not signed, not ratified, not acceded

(a) = acceded

(s) = signatory only

(d) = succession

(r) = ratified

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	First Optional Protocol to the ICCPR on the right of individual petition
ICCPR-OP 2	Second Optional Protocol to the ICCPR on the abolition of the death penalty
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW-OP	Optional Protocol to CEDAW on the right of individual petition
CRC	Convention on the Rights of the Child
CRC-OP 1	Optional Protocol to the CRC on the involvement of children in armed conflict
CRC-OP 2	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAC	Convention Against Corruption

## ANNEXURE C

### Quiz Is Your Police Democratic?

QUESTIONS TO ASK	INDICATORS / EVIDENCE
<p>How are human rights made relevant to police work?</p> <p>To what extent are you and your officers aware of basic human rights?</p>	<ul style="list-style-type: none"> <li>● Human rights mentioned in:               <ul style="list-style-type: none"> <li>● national legislation</li> <li>● official policy statements</li> <li>● mission statements</li> <li>● codes of conduct of behaviour</li> <li>● operational documents</li> </ul> </li> <li>● Human rights given profile in all training</li> <li>● Line managers provide oral and effective commitment to human rights</li> <li>● Human rights awareness is a performance criterion for promotion</li> </ul>
<p>What guarantees does your police service have against abuses of authority such as arbitrary or excessive use of force?</p>	<ul style="list-style-type: none"> <li>● Instruction, training, and supervision in place</li> <li>● Internal and external investigations</li> <li>● Judicial review in place</li> <li>● Recording of police use of force</li> <li>● Automatic and independent review in cases of (deadly) force</li> <li>● Preventive measures in place to combat ill-treatment and torture</li> </ul>
<p>To what extent are human rights effectively respected and supported?</p>	<ul style="list-style-type: none"> <li>● Number and types of complaints of abuse of power and other human rights violations</li> <li>● Number and types of sanctions imposed, both disciplinary and judicial</li> <li>● Adverse press reports</li> <li>● Criticisms by NGOs</li> <li>● Percentage of defendants released due to inefficient police work or "mistakes" by the police</li> </ul>
<p>What measures are taken to ensure that all citizens are treated equally, irrespective of race, gender, religion, language, colour or political opinion?</p>	<ul style="list-style-type: none"> <li>● Recruitment of officers to represent all sections of society</li> <li>● Instruction and training in the principles of non-discriminatory practices</li> </ul>

QUESTIONS TO ASK	INDICATORS / EVIDENCE
<p>Does the police service respect and promote the rule of law? What legal basis do policing objectives and actions have?</p>	<ul style="list-style-type: none"> <li>● Numbers of cases filed against police</li> <li>● Numbers of findings, or judicial orders that indicate excessive use of force has been used</li> <li>● Percentage of unauthorized searches and unlawful arrest cases brought against police</li> </ul>
<p>In what way is your police service transparent, open and accountable?</p>	<ul style="list-style-type: none"> <li>● Performance figures are publicly available</li> <li>● Costs and expenditure are publicly available</li> <li>● Public access to senior officers</li> </ul>
<p>How do recruitment practices take into consideration the various groups represented in society? What measures are in place to avoid discrimination?</p>	<ul style="list-style-type: none"> <li>● Population/ethnic/gender representation</li> <li>● Recruitment opportunities for various minority groups</li> <li>● Percentage of diverse groups represented in the force</li> <li>● Proactive recruitment and existence of outreach policies</li> </ul>
<p>What importance is given to human rights during training?</p>	<ul style="list-style-type: none"> <li>● Number of hours spent on national law and human rights during training</li> <li>● Delivery of human rights modules in training, and included in wider training</li> </ul>
<p>What kind of human rights law is included in the curriculum?</p>	<ul style="list-style-type: none"> <li>● International human rights instruments included</li> <li>● Regional human rights instruments included</li> </ul>
<p>Which bodies are there to evaluate the quality of the delivery of policing (internal and external)?</p>	<ul style="list-style-type: none"> <li>● Active internal affairs, investigations, management reviews</li> <li>● Parliamentary committees on police practice and use of budget</li> <li>● Fora for internal communication with groups and in-house publications</li> <li>● Public reports of intent</li> </ul>
<p>How is each individual police officer made accountable for the consequences of their own actions or lack thereof? How is this assessed with regard to its impact on the whole force?</p>	<ul style="list-style-type: none"> <li>● Precise and timely performance feed-back from management on performance at incidents</li> <li>● Official complaints against individual police officers</li> <li>● Use of internal anonymous hotlines</li> <li>● Name and blame by supervisors</li> </ul>
<p>How can the public make informal and/or formal complaints? What opportunities exist? How accessible and responsive is the system?</p>	<ul style="list-style-type: none"> <li>● Availability of authorised people and institutions to record a complaint</li> <li>● Accessibility of the points and people receiving the complaints</li> <li>● Formalities required to make a complaint: informal or formal, direct action for individual victims and vulnerable groups</li> </ul>

QUESTIONS TO ASK	INDICATORS / EVIDENCE
<p>How effective and relevant are internal investigation procedures?</p> <p>Are the internal disciplinary procedures accessible, impartial, prompt and rigorous?</p>	<ul style="list-style-type: none"> <li>● Time-span between act and appointment of an investigator</li> <li>● Time-span between appointment and end of investigation</li> <li>● Ratio of investigators and resources compared to police force departments</li> <li>● Number of cases investigated automatically or at discretion of managers</li> <li>● Availability of range of punishments</li> <li>● Percentage of misconduct cases where action is subsequently taken</li> </ul>

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## **CHRI's PREVIOUS REPORTS TO CHOGM**

### **Open Sesame: Looking for the Right to Information in the Commonwealth (2003)**

Open Sesame demonstrates the value to democracy and development of ensuring that people have a guaranteed right to access information held by government and other powerful institutions as well as the urgency of enabling that right. The international standards, practice and lessons expounded in this report offer a practical solution to the all too evident systemic governance problems that beset most Commonwealth countries today through the neglect of this fundamental right.

### **Human Rights and Poverty Eradication: A Talisman for the Commonwealth (2001)**

The Talisman report shows how poverty is an abuse of human rights. It advocates the adoption of a rights-based approach to eradicating the large-scale poverty that continues to exist in the Commonwealth. It points to the gap between the rhetoric the Commonwealth espouses and the reality of people's lives. The report urges member governments to cooperate to fulfil the many solemn commitments made at successive CHOGMs or risk the Commonwealth losing its relevance.

### **Over a Barrel - Light Weapons and Human Rights in the Commonwealth (1999)**

Over a Barrel exposed a tragic contradiction in the modern Commonwealth in that although human rights are recognised as central to the Commonwealth, millions of light weapons flow freely, jeopardising safety, development and democracy. The report outlines urgent recommendations to the Commonwealth for curbing the reach of light weapons in member countries.

### **The Right to a Culture of Tolerance (1997)**

This report focused on two themes: ethnic and religious intolerance as an urgent problem throughout the Commonwealth; and freedom of expression/information as a crucial element of a democracy. The report noted that the norms and political values of the Commonwealth compel the association to act to promote tolerance in member countries and the report made recommendations for achieving this goal.

### **Rights Do Matter (1995)**

Rights Do Matter explored two themes: freedom of expression and the need for major reform in prisons. The report placed this discussion in the context of the transition from authoritarian to democratic political orders and the economic transition from planned to market economies.

### **Act Right Now (1993)**

Act Right Now was an assessment of the progress of human rights in Commonwealth countries since the Harare Declaration and was made with reference to the United Nations World Conference on Human Rights in Vienna in June 1993. It called for the Commonwealth to play a lead role in supporting the long, complex process of moving towards real democracy in transitional countries.

### **Put Our World to Rights (1991)**

Put Our World to Rights was the first independent overview of the status of human rights in the Commonwealth. It provides practical guidance on how to use international machinery for redress.

## CHRI PROGRAMMES

CHRI's work is based on the assumption that for the realisation of human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

### **Human Rights Advocacy:**

CHRI makes regular submissions to official Commonwealth bodies including the Commonwealth Ministerial Action Group and Commonwealth member governments. From time to time CHRI conducts fact finding missions to investigate human rights concerns in member countries and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their capacity and collective power to advocate human rights issues in the Commonwealth. CHRI's Media Unit also ensures that crucial human rights issues are in the public consciousness.

## **ACCESS TO INFORMATION**

### **Right to Information:**

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

### **Constitutionalism:**

CHRI believes that constitutions must be made and owned by the people. Towards this end, it has developed guidelines to inform the making and review of constitutions through a consultative process. In addition, CHRI promotes knowledge of constitutional rights and values through public education programmes. It has developed web-based learning modules for the Commonwealth Parliamentary Association aimed at informing legislators of the value of human rights to their work. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of local representatives.

## **ACCESS TO JUSTICE**

### **Police Reforms:**

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

### **Prison Reforms:**

The closed nature of prisons makes them prime centres of human rights violations. CHRI aims to open up prison working to public scrutiny. This programme is sharply focused on ensuring that the near defunct lay visiting system is revived. CHRI examines prison visiting and undertakes capacity building programmes for visitors.

### **Judicial Colloquia:**

In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

*In too many countries, governments are failing in their primary duty to provide the public with an honest, efficient, effective police service that ensures the rule of law and an environment of safety and security. Membership of the Commonwealth is premised on countries being democratic – and this requires democratic policing. The only legitimate policing is policing that helps create an environment free from fear and conducive to the realisation of people’s human rights, particularly those that promote unfettered political activity, which is the hallmark of a democracy. As CHRI advocates in its report to the Commonwealth Heads of Government, police reform is now too important to neglect and too urgent to delay. This report calls on the Commonwealth to explicitly acknowledge that police reform is needed in many countries of the Commonwealth and to lead the move toward better policing. CHRI urges the Commonwealth to develop Commonwealth Principles of Policing based on its core principles and international standards.*



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