POLICE REFORM OPPORTUNITIES FOR BANGLADESH

A Comparative Survey of Police Legislation in
India, Pakistan, Northern Ireland, South Africa and Kenya

POLICE REFORM PROGRAMME

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"In no branch of the Administration in Bengal is improvement so imperatively required as in the police. There is no part of our system of government of which such universal and bitter complaint is made, and none in which, for the relief of the people and the reputation of Government, is reform in anything like the same degree so urgently called for."

Sir John Woodburn
Former Lieutenant-Governor of Bengal
12 December 1901

By Sanjay Patil

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Police Reform Programme

The Police Reform Programme (PRP) is a long term and comprehensive capacity building initiative to improve human security in Bangladesh. The PRP supports the transition from a colonial style police force to democratic policing by strengthening the Bangladesh Police's ability to contribute to a safer and more secure environment based on respect for the rule of law, human rights and equitable access to justice.

Sanjay Patil

Sanjay Patil is a lawyer with extensive experience of working on police reform. He has helped formulate a possible review mechanism for the national security activities of the Royal Canadian Mounted Police and he spearheaded the South Asia Police Reform Programme for the Commonwealth Human Rights Initiative. Currently he seeks to improve police conduct towards drug users on behalf of the International Harm Reduction Development Program at the Open Society Foundations in New York.

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FOREWARD

National Project Director, Police Reform Programme

The Bangladesh Police Reform Programme (PRP) seeks to assist the reform process within the Bangladesh Police. As part of our support to police reform in Bangladesh the PRP has provided significant contributions to the Police especially in, but not limited to, the areas of information communication technology (ICT) development, community policing, training, organisational change, gender mainstreaming, victim support and investigation. Community policing is now, after some seven years of work by the PRP, seen by the public, Government and Police alike to be a core part of policing in Bangladesh. Similarly the Police are now recruiting new female officers of all ranks in previously unseen numbers; this was an issue which the PRP has been advocating in favour of for a considerable number of years. However, the longer term sustainability of these initiatives will be open to question if there is not a revision of the police legislation generally and specifically the 1861 Police Act.

This report is intended to be a contribution towards the debate about the revision of police legislation in Bangladesh and it seeks to look at the experience that a number of Commonwealth countries have had in revising their police legislation. As the author of this report identifies the police services in all of the jurisdictions that this report covers have their origins in what has become known as the 'Irish Constabulary Model'. Under this system the police were specifically intended to be a force for control of the population by a foreign colonial government. This contrasted significantly from the 'Metropolitan Police Model' which was adopted at the same time by the British to police their own citizens. It is perhaps one of the ironies of history that nearly all the countries that initially adopted the 'Irish Constabulary Model' have subsequently spent considerable time and resources moving towards the more community centred Metropolitan Police Model.

It is important to note that in the case of the 1861 Police Act the modern police were formed in large part because of the events of 1857 and the Mutiny against the rule of the British East India Company. Therefore unsurprisingly the Police Act does not embody the modern democratic principles of transparency; accountability and respect for human rights which underpins the process of police reform in Bangladesh. Just as with most other jurisdictions which share the legacy of the Irish Constabulary Model there is a clear need to revise the overall legislative framework which currently governs the police within the context of the greater police reform process.

This report by examining the different experiences of Bangladesh, India (Kerala and West Bengal/Paschimbanga), Kenya, Northern Ireland, Pakistan and South Africa will help increase public understanding of the importance of legislative reform. In no country has the process been easy nor could it be said that every example is positive. However, there is a clear message that legislative reform should be a regular process undertaken, at a minimum, every twenty to thirty years. As policing evolves so to should the legislation that governs the police. Unfortunately the Police Act of 1861 is no longer fit for purpose and is badly in need of revision.

I hope that this report is going to be a contribution towards the wider understanding of the role of legislation in police reform in Bangladesh. It is intended that this report will be of use primarily to the Police and people of Bangladesh but I hope that it will also be of interest and use beyond Bangladesh.

Md. Mokhlesur Rahman, BPM
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Bangladesh Police and National Project Director
Police Reform Programme

LIST OF ABBREVIATIONS

ANC	African National Congress (South Africa)
CBP	Community-Based Policing
CIC	Commission for the Implementation of the Constitution (Kenya)
CIOC	Constitutional Implementation Oversight Committee (Kenya)
CHRI	Commonwealth Human Rights Initiative
CPA	County Policing Authority (Kenya)
CPF	Community Police Forum (South Africa)
CPLC	Citizen Police Liaison Committee (Pakistan)
CrPC	Code of Criminal Procedure, 1898 (Bangladesh)
CSF	Community Safety Forum (South Africa)
DGP	Director General of Police
DPO	District Police Officer (Pakistan)
DPP	District Police Partnership (Northern Ireland)
DPS & PCC	District Public Safety and Police Complaints Commission (Pakistan)
DPSC	District Public Safety Commission (Pakistan)
FIR	First Information Report
HRCP	Human Rights Commission of Pakistan
ICD	Independent Complaints Directorate (South Africa)
IGP	Inspector General of Police
IPID	Independent Police Investigative Directorate (South Africa)
IPOA	Independent Policing Oversight Authority (Kenya)
JSP	Janamaithri Suraksha Project (Kerala)
KPA	Kerala Police Act (India)
MEC	Members of Executive Council (South Africa)
MLA	Member of Legislative Assembly
MP	Member of Parliament
NARC	National Rainbow Coalition (Kenya)
NGO	Non-Governmental Organisation
NIPB	Northern Ireland Policing Board
NPC	National Police Commission (India)
NPS	National Police Service (Kenya)
NPSC	National Police Service Commission (Kenya)
NPSC	National Public Safety Commission (Pakistan)
NRB	National Reconstruction Bureau (Pakistan)
ODM	Orange Democratic Movement (Kenya)
OECD	Organisation for Economic Co-operation and Development
PADC	Police Act Drafting Committee (India)
PCA	Police Complaints Authority (Kerala)
PML-Q	Pakistan Muslim League–Quaid-e-azam (Pakistan)
PNIA	Police (Northern Ireland) Act
PNU	Party of National Unity (Kenya)
PO	Police Order (Pakistan)
PONI	Police Ombudsman for Northern Ireland
PPCA	Provincial Police Complaints Authority (Pakistan)
PPS & PCC	Provincial Public Safety and Police Complaints Commission (Pakistan)
PPSC	Provincial Public Safety Commission (Pakistan)
PSNI	Police Service of Northern Ireland
RAB	Rapid Action Battalion (Bangladesh)
RCMP	Royal Canadian Mounted Police
RUC	Royal Ulster Constabulary (Northern Ireland)
SAPS	South African Police Service

EXECUTIVE SUMMARY

"It is often posited that the shortcomings of the Bangladesh Police are attributable to the fact that it continues to function under antiquated legislation. Enacted in 1861, the Police Act remains the governing statute for the police in Bangladesh"

EXECUTIVE SUMMARY

It is generally accepted that democratic policing is an important component to overall democratic development. Whether as part of British India, East Pakistan or the People's Republic of Bangladesh, policing in Bangladesh has been fraught with problems. Aside from being under-resourced and asked to work under challenging conditions, the Bangladesh Police also operate under police legislation that is 150 years old. The Police Act, 1861 was enacted in the immediate aftermath of the 1857 War of Independence and was ostensibly designed to maintain law and order pursuant to the more militarised Irish Constabulary model of policing rather than serve the public in the spirit of the more civilian-minded Metropolitan Police.

Despite being strongly criticised as far back as the Indian Police Commission of 1902-03, the Police Act, 1861 has continued to operate in Bangladesh all this time. The objective of this study is to reignite a debate about the merit of having updated police legislation in Bangladesh. By first examining the events leading to the enactment of the Police Act, 1861, and then the Act itself, this report will seek to examine its continued relevance for a modern and democratic Bangladesh. To answer the question of whether the Police Act, 1861 remains fit for purpose, this study will survey the redrafting of police laws from select jurisdictions in order to ascertain what lessons Bangladesh can learn from others as it looks to reform the police.

Chapter one begins by providing a definition for "democratic policing" and its importance for Bangladesh. The militaristic origin of the Irish Constabulary model of policing, and how it was used by the British to dispossess Irish Catholics of power and influence, is contrasted against the "policing by consent" Metropolitan Police model that was adopted for London at roughly the same time. Building on the Irish Constabulary's "success" in quelling opposition to its rule, the British chose to export that form of policing, rather than the Metropolitan model, to its non-white colonies so that it could suppress any indigenous rebellions. Due to their shared colonial history of being policed by some version of the Irish Constabulary model, this study examines the attempts made by India (including Kerala and West Bengal), Pakistan, Northern Ireland, South Africa and Kenya to move away from regime policing and enact updated police legislation.

The four themes of analysis used in exploring their respective efforts to reform the police have been selected because each one addresses a central element to what constitutes "better policing". First, the dynamic between the police and the executive is examined because this sensitive and important relationship is so critical to the professional functioning of police in any jurisdiction. Second, different ways to achieve democratic accountability of police are investigated because in the end, the police are ultimately answerable to the people and democratic institutions. Third, in light of the fact that the police have exceptional powers at their disposal, and it is inevitable that the police will at some point purposefully or mistakenly exceed their jurisdiction, this study surveys external accountability bodies that have been established to scrutinise police misconduct. Fourth, since public trust in the police is fundamental to its efficient and effective operation, attention is given to how the police can suitably engage with the community.

Chapter two examines the circumstances surrounding the enactment of the Police Act, 1861 in British India. It discusses the introduction of the Irish Constabulary model to the Indian subcontinent in 1843 and British concern in maintaining law and order after the 1857 War of Independence. Despite concerns even then about having the district head of police

organisationally responsible to the Inspector General of Police, but also simultaneously subject to the lateral control and direction of the Magistrate, the Indian Police Commission of 1860 recommended the retention of this system of "dual control". With time, the shortcomings of dual control became more obvious. In fact, the Indian Police Commission of 1902-03 identified dual control as a source of undue interference that adversely affected police performance.

When applying the four themes of analysis used in this study, the Police Act, 1861 is found to be significantly lacking. First, the inclusion of the undefined term "superintendence" to describe the executive's supervisory role vis-à-vis the police has resulted in the police often being forced to serve the partisan interests of the regime in power. Second, given that democratic police have an obligation to be accountable to the law, elected representatives and the community, the problem with the Police Act, 1861 is that it places great emphasis on accountability to the government but less importance on accountability to the law and to the community. Third, notwithstanding the Bangladesh Police's move to establish the Police Internal Oversight body, failure of the 1861 Act to institute some form of independent and external review of police misconduct is a glaring omission. Fourth, the 1861 Act is silent on the police's relationship towards the community and the need to work closely with them in order to secure public safety.

Chapter three surveys India's approach to police reforms post-Independence. India is a federal state wherein policing is a state subject, but the Central Government also has some national policing responsibilities. The National Police Commission of 1979 suggested comprehensive reforms in the aftermath of Emergency that were essentially ignored. In 1996, two former Director Generals of Police initiated public interest litigation related to police reforms, which culminated with the Supreme Court in *Prakash Singh and Others vs. Union of India and Others* issuing seven directives to the State and Central Governments on specific steps they should undertake to improve the delivery of police services. However, after five years neither the States nor the Central Government has fully implemented the Court's directives because the political will to do so has been absent.

As the *Prakash Singh* litigation was winding its way through the court system, the Government of India set up the Police Act Drafting Committee to formulate the Model Police Act, which could serve as a template for new legislation across the country. Though not without its flaws, the Model Police Act does a good job of addressing many of the failings of the Police Act, 1861. West Bengal, an Indian state that has historical, cultural and linguistic ties to Bangladesh, put together a draft act in 2007 largely emulating the Model Police Act. But with the draft act stalled, and a recently elected government that has not expressed much interest in reforming the police, it does not appear that the West Bengal Police Act (Draft) 2007 will ever be enacted.

Kerala, on the other hand, is an example of a South Asian jurisdiction that has taken tremendous bipartisan steps to institute a more efficient and effective police organisation through updated legislation. The Kerala Police Act, 2011 is a product of extensive public consultation. While it provides the police with greater operational control, it also follows the Model Police Act in one key manner – it acknowledges the important role the Magistrate has in coordinating district administration and that this responsibility will naturally touch on matters of pertinence for the head of District Police. The Kerala Police Act clearly delineates the scope of the Magistrate's role in relation to the police and charts out an interesting compromise between "full police independence" and "governmental policing". In addition, the Kerala Police Act importantly sets out that a member of the public may register a complaint against the police at the district or state level.

Chapter four looks at the passage of the Police Order 2002 in Pakistan and how their efforts to reform the police have failed. Like India, Pakistan did very little to improve its policing post-Partition. This changed when dictator Pervez Musharraf assumed power in 1999. Although policing is a provincial subject matter, in order to bolster his "democratic" credentials with Western governments and donors, and to circumvent established provincial power centres by using local government allies to advance regime survival, Musharraf initiated a series of reforms that included the promulgation of the relatively progressive Police Order 2002. However, because it was enacted without political consensus, the provinces and administrative cadres pressured Musharraf to pass amendments in 2004 that significantly diluted the Police Order 2002.

The 2004 amendments, and the overall failure to follow through with reforms, resulted in the non-existent or dysfunctional operation of institutions set up under the Order. In fact, now that provinces are able to alter, repeal or amend the Order, Sindh has already chosen to repeal it and resurrect the Police Act, 1861 (amended as of 14 August 2002) and Balochistan has passed the Balochistan Police Act, 2011 that largely replicates the Police Act of 1861. A major reason that reforms in Pakistan failed was because greater operational responsibility for the police, along with the concomitant marginalisation of the Magistrate, meant that 140 years of practice changed almost overnight and this was vociferously opposed by the bureaucracy. The Citizen Police Liaison Committee, which involves collaboration between the community and police, remains the sole area of reform that has continued in Pakistan. However, this is a mostly private initiative spearheaded by businessmen and not driven by either the police or government.

Chapter five examines how Northern Ireland was able to effectively reform its police after emerging from decades of conflict. The Royal Ulster Constabulary, mostly Protestant and rooted in the Irish Constabulary model, was viewed by Catholics as defending the Unionist position and therefore agents of the state rather than members of the community. Subsequent to the signing of the Belfast Agreement in 1998, wherein the political parties representing Protestant unionists and Catholic nationalists agreed to share power, it was agreed that Christopher Patten would chair the Independent Commission on Policing for Northern Ireland and make recommendations to substantially revamp policing in the territory. Patten urged policymakers to give police "operational responsibility" rather than "operational independence" because in a democracy the police must be held accountable for their actions. He also stressed that for police reforms to work, all of his recommendations had to be implemented and not only those that were politically expedient or easy.

The Government heeded his advice and passed the Police (Northern Ireland) Act, 2000, which created the Police Service of Northern Ireland. The Act incorporated all of the Commission's major recommendations. Underpinning the reforms is what the Commission referred to as the "tripartite model". Ostensibly, there are three elements to having a proper functioning policing arrangement. First, the Minister of Justice is tasked with formulating long-term policy (i.e. budgetary allocation and matters of national security), the Northern Ireland Policing Board, which has 19 political and independent members, is resposible for medium-term policy (i.e. oversee implementation of policing plans), and the Chief Constable is given operational responsibility for short-term policy (i.e. autonomy over operational and administrative decisions that pertain to specific investigative matters and personnel decisions). By all accounts, the tripartite model has worked because there is a great deal of consultation and cooperation between all three stakeholders. In particular, the Policing Board has garnered respect for its reporting, transparency, and attempt to make the Police Service of Northern Ireland as effective, efficient and impartial as possible.

To complement the tripartite model, District Policing Partnerships were established to facilitate improved police-community relations. These partnerships are composed of political appointees as well as independent members drawn from the local community, and are expected to work with the local Police Commander to ensure that the community's priorities shape the development of the Local Policing Plan. In addition, the Police (Northern Ireland) Act, 2000 strengthened the office of the Police Ombudsman for Northern Ireland, which has been effective in providing independent external scrutiny of the police. Mandated to receive all police-related complaints, and also in possession of policing powers, the Ombudsman's office is generally viewed as a robust police complaints mechanism.

Chapter six reviews the challenges that confronted South Africa when it transitioned from apartheid-era policing to democratic-style policing in the 1990s. Throughout the apartheid period, the South Africa Police and security agencies had a reputation for torture and other human rights abuses. After apartheid ended, and in anticipation of the first democratic elections in 1994, South Africans from all communities drafted the Interim Constitution that, amongst other things, created the civilian South African Police Service.

These initial reforms were institutionalised with the passage of the South African Police Service Act, 1995 and the Constitution of the Republic of South Africa, 1996. Together, these two important documents radically altered South African policing. They restructured the South African Police Service to function in the national, provincial and municipal spheres, as well as partly devolved policing responsibilities to the provincial level. Furthermore, the new Act and Constitution better defined the police-executive relationship, created the Civilian Secretariat to oversee police performance at both national and provincial levels, and established the Independent Complaints Directorate to investigate police misconduct.

Although the statutory changes made after the 1994 elections substantially improved policing in South Africa, gaps and redundancies were identified in the legislation. Consequently, Parliament recently passed two acts designed to address these problems. First, the Civilian Secretariat for Police Service Act, 2011 more clearly differentiates the roles and responsibilities of the national and provincial secretariats. The Act also provides the bodies with greater capacity to coordinate the work of other institutional actors involved in police oversight. Second, the Independent Police Investigative Directorate Act, 2011 renames the Independent Complaints Directorate as the Independent Police Investigative Directorate (IPID) and expands the mandate and powers of the body. As part of its move from a complaints-driven organisation to an investigative-driven institution, IPID is required to investigate an increased number of alleged misconduct, including deaths, rapes, torture and corruption involving police members. Notably, the South African Police Service must immediately notify IPID of any death, rape or instance of torture involving police and submit a written report of the same within 24 hours. In terms of community engagement, sector policing and community policing forums in South Africa appear to have been successful in building bridges between the police and the public.

Chapter seven explores Kenya's historical problems with policing and its recent serious efforts to reform the police subsequent to the post-election violence that took place after the December 2007 elections. During colonial rule and up until very recently, Kenya had two policing organisations that operated separately under pre-independence police legislation: the Kenya Police and the Administration Police. An attempt to reform the Kenya Police was initiated after the 2002 national

election but these efforts quickly lost momentum.

It took significant post-election violence in early 2008, between the Mwai Kibaki-led Party of National Unity and the Raila Odinga-led Orange Democratic Movement, to galvanise the political will to actually implement police reforms. After 1500 people died and hundreds of thousands were displaced, peace was achieved when the two sides signed the power-sharing National Accord and Reconciliation Act. In light of the violence perpetrated by security agencies during the conflict, the Commission of Inquiry on Post Election Violence was established and it strongly recommended reform of both the Kenya Police and the Administrative Police. Another commission, the National Task Force on Police Reforms, affirmed this recommendation and established the Police Reform Implementation Committee to implement its more than 200 recommendations.

The combination of all these recent developments has converged to result in some significant police reforms. First, the passage of the 2010 Constitution has clearly articulated that no one is able to control or direct the Inspector-General to investigate a particular offence, enforce a law against a particular person, or make a personnel decision that is properly within his power. Second, the National Police Service Bill, 2011 has permitted the Kenya Police and the Administration Police to retain their separate functioning but have brought them organisationally under the same umbrella of the National Police Service. Third, the Constitution and the National Police Service Commission Act, 2011 have created the National Police Service Commission, a body responsible for the recruitment, promotion and terms and conditions of service for police officers. Fourth, the National Police Service Bill provides for the establishment of County Policing Authorities, bodies that will be representative of the community and help oversee local police functioning. Fifth, the Independent Policing Oversight Authority Act, 2011 establishes the Independent Policing Oversight Authority, a body that will have dedicated staff investigating complaints against the police. Sixth, the National Police Service Bill provides a statutory framework for community policing committees.

Chapter eight sets out findings and recommendations for Bangladesh based on the analysis and research found in this study. In particular, the chapter seeks to do the following:

1. Answer the central question of whether the Police Act, 1861 remains fit for purpose?
2. Draw key lessons from the case studies; and
3. Provide a basic roadmap for how Bangladesh can proceed.

A. Does the Police Act, 1861 Remain Fit for Purpose?

The difficulty in answering this question resides in the fact that the "purpose" of police legislation is subject to debate because different stakeholders have different conceptions of what the purpose should be. For Government, priority is given to the maintenance of law and order. For the police, their focus is on operational efficiency. Civil servants are particularly concerned that Government as a whole operates effectively. While the public share all of these priorities, they are also keen to be treated with dignity. By any of these standards, the Police Act, 1861 is no longer fit for purpose. Since its enactment in 1861, commission after commission has concluded that the Police Act should be significantly amended or completely replaced. The 1860 Police Commission entrenched the use of the Irish Constabulary system in British India because it afforded the most effective means available to quell indigenous movements or rebellions. However, such a system no longer has a place in modern and democratic Bangladesh.

B. What Can Facilitate Reform?

Experience has shown that four elements are incredibly helpful in order to achieve successful police reform.

1. Achieve Political Consensus: Broad political agreement is essential for reforms to be successful. In Northern Ireland, both Unionists and Republicans accepted that direct political control of the police had to stop if democratic policing was to be achieved. In South Africa, the end of apartheid and subsequent democratic elections provided an opportunity for both blacks and whites to revamp the South African Police. In Kenya, post-election violence served as an impetus for the two major political coalitions to finally follow through with the age-old promise of police reforms. Although no "grand political bargain" was struck in Kerala, there has been bipartisan consensus on the issue of police reforms. Conversely, Pakistan demonstrates what happens when reforms are initiated in the absence of political consensus. Since a dictator implemented it without agreement from the provinces or other parties, the Police Order 2002 had very little chance of succeeding.

2. Establish High-level Commission: Setting up of a high-level commission, spearheaded by a highly qualified and non-partisan person tasked with providing a roadmap for comprehensive police reforms, can make it easier for opposing sides to accept his/her recommendations. The Independent Commission on Policing for Northern Ireland and the National Task Force on Police Reforms in Kenya demonstrate the value of having a well-respected individual, without ties to a particular political party, assess the state of policing and suggest detailed recommendations on how to improve police performance.

3. Create Formal Mechanism to Monitor Reforms: If a high-level commission makes recommendations, it is important to create a formal mechanism that can monitor the implementation of proposed reforms. The Independent Police Oversight Commissioner in Northern Ireland was an example of how a properly resourced and robust body can help to ensure that valuable recommendations regarding police reform are not permitted to gather dust (i.e. the Indian National Police Commission of 1979).

4. Implement Reforms Package in Total: For wholesale police reforms to work, they should be treated as a package. As Patten strongly advised, one must not "cherry-pick" from his report. The various facets of his report represented different characteristics of an integral whole. One reason police reforms never took hold in Pakistan is because key elements of the Police Order 2002 were subverted by the 2004 amendments. If Bangladesh decides to establish a new or updated legal framework for the police, it is highly advisable that implementation be comprehensive and not piecemeal.

C. How to Improve Police-Executive Relations?

Since a healthy Police-Executive relationship is so critical to the democratic functioning of the police, considerable thought should be given to this issue.

1. Clearly Define the Roles of the Police and Executive: To avoid the confusion created by the undefined use of "superintendence" in the Police Act, 1861, it is critically important for

updated police legislation in Bangladesh to unmistakably demarcate the roles and responsibilities of the police and the executive. Patten's tripartite model provides useful guidance in this regard. Also, Kenya's Constitution helpfully articulates that no one is able to control or direct the Inspector-General to investigate a particular offence, enforce a law against a particular person, or make a personnel decision that is properly within his power.

2. Compromise on "Dual Control": In light of Bangladesh's constitutional and democratic status, strict dual control is no longer a suitable form of oversight. However, one cannot ignore that dual control of police has been the practice in Bangladesh for 150 years. Radically altering that arrangement is bound to meet stiff resistance from many quarters. This is what happened in Pakistan and partly explains why the reform effort there failed. Therefore, Bangladesh can learn from Kerala and provide a clearly articulated and circumscribed role for the Magistrate, in relation to the police, which acknowledges his important position in overall district coordination.

D. How to Increase the Democratic Accountability of Police?

The case studies examined in this report reveal the importance of having people's representatives tell the police what sort of service they want, and then holding the police accountable for delivering it. In order to make that happen, the following are critical:

1. Create Decision-Making Buffer Between Police and Executive: The Police Act, 1861 does not establish any body to insulate the police from illegitimate control and it does not set up an independent mechanism to monitor and inspect police performance. Bangladesh should follow other jurisdictions surveyed in this study and create an oversight body that seeks to secure the maintenance, efficiency and effectiveness of the police service it monitors.

2. Prioritise Transparency and Co-operation: Whether it is the police, an oversight body or an external accountability mechanism, they each need to operate transparently if the community is to trust it. The Northern Ireland Policing Board's regular public meetings are an example of ideal transparency. For policing-related institutions to function most effectively, they should co-operatively share information with one another. The new South African Civilian Secretariat for Police Service Act, 2011, is an example of the kind of co-operation required for these institutions to successfully work together.

3. Emphasise Independence of Buffer Body: Public trust in the oversight body will be weakened if it is seen as a government functionary. Inclusion of independent members will strengthen public perception that the body is non-political in nature. The Northern Ireland Police Board provides guidance in this respect; it has ten elected members and nine independent members. In South Asia, the State Police Board created by the Model Police Act of India also has a fairly strong independent flavour to it. If Bangladesh chooses to create an oversight body, it should consider making appointments (or removing people) on the basis of merit and not political considerations.

4. Limit Political Interference in Treatment of IGP and Other Officers: The direct political appointment of the IGP and other officers provided for in the Police Act, 1861 is not ideal in a system that seeks to have police wield greater operational responsibility. It is important to

have an independent body involved in IGP selection because it bolsters public trust in the integrity of the selection process. Bangladesh may wish to emulate other South Asian jurisdictions and stipulate that the IGP must be selected from a short list provided to the Government by the oversight body. In regards to the transfer, posting and promotion of officers other than IGP, Bangladesh could follow the Model Police Act and allow the police to make personnel decisions by committee, as well as ensure that authority to transfer, post and promote at the district level is decentralised to the Superintendent of Police.

5. Formulate Performance Standards and Policing Plans: The oversight body should formulate specific performance standards that the police organisation can meet and draft policing plans that the police can follow. Bangladesh can learn from Kerala, which appoints three external experts each year to assess police performance. Also instructive is the practice of the Civilian Secretariat in South Africa, which conducts quality assessments of the SAPS and monitors its performance.

E. How to Ensure the Sufficient External Accountability of Police?

Robust and effective scrutiny of the police is a powerful tool in ensuring that the police wield their tremendous power in a responsible and legal manner.

1. Create Dedicated External Accountability Body: Each of the jurisdictions examined in this study have sought to create a dedicated external accountability body because they all recognise that simply relying on internal police investigations or the courts is insufficient. For Bangladeshis to have trust in the police, they must believe that misconduct committed by serving officers will be fairly, thoroughly and quickly examined by an independent agency. The police need not fear external scrutiny since the public trust engendered by honest and sincere oversight will facilitate better police-community relations and therefore make their jobs easier to perform. While it is unlikely that a very powerful and autonomous Ombudsman, like the one in Northern Ireland, will find favour amongst Bangladesh policymakers, a more realistic model to strive for is the one soon to be created in Kenya. The IPOA has a Director empowered to direct and guide the agency (much like the Executive Director for IPID in South Africa), but the Board that governs it has a democratic composition that mirrors the police accountability bodies found in South Asia.

2. Provide Accountability Body with Necessary Powers: For an external accountability body to have any "teeth" it must at least follow Kerala and have the powers of a civil court but it should ideally have more powers than that. It should be able to initiate investigations on its own motion, its recommendations should be binding, and it should be able to require that the police automatically report serious matters to it.

3. Ensure Rights of Complainant or Witness: Drawing from Indian examples, the complainant should receive a receipt acknowledging his complaint and also be informed of the progress, completion and final determination of his complaint. In the event that a frivolous or vexatious complaint is registered, the external accountability body should simply refuse to conduct an investigation and not fine or imprison the complainant (as is the case in some of the South Asian statutes). This latter practice has a chilling effect on people's willingness to file a complaint because the risk of penalty will dissuade them from registering legitimate grievances.

4. Create District-Level Complaints Commission: Given the size of Bangladesh, as well as the challenges of travel due to issues of poor infrastructure and poverty, setting up district-level mechanisms will ensure that complainants have accessibility to a remedy for police wrongdoing.

F. How to Facilitate Sincere Police Engagement with the Community?

While it is unclear whether former British Home Secretary Sir Robert Peel truly said that the "police are the public and the public are the police", the principle contains an inherent truth: the police cannot do their job effectively unless they have the cooperation of the people they police.

1. Develop Statutory Framework: The failure to have properly defined structures in place can compromise the sustainability of community-based policing initiatives. South Africa and Kerala include specific provisions related to community-based policing in their respective police acts.

2. Empower the Beat Constable: When considering legislation that formalises community-based policing, Bangladesh should clearly articulate a role for the beat constable. Kerala and Northern Ireland have shown the benefit of having properly trained and reliable constables hand-picked to forge productive relationships with the community. The dynamic between the police and the people has radically changed for the better. But in order for this approach to work, it is absolutely imperative that constables are permitted to stay in the community for at least three years; this is the minimum amount of time required to cultivate the necessary ties.

G. What is a Possible Roadmap for Reform?

The purpose of a police organisation in a modern and democratic Bangladesh is to be an efficient and effective service that gives top operational priority to servicing the needs of the public interest. Against that standard, the Police Act, 1861 is demonstrably inadequate. In order to clearly define the police-executive relationship, create institutions that can properly monitor the police for both performance and conduct, and ensure that the police effectively engage with the community it is meant to serve, mere amendments to the Police Act, 1861 are insufficient. To adequately address the current challenges in crime prevention and maintaining law and order, Bangladesh should consider following the examples of Kerala, Kenya, Northern Ireland and South Africa and pass new policing legislation that is consistent with Bangladesh's Constitution and reflects the democratic aspirations of the Bangladeshi people. When doing so, Kerala provides guidance on how a South Asian jurisdiction can transparently draft and pass new legislation that ushers in an era of greater police professionalism. Conversely, Pakistan illustrates the dangers of attempting police reform without political consensus.

Immediate Recommendations

1. Build Awareness of International Good Practice: Convene targeted consultations that will educate key policymakers international good practice that can help inform Bangladesh's police reform effort. These consultations should include leadership from the Bangladesh Police, senior members of the Ministry of Home Affairs, leading NGOs, media and Members of Parliament.

1.Develop Statutory Framework: The failure to have properly defined structures in place can compromise the sustainability of community-based policing initiatives. South Africa and Kerala include specific provisions related to community-based policing in their respective

2. Establish Inter-Ministerial Working Group: In order to begin an intergovernmental conversation about possible police legislation, a small working group involving key stakeholders from across Government (i.e. Bangladesh Police, Ministry of Home Affairs, Ministry of Justice etc...) should be created.

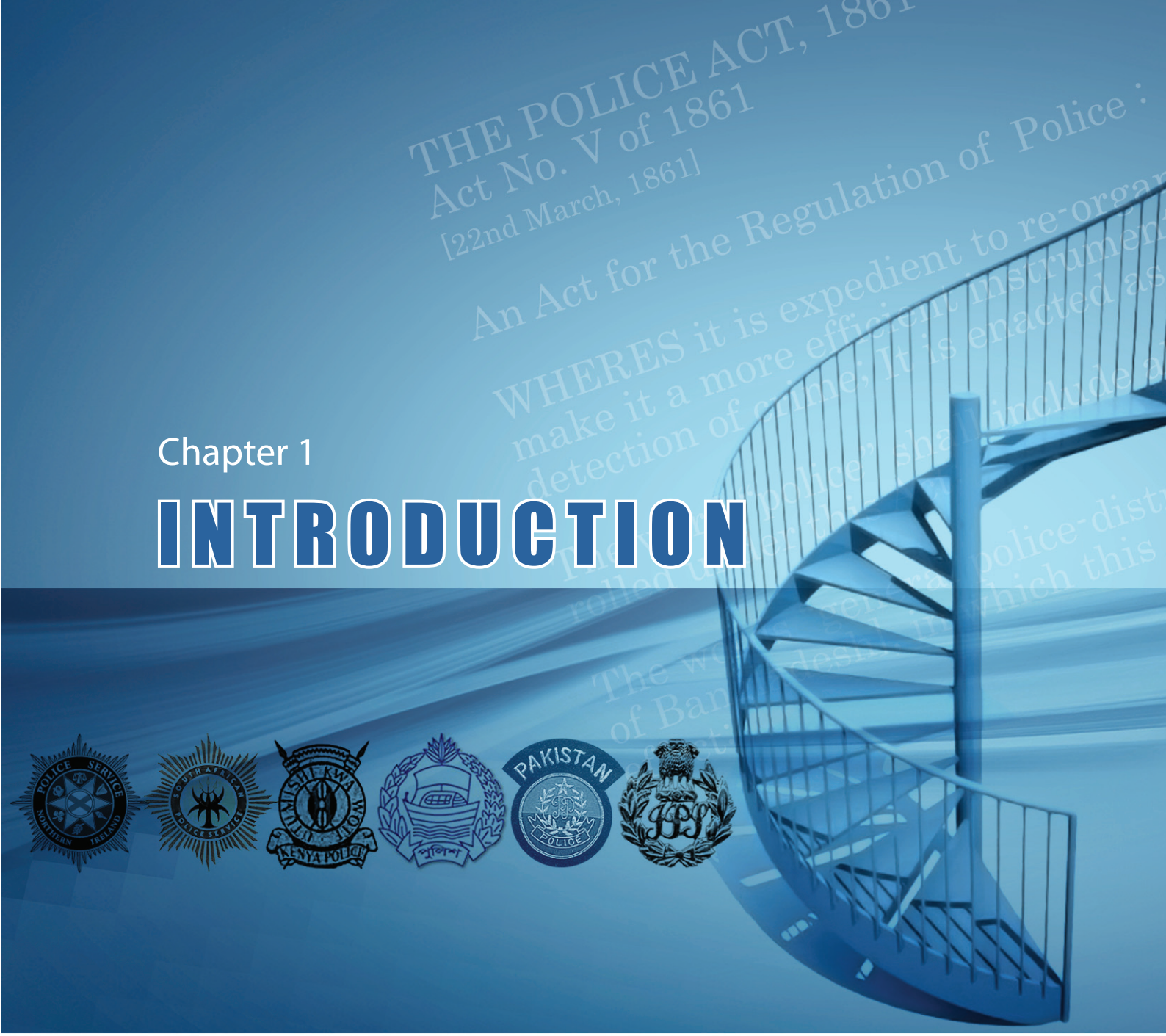
3. Sponsor Visiting Programmes: Facilitate exchanges between key Bangladeshi policymakers and those outside of Bangladesh who have been successful in democratising police performance. Ideally, participants would include senior staff from both major political parties. Such interactions may help create a positive domestic environment for police reform.

Intermediate Recommendations

1. Appoint a non-partisan Eminent Citizens Council: Appoint five eminent citizens, including a very high-profile Chairperson, and provide them with a broad mandate to put forward a comprehensive set of recommendations for police reform. These five people should be acceptable to both major political parties.

2. Appoint an Independent Police Oversight Commissioner: After the Eminent Citizens Council puts forward their recommendations, the Government should appoint a non-partisan, but well-respected, Independent Police Oversight Commissioner who will be tasked with ensuring that the recommendations are implemented.

3. Conduct Public Hearings: Once a formal draft police law has been put together, it is imperative to solicit the input of the public. It is important that the lay public and non-governmental organisations have an opportunity to express their views on how the police should be reformed so as to ensure that any new police law is modern and relevant to their needs. These hearings should be held across the country.



Chapter 1

INTRODUCTION

> "If Bangladesh is going to succeed in reforming the police, it will have to draw on its democratic credentials. "Democratic government is more important for police reform than police reform is for democratic government. Police reform is a necessary, but not a sufficient, condition for democratic government."

1. INTRODUCTION

It is generally accepted that a democracy should have police who act according to the rule of law and not according to the whims of the ruler or the police agent. According to renowned policing expert David Bayley, a police organisation that seeks to embody democratic principles must possess the following four qualities:

1. Police must give top operational priority to servicing the needs of individual citizens and private groups;
2. Police must be accountable to the law rather than to the government;
3. Police must protect human rights, especially those that are required for the sort of unfettered political activity that is the hallmark of democracy; and
4. Police should be transparent in their activities.[1]

While norms 1, 3 and 4 are widely accepted principles, the same cannot be said for norm 2. Many experts argue that in democratic countries, the police should be accountable to more than just the law. As pointed out in The Report of the Independent Commission on Policing for Northern Ireland, also known as the Patten Report, "accountability to the law is vital but accountability is a much wider concept than that."[2] In addition to the law, it involves being accountable to elected representatives and the community.[3]

Abiding by the rule of law, or to act "lawfully", does not simply mean exercising the powers that have been statutorily accorded. As pointed out by the Indian Supreme Court, "The existence of the power to arrest is one thing...the justification for the exercise of it is quite another...the police officer must be able to justify the arrest apart from his power to do so."[4] This principle is also reflected in *Bangladesh Legal Aid and Services Trust vs. Bangladesh,*[5] where the High Court Division of the Bangladesh Supreme Court held that the powers of arrest under Section 54 of the Code of Criminal Procedure must be circumscribed because the provision is so broad and vague that the police repeatedly abuse it in practice.[6]

Although Bangladesh is a democracy, retention of the Police Act, 1861 and its coercive elements, have made it difficult for democratic policing to take root. Whether since Independence or as East Pakistan or under the British Raj, "police organization [in Bangladesh] was designed not to attract better talent, but to ensure built-in subservience of the police to the executive administration regardless of the resulting corruption, lack of professional competence, police highhandedness and police-public estrangement."[7] If Bangladesh is going to succeed in reforming the police, it will have to draw on its democratic credentials. "Democratic government is more important for police reform than police reform is for democratic government. Police reform is a necessary, but not a sufficient, condition for

[1] David Bayley, *Democratising the Police Abroad: What to Do and How to Do it,* National Institute of Justice, Office of Justice Programmes, US Department of Justice: Washington D.C. (2001), pp. 13-15.
[2] *A New Beginning: Policing in Northern Ireland,* The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 1.14.
[3] A more detailed discussion of this can be found at Section 1.4 of this report.
[4] *Joginder Kumar v State of UP* AIR 1994 SC 1349, paragraph 25.
[5] 55 DLR (HCD) (2003) 363.
[6] Ibid,, pp. 5-9.
[7] Muhammad Nurul Huda, "Conceptualising Police Reforms," *NIPSA Newsletter*, Commonwealth Human Rights Initiative, October 2009: http://www.nipsa.in/conceptualising-police-reforms-muhammad-nurul-huda/ (accessed on 13 June 2011).

democratic government. The police tail cannot wag the government dog."[8] This statement highlights the fact that any effort to reform the police will only be successful if the requisite political will is mustered.

The failure to professionalise the police has also had negative consequences for Bangladesh's overall development. As pointed out by the National Strategy for Accelerated Poverty Reduction, "Security and safety for the citizenry is crucial for maintaining peace and sustaining economic advancement in the society. An accountable, transparent and efficient police is not only essential for safety and security but also for economic growth. A bad law and order situation dampens the economic environment and may seriously harm business."[9] An analysis of Bangladesh's effort to achieve its targets for the Millennium Development Goals concluded that police reforms would support "better service delivery and a safer society thereby creating a conducive environment for economic growth and human development. Specific initiatives to support the achievement of the Millennium Development Goals include ... tackling extrajudicial action ... and a more modern legislative basis for more professional law enforcement."[10]

It is often posited that the shortcomings of the Bangladesh Police are attributable to the fact that it continues to function under antiquated legislation. Enacted in 1861, the Police Act remains the governing statute for the police in Bangladesh. Entering its 150th year of operation, critics contend that in order for law enforcement to improve and modernise, the Bangladesh Police require an updated law.[11]

The objective of this study is to reignite a debate about the merit of having updated police legislation in Bangladesh. By first examining the events leading to the enactment of the Police Act, 1861, and then the Act itself, this report will seek to examine its continued relevance for a modern and democratic Bangladesh. To answer the question of whether the Police Act, 1861 remains fit for purpose, this study will survey the redrafting of police laws from select jurisdictions in order to ascertain what lessons Bangladesh can learn from others as it looks to reform the police.

This chapter will first focus on the militaristic origins of the Bangladesh Police. Then, it will examine how the police typically functioned during the British Empire. Subsequently, the reasons for why the case studies in this report were selected will be examined. Finally, the chapter will conclude by outlining the structure of analysis used throughout the report.

1.1 The Militaristic Origins of the Bangladeshi Police

As the British Empire expanded throughout the 18th and 19th centuries, it established its administrative and economic control over large parts of the world, including Ireland. In fact, England's hegemony over Ireland dated back many centuries.

[8] David Bayley, *Democratising the Police Abroad: What to Do and How to Do it*, National Institute of Justice, Office of Justice Programmes, US Department of Justice: Washington D.C. (2001), p. 13.
[9] Government of the People's Republic of Bangladesh, *Moving Ahead: National Strategy for Accelerated Poverty Reduction II (Revised) FY 2009-2011*, General Economics Division, Planning Commission, October 2008, p. 157: www.usaid.gov/bd/files/7c.PRSP.pdf (accessed on 14 September 2011).
[10] Government of the People's Republic of Bangladesh, *The Millennium Development Goals: Bangladesh Progress Report 2009, General Economics Division, Planning Commission, 2009*, p. 35: www.undp.org.bd/info/pub/Bangladesh%2520MDGs%2520Progress%2520Report%25202009.pdf (accessed on 14 September 2011).
[11] See Commonwealth Human Rights Initiative, Feudal Forces: *Reform Delayed – Moving From Force to Service in South Asian Policing*, 2010; Muhammad Nurul Huda, "Law-enforcement professionalism and political will," *The Daily Star*, 10 September 2011: http://www.thedailystar.net/newDesign/news-details.php?nid=201799 (accessed on 1 December 2011).

In 1813, Sir Robert Peel was Chief Secretary for Ireland and firmly believed that the combustible mix of local grievances, religious animosities and political agitators necessitated the formation of an organised policing force.[12] This was achieved through the enactment of the Peace Preservation Act in 1814. This Act allowed the Lord Lieutenant to declare a county (or a barony) to be in a state of disturbance. "Having done this, a stipendiary magistrate, who exercised control over all local magistrates in the disturbed area, was appointed. A police force consisting of a chief constable and up to 50 constables would effectively garrison the area until the disturbance had passed."[13] In this system, "Peelers" (as the constables came to be called, a derivative of Sir Robert Peel's name) usually came from a military background and were used to suppress the rioting and unrest common in rural districts at the time.

Shortly thereafter, the Irish Constabulary Act was passed in 1822 and established a force in each province of Ireland, with chief constables and inspectors general under the control of the UK civil administration for Ireland at Dublin Castle.[14] "The style of policing provided by the Irish Constabulary was paramilitary. Constables were armed and housed in barracks and police stations throughout Ireland. The great bulk of constables were from Catholic backgrounds, but the officers tended to be Protestant."[15] This tendency to have senior officers be Protestant was consistent with England's historical desire to dispossess Irish Catholics of power and influence so that they would be easier to rule.

The housing of constables in barracks, and the issuance of uniforms that greatly resembled the Rifle Brigade of the British Army, was notable because it reflected the desire of Peel and the British Government to have the Irish Constabulary embody a militaristic ethos rather than the more civilian-minded model that was to be found in Dublin or England. Given that one of the primary initial tasks of the Irish Constabulary was the forcible seizure of taxes collected by churches on behalf of the Protestant Anglican clergy, adopting a militaristic approach seems consistent with their objectives.

The force was ultimately reorganised under The Irish Constabulary (Ireland) Act of 1836, and the first constabulary code of regulations was published in 1837. The amendments made in 1836 were designed to centralise this paramilitary force, which was re-designated as the Royal Irish Constabulary in 1867. Although ultimately disbanded with the creation of the Irish Free State in 1922, the Royal Irish Constabulary served as the model for the Royal Ulster Constabulary in Northern Ireland (described in more detail at Section 5.1) and throughout the British Empire (described in more detail at Section 1.2).

The evolution of the Irish Constabulary was in contrast to the policing developments occurring in London at approximately the same time. In 1829, Sir Robert Peel was the Home Secretary for the United Kingdom and no longer Chief Secretary for Ireland. In his capacity as Home Secretary, Peel oversaw the passage of the Metropolitan Police Act and the subsequent creation of the Metropolitan Police. Some historians contend that the motivation

[12] Tadhg O Ceallaigh, "Peel and Police Reform in Ireland, 1814-18," *Studia Hibernica*, No. 6 (1966), p. 1.
[13] Peter Joyce, "The emergence and development of professional policing," in *Policing: development and contemporary practice* (London: SAGE, 2011), p. 17.
[14] Prior to becoming the Irish Free State, Dublin Castle was the seat of British Rule.
[15] Peter Joyce, "The emergence and development of professional policing," in *Policing: development and contemporary practice* (London: SAGE, 2011), p. 18.

for introducing a 'new' form of policing to London "was a growing dissatisfaction with the existing apparatus of law enforcement: a dissatisfaction which reflected not so much some inherent, essential weakness in that apparatus, but rather changing assessments of what it should be expected to deliver."[16]

There is little doubt that average individuals at that time were keen to have a more efficient and effective form of law enforcement. But it is also true that they would have been very nervous about the creation of a force that had "powers, duties, access to the use of force, and the practical capacity to use it, which were not available to ordinary citizens."[17] That is why Sir Robert Peel was very conscious of the need to have the Metropolitan Police *be* civilian, but also that they be *seen* to be civilian. This was important because those being policed were citizens and the government had to take into account their wishes. Obviously this was less of an issue when dealing with those who were in the colonies, as they were only subjects and not citizens.

Four elements were key to the civilian model. First, the police should provide a proactive service, one that sought to prevent crime before it happened rather than merely investigate it after the fact. As a result, emphasis was placed on the "beat constable", an officer who would patrol a small geographic area on foot. The rationale was that the mere presence of law enforcement would discourage the commission of crime.

Second, policing should be done by consent of the public. This approach was embodied in the 'General Instructions' issued to the new recruits of the Metropolitan Police. "These declarations emphasised the importance of the police service operating with the support of those they policed, and the concern to secure a system of policing by consent influenced a number of developments affecting the manner in which the delivery of policing was constructed in its formative years."[18] The idea that the Metropolitan Police was reformed "root and branch" as of 1829 is erroneous; the seeds were planted in 1829 but reforms occurred throughout the 19th century and well into the next.

Third, Peel recognised that providing a regular wage to these police officers was another important element to 'professionalising' this service. Previously, watchmen or guards were employed by wealthy individuals or on an *ad hoc* basis; there was no dedicated group of men that would provide security. This completely changed with the introduction of the Metropolitan Police.

Fourth, in contrast to the Royal Irish Constabulary, the Metropolitan Police adopted a distinctly non-military approach to certain issues. For instance, they wore a blue uniform different from that used by the army or the rifle brigade, and they did not reside in barracks. Moreover, the Royal Irish Constabulary was regularly and visibly armed, whereas the Metropolitan Police occasionally carried guns but normally did not.

Despite being formulated by the same man, there were many differences between the Irish

[16] John Styles, "The Emergence of the Police - Explaining Police Reform in Eighteenth and Nineteenth Century England", *British Journal of Criminology* 27, no. 20 (1987), p. 20.
[17] Philip Stenning, "Ingredients for a good police/executive relationship," Paper presented at Commonwealth Human Rights Initiative Conference, 23-24 March 2007, New Delhi, India, p. 3: www.humanrightsinitiative.org/programs/aj/police/exchange/ingredients_for_a_good_police_executive_relationship.pdf (accessed on 22 July 2011).
[18] Peter Joyce, "The emergence and development of professional policing," in *Policing: development and contemporary practice* (London: SAGE, 2011), p. 11.

Constabulary and the Metropolitan Police. A possible explanation is that one model was for citizens whom he would have been far more accountable to, and one model was for subjects whom he would not have felt the same duty towards. Regardless, the fact remains that the distinct approaches, and how they were subsequently applied, had significant consequences for policing throughout the British Empire.

1.2 Policing in the British Empire

When looking at policing during the 1800s in England, its white colonies, and its non-white colonies, a few patterns emerge that are helpful in understanding how and why policing evolved the way it did on the Indian subcontinent. In 1867, the Irish Constabulary's performance during the Fenian Rising was greatly appreciated by Queen Victoria and raised its profile. For its efforts, the Queen bestowed the Constabulary with the title "Royal". At around this time, the Canadian Government was about to take control of large tracts of land from the private Hudson's Bay Company and a decision had to be reached about how to secure the vast region from Manitoba to the Rocky Mountains. Their particular concern was peacekeeping because deteriorating relations between the Hudson's Bay Company and Native people and Métis had dominated the period 1845-1870. As a result, the Royal Canadian Mounted Police was founded in May 1873 and it was decided that the force's job would be to solidify Canada's claim to the West, improve relations with First Nations and wipe out the illegal whiskey trade.[19] It was first known as the North-West Mounted Police and it was a paramilitary force modelled after the Royal Irish Constabulary.

Similarly, in 1800's Australia there was a need for police to patrol and monitor the vast countryside in order to counter the increasing threat posed by convicts that had escaped from prison (also known as bushrangers) and to adequately stifle any resistance by Aboriginals to what was then British rule. Any resistance by Aboriginals to the dispossession of their lands and resources, and to the disruption of their ways of life and socialisation practices, was classified as criminal activity.[20] As there was no military conquest of Australia, the police assumed a paramilitary role and featured in the forced removals of Indigenous peoples to new locations.[21] Although British law at the time bestowed "subject" status to all those born within His Majesty's dominions, Australia's police and Canada's North-West Mounted Police did not accord indigenous peoples the protection rights "subject" status was intended to impart.[22]

The type of policing that was adopted in non-white colonies was more akin to the type of policing encountered by indigenous peoples in white colonies. Notwithstanding that people born on the Indian subcontinent were also British subjects, the extractive economic relationship between Westminster and the people of South Asia meant that rights were only accorded to the extent that they did not interfere with any exploitative arrangement.

> The overriding consideration before those who designed the police organization in 1861 was to create an instrment in the hands of the – colonial – government for keeping the natives on a tight

[19] "RCMP: A Brief History", 22 June 2005, Canadian Broadcasting Corporation: http://www.cbc.ca/news/background/rcmp/
[20] Paul Hasluck, *Black Australians: A survey of Native Policy in Western Australia 1829 – 1897*, (Carlton: Melbourne University Press, 1970).
[21] Dr Christine Jennett, "Policing and Indigenous Peoples in Australia," Paper presented at the History of Crime, Policing and Punishment Conference convened by the Australian Institute of Criminology in conjunction with Charles Sturt University, Canberra, 9-10 December 1999.
[22] Amanda Nettelbeck and Russell Smandych, "Policing Indigenous Peoples on Two Colonial Frontiers: Australia's Mounted Police and Canada's North-West Mounted Police," *Australian and New Zealand Journal of Criminology* 43, no. 2 (August 2010).

> leash, not a politically neutral outfit for fair and just enforcement of law. Police was designed to be a public-frightening organization, not a public-friendly agency. Service to the people was not an objective of this design. It was designed in response to the social and political realities of the times: The paramount concerns were collection of land revenue and maintenance of law and order (a euphemism for what Justice Cornelius called the rule of danda (stick)). Both these – incompatible – functions were vested in a European officer, variously called Collector, District Officer, Deputy Commissioner or District Magistrate."[23]

British administrators and white settlers preferred the Irish Constabulary model for frontier territories where large tracts of land and untamed wilderness made, in their opinion, the urban-centric Metropolitan model inappropriate. For English subjects, adopting the Irish Constabulary model of policing was a choice that made sense to them for reasons of geography and for their own self-interested objective of suppressing possible revolts from hostile indigenous populations. "In colonies that had been acquired by conquest, from the Sind to Rhodesia, the indigenous legal system was ignored and a new imperial system imposed from above … Local law enforcement practices were invalidated and imperial structures imposed."[24]

A good example of this was in South Africa. When the British were trying to suppress revolts by the Boers in the occupied republics of Transvaal and the Orange Free State, the South Africa Constabulary was used extensively. The War Office pointed out that:

> The aim and duty of the Constabulary – should be to achieve prolonged, continuous and effective occupation of definite areas. Within their allocated areas the Constabulary should be perpetually active, familiarising themselves with the inhabitants of the country and rendering it untenable by small bodies of enemies or rebels. Occupied areas should contribute to the pacification of the country.[25]

After the conclusion of the Boer War, the Constabulary was seen as essentially a "white man's" police force and did not patrol African locations unless their was a threat that the disturbance would affect white areas. "The policing of African communities was of concern only where white interests were affected; crime amongst blacks living in the locations did not merit much attention."[26]

This experience is very different from non-white colonies where no choice was provided as to which model of policing was adopted. Instead, the use of the Irish Constabulary model in places like South Asia and South Africa was for the same reasons it was formulated in Ireland; it was an exceptionally effective means to control an otherwise hostile native population. "In Colonial Africa the West Indies, the Pacific, south-east Asia and in India race was a crucial element in policing. The structure of recruitment and command in these colonies was based on race. Gazetted officers were for the most part white, or different in race from those of the rank and file they commanded, and were therefore commonly recruited from outside the colony."[27]

[23] Muhammad Shoaib Suddle, "Reforming Pakistan Police: An Overview," 2002, p. 94: http://www.unafei.or.jp/english/pdf/PDF_rms/no60/ch05.pdf (accessed on 15 July 2011).
[24] Mike Brogden, "The Emergence of the Police – The Colonial Dimension," *British Journal of Criminology* 27, no. 1 (1987): 4-14, p. 14.
[25] Albert Grundlingh, "'Protectors and friends of the people'? The South African Constabulary in the Transvaal and Orange River Colony, 1900-1908," in *Policing the empire: government, authority, and control, 1830-1940*, eds. David M. Anderson and David Killingray (Manchester: Manchester University Press, 1991), p. 169.
[26] Ibid., p. 176.
[27] David M. Anderson and David Killingray, "Consent, coercion and colonial control: policing the empire, 1830-1940," in *Policing the empire: government, authority, and control, 1830-1940*, eds. David M. Anderson and David Killingray (Manchester: Manchester University Press, 1991), p. 7.

1.3 Country Selection

In order for this study to be of utility to decision-makers in Bangladesh, choosing the most appropriate countries for comparison is critical. Important factors to consider are:

- Economic development;
- Democratic development;
- Cultural/historical similarities;
- Demographic similarities; and
- Instructive experiences in the area of police reform.

On this basis, there are a number of countries that could have been selected for this study. However, the binding element of the chosen jurisdictions has been the shared colonial legacy of British administration in each country. While the British also administered countries like Australia, Canada, and New Zealand, these countries were allowed significant self-government at an early stage and therefore comparisons to them would not be very instructive for Bangladesh.

When looking to compare Bangladesh against international practice, greater emphasis will be placed on those reform efforts that have culminated in the passage of progressive legislation and are not merely proposals or draft bills. However, the struggles of police reform in jurisdictions that are similarly situated in terms of democratic and economic development, but that are currently only considering draft legislation, will still have their proposed bills examined.

An important caveat to make at the outset is that using overseas models as a template for reform can carry some risk. Socio-economic realities will inevitably differ between two countries which will prove challenging when trying to make equivalent comparisons; the best one can hope for is that enough similarities exist that some instruction is possible. A good example of this is Northern Ireland. David Bayley points out that the success Northern Ireland has had in reforming the police, after prolonged political conflict abetted by sectarianism and in the face of a continuing paramilitary criminality, suggests that there is hope for other countries with similar problems. At the same time, Northern Ireland had distinct advantages in reforming its police that many post-conflict countries do not have: a) a political settlement; b) shared democratic habits and an appreciation of the rule of law; c) a well developed capacity to govern; and d) rich civil society.[28]

This study will look to identify the overall merit of police reform initiatives in select jurisdictions, but it will also seek to emphasise those initiatives or philosophical approaches that have the most relevance for Bangladesh.

1.3.1 India

Both Bangladesh and India were part of British India and share a common history. In addition, by virtue of having both been governed by the British, the two countries share the same legislative framework. Important for the purpose of this study is that both have retained the

[28] David Bayley, "Post-conflict Police Reform: Is Northern Ireland a Model?" *Policing* 2, no 2 (2008): 233-240. A fifth advantage that Northern Ireland had was access to a great deal of resources. Many post-conflict countries may not have such access.

Police Act, 1861. Despite the fact that India is a federal state and Bangladesh is unitary, their relative experience with the Police Act, 1861 post-Partition should be informative.

Furthermore, the economic, demographic and cultural similarities between Bangladesh and India provide another reason to select India for this study. Both are developing economies with young populations. Also, the cultural and linguistic similarities between Bangladesh and some states in India (i.e. West Bengal) are an additional reason for comparing their experiences with policing.

1.3.2 Pakistan

Similar to India, selecting Pakistan for this study makes sense because of the shared colonial history with Bangladesh. The fact that both were one country for 24 years is another reason to investigate how they have respectively differed (or remained the same) in terms of police reform 40 years after having separated. Although Bangladesh and Pakistan are not culturally or linguistically very similar, they are both predominantly Muslim countries with essentially the same demographic and economic profile. Moreover, both countries have also historically struggled with the tension between military rule and elected governments.

Since Pakistan chose to update their police legislation in 2002, it will be interesting to examine what lessons can be derived from their experience and to identify possible avenues of action, as well as potential pitfalls to avoid.

1.3.3 Northern Ireland

As detailed in Section 1.1 and 1.2, the root of policing in British India can be traced back to the Constabulary model first implemented in Ireland. When Ireland was partitioned, with the south and east of the country becoming the Irish Free State in 1922, Northern Ireland remained a self-governing territory within the United Kingdom. Instead of adopting the Metropolitan model of policing, Northern Ireland retained the Irish Constabulary model but renamed their police the Royal Ulster Constabulary.

The violence and internal turmoil that afflicted Northern Ireland between 1968-98, and the challenges that this posed for policing, is not necessarily a unique experience. But what was unique was the efficacy of their police reform efforts after a peace agreement was reached in 1998. Northern Ireland's ability to emerge from decades of communal conflict and engage in a reform process that has been largely successful could provide critical lessons for Bangladesh.

1.3.4 South Africa

In some ways, South Africa is quite different from all other nations. Notwithstanding that 17 years have passed since its first free elections, the country is still trying to overcome the brutal legacy of apartheid. This alone makes South Africa a unique case study in post-colonial experiences. Nevertheless, the specific steps it took after 1994 to overhaul policing in a very challenging post-apartheid environment can have some instruction for Bangladesh.

While South Africa overall has enjoyed greater economic growth than Bangladesh, the fact remains that parts of South Africa suffer from poverty that is comparable to what is found in

Bangladesh. Thus, the challenge of finding resources to facilitate democratic policing is a factor in both countries.

1.3.5 Kenya

Kenya shares a number of characteristics with Bangladesh that make a comparison apt. First, the two countries have a common colonial history. As a result, British laws from the Indian subcontinent governed Kenya for a period of time (i.e. the Indian Penal Code, the Criminal Procedure Code, the Indian Evidence Act and the Police Act, 1861). Second, both Bangladesh and Kenya have unitary political systems with a national police force. Unlike Pakistan, India and South Africa (which have federal or quasi-federal structures of government), the challenge of policing a geographically large and heavily populated country is common to both Kenya and Bangladesh. Third, although both countries have very little in common culturally, linguistically or ethnically, they do share a similar economic and demographic profile.

1.4 Structure of Analysis

The countries selected for this study are at different stages in terms of their respective police reform efforts. Although the analysis that follows will be structured in exactly the same way for each country, its content will be contingent on the contextual realities of that particular jurisdiction. Each thread of analysis was selected because it addresses a central element to what constitutes better policing.[29]

1.4.1 Police-Executive Relationship

The parameters of the relationship between the police and the executive[30] can be hotly contested. Despite the fact that a civilian model of police has been in existence for nearly 200 hundred years, and extensive professional and academic debate has surrounded the issue for nearly as long, there is no one ideal model of police-government relations. Rather, three models are identified in this study and none of them exist in an airtight silo; depending on the circumstances of a particular situation, elements of one model may be imported to another model.

The first model of "full police independence" is one in which the police are immune and isolated from governmental intervention on a wide variety of matters. Underpinning this model is a faith in the expertise and professionalism of the police and a scepticism about whether politicians can or will be held accountable for their interventions in policing.[31]

[29] This study does not discuss conditions of police or training because such issues cannot be adequately addressed by statute. These involve issues of funding, which are outside the ambit of this study.
[30] "Executive" oversight of the police is generally performed by a ministry specially tasked with that responsibility. Usually the ministry is known as "Home" or "Interior". In South Africa, there is a ministry dedicated to "Police".
[31] Kent Roach, "The Overview: Four Models of Police-Government Relationships," *The Ipperwash Inquiry*, 29 June 2004, p. 51: www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/meetings/pdf/Roach.pdf (accessed on 22 June 2011). This model was best expressed by Lord Denning in *R. v. Metropolitan Police Commissioner, ex parte Blackburn*: "I have no hesitation, however, in holding that, like every constable in the land, [the Commissioner of the London Metropolitan Police] should be, and is, independent of the executive ... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone." [1968] 1 All E.R. 763, p. 769. It is important to

The second model of "operational responsibility" maintains that while the Chief of Police has the right to take operational decisions without requiring governmental direction, his/her decision may be subject to inquiry or review.[32] Like other public officials, the Chief of Police must be fully accountable to the institutions of that society for the due performance of his/her functions and cannot be said to be independent. "Chief officers should be accountable, and be seen to be accountable, for reform of the police service, the positive development of policing in general and working with police authorities in terms of the performance of their particular force."[33] This operational responsibility will extend to matters of both law enforcement and administration.

Regarding law enforcement, the police must be able to engage in independent decision-making when it involves enforcing the law in individual cases. This includes important decisions about whom to investigate, search, question, detain, arrest and prosecute in a particular case. Governments are not precluded from advising police of their views with respect to police decisions that may have significant public policy or public interest implications (e.g. matters of national security, or matters that have repercussions for international relations).[34]

Regarding administration, governments must not be involved in decisions regarding the appointment, assignment, deployment or promotion of officers other than the Chief of Police. This power must be within the purview of the Chief of Police.[35] Moreover, the Chief of Police must only receive governmental communication from the concerned Minister and must be given suitable protection against arbitrary removal (i.e. removal should not be permitted unless there is evidence of misconduct/incapacity or until after the expiration of a fixed term).[36]

The third model of "governmental policing" is one in which the police are viewed as civil servants subject to Ministerial control and protected only by their ability to refuse to obey unlawful orders and whatever other protections that civil servants may enjoy. This model is sceptical of full police independence and has more faith in government. Recognising that policing issues often affect more than just the Home Ministry, it places less emphasis on Ministerial responsibility and more on centralised governmental decision-making.[37]

Irrespective of what model a country selects, some elements will be common. The police and political executive are both bound together in the common endeavour of preventing and investigating crime, maintaining law and order and ensuring that the people have a well

note that notwithstanding Denning's oft-quoted passage from this judgment, the London Metropolitan Police do not in practice enjoy full police independence. During the August 2011 riots in London, Home Secretary Theresa May ordered the mobilisation of special constables and cancelled all police leave so that the crisis could be addressed. See "Riots: Police defend handling of crisis after criticism," *BBC News*, 12 August 2011: http://www.bbc.co.uk/news/mobile/uk-14501236 (accessed on 16 August 2011).

[32] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 6.20.

[33] *Policing: Building Safer Communities Together*, United Kingdom Home Office, November 2003, p. 16.

[34] Philip Stenning, "Ingredients for a good police/executive relationship," Paper presented at Commonwealth Human Rights Initiative Conference, 23-24 March 2007, New Delhi, India, p.10: www.humanrightsinitiative.org/programs/aj/police/exchange/ingredients_for_a_good_police_executive_relationship.pdf (accessed on 22 July 2011).

[35] Ibid., p. 12.

[36] Ibid., p. 11. The principle of police accountability for their actions (through standard political, legal, and administrative processes) applies in all cases, regardless of whether such actions are exclusively within the purview of the police.

[37] Kent Roach, "The Overview: Four Models of Police-Government Relationships," *The Ipperwash Inquiry*, 29 June 2004, pp. 6-7: www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/meetings/pdf/Roach.pdf (accessed on 22 June 2011).

functioning essential service that protects life, property and liberty. Regardless of the model, the roles, powers and responsibilities of both the police and executive must be properly articulated in order for policing to work in an efficient, unbiased, and responsive manner.[38] By looking at how other countries treat this difficult aspect of policing, and also considering the current legislative framework for the Bangladesh Police, this study will assess what model of police-executive relations is most suitable for Bangladesh.

1.4.2 Democratic Accountability

Democratic accountability is when the people's representatives tell the police what sort of service they want, and then hold the police accountable for delivering it.[39] While "operational responsibility" may be given to the police so that they can wield the necessary professional discretion to deliver the desired service, at the end of the day they are ultimately accountable to the government for whether that desired service is in fact delivered or not.

In order to avoid the problem of having the police receive express direction from the executive, governments often choose to have disciplinary and management matters overseen by an autonomous body that serves as a buffer between the police and the executive. This body is sometimes referred to as a "National Police Commission" or "Policing Board", and if properly constituted it can be very effective in helping to shape policy, set budgets, and oversee ethics.[40] Although long-term policy will usually remain vested with the concerned Minister, a National Police Commission could have jurisdiction over medium-term policy.

Moreover, this body can also limit potential political interference in the selection, transfer, and removal of the Chief of Police. Given the importance of the Chief of Police in maintaining the integrity of the service as a whole, it is vital that his/her selection is based on merit and not political considerations. Having an autonomous body involved in candidate selection would undoubtedly strengthen the vetting process. For those same reasons, his/her transfer or termination must be a matter that involves the autonomous body.

In addition to addressing the sensitivities raised by the police-executive relationship, this autonomous body can also be instrumental in evaluating police performance for economy, efficiency and effectiveness. To this end, the body can formulate specific performance indicators and performance standards that the police service can meet. Having benchmarks makes it much easier for the police to understand and meet the community's expectations.

Finally, in order for the autonomous body to have credibility, it is critical that it operates in a transparent fashion and that it is composed of the important stakeholders. "The way to deal with the temptations governments will inevitably face to use the police for their own partisan ends is to make the activities of the police and the decisions of the government with respect to

[38] Commonwealth Human Rights Initiative, "The Police-Politician Paradigm: The Police-Executive Relationship," 2010, p. 1: www.humanrightsinitiative.org/programs/aj/police/india/initiatives/police_executive_paradigm_stenning.pdf (accessed on 22 July 2011).
[39] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 5.4.
[40] Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, 2005, pp. 37-38: www.humanrightsinitiative.org/publications/chogm/chogm_2005/chogm_2005_full_report.pdf (accessed on 15 June 2011).

them as transparent as possible to as many people as possible."[41] Since public trust and confidence in the police and its related institutions is so important to successful police reform, the autonomous body should make an effort to hold public meetings wherein the community's input is invited. Regarding composition, the body should include the government, the opposition and independent members who are respected and representative of the community.

If the autonomous body can successfully carry out these enumerated responsibilities, then the police will be held accountable to elected representatives for their performance and undue political interference can be mitigated, if not altogether avoided.

1.4.3 External Accountability

Due to the exceptional scope and nature of the police's power to arrest, search and otherwise deprive the citizenry of their civil liberties, the government and community have to be vigilant that those powers are not abused. The autonomous body described in Section 1.4.2 is an oversight body which requests information and makes inquiries of the police before a relevant decision is made. Its function is to examine decision-making on an ongoing basis. If it performs its oversight function well, it can help to prevent abuse before it happens.

However, it is inevitable that the police will at some point in time purposefully or mistakenly exceed their jurisdiction and when that happens, a mechanism must be in place to review such conduct. Nearly every police organisation has some internal procedure designed to receive complaints and to guarantee discipline, effectiveness and efficiency. Normally these internal procedures rely on the police investigating other police. Even though this usually means that the investigators have the necessary skills to conduct a proper inquiry, there is an open question as to whether the investigation will be truly unbiased and objective. "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."[42]

The problem is that the public usually regards internal inquiries with suspicion because more often than not, they are lengthy and lack transparency. As a result, there is a discernable trend away from traditional "police investigating police" models in developed countries. "This trend seeks to move beyond police control of the investigative and adjudicative processes toward more direct and expansive civilian involvement in the investigation of complaints against police as well as the adjudication of outcomes … It would seem that the issue is no longer whether civilian review is desirable or possible but how civilian involvement in the investigation and disciplinary process can be most effective in satisfying public accountability while also obtaining the police cooperation necessary for good internal investigations."[43] To help ensure greater public

[41] Mike Brogden and Clifford Shearing, *Policing for a New South Africa*, (London: Routledge, 1993), p. 80.
[42] Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, 2005, p. 53: www.humanrightsinitiative.org/publications/chogm/chogm_2005/chogm_2005_full_report.pdf (accessed on 15 June 2011).
[43] Dr. Christopher Murphy and Paul F. McKenna, "Police Investigating Police: A Critical Analysis of the Literature," Commission for Public Complaints Against the RCMP: http://www.cpc-cpp.gc.ca/prr/inv/police/projet-pip-pep-eng.aspx (accessed on 3 July 2011).

confidence in the police, it is not sufficient for the police to be accountable; they must be *seen* to be accountable. Thus, in the interest of time and space, this study will focus on external complaints bodies rather than internal disciplinary oversight, which usually involves detailed procedures not found in legislation but set out in regulations and/or departmental circulars.

Professor Peter Stenning has identified certain elements to having a successful complaints body:[44]

- A sound legislative foundation;
- Dedicated, competent, experienced and trained personnel to administer it;
- A reasonable level of commitment and cooperation on the part of police;
- An adequate degree of confidence in the process by the public and potential complainants; and
- The commitment of adequate resources for full and effective implementation of the process.

Professor Stenning also recommended that the process should be: accessible, fair to complainants and police officers, respectful of human rights and dignity, open and accountable, timely, thorough, impartial, independent, should take account of both the "public interest" and the interests of the parties involved in the complaint, and should avoid unnecessary duplication or overlap with internal disciplinary and grievance processes.[45]

As with the autonomous oversight body, the composition of the review body is very important. The public will not have confidence in it if it is mostly composed of former or current government and police officials. Rather, at least half the members should be independent, well respected, and representative of the community.

It is also important for this review body to have *mero motu*[46] or *suo moto*[47] powers. In some cases, an individual is unable or unwilling to initiate a complaint against police wrongdoing because s/he is afraid of the consequences. In other cases, the "harm" at issue is not specific to a particular individual but a policy matter that affects the public generally.[48] Under these circumstances, it is crucial that the review body has the capacity to initiate on its own an inquiry into the matter.

If accountability for wrongdoing is not sufficiently stringent and/or consistently applied, it naturally follows that impunity will become an issue. If there is no disincentive to be corrupt, there is a greater likelihood that the police will take advantage of the situation. Therefore, a key element to police reform is the creation of a robust, competent and sufficiently resourced independent complaints body that has the confidence and trust of the public.

1.4.4 Community Engagement

Since the inception of the Metropolitan Police, there has been an acknowledgment that democratic

[44] Philip Stenning, *Review of Part 9 (Complaint Procedure) of the British Columbia Police Act as amended by Section 36 of SBC 1997, c.37*, August 1998.
[45] Ibid.
[46] *Mero motu* means, "Of one's own accord, voluntarily and without prompting or request".
[47] *Suo moto* means, "On its own motion".
[48] A good example of this is when the Commission for Public Complaints Against the RCMP initiated a special investigation into the use of conducted energy weapons (also known as "tasers") by the RCMP. See *RCMP Use of the Conducted Energy Weapon (CEW) – Final Report*, 12 June 2008: www.cpc-cpp.gc.ca/af-fr/PDF/FinalCEWReport_e.pdf (accessed on 10 July 2011).

policing cannot occur without the consent and cooperation of the community. However, in developing democracies, particularly in South Asia, there has traditionally been very little attention paid to this issue. While things are slowly starting to change in this regard, there is considerable progress yet to be made.

Given the power imbalance between the public and the police, it is incumbent on the police to establish a constructive relationship with the community it serves. It is unrealistic to expect lay citizens, diverse in interest and unpaid to secure public safety, to take the initiative in fostering better police-community interaction. With the resources at their disposal, a specialised mandate, and government-sanctioned authority, the police are obviously in a better position to take the lead on this issue. Yet, notwithstanding the fact that they are in a better position to initiate more vibrant police-community relations, the police can sometimes exhibit reluctance in this regard. As a result, it can be helpful to statutorily create formal bodies that compel the police and community to work together on matters of crime prevention and public safety. If done properly, these cooperative bodies can ensure that decision-making is decentralised and that local issues of law enforcement are dealt with locally.

A good example of healthy collaboration between the public and the police is "community policing". Although a precise definition of community policing is subject to debate, it is generally acknowledged that there are some fundamental features of community policing in order for it to be termed as such:[49]

- Practice policing by consent not coercion;
- Be part of the community not apart from it;
- Find out (together with the community) what the community's needs are;
- Work in partnership with other agencies and the public;
- Tailor the 'business' of policing to meet the community's needs;
- Be accountable for its 'business service'; and
- Provide a quality service.

To ensure the success of community policing in a particular area, police authorities must consult with the public when formulating the policing plan. Neglecting to do so will alienate locals and increase the likelihood that they will have overlooked something that is important to the community. Finally, lay visiting schemes to designated places of detention is another way for the police and the public to foster trust and increase transparency. Although the police become more vulnerable to possible criticism by allowing appointed persons the ability to audit, without prior announcement, station houses or other places of detention, the benefit to both the police and the public is that by opening their doors in this way, the community will have greater confidence and trust in their operations.

In sum, policing is a matter for the whole community, not just any one stakeholder. "Policing should be a collective community responsibility: a partnership for community safety. This sort of policing is

[49] South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Philosophy and principles of community-based policing*, September 2006, p. 4: www.seesac.org/uploads/studyrep/CBP_ENG_3rd_edition_FINAL.pdf (accessed on 14 June 2011).

more difficult than policing the community. It requires an end to ‘us’ and ‘them’ concepts of policing. If it is to work, it has to become the core function of a police service, not the work of a specialized command or a separate cadre of police officers.”[50]

[50] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 1.16.

Chapter 2

ANALYSIS OF THE POLICE ACT, 1861

"With respect to policing, the Police Act, 1861 remains the operating legislation for Bangladesh, India at the national level as well as some of its states, and Sindh in Pakistan. Additional 19th century laws, like the Code of Criminal Procedure, 1898 and the Penal Code, 1860 and the Police Regulations of Bengal, 1943 also continue to influence the manner in which the Bangladesh Police performs its duties."

2. ANALYSIS OF THE POLICE ACT, 1861

Despite decades having passed since Partition, pre-Independence legislation remains on the books throughout modern South Asia and continues to play a central role in the criminal justice systems of the region. With respect to policing, the Police Act, 1861 remains the operating legislation for Bangladesh, India at the national level as well as some of its states, and Sindh in Pakistan. Additional 19th century laws, like the Code of Criminal Procedure, 1898 and the Penal Code, 1860 and the Police Regulations of Bengal, 1943 also continue to influence the manner in which the Bangladesh Police performs its duties. However, examining the impact of these statutes and regulations on policing in Bangladesh is outside the scope of this study. Although reference may be made to such statutory instruments, the focus will be on the Police Act, 1861.

The genesis of the Irish Constabulary model of policing, and its influence on law enforcement in the British colonies, was examined in the Introduction. This chapter will continue to survey that relationship in the context of South Asia by examining the events which lead up to the enactment of the Police Act, 1861 and exploring the merit of retaining it 150 years later.

2.1 History of the Police Act, 1861

Although British presence in South Asia can be traced back to 1608, when the East India Company was first given its Charter to trade, it was not until 1757 that the Company began to explicitly rule over some of the Princely States in the region. The Company continued their suzerainty until 1858, when India's War of Independence in 1857 (also known as the "Sepoy Mutiny") caused governance on the subcontinent to transition from the Company to the Crown (also known as the "British Raj').

From 1608 to the mid 1800's, policing in South Asia oscillated between various systems because the British were unsure how to successfully incorporate local forms of policing (i.e. Kotwal or Village Watchmen) into the governance structure they wished to implement. "Faced with the quandary of ruling by coercion or consent, they achieved a compromise in a system of law that incorporated some local practices while delegitimizing others. The police force was of the people, but insulated from them and not governed by them. Legal discourse was reconstructed in imperial terms. The continuing dilemma was to persuade the indigenous population that it was not sufficiently advanced to sustain its own judicial practices and law enforcement procedures until it had absorbed the colonial legal construction."[51]

However, the policing terrain began to take greater shape in 1843. "After the annexation of Sindh in 1843, one of the first measures undertaken by Sir Charles Napier was the organization of a regular police force. Napier took as his model the Irish Constabulary, as the circumstances of the newly conquered province required a semi-military rather than a purely

[51] Mike Brogden, "The Emergence of the Police – The Colonial Dimension," *British Journal of Criminology* 27, no. 1 (1987): 4-14, p. 10. In fact, the Indian Police Commission of 1860 explicitly stated that with respect to the Village Watchmen, "he will obey the orders of the organized Police, but will not be incorporated into the body." See the Report of the Indian Police Commission, 1860, paragraph 23: www.police.pondicherry.gov.in/Police%2520Commission%2520reports/Police%2520commission%2520report%25201860.pdf (accessed on 14 June 2011).

civil force."[52] There were two important features of this model that made it very different from the previous types of policing used: first, the police were to be kept entirely distinct from the military in their support of the government; and second, the police were to be an entirely independent and dedicated body to assist civilian authorities in discharging their responsibilities for law and order, but under their own officers.[53]

The import of the Royal Irish Constabulary model to India has been harshly criticised.

> The primary justifications for this colonial police were undoubtedly the exigencies of trade and company profit. The emphasis was on order maintenance, on keeping the trade routes safe and building a colony that would be the jewel in the crown … It was natural that the British would not let the police be under the control of the subjugated people and be a part of the community since that would have made the Raj redundant. The rule through a small number of British officers over the millions of Indians had to be largely symbolic, based on an implied authority and total submission of the people. The Indian police had to be modeled after the colonial Royal Irish Constabulary rather than the Metropolitan Bobby to ensure that it would maintain a distance from the native people.
>
> Accordingly, despite the obvious success of the Metropolitan model, its extension in the same period to 178 English towns and boroughs through the Municipal Corporations Act in 1835, the British rulers never implemented this system in India nor in any of their non-English colonies. The lessons learnt in controlling the Irish population, the objectives of maintaining British hegemony and the racial superiority all contributed toward the refinement of the colonial model rather than the Metropolitan one in all the colonies. This model was unexpectedly very successful and helped Britain rule over vast tracts of lands where the sun never set.[54]

Administrators outside of Sindh appreciated Napier's reforms because they were contending with increasing levels of lawlessness. The move to having a dedicated Superintendent of Police for each district, whose job was solely ensuring law and order and the prevention and detection of crime, was an appealing way to address the rampant dacoity that was taking place.[55] However, even though this system was predicated on the reasonable premise that dedicated personnel would develop into a more professional force, the system lacked logical finish. "Paradoxically, the district heads of police were organizationally under the command of their provincial chief, the captain of police, while operationally each one of them was subject to orders of his respective civilian authority. In essence, the senior officers of the force were merely to be good managers of the men under their command while the District Officers, apart from their revenue and judicial functions, were tasked with the responsibility of maintaining law and order in their respective districts."[56] This "dual control" later became entrenched in the Police Act, 1861 and is discussed in more detail at Section 2.2.

Also around this time, in 1845, Governor General Dalhousie adopted the London Metropolitan Police model for Calcutta whereby a Commissioner of Police was appointed with the powers of a justice of peace to preserve law and order, detect crime and apprehend offenders. It has been argued that, "where the indigenous population was in a minority and/or policing settlers was a priority, such as in the British Indian cities of Calcutta (now Kolkata), Madras

[52] Report of the Indian Police Commission, 1902-03, Government Central Printing Office, Simla, 1903, p.15 (Chapter 1: Reforms in Bombay): http://ebookbrowse.com/the-indian-police-commission-1902-03-pdf-d14229902 (accessed on 14 June 2011).
[53] Muhammad Shoaib Suddle, "Reforming Pakistan Police: An Overview," 2002, p. 96: http://www.unafei.or.jp/english/pdf/PDF_rms/no60/ch05.pdf (accessed on 15 July 2011).
[54] Dilip K. Das and Arvind Verma, "The Armed Police in the British Colonial Tradition - The Indian Perspective," *Policing: An International Journal of Police Strategies & Management* 21, no. 2 (1998): 354-367, pp. 360-361.
[55] Report of the Indian Police Commission, 1902-03, Government Central Printing Office, Simla, 1903, Chapter 1: http://ebookbrowse.com/the-indian-police-commission-1902-03-pdf-d14229902 (accessed on 14 June 2011).
[56] Muhammad Shoaib Suddle, "Reforming Pakistan Police: An Overview," 2002, p. 96: http://www.unafei.or.jp/english/pdf/PDF_rms/no60/ch05.pdf (accessed on 15 July 2011).

(now Chennai) and Bombay (now Mumbai), alternative policing systems similar to the English system emerged."

The irony is that the idea of extending the Metropolitan model to non-urban areas was considered as early as 1838 by the Bird Committee. The Bird Committee was tasked to look into the "desirability" of introducing to India police reforms similar to those Peel had introduced in London in 1829. "After stressing that the chief cause of police inefficiency was its inadequate supervision, the Committee recommended that control over police be entrusted exclusively to an officer other than the Collector."[57]

This suggestion was resurrected after the Torture Commission of 1855 released its report, which excoriated revenue authorities in Madras for misusing their police powers to extort revenue from poor peasants. When drafting reforms to reflect the concerns expressed in the Torture Commission report, it had been the original intention of the Directors of East India Company to deprive the Magistrate of all executive control over the police.

> The Directors issued orders clearly emphasising that further organizational development of police throughout the sub-continent would proceed on the basic premise that the District Magistrate would seize to have any role in the affairs of police. In line with the basic principles of a modern organization, they decided to commit the police exclusively to a – European – superintendent of police responsible only to his departmental hierarchy. In what may be termed as the most important policy directive – of 24 September 1856 – for the reorganization of police throughout British India, the Directors observed that the police in India had lamentably failed in accomplishing the tasks for which it was established. Identifying ineffectual and irrational control by the District Magistrate as one of the major causes of police failure, they directed: The management of the police of each district be taken out of the hands of the Magistrate and be committed to an European officer with no other duties and responsible to a General Superintendent of Police for the whole presidency.[58]

However, the 1857 War of Independence changed everything. On 10 May 1857, Indian sepoys in the town of Meerut mutinied against their senior British officers of the East India Company. The rebellion soon spread to many parts of northern India and was not fully contained until 20 June 1858. The geographic spread of the revolt, the number of sepoys involved, and the subsequent loss of life were all factors that greatly troubled the British and forced a reorganisation of British rule on the subcontinent. The Company was dissolved and India became directly controlled by the Crown.

It has been argued that "the implementation of the 1856 directive could have rid the police of many of its chronic organizational ills, but the 'Mutiny' of 1857 completely transformed the whole liberal perspective. The clock was turned back and tightening of control over police was felt a more compelling necessity both to rein in the natives and prevent policemen from ever falling into the footsteps of mutineers. The historic decision regarding separating the police from the executive authorities was withdrawn, and it was strongly advocated that with the judicial and police powers concentrated in the same hands, the District Officer would be more effective in keeping the junior police ranks loyal to the rulers."[59]

The recommendation to centralise such control with the District Officer (or "Magistrate") was made by the Indian Police Commission of 1860. The Commission, headed by Mr. M.H.

[57] Ibid., p. 97.
[58] Ibid.
[59] Ibid.

Court as President, suggested the revamp of policing on the subcontinent. One of its more important recommendations was the empowerment of the District Magistrate vis-à-vis the police:

> We have arranged for this force being in all respects subordinate to the Civil Executive Government, and for its being efficient instrument in the hands of the Magistrate for the prevention and detection of crime, and under his control for the criminal administration of the District. We have aimed at placing the relations between the Magistrates and the Officers of the Police Force on a satisfactory footing and at preserving the responsibility now vested in the Magistrate for the conduct of the Criminal Administration; and on the other hand we have taken care to secure to the Police Officers that position which is necessary to the discharge of their responsibility for the efficiency of the Police.[60]

The second major reform was to make the police a civilian force rather than a military one. Given that armed 'natives' in the military corps had been the ones to rebel in 1857, the British were acutely aware of the continued risk in relying too much on a militarised arrangement.[61] In addition, there were concerns expressed about the continued expense of maintaining a substantial military presence.[62] As a result, the Commission recommended the following:

> We propose to from a purely Civil though well organized Constabulary, quite distinct from the Military Force, subordinate to the Civil Government, and at the disposal of the Magistrates, capable of discharging all civil duties whatever, as described in the preceding par. 9, with vigour and effect, and requiring no aid whatever from any Military or semi-Military body, in the performance of the ordinary Police work of the country.
>
> It is obvious that a Police Force, which is to do this work really well, must be *thoroughly* organized. We have therefore provided a complete Civil organization for the whole body, from the Inspector General to the common Constable. Farther, we have been careful to provide a complete system of *supervision by European Officers*. The want of this, has, we believe been one of the greatest disadvantages of the Civil Police system heretofore existing in India.[63]

The Commission's recommendations were consolidated in the form of a draft Bill that eventually became the Police Act, 1861.

2.2 Police Act, 1861 and Bangladesh

In the years following the enactment of the Police Act, 1861, the state of policing in British India degenerated. To address some of the systemic problems that had emerged, the Indian Police Commission of 1902-1903 was set up under the Chairmanship of Sir A.H.L. Fraser in order to identify possible ways in which police functioning could improve. When reviewing the state of policing 40 years after the introduction of the Police Act, 1861, the 1903 Commission concluded that "the police force is far from efficient, it is defective in training and organization, it is inadequately supervised, it is generally regarded as corrupt and oppressive, and it has utterly failed to secure the confidence and cordial cooperation of the people."[64] Many of the points raised by the 1903 Commission, such as abysmal pay and

[60] Report of the Indian Police Commission, 1860, paragraph 7: www.police.pondicherry.gov.in/Police%2520Commission%2520reports/Police%2520commission%2520report%25201860.pdf (accessed on 14 June 2011).
[61] Ibid., paragraph 19.
[62] Ibid.
[63] Ibid., paragraphs 13 and 14.
[64] Report of the Indian Police Commission, 1902-03, Government Central Printing Office, Simla, 1903, p. 149: http://ebookbrowse.com/the-indian-police-commission-1902-03-pdf-d14229902 (accessed on 14 June 2011).

insufficient training as reasons for poor police performance, are as true today as when they were raised over 100 years ago.

For instance, the commissioners wrote that "it is essential for real reform that there should be a bold increase in the wages of a staff which wields so great a power, and in the more careful supervision of their work ... There is no province in India to which these remarks may not be applied; though there is no other province in which the necessity for real reform is more urgent than in Bengal."[65] But interestingly, on the point of greater supervision, the 1903 Commission did not suggest that it was the Magistrate who should be given more power to oversee the police. Rather, the Commission felt that superior officers' sense of responsibility had been weakened by a degree of interference never contemplated by the authors of the system.[66] "The subordination of the Superintendent to the District Magistrate has been carried much further than the Commission and the Legislature contemplated."[67]

The Police Act of 1861 provided for the dual control of the police. Section 4, paragraph 2 of the Act stated that "The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, *under the general control and direction of such Magistrate*, be vested in a district superintendent and such assistant district superintendents as the Provincial Government shall consider necessary (emphasis added)." This meant that control of administrative, technical, financial, professional and organisational issues were under the purview of the Inspector General through his deputies; and the lateral general control and direction of the police resided with the District Magistrate.[68]

However, the 1903 Commission felt that some Magistrates were abusing the dual control provided for under the Police Act. They acknowledged that good Magistrates interfered in the way they did because they did not have confidence in the Superintendent of Police to do his job properly; but the Commission felt that this concern was taken too far in practice:

> District Magistrates interfere too much in some provinces (especially in Bengal); and that constant interference in details is one of the causes of the incapacity and recklessness of some Superintendents.) Superintendents should be under the general supervision and control of District Magistrates. They should be advised, and reported if recalcitrant. Unwise and unjust punishments must be checked, and improper appointments must be prevented. But official interference in detail should ordinarily be by departmental superiors. Superintendents should not be in a manner which deprives them of influence over their men and of interest in their work. The language of the police manuals of almost all provinces has the same tendency to undue interference. They speak of the Magistrate as "entirely responsible for the peace and criminal administration of his district," and of the Superintendent as "his assistant for police duties, and, as such, bound to carry out his orders." "The District Superintendent's office is virtually a branch of the District Magistrate's headquarters office." This is going too far.[69]

Interestingly, even though the Commission found that the application of dual control had many shortcomings, they firmly believed it should be maintained because "it was essential to preserve the responsibility of the District Magistrate for the general success of the criminal

[65] Ibid., p. 19 (Chapter 2: Popular opinion regarding the police and their work).
[66] Ibid., p. 18 (Chapter 1: Conclusion).
[67] Ibid., p. 17 (Chapter 1: The present position).
[68] Postings and transfers of Superintendents of Police and officers senior to them were the concern of the provincial government, not of the Inspector General. See Muhammad Shoaib Suddle, "Reforming Pakistan Police: An Overview," 2002, p. 98: http://www.unafei.or.jp/english/pdf/PDF_rms/no60/ch05.pdf (accessed on 15 July 2011).
[69] Report of the Indian Police Commission, 1902-03, Government Central Printing Office, Simla, 1903, pp. 83-84 (Chapter 6: Undue Interference): http://ebookbrowse.com/the-indian-police-commission-1902-03-pdf-d14229902 (accessed on 14 June 2011).

administration of the district, and to afford him prompt means of ensuring the obedience of the organised constabulary to his lawful orders."[70] Essentially, because the deplorable performance of police necessitated oversight, the 1903 Commission felt that there was no other system available but dual control in order to keep errant policemen in line. The pressing question for this study is whether that form of dual control remains appropriate for modern Bangladesh.

Despite the recommendations of Fraser's Commission, very few changes were made to the Police Act, 1861. Thus, it should come as no surprise that calls for reform of policing on the subcontinent have not subsided with the passage of time. In the aftermath of Partition, Bangladesh (then East Pakistan) had retained the 1861 Act in its entirety. In 1948, when the East Pakistan police were agitating in Dhaka, a six-member Commission was formed to reform the police, with Justice Sahabuddin as the President. This Commission gave its report in 1953, but it was not implemented. In fact, from 1960 to 1989, a period of time that covered Bangladesh as East Pakistan and as an independent state, nine police commissions were established to reform the police but successive governments only ever partially implemented recommendations and never took concrete measures to correct the ills that continue to plague policing in South Asia.[71] Subsequent to Independence in 1971, Bangladesh has made very minor amendments to the Act.

The Police Act of 1861 has been harshly criticised by informed scholars. "The Indian Police Act of 1861 was primarily a mechanism to subjugate the people, and the traditional cooperation of the community was lost sight of in the concerns for law and order. The imperative need was to develop a sense of fear of authority in the entire population, and it was achieved through this system of ruler's police. The police were to be shaped as an instrument of the Raj, one where men were disciplined, armed and without hesitation would follow British officers' orders."[72]

2.2.1 Police-Executive Relationship

Notwithstanding minor adjustments to the Police Act, 1861, or unique legislative developments at the metropolitan level, police-executive relations in Bangladesh have remained largely the same for decades. The relevant provisions of the Police Act are:

> **3. Superintendence in the Government** - The superintendence of the police throughout a general police-district shall vest in and shall be exercised by the Government; and, except as authorized under the provisions of this Act, no person, officer or Court shall be empowered by the Government to supersede or control any police functionary.
>
> **4. Inspector-General of Police, etc.** - The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspector-General as to the Government shall seem fit.
>
> The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Government shall consider necessary.

[70] Ibid., pp. 82-83 (Chapter 6: The District Magistrates).
[71] Sheikh Hafizur Rahman Karzon, "Bangladesh Police: Existing problems and some reform proposals," *The Law and Our Rights – The Daily Star*, 14 October 2006: http://www.thedailystar.net/law/2006/10/02/index.htm (accessed on 1 July 2011).
[72] Dilip K. Das and Arvind Verma, "The Armed Police in the British Colonial Tradition - The Indian Perspective," *Policing: An International Journal of Police Strategies & Management* 21, no. 2 (1998): 354-367, p. 361.

5. Powers of Inspector-General. Exercise of Powers - The Inspector-General of Police shall have the full powers of Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Government.

12. Power of Inspector-General to make rules - The Inspector-General of Police may, from time to time, subject to the approval of the Government, frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

One of the greatest shortcomings of Section 3 of the Police Act, 1861 is that it does not define "superintendence". Making reference to the discussion found at Section 1.4.1, police-executive relations in Bangladesh generally follow the third model of "governmental policing", wherein the police are viewed as civil servants subject to Ministerial control and protected only by their ability to refuse to obey unlawful orders and whatever other protections that civil servants may enjoy. Most people would agree that in a democracy the police should ultimately be accountable to democratically elected leaders. However, the problem with the word "superintendence" is that it is so vague and non-descript that it provides very little guidance on how to set out, in a democratic context, the parameters of the police-executive relation. The fact that "superintendence" is such a poorly understood word has permitted those governments that follow the 1861 Act to use the police to serve the partisan interests of the regime in power.[73]

Another significant problem with the Police Act of 1861 is the issue of dual control. Although the statute provides the Inspector-General of Police (IGP) and his deputies with administrative control over the police, such as the ability to make rules that would facilitate efficiency, they are able to wield such power only under the general control and direction of a Magistrate. As detailed in Section 2.2, commissions dating as far back as the Indian Police Commission 1902-03 have expressed the view that this dual control at the district level from a functionary *outside* the police system erodes the sense of full responsibility that should be rightly borne within the system. "The frequent by-passing of the normal chain of command results in the atrophy of the supervisory structure. It, therefore, fails to operate effectively even in matters which do not attract any such extraneous interference."[74]

The counterargument is that in the absence of such dual control, there is no other mechanism provided for under the Act that ensures oversight of the police and makes certain that they are efficiently and effectively safeguarding public safety and held accountable for any excess or transgression of their authority. By having a District Magistrate monitor the police, as part of his overarching responsibility to ensure the smooth functioning of criminal administration in his district, there is a built-in institutional check on potential police misconduct. While it is true that there is no other external oversight or review mechanism provided for under the Act, this argument misses the point.

[73] G.P. Joshi, *Controlling the Police: An Analysis of the Police Acts of Commonwealth Countries*, Working Paper No.13, International Police Executive Symposium, October 2007: http://www.ipes.info/wps/WPS%20No%2013.pdf, at p. 5

[74] National Police Commission, Second Report, 1983, paragraph 15.19. Also see the Report of the Indian Police Commission, 1902-03, at page 63: "The requisite control over the Superintendent's exercise of his disciplinary powers is afforded by the right of appeal to the higher officers of the department and by their supervision. There is no necessity for the dual control, and the undue interference of the District Magistrate, besides being unsound in principle, has led to the practical elimination of the Deputy Inspector-General."

The key question, which will be answered in the last chapter, is: *Given the rights and protections afforded by Bangladesh's Constitution, as well as the fact that the people of Bangladesh are able to freely express their democratic aspirations, is strict dual control (a type of supervision rooted in an undemocratic tradition) the most suitable form of oversight for a modern and developing country?*

It is clear that under the Police Act, 1861, dual control provides the only means of police oversight. Thus, if dual control is eliminated and replaced with nothing, the situation will become "intolerably dangerous" since there will be no robust accountability of extensive and oppressive police powers.[75] However, as pointed out in Sections 2.1 and 2.2, this regime of oversight was not constructed with a democracy in mind.

The people of Bangladesh have acknowledged the problems associated with illegitimate interference in operational policing matters and have expressed their desire for reform. A baseline survey on people's perception of the Bangladesh Police, conducted by the Police Reform Programme of the United Nations Development Programme, revealed that the public believes police performances are obstructed by outside interference, influence or pressure, including political and social pressure.[76] In addition, Saferworld also conducted a people's perception survey and found that 58 percent of respondents said that there was too much political interference in the work of the security services and 62 percent said that politicians have too much say over how the police perform their duties. Several respondents also argued that political interference is the most serious obstacle to police reform in Bangladesh.[77]

Since it appears that dual control by itself is no longer a sufficient form of oversight in a democracy, it may be time to update police legislation to provide an alternative conception of police-executive relations that is more democratic in nature. The case studies that follow will provide greater clarity on possible approaches for Bangladesh in this regard.

2.2.2 Democratic Accountability

As mentioned in Section 1.4.2, democratic accountability is when the people's representatives tell the police what sort of service they want, and then hold the police accountable for delivering it. Although Sections 2.1, 2.2 and 2.2.1 have suggested that the Police Act, 1861 was not formulated with a democracy in mind, references in the Police Act to "Government" post-Independence do take on a different meaning than during the colonial era. Thus, when Government wields "superintendence" under Section 3 of the Act, this is possibly democratic accountability in action. The argument put forward is that, "Since the Government was elected by the people, why should they not be able to tell the police what to do and what not to do? As the people's representatives, is not such direction merely the democratic expression of people's wishes vis-à-vis the ballot box?"

However, as mentioned at the outset of this report, democratic police have an obligation to be accountable to the law, elected representatives and the community. The problem with the

[75] Report of the Indian Police Commission, 1902-03, Government Central Printing Office, Simla, 1903, pp. 82-83 (Chapter 6: The District Magistrates): http://ebookbrowse.com/the-indian-police-commission-1902-03-pdf-d14229902 (accessed on 14 June 2011).
[76] United Nations Development Programme – Bangladesh, "External interference obstructs police performance: Public Attitude Baseline Survey," Press Release, 14 February 2007.
[77] Saferworld, *Security Provision in Bangladesh (Executive Summary)*, March 2010, pp. iii-iv.

Police Act, 1861 is that it places great emphasis on accountability to the Government but less importance on accountability to the law and to the community. In order to have democratic policing, legislation governing the police should ideally address all three components. The failure of the Police Act, 1861 to do so is another of its shortcomings.

Consequently, measures should be taken to either update the 1861 Act or adopt new legislation that seeks to create structures that remove direct control of police by political operatives, but that also hold police accountable to the Government for their conduct and performance. For example, the Police Act of 1861 permits the Government to appoint the IGP, other senior officers and officers who will lead the administration of police in a given district.[78] This level of direct appointment is not ideal in a system that seeks to have police wield greater operational responsibility. Thus, the case studies surveyed in this report will be examined for helpful ideas on how to create effective democratic institutions that can hold the police accountable without compromising operational responsibility.

2.2.3 External/Internal Accountability

Referring back to the discussion at Section 1.4.3, the exceptional scope and nature of the police's power to arrest, search and otherwise deprive the citizenry of their civil liberties means that the government and community have to be extraordinarily vigilant that those powers are not abused. For scrutiny of police conduct to have legitimacy and public trust, it is important that an independent body does the review. Democratic police organisations generally accept that some form of external oversight is necessary to ensure public confidence. The case studies in this report will examine different models of external oversight.

It is unfortunate that the Police Act, 1861 does not statutorily create a mechanism for the independent review of malfeasance or misconduct. Instead, the Act only provides for internal accountability:

> **7. Appointment, dismissal, etc. of inferior officers** - Subject to such rules as the Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same; or may award any one or more of the following punishments to any police-officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own, shall render himself unfit for the discharge thereof, namely:-
> (a) fine to any amount not exceeding one month's pay;
> (b) confinement to quarters for a term not exceeding fifteen days with or without punishment-drill, extra guard, fatigue or other duty;
> (c) deprivation of good-conduct pay;
> (d) removal from any office of distinction or special emolument
>
> **29. Penalties for neglect of duty, etc** - Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation of lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave shall fail, without reasonable cause, to report himself for duty on the expiration of such leave or who shall engage without authority in any employment other than his police duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

[78] Police Act, 1861 (Bangladesh), Section 4.

Unlike the Dhaka Metropolitan Police Ordinance, 1976, the Police Act, 1861 only identifies a limited number of disciplinary penalties and neglects to set out offences against citizens. The Dhaka Metropolitan Police Ordinance significantly expands potential disciplinary punishment at section 12(1) to include dismissal from service; removal from service; compulsory retirement; reduction in rank; stoppage in promotion; forfeiture of seniority for not more than one year; and forfeiture of pay not exceeding one month. In regards to offences against the citizen, sections 51-54 hold that punishment will be meted out to any officer who, without lawful authority or reasonable cause, enters or searches any building, vessel, tent or place; vexatiously and unnecessarily detains, searches or arrests any person or seizes the property of any person; offers any unnecessarily personnel violence to any person in his custody or holds out any threat or promise not warranted by law; or unnecessarily delays forwarding any person arrested to a Magistrate.

To its credit, the Bangladesh Police have set up a Police Internal Oversight body and an associated website in order to increase transparency of their internal disciplinary procedures. The mandate of Police Internal Oversight is to:[79]

- Remove corrupt officials as quickly as possible;
- Crack the police-criminal nexus;
- Restore discipline and the police chain of command;
- Increase police ability and efficiency;
- Build the credibility and image of the police; and
- Identify honest, efficient and dynamic officers.

However, amending the Police Act, 1861 to include additional forms of internal discipline, or relying solely on the commendable initiative of Bangladesh Police to set up Police Internal Oversight, would be helpful but insufficient. The Commission for Public Complaints Against the RCMP summarise the significant disadvantages of relying only on "police-investigating-police" in an internal process:

- Police do not take seriously most public complaints and assign limited investigative resources and expertise to the process;
- Police officers are sympathetic and responsive to informal police cultural norms and perspec tives which protect individual officers and undermine the investigative process;
- Police officers can be pressured by other police and the police culture to conduct ineffective investigations;
- There is little evidence that police officers obtain higher levels of police cooperation from other police in complaint investigations;
- Police adjudication and disciplinary processes tend not to reflect public standards and expec tations regarding appropriate investigative outcomes;
- There is low level of substantiated complaints through this model; and
- As a result of an exclusive and compromised police involvement in all stages of the complaint and adjudication process, the model is seen by many to fail to meet the basic standards of public accountability.[80]

[79] Police Internal Oversight website: http://www.pio.gov.bd/index.php?menu_id=68&exmenu=68&page=1 (accessed on 1 August 2011).
[80] Dr. Christopher Murphy and Paul F. McKenna, "Police Investigating Police: A Critical Analysis of the Literature," Commission for Public Complaints Against the RCMP: http://www.cpc-cpp.gc.ca/prr/inv/police/projet-pip-pep-eng.aspx (accessed on 3 July 2011).

Similar to the criticisms outlined above, the National Police Commission of India also acknowledged the problem of solely relying on departmental inquiries when it released its First Report in 1979. "Even if … precautions are taken in departmentally conducted inquiries, there would still be a category of complaints of serious misconduct by police in which the aggrieved person would feel dissatisfied about the impartial and objective nature of the inquiry unless it is conducted by some independent authority outside the police."[81] The Commission felt that in cases where the police deal with unruly mobs in a serious law and order situation or when the police have "encounters" with dacoit gangs, "a magisterial inquiry also fails to carry conviction to the aggrieved persons because a Magistrate (executive) is in practice looked upon as an integral part of the Establishment."[82]

Therefore, despite the fact that the Police Act, 1861 provides for internal discipline and/or magisterial oversight, or even that the Bangladesh Police has proactively strengthened its internal oversight procedures, the failure to institute some form of independent and external review of police misconduct is a glaring omission for any police organisation seeking to become democratic in orientation and practice.

2.2.4 Community Engagement

In order to move away from a constabulary model of policing and cultivate a more civilian-minded police organisation, community engagement must be a priority. As indicated in Section 1.4.4, democratic policing cannot occur without the consent and cooperation of the community. Since the police in South Asia can sometimes be reluctant to proactively engage with the public, it can be helpful to statutorily create formal bodies that compel the police and community to work together on matters of crime prevention and public safety. If done properly, these cooperative bodies can ensure that decision-making is decentralised and that local issues of law enforcement are dealt with at the local level.

However, the Police Act of 1861 does not explicitly mention the community anywhere. The preamble only states "it is expedient to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime." Unlike updated legislation in other jurisdictions, the Police Act of 1861 does not make reference to community policing or other types of possible police-public cooperation. Given that community policing has been at the forefront of police reforms in Bangladesh recently, it is a significant shortcoming that the current legislative framework does not address or capture ongoing and important community-oriented initiatives.

If anything, the Police Act, 1861 has provisions that are actively unfriendly towards the community. For instance, section 17 permits senior police officers or the District Magistrate to appoint community members as "special police officers" so that they may assist with an unlawful assembly, riot or disturbance of the peace. In the event that the community member chooses not to assist, section 19 states that he can be penalised for his refusal. These provisions relating to special police officers are more about policing through coercion rather than consent.

[81] National Police Commission, First Report, 1979, paragraph 10.18: www.bprd.nic.in/writereaddata/linkimages/4904619426-FIRST%20REPORT.pdf (accessed on 13 June 2011).
[82] Ibid.

Finally, the requirement under section 22 for police to always be on duty is not helpful for community engagement. On the face of it this policy may appear public friendly, (i.e. the police being on duty at all times means that they are always accessible to the public), but it is not. In practice, having police always on duty and subjecting them to 13-14 hour days without holidays burns them out and makes them less likely to serve the public selflessly. It would be much better for both the police and the community if the police were treated with more respect in this regard.

2.3 Other Relevant Legislation in Bangladesh

Along with the Police Act, 1861, there are additional legislative instruments that touch on important aspects of policing in Bangladesh and warrant mention. First, many of the powers bestowed to the police can be found in the Code of Criminal Procedure, 1898 (CrPC). For example, Section 54 stipulates the circumstances of when a police officer may make an arrest without an order or warrant; Section 61 makes it impermissible for a police officer to detain a person without warrant for longer than 24 hours before presenting him before a Magistrate; and Section 154 requires a First Information Report (FIR) to be written down in cases involving cognizable offences. The details of most police operational duties in Bangladesh are found in the CrPC and the Police Regulations of Bengal 1943, and not necessarily in the Police Act, 1861.

Akin to the Police Act, the CrPC and the Regulations are older statutory instruments that are quite dated. In fact, it has been pointed out that since there was no Constitution at the time the Regulations were formulated, many provisions are not consistent with the spirit of the present Constitution.[83] However, the limited scope of this study is unable to provide a full exposition on how these other documents intersect with the Police Act and to what extent these additional legislative tools are able to address possible gaps created by the Police Act, 1861.

Similarly, two ordinances that should also be mentioned but will not be discussed in detail are the Dhaka Metropolitan Police Ordinance, 1976 and the Armed Battalion Ordinance, 1979. First, the Dhaka Metropolitan Police Ordinance, which provided for a separate police force to operate in Dhaka, was unique because it clearly set out that the Police Act, 1861 no longer applied to the capital city[84] and that the Dhaka Metropolitan Area was no longer under the charge of any District Magistrate.[85] The removal of dual control meant that the Metropolitan police force was no longer subject to executive magisterial control and regulatory and licensing powers were vested with the IGP and metropolitan police commissioners.

Second, the Armed Police Battalions Ordinance, 1979 was amended in 2003 to create the Rapid Action Battalion (RAB). "RAB was designed as a composite force comprising elite members from the military (army, air force, and navy), the police, and members of Bangladesh's various law enforcement groups. RAB personnel are seconded from their parent organizations, to which they return after serving time with the force ... It is regarded as an elite counter-terrorism force and indeed RAB has targeted, apart from criminal suspects, alleged members of militant Islamist or

[83] A.S.M. Shahjahan, "Strengthening Police Reforms: Police Reforms in Bangladesh," Strengthening the Criminal Justice System, 2006, p. 48: http://www.adb.org/Documents/Books/Strengthening-Criminal-Justice-system/chap03.pdf (accessed on 5 July 2011).
[84] Dhaka Metropolitan Police Ordinance, 1976 (Bangladesh), Section 3.
[85] Ibid., Section 4.

left-wing groups."[86] When RAB was created, some had expressed concern about using the military for civilian policing. This concern is particularly important given that the raison d'être for restructuring the police in 1861 was to "civilianize" it.

The truth is that the recent trend in some parts of South Asia has been to "militarise" the police. The culture in the civil law enforcement agencies of the region is usually hierarchical and unnecessarily militarised in which the junior staff has to show extreme submission and subordination to the seniors. This behaviour is more akin to combative traditions and is considered absolutely necessary for command and control.[87] In Bangladesh the military has assumed some duties that were previously performed by civilian police (i.e. RAB, border guards, and prisons). During the Caretaker Government of 2007-2008, military officials expressed a desire to impose a military-style chain of command on the police believing that doing so would eradicate corruption in the police ranks and limit interference from politicians. However, in response to this suggestion, a former IGP correctly pointed out that, "efforts to make the police more like the military will backfire. The military lives in the cantonment not with the people. The moment the police becomes like the military it will become disconnected from the community. Militarisation of the police would create a "ghetto mentality", which would divorce the police from the people and reduce accountability."[88]

[86] Human Rights Watch, *Crossfire: Continued Human Rights Abuses by Bangladesh's Rapid Action Battalion*, 2011, pp. 1-2: www.univie.ac.at/bimtor/dateien/bangladesh_hrw_2011_crossfire.pdf (accessed on 1 July 2011).
[87] Umar Riaz, "Police culture in Pakistan," *Daily Times*, 18 June 2011: http://www.dailytimes.com.pk/default.asp?page=2011\06\18\story_18-6-2011_pg3_2 (accessed on 9 July 2011).
[88] International Crisis Group, Bangladesh: Getting Police Reform on Track, Asia Report No. 182, 11 December 2009, p. 7: www.unhcr.org/refworld/docid/4b22758b2.html (accessed on 3 July 2011).

Chapter 3

INDIA

"The vastness of India, in terms of culture and the various police reform experiments that have been undertaken at the state and federal levels, make it difficult for this chapter to examine every single police reform initiative. As a result, this chapter will focus on specific developments that have some relevance for Bangladesh."

3. INDIA

Key Legislation:

Model Police Act, 2006
West Bengal Police Act (Draft), 2007
Kerala Police Act, 2011

3.1 Background

Even though India has a federal constitutional structure that lists policing as a state subject,[89] the Government of India retains jurisdiction over policing in the Union Territories and central police organisations like the Central Bureau of Investigation[90] and the National Investigation Agency.[91] Since Independence, the states and the Central Government have both failed to implement police reforms that reflect the principles described in the Introduction. In the aftermath of the Supreme Court's ruling in *Prakash Singh and Others vs. Union of India and Others* (described in more detail at Section 3.1.2) some states have passed new legislation, whereas others have continued to retain the 19th century law. At the federal level, the Police Act, 1861 has been retained.

The vastness of India, in terms of culture and the various police reform experiments that have been undertaken at the state and federal levels, make it difficult for this chapter to examine every single police reform initiative. As a result, this chapter will focus on specific developments that have some relevance for Bangladesh.

3.1.1 National Police Commission

In the aftermath of Emergency Rule (1975-77), when a number of civil liberties were suspended and police were asked to make thousands of politically motivated arrests, the newly elected Janata Dal government decided to conduct a thorough review of policing at the national level by forming the National Police Commission (NPC).[92] This review was the first major effort to examine policing since the Indian Police Commission of 1902-03.

The NPC's terms of reference were fairly wide as it was asked to assess the role and performance of the police, both as a law enforcement agency and as an institution to protect the citizens' Constitutional rights. One of its most important terms of reference required it to recommend measures and institutional arrangements to "prevent misuse of powers by the police and misuse of police by administrative or executive instructions, political or other pressure, or oral orders of any type, which are contrary to law."[93]

Unfortunately, the NPC mandate and functioning was adversely affected by political considerations.

[89] Constitution of India, 1950, Entry 2 (List II), Seventh Schedule.
[90] Constitution of India, 1950, Entry 8 (List I), Seventh Schedule.
[91] National Investigation Agency Act, 2008 (India).
[92] Vide Government of India's resolution number VI-24021/36/77-GPA.I, 15 November 1977. The commission consisted of Dharam Vira (retired Governor) as Chairman, N.K. Reddy (retd. Judge, Madras High Court), K.F.Rustamji (ex DG, BSF and Special Secretary, Home Ministry), N.S. Saksena, (ex DG, CRPF and Member UPSC) and M.S. Gore (Professor, Tata Institute of Social Sciences, Bombay) as members and C.V.Narasimhan (Director CBI) as Member Secretary.
[93] Government of India's resolution no. VI-24021/36/77-GPA.I, 15 November 1997; Term of Reference No. 10(i) and (ii).

After Congress defeated Janata Dal in the 1980 election, the government proceeded to undermine the NPC. For instance, while the First Report of the NPC was released in February 1979, it was not until March 1983 that the Second through Eighth Reports were made publicly available, even though they had been completed in May 1981.

Second, state governments were specifically informed by the Central Government that, "At some places in the 2nd report ... the commission has relied on the observations and findings of the Shah Commission to arrive at certain conclusions. Government strongly repudiates all such conclusions. At several other places ... the commission has been unduly critical of the political system or of the functioning of the police force in general. Such general criticism is hardly in keeping with an objective and rational approach to problems and reveals a biased attitude. Government is of the view that no note should be taken of such observations."[94] This was a clear indication from the government that it had very little interest in implementing the recommendations of the NPC.

Nevertheless, the findings of the NPC have stood the test of time. Although put together 30 years ago, the NPC's conclusions are often still referenced by police reform advocates and their recommendations were reiterated by the Supreme Court in its seminal ruling, *Prakash Singh and Others vs. Union of India and Others*. Thus, it is useful to provide a summary of what the NPC found in each of its reports:

> **First Report:** Set up District Inquiry Authorities in every district. This would be "an independent oversight authority" to investigate large number of complaints made against police.
>
> **Second Report:** A State Security Commission should be set up to help the state government discharge its responsibilities openly and within the existing legal framework. The Commission should also assist the police in carrying out its functions, without undue interference. Police officers should be protected against illegitimate transfer and suspension orders.
>
> **Third Report:** A special investigation cell should be created in the police department at the state level to monitor the progress of investigation of cases under the Protection of Civil Rights Act and other atrocities against Scheduled Castes and Tribes.
>
> **Fourth Report:** Senior officers should make surprise visits to police stations to detect persons held in illegal custody and ill treatment of detainees. More holistic police performance indicators should be put in place.
>
> **Fifth Report:** Stress on women in the police and that they should become an integral part of the police organization without any distinction in the kind of duties performed by them.
>
> **Sixth Report:** Investigation staff should be separated from law and order staff at the police station level in urban areas.
>
> **Seventh Report:** A central police committee should be created to advise and monitor the police.
>
> **Eighth Report:** Protection available to police officers under Sections 132 and 197 of the Code of Criminal Procedure should be withdrawn. The Eighth Report also drafted a Model Police Act with a recommendation to replace the Act of 1861.

3.1.2 Prakash Singh and Others vs. Union of India and Others

After the NPC reports were released very little pressure was applied at the national or state

[94] The Ministry of Home Affairs, Government of India's Letter No.11013/11/83- NPC Cell, 31 March 1983.
[95] Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving From Force to Service in South Asian Policing*, 2010, pp. 39-40.

levels demanding police reform. This remained the case until 1996, when two retired Directors General of Police (Prakash Singh and N.K. Singh) filed a writ petition requesting the Supreme Court to direct the government to consider the NPC's recommendations.[96] After 10 years of litigation, the Supreme Court held on 22 September 2006 that given the "gravity of the problem" and "total uncertainty as to when police reforms would be introduced", it could not "further wait for governments to take suitable steps for police reforms" and had to issue "appropriate directions for immediate compliance."[97] Consequently, the Court issued directives to the state governments and the Government of India that it had to undertake certain steps in order to respect the NPC's findings and usher in genuine police reform. The following is a summary of the Supreme Court's directives:

1. **Constitute a State Security Commission** to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police; (ii) lay down broad policy guidelines; and (iii) evaluate the performance of the state police. The State Security Commission was to have bi-partisan representation along with members of civil society in order to avoid undue political interference.

2. **Fixed Tenure for Director General of Police:** Ensure that the Director General of Police is appointed through a merit-based, transparent process and enjoys a minimum tenure of two years. This directive was aimed at combating arbitrariness in the appointment of the highest-ranking police officer.

3. Ensure that other **police officers on operational duties** (including Superintendents of Police in charge of a district and Station House Officers in charge of a police station) also have a **minimum tenure of two years.**

4. **Set up a Police Establishment Board**, to decide all transfers, postings, promotions and other service related matters for police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. In effect, the Board was intended to bring these crucial service-related matters largely under police control.

5. **Set up a National Security Commission** at the Union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations, who should also be given a minimum tenure of two years.

6. **Set up independent Police Complaints Authorities** at both state and district levels. The state level Authority would inquire into cases of serious misconduct including incidents involving: (i) death; (ii) grievous hurt; and (iii) rape in police custody by police officers of and above the rank of Superintendent of Police. The district level Authority will inquire into cases of serious misconduct including incidents involving: (i) death; (ii) grievous hurt; (iii) rape in police custody; (iv) extortion; (v) land/house grabbing; and (vi) any incident involving serious abuse of authority by police officers of and up to the rank of Deputy Superintendent of Police.

7. **Separate the Investigation and Law and Order Functions of the Police**. Both investigation and law and order are vital and specific police functions. To encourage specialisation and upgrade overall performance, the Court ordered a gradual separation of the investigative and law and order wings, starting with towns and urban areas with a population of one million and above. It was believed that this would streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court did not say how this separation was to take place in practice, but clearly indicated that there must be full coordination between the two wings of the police.[98]

[96] It is important to note that two other important committees were established to look at police reforms in India. Pursuant to the Supreme Court's directions found in Writ Petition (Civil) No. 310 of 1996, the Government of India established the Ribeiro Committee on Police Reforms in May 1998. Also, in January 2000, the Central Government established the Padmanabhaiah Committee on Police Reforms. It was mandated to devise methods of insulating the police from politicisation and criminalisation, as well as suggest reforms to ensure the accountability of police.

[97] *Prakash Singh and Others vs. Union of India and Others* (2006) 8 SCC 1.

[98] Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving From Force to Service in South Asian Policing*, 2010, pp. 41-42: www.humanrightsinitiative.org/publications/police/feudal_forces_reform_delayed_2010.pdf (accessed on 1 July 2011).

State reaction to the Supreme Court's pronouncement can be characterised as one of disinterest. There is not a single state that has fully complied with the directives. "A few of the smaller states complied with the directives fully or partially and a few others filed for an extension of time. Unfortunately, most states, particularly the larger ones, objected to the directives and asked the Court to review them. The Court dismissed the review petition on 23 August 2007. The progress remained slow and finally on 16 July 2008, the Supreme Court set up a three-member Committee under the Chairmanship of one of their retired judges to monitor compliance of their directives by the central and state governments."[99]

Initially, the Committee conducted its work remotely and did not actually visit the states. However, towards the end of its mandate the Committee decided to travel throughout India in order to assess state compliance with the ruling. Since it was impossible for the Committee to visit all the states and union territories in the country, it decided to visit the four states of Maharashtra (West Zone), Uttar Pradesh (North Zone), Karnataka (South Zone) and West Bengal (East Zone). In the end, the Committee found that each of these states had not complied with the letter and spirit of the Court's directives in *Prakash Singh*.[100] After receiving the Committee's report in August 2010, the Supreme Court sent show causes to the Chief Secretaries of Maharashtra, Uttar Pradesh, Karnataka and West Bengal to appear before it so that they could explain their states' non-compliance.[101]

Nearly five years after the Court issued its directions in *Prakash Singh*, the states have generally done their best to avoid compliance. An analysis of state compliance reveals that 82 percent of states have not set up a State Security Commission as directed by the Supreme Court, 74 percent remain non-compliant on the issue of tenure for the Director General of Police, and 79 percent continue to ignore the Apex Court regarding a Police Complaint Authority.[102]

Equally troubling is the fact that the Government of India has displayed only marginally more interest in Prakash Singh than the states. In March 2010, the Ministry of Home Affairs issued two memoranda, the first setting up a single Security Commission to cover all the Union Territories, and the second setting up Police Complaints Authorities.[103] It appears that even though the Supreme Court has issued clear directions on how the central government and states can reform their police services – directions that consolidate years of thinking on the subject – both levels of government have displayed indifference in adhering to the Court's directives.

3.1.3 Model Police Act, 2006

As the *Prakash Singh* litigation was winding its way through the court system, the Government of India set up the Police Act Drafting Committee (PADC) – also known as the Soli Sorabjee Committee – in October 2005. Ostensibly, the PADC was mandated to take into account the changing role and

[99] Ibid., p. 42.
[100] Ibid., p. 47.
[101] Commonwealth Human Rights Initiative, "Seven Steps to Police Reform," July 2011, p. 6: www.humanrightsinitiative.org/programs/aj/police/Seven_Steps_to_Police_Reform_JULY2011.pdf (accessed on 15 July 2011).
[102] Ibid., pp. 7-10.
[103] Ibid., p. 10. On its own initiative, the Union Territory of Chandigarh has set up a three member PCA separate from the authority that the Central Government has established for other union territories.

responsibilities of the police and the challenges before it, and then draft a model Police Act that could guide states when they considered drafting their own updated legislation. The creation of the PADC reflected the government's concern that the Police Act, 1861 was an anachronism wherein "the sole consideration was of defending the establishment rather than providing sensitive and friendly policing … police forces were to serve the interests of rulers and not people."[104] Recognising that the modern state requires policing that is efficient, effective and accountable,[105] the Central Government established the PADC to look into how a new Act could help provide such law enforcement.

Shortly after the Supreme Court issued the *Prakash Singh* ruling, the PADC submitted its Model Police Act to the Home Minister on 30 October 2006. "Although possessing both strengths and significant weaknesses, the Model Police Act complements the Supreme Court judgement in that it provides the detailed instructions through which the directions of the Supreme Court can be most effectively implemented. However, as with previous commissions and governmental attempts to address systemic flaws in policing, the Model Police Act was shelved and subsequently ignored."[106]

3.1.4 Selected Developments at State Level

With 28 states, and each with their own police service, there are a number of police reform efforts underway in India. Due to constraints of time and space, this study will only look at two states in India: West Bengal and Kerala. West Bengal has been selected because it is culturally and historically very similar to Bangladesh and, outside of Kolkata, it still continues to operate under the Police Act, 1861 and the Police Regulations of Bengal, 1943. Kerala has been selected because out of all the Indian states, it has probably done the most to advance the development of a public-friendly and democratic police service.

West Bengal can trace back its state-specific police reform efforts to the creation of the West Bengal State Police Commission in 1960; its members submitted the final report on 29 December 1961 and recommended significant changes for police functioning. However, like most reform efforts, nothing was actually done with the recommendations. Subsequently, in the aftermath of the Supreme Court's ruling in *Prakash Singh*, West Bengal did very little to adhere to the ruling and was issued a notice by the Supreme Court to explain its non-compliance with the directives. At one point the Court had also taken issue with West Bengal's decision to have the Health Minister serve as Chairman of the State Security Commission. It eventually replaced the Health Minister with the Chief Minister.[107]

Notwithstanding West Bengal's non-compliance with the Court's directives, the state proceeded to draft a new police bill in 2007. This draft bill has a number of elements (i.e. special police officers, special security zones, and the creation of additional courts) that have no business being in a civilian-oriented police act. Due to various delays during the legislative process,

[104] Prime Minister's Address to the Superintendents of Police Conference, 1 September 2005: http://pmindia.nic.in/speech/content.asp?id=182 (accessed on 26 July 2011).
[105] Ibid.
[106] Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving From Force to Service in South Asian Policing*, 2010, p. 49: www.humanrightsinitiative.org/publications/police/feudal_forces_reform_delayed_2010.pdf (accessed on 1 July 2011).
[107] Commonwealth Human Rights Initiative, "Seven Steps to Police Reform," July 2011, p. 7: www.humanrightsinitiative.org/programs/aj/police/Seven_Steps_to_Police_Reform_JULY2011.pdf (accessed on 15 July 2011).

the bill has been stalled and not yet brought to a vote. Although the current status of the West Bengal Police Act (Draft) 2007 remains unclear, and the draft is unlikely to be viewed favourably with the new government that assumed power in May 2011, it may still be useful to examine some of its provisions.

After Independence and the reorganisation of states along linguistic lines, Kerala adopted the Police Act, 1960, which was largely modelled after the Police Act, 1861. In the aftermath of Prakash Singh, the Kerala Police (Amendment) Act was passed on 19 September 2007 and came into force on 5 October 2007. However, since it was felt that the amendments did not sufficiently address all the pertinent issues related to better policing, the State Government decided to draft a completely new police act.

At the end of 2007, the Government created a Police Act Review Committee. Composed of six police officers, the Committee put together a draft act that they submitted to the Government in mid-2008.[108] In early 2009, the Kerala Police agreed to put the draft act on their website for public comment. Although the process stalled at this juncture, it was eventually reactivated when the draft was introduced in the Legislative Assembly in August 2010. In order to strengthen the bill, the Government agreed to constitute a 19-member select committee (consisting of MLAs from both the government and the opposition) that would conduct public meetings in all 14 districts in an attempt to solicit public feedback. These meetings were so successful that at some gatherings up to 700 people attended.

Parallel to these meetings, the Kerala Police also distributed questionnaires to the public, asking for their input on certain aspects of the draft bill. As Secretariat for the Select Committee, the Kerala Police consolidated this feedback. When the Select Committee ultimately submitted their report to the Legislative Assembly, they recommended 798 changes to the draft bill. Once the Assembly considered the Select Committee's recommendations, approximately 240 of those changes were incorporated into the final Police Act, 2011, which was passed on 4 January 2011. Observers were impressed by the political will displayed by the Kerala Government in procuring public input during this process.[109]

3.2 Police-Executive Relationship

3.2.1 Model Police Act, 2006

The Model Police Act, 2006, like the Police Act, 1861, vests superintendence over the police in the State Government, holding it responsible to ensure an efficient, effective, responsive and accountable police service.[110] However, the Model Police Act goes much further in defining the scope of "superintendence" and "administration" and explaining how the relationship between government, police and District Magistrates will practically function.

[108] At approximately the same time, former Supreme Court Justice V.R. Krishna Iyer, in his capacity as Chair of the Law Reforms Commission, was engaged in a review of various Kerala laws. Although the Government did not ask him to conduct a review of the Police Act, he did one anyway. When considering the draft act put forward by the Police Act Review Committee, the Government also considered Justice Iyer's draft.
[109] Interview with the Coordinator of Police Reforms at the Commonwealth Human Rights Initiative (CHRI) on 15 August 2011. CHRI is a Delhi-based human rights organisation that has been actively engaged with the Kerala Police in working on police reforms in Kerala.
[110] Model Police Act, 2006 (India), Section 39(1).

First, in the preamble itself, the Model Police Act states, "functioning of the police personnel needs to be professionally organised, service oriented, free from extraneous influences and accountable to law." The Act places responsibility on the State Government for "laying down policies and guidelines, setting standards for quality policing, facilitating their implementation and ensuring that the police performs its task in a professional manner with functional autonomy."[111] In order to set the appropriate standards, the Government is compelled to consult with the State Police Board in identifying the objectives of policing over a five-year period.[112]

Second, in regards to administration of the police service, that responsibility vests throughout the state with the Director General of Police (DGP)[113] and locally with the District Superintendent of Police.[114] According to the Model Police Act, "administration" will mean "the management of the Police Service, subject to law, rules and regulations; and will include framing of regulations; supervising the functioning of the police at all levels; appointment to subordinate ranks of the Service, deployment of the police personnel, posting, transfers, and the requisite disciplinary action up to and including the rank of Inspector of Police; and advising the Government on the placement of officers of and above the rank of Assistant/Deputy Superintendent of Police."[115] However, the Act provides that the State Government "may intervene in the exercise of the powers of administration by the Director General of Police or any other authorised officer only in accordance with the prescribed rules, regulations or in exceptional circumstances involving urgent public interest, reasons for which shall be recorded in writing."[116]

As part of his role, the DGP is expected to put into operation the Strategic Plan and Annual Plan prepared by the State Government, after the Government has consulted the State Police Board.[117] But since the DGP also sits on the State Police Board, he is involved in the formulation of those strategic priorities. Thus, in this way, the DGP is held responsible for administering, controlling and supervising the police to ensure its efficiency, effectiveness, responsiveness and accountability.[118]

Importantly, because the appointment, transfer and/or termination of the DGP in states across India has typically been fraught with illegitimate political considerations, the Model Police Act stipulates that the DGP will be selected by the State Government from a panel of three candidates put forward by the State Police Board and not directly appointed.[119] In addition, to ensure that there is continuity of service and that he does not feel obliged to curry favour with the Government to retain his position, the DGP is given tenure of at least two years irrespective of superannuation.[120]

Third, on the complex matter of the District Magistrate's role in relation to police functioning, the Model Police Act moves away from the "control and direction" approach of the Police Act, 1861, and provides a much more precise articulation of what the relationship should be. It accepts that the District Magistrate has an important role to play in the administration of the district and this will naturally touch on matters of pertinence for the Superintendent of Police. Thus,

[111] Model Police Act, 2006 (India), Section 39(2).
[112] Model Police Act, 2006 (India), Section 40(1)(a).
[113] Model Police Act, 2006 (India), Section 51(1).
[114] Model Police Act, 2006 (India), Section 51(2).
[115] Model Police Act, 2006 (India), Section 51(3).
[116] Model Police Act, 2006 (India), Section 51(3).
[117] Model Police Act, 2006 (India), Section 52(a).
[118] Model Police Act, 2006 (India), Section 52(b).
[119] Model Police Act, 2006 (India), Section 6(2).
[120] Model Police Act, 2006 (India), Section 6(3).

to ensure efficiency of administration, it shall be lawful for the Magistrate to coordinate functioning of the police with other agencies on matters relating to:

- The promotion of land reforms and the settlement of land disputes;
- Extensive disturbance of the public peace and tranquillity in the district;
- The conduct of elections to any public body;
- The handling of natural calamities and rehabilitation affected persons;
- Situations arising out of any external aggression or internal disturbances;
- Any similar matter, not within the purview of any one department and affecting the general welfare of the public of the district; and
- Removal of any persistent public grievance.[121]

In order to facilitate such coordination, the Magistrate may call for information of a general or special nature from the District Superintendent of Police and when necessary, the District Magistrate shall pass orders and issue directions in writing.[122] By acknowledging the importance of the Magistrate and clearly delineating the scope of his role in relation to the police, the Model Police Act charted out an interesting compromise between the "full police independence" and "governmental policing" models of police-executive relations outlined in Section 1.4.1 that might be appropriate in the South Asian context. In fact, both West Bengal in its draft act and Kerala in its new police act adopt a very similar approach.

3.2.2 West Bengal

In the West Bengal Police Act (Draft) 2007 ("West Bengal Draft Act"), the preamble states, "the police needs to be professionally organized and kept free from extraneous influences, so that it is respected by citizens and accountable to the law." Similar to Model Police Act, the West Bengal Draft Act provides a more detailed definition of superintendence. In fact, it replicates almost verbatim the language used in Model Police Act: "The State Government shall exercise its superintendence over the police service in such manner and to such extent so as to promote the professional efficiency of the police and to ensure that the police performance is at all times in accordance with the law. For this purpose, the State Government shall lay down policies and guidelines, setting standards for quality policing, facilitate their implementation and ensuring that the police force performs its duties in a professional manner with functional autonomy."[123] In order to set those standards, the State Government will finalise a 5-year Strategic Plan after receiving a report from the DGP and recommendations from the State Police Board.[124]

In the West Bengal Draft Act, the administration of the police service vests throughout the state with the DGP[125] and locally with the District Superintendent of Police.[126] It also defines "administration" as the "management of the police service subject to law, rules and regulations; and will include framing of orders and instructions supervising the functioning of the police service at all levels; recruitment,

[121] Model Police Act, 2006 (India), Section 14(1).
[122] Model Police Act, 2006 (India), Section 14(2).
[123] West Bengal Police Act (Draft) 2007, Section 6.3(3).
[124] West Bengal Police Act (Draft) 2007, Section 6.4(1).
[125] West Bengal Police Act (Draft) 2007, Section 6.1(1).
[126] West Bengal Police Act (Draft) 2007, Section 6.1(2).

postings transfer and promotion among non-Gazetted ranks of the Police Service, deployment of the police; disciplinary action in the case of non-Gazetted Police officers, and advising the Government on the placement of officers of the rank of Assistant/Deputy Superintendent and above."[127] However, the Draft Act also provides that the State Government "may intervene in the exercise of the administrative powers by the Director General or any other competent police authority only in accordance with the prescribed rules, or in exceptional circumstances involving urgent public interest, reasons which should be recorded in writing, and all such cases shall be brought before the State Police Board in its next meeting."[128] But unlike the Model Police Act, which states that the reasons for any interference *shall* be recorded in writing, the West Bengal Draft Act merely states that such reasons *should* be recorded in writing. Compounding this difficulty is the practical reality in South Asia that terms such as "public interest" are so broadly applied and that reasons are rarely recorded in writing for decisions such as premature transfers, even when there is a statutory duty to do so.

On the issue of the DGP's powers and responsibilities, the West Bengal Draft Act requires the DGP to advise the State Government and the State Police Board on all matters related to policing,[129] implement the policies, strategic plan and annual sub plans put together by the State Government in consultation with the State Police Board,[130] and administer the police service to ensure that it is efficient, effective, responsive, and accountable.[131] Regarding DGP appointment, the method used is the same as in the Model Police Act (Government selects from a panel of three presented to it by the State Police Board) but tenure is for a minimum of two years subject to superannuation.[132] Regarding District Magistrates, the West Bengal Draft Act replicates the Model Police Act wording on this issue.

3.2.3 Kerala

While the Model Police Act and West Bengal Draft Act share many similarities, the Kerala Police Act, 2011 ("KPA 2011") places much greater emphasis on the public accountability of police in the various aspects of its operation, and devotes comparatively less attention to defining the police-executive relationship. The KPA 2011 states that the administration, supervision, direction and control of the police shall, subject to the control of the Government, be vested in the DGP.[133] The problem appears to be that the Act gives little indication under what circumstances the Government would be able to intervene and assert its "control".[134] The Act only states, "Notwithstanding anything contained in the foregoing provisions of this Act, Government may give lawful directions to the State Police Chief for taking actions in accordance with the provisions of the Act."[135]

[127] West Bengal Police Act (Draft) 2007, Section 6.1(3).
[128] West Bengal Police Act (Draft) 2007, Section 6.1(3).
[129] West Bengal Police Act (Draft) 2007, Section 6.2(1)(i).
[130] West Bengal Police Act (Draft) 2007, Section 6.2(1)(ii).
[131] West Bengal Police Act (Draft) 2007, Section 6.2(1)(iii).
[132] West Bengal Police Act (Draft) 2007, Section 2.4(3).
[133] Kerala Police Act, 2011, Section 18(1).
[134] During the administration of Kerala Chief Minister A.K. Anthony (2001-2004), a circular was issued stating that there should be no interference of the police and that the DGP should be given operational independence over the Kerala Police. However, there was a failure to couple this independence with the appropriate accountability mechanisms. The police became excessive and the citizens were dissatisfied with police performance. The fallout from this experiment is a possible explanation for why the KPA 2011 is silent on defining "control". This incident illustrates the importance of having accountability – both for performance and wrongdoing – along with greater operational independence for the police. Interview with the Coordinator of Police Reforms at the Commonwealth Human Rights Initiative (CHRI) on 15 August 2011.
[135] Kerala Police Act, 2011, Section 128.

Kerala has abandoned the use of the word "superintendence" (which is a term rarely used in police legislation outside of South Asia) and has decided to focus more on the duties and responsibilities of police. Although moving away from the anachronistic term "superintendence" might be viewed as a step forward, the failure to more explicitly define what constitutes legitimate executive control is a concern. Also worrying is that the KPA 2011 stipulates that the DGP is entitled to a minimum tenure of two years, but that this is subject to superannuation.[136] In addition, there is no role for the State Security Commission in the appointment or removal of the DGP.

Regarding the role of the District Magistrate, the KPA 2011 emulates the Model Police Act and sets out in almost identical terms the District Magistrate's role in relation to police functioning.[137] In addition, the KPA 2011 allows the Magistrate to retain the ability to make regulations that touch on important environmental matters[138] and to issue orders regarding law and order when a public assembly involves some sort of dispute.[139]

3.3 Democratic Accountability

3.3.1 Model Police Act, 2006

The Model Police Act seeks to achieve democratic accountability through the creation of two bodies: the State Police Board[140] and the Police Establishment Committee.[141] As pointed out by the Supreme Court of India in *Prakash Singh*, a State Security Commission of some sort must be set up in each state to ensure that State Government does not exercise unwarranted influence or pressure on the State police.[142] In the Model Police Act, the State Police Board is designed to frame policy guidelines that will promote an efficient, effective, responsive and accountable policing service.[143] Additionally, in order to limit executive control over the police, the State Police Board will prepare a panel of three senior officers for the State Government to consider when appointing the DGP.[144] Also, the Board is tasked with identifying performance indicators to evaluate the functioning of the police service.[145] Finally, the Board has the important job of reviewing and evaluating the organisational performance of the police against the Annual Plan, identified performance indicators, and available resources.[146] One of the interesting features of the Model Police Act is that it allows the State Government to establish an Inspectorate of Performance Evaluation, headed by a former DGP, to assist the State Police Board in evaluating police performance.[147] Also, the Board is expected to assist the Government in developing a five-year strategic plan.[148] The Board is expected to report annually and this report will be laid before the Legislative Assembly.[149]

[136] Kerala Police Act, 2011, Section 97(1). This means that if a DGP is appointed six months prior to retirement, he can only serve as DGP for six months. Such insecure tenure is problematic.
[137] Kerala Police Act, 2011, Section 19.
[138] Kerala Police Act, 2011, Section 80(1).
[139] Kerala Police Act, 2011, Section 81.
[140] Model Police Act, 2006 (India), Section 41.
[141] Model Police Act, 2006 (India), Section 53.
[142] *Prakash Singh and Others vs. Union of India and Others* (2006) 8 SCC 1
[143] Model Police Act, 2006 (India), Section 48(a).
[144] Model Police Act, 2006 (India), Section 48(b).
[145] Model Police Act, 2006 (India), Section 48(c). These indicators will include operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and observance of human rights standards.
[146] Model Police Act, 2006 (India), Section 48(d).
[147] Model Police Act, 2006 (India), Section 181(2).
[148] Model Police Act, 2006 (India), Section 40(1)(a).
[149] Model Police Act, 2006 (India), Section 50.

An important aspect to a body like the State Police Board is its composition; the more independent members there are the more likely the body will be independent from the executive. The Board shall have as its members:[150]

- Home Minister (Chair);
- Leader of the Opposition;
- Retired High Court Judge, nominated by the Chief Justice of the High Court;
- Chief Secretary;
- Secretary in charge of the Home Department;
- Director General of Police; and
- Five independent members appointed on recommendation of the Selection Panel.[151]

In addition, the Model Police Act indicates that no less than two women should be on the State Police Board[152] and that no serving government employee shall be appointed as an independent member.[153]

Another direction of the Supreme Court in *Prakash Singh* was for states to create a Police Establishment Board so that police transfers, postings and promotions were determined by operational merit rather than political considerations.[154] Countries like Northern Ireland and South Africa normally leave these responsibilities to the Chief of Police, as he will have the necessary administrative and operational understanding to make those determinations. However, due to the politicised nature of policing in South Asia, it might be prudent to have more than just the Chief of Police involved in such decisions. To accomplish this the Model Police Act creates the Police Establishment Committee, which consists of the DGP and 4 other senior officers.[155] It accepts complaints from police officers about being subjected to illegal orders,[156] it recommends names for the posting of Assistant/Deputy Superintendent positions and higher (which the Government should ordinarily accept),[157] and it recommends to the DGP the postings of Sub Inspectors or Inspectors in a police range.[158] Also, the Model Police Act understands the importance of decentralising some of the operational decision-making within the police organisation. Therefore, inter-district transfers and postings of non-gazetted ranks, within a Police Range, shall be decided by the Range Deputy Inspector General (on the recommendation of District Superintendents).[159] In addition, the District Superintendent of Police will decide the postings and transfers of non-gazetted police officers within a district (on the recommendation of all Additional/Deputy/Assistant Superintendents).[160]

[150] Model Police Act, 2006 (India), Section 42(1).
[151] The Selection Panel will include: Retired Chief Justice; Chair of State Human Rights Commission; and Chair of State Public Service Commission. See Model Police Act, 2006 (India), Section 43.
[152] Model Police Act, 2006 (India), Section 42(2).
[153] Model Police Act, 2006 (India), Section 42(3).
[154] *Prakash Singh and Others vs. Union of India and Others* (2006) 8 SCC 1
[155] Model Police Act, 2006 (India), Section 53(1).
[156] Model Police Act, 2006 (India), Section 53(2).
[157] Model Police Act, 2006 (India), Section 53(3).
[158] Model Police Act, 2006 (India), Section 53(4).
[159] Model Police Act, 2006 (India), Section 53(5).
[160] Model Police Act, 2006 (India), Section 53(6).

3.3.2 West Bengal

In terms of State Police Board functions, West Bengal replicated the Model Police Act provisions.[161] Similarly, the West Bengal Draft Act has very similar provisions regarding reporting requirements[162] and Board input into the development of strategic and annual plans.[163] Where these two drafts differ is in the composition of the Board. Unlike the Model Police Act, which placed great importance on the State Police Bard having an independent composition, the West Bengal Draft Act removes some key people from the Board. It does not call for the inclusion of a retired High Court Judge, it reduces the number of independent members from five to three, and it requires that one of the independent members must be a former DGP.[164]

The Police Establishment Board found in the West Bengal Draft Act has two distinguishing features from the one outlined in the Model Police Act. First, it is composed of the DGP and three senior officers (not four as in the Model Police Act).[165] Second, it does not cover the issue of promotions, as does the Police Establishment Committee in the Model Police Act.

3.3.3 Kerala

Kerala's approach towards the State Security Commission differs from the other examples in some significant ways. Specifically, its mandate and powers are broader. For instance, in addition to framing policy guidelines[166] and issuing directions for the implementation of crime prevention tasks and service-oriented activities,[167] the State Security Commission must appoint three experts to evaluate police performance every year.[168] Critically, the directions of the State Security Commission are binding on the police.[169] However, disappointingly, the KPA 2011 does not require the Government or Kerala Police to consult with the Commission on strategic or annual plans. Failing to have this key body provide input in this manner is a significant oversight.

If the composition of the State Security Commission in the Model Police Act is strong, and the composition relatively weak in the West Bengal Draft Act, then Kerala falls somewhere in between. The KPA 2011 stipulates that the Commission shall consist of the following people:

- Home Minister (Chairperson);
- Law Minister;
- Leader of Opposition;
- Retired High Court Judge nominated by the Chief Justice of the High Court;
- Chief Secretary;
- Secretary in charge of the Home Department;
- Director General of Police; and
- Three non-official independent members, nominated by the Governor, one of whom shall be a woman.[170]

[161] West Bengal Police Act (Draft) 2007, Section 6.10.
[162] West Bengal Police Act (Draft) 2007, Section 6.12.
[163] West Bengal Police Act (Draft) 2007, Section 6.4.
[164] West Bengal Police Act (Draft) 2007, Section 6.7.
[165] West Bengal Police Act (Draft) 2007, Section 6.14.
[166] Kerala Police Act, 2011, Section 25(1)(a).
[167] Kerala Police Act, 2011, Section 25(1)(b).
[168] Kerala Police Act, 2011, Section 26(1).
[169] Kerala Police Act, 2011, Section 25(5).
[170] Kerala Police Act, 2011, Section 24(2).

This composition has the advantage of including a retired High Court Judge, but the disadvantage of having only three independent members, all of whom are "non-official".

With respect to the Police Establishment Board, the one for Kerala is composed of the DGP and four other senior officers. According to *Prakash Singh*, the Establishment Board is supposed to make recommendations to the state government on postings and transfers of officers above the rank of Deputy Superintendent of Police. However, the KPA 2011 only allows the Establishment Board to make transfer, posting and promotion decisions for those that belong to Inspector or below. There is no provision for it to make recommendations for those of a higher rank.

3.4 External Accountability

3.4.1 Model Police Act, 2006

Consistent with the directions in Prakash Singh, the Model Police Act creates two forms of institutional scrutiny on police misconduct: one at the state level and one at the district level. At the state level, the Police Accountability Commission ("Accountability Commission") can receive complaints, or initiate *suo moto* inquiry ("on its own motion"), regarding allegations of "serious misconduct" (which are defined as death in police custody; grievous hurt as defined under s.320 of Indian Penal Code; rape or attempted rape; or arrest or detention without due process of law)[171] by any officer[172] and monitor allegations of "misconduct" (defined as "any wilful breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the public"[173]) by officers of and above the rank of Deputy/Assistant Superintendent of Police. The Accountability Commission will have powers of a civil court, including:

- Summoning and enforcing attendance of witnesses and examining them on oath;
- Discovery and production of any document;
- Receiving evidence on affidavits;
- Requisitioning any public record or copy thereof from any court or office;
- Issuing authorities for the examination of witnesses or documents; and
- Any other matter as may be prescribed.[174]

Importantly, the Accountability Commission will have the power to direct the DGP or State Government to register an FIR and/or initiate departmental action.[175] The Accountability Commission is also expected to annually report to the Legislative Assembly[176] and to control and supervise the District Accountability Authorities.[177]

[171] Model Police Act, 2006 (India), Section 167(1).
[172] Model Police Act, 2006 (India), Section 167(1).
[173] Model Police Act, 2006 (India), Section 167(3).
[174] Model Police Act, 2006 (India), Section 168(1).
[175] Model Police Act, 2006 (India), Section 171(1).
[176] Model Police Act, 2006 (India), Section 172(1).
[177] Model Police Act, 2006 (India), Section 176(1).

In regards to composition, the Accountability Commission is to have the following five members:

- A retired High Court Judge (Chairperson);
- A retired police officer from another state, superannuated in the rank of DGP;
- A person with a minimum of 10 years of experience either as a judicial officer, public prosecu tor, practicing advocate, or a professor of law;
- A person of repute and standing from the civil society; and
- A retired officer with experience in public administration from another state.[178]

Of these members, at least one must be a woman and no more than one should be a retired police officer. The State Government will select the Chairperson from a panel of three retired High Court Justices put forward by the Chief Justice of the High Court[179] and other members will be selected on the basis of recommendations made by the Selection Panel.[180]

It was held by the Supreme Court, and reiterated by the Soli Sorabjee Committee, that having a state-level complaints authority and nothing at the district level would be insufficient. Due to issues of accessibility, it is critically important that a complaint mechanism be available at the district level as well. Thus, the Model Police Act created District Accountability Authorities to monitor departmental inquiries into complaints of misconduct against police personnel.[181] If a District Accountability Authority receives any complaint of serious misconduct, it is required to forward it to the Accountability Commission.[182] If a District Accountability Authority receives any complaint of misconduct, it is to forward it to the District Superintendent of Police (unless the complaint is against an officer at or above the rank of Assistant/Deputy Superintendent, in which case the complaint will be forwarded to the DGP and under intimation to the Commission).[183] Each District Accountability Authority is expected to submit an annual report to the Accountability Commission.[184]

The District Accountability Authority will include a retired District and Sessions Judge (Chairperson), a retired senior police officer, and a person with over ten years experience in law or public administration.[185] The State Government will appoint these three people on the basis of the Selection Panel's recommendation.[186]

Admirably, the Model Police Act clearly states that the complainant has certain rights during this process: the complainant shall have a right to be informed of the progress of the inquiry by the Accountability Commission or the District Accountability Authority; upon completion of inquiry, the complainant shall be informed of the conclusions; the complainant may attend all hearings in the inquiry; and all hearings shall be conducted in a language intelligible to the complainant.[187]

[178] Model Police Act, 2006 (India), Section 160.
[179] Model Police Act, 2006 (India), Section 161(1).
[180] Model Police Act, 2006 (India), Section 161(2). The Selection Panel will be composed of the Chairperson of the Commission, Chairperson of the State Public Service Commission, and Chairperson of the State Human Rights Commission (or, in the event of there is no such Commission in the State, the Lokayukta or Chairperson of the State Vigilance Commission).
[181] Model Police Act, 2006 (India), Section 173(1).
[182] Model Police Act, 2006 (India), Section 174(1)(a).
[183] Model Police Act, 2006 (India), Section 174(1)(b).
[184] Model Police Act, 2006 (India), Section 175(1).
[185] Model Police Act, 2006 (India), Section 173(2).
[186] Model Police Act, 2006 (India), Section 173(3).
[187] Model Police Act, 2006 (India), Section 177.

3.4.2 West Bengal

Having ignored the Supreme Court's directive on setting up a Police Complaints Authority,[188] West Bengal's track record on external accountability has been quite bad. For instance, the West Bengal Draft Act simply designates the Lokayukta[189] as the state-level Police Complaints Authority (PCA).[190] Although the PCA will have essentially the same functions[191] and powers[192] as those described for the Accountability Commission under the Model Police Act, having an anti-corruption ombudsman inquire into complaints possibly involving custodial death does not make very much sense. While not having to create entirely new institutions may be attractive from an administrative perspective, the seriousness and complexity of investigating police misconduct requires the establishment of a body with a very focused and dedicated mandate.

Also problematic is the fact that the PCA's findings are not binding on the State Government; it only has to "consider" the recommendations.[193] Furthermore, the West Bengal Draft Act states that if the PCA believes a complaint is vexatious, it can order a fine.[194] This may have a chilling effect on people's willingness to file a complaint. Finally, the failure to provide for the creation of district-level complaints authorities is a glaring omission of the West Bengal Draft Act. West Bengal is a very large state and it is unrealistic to expect that all complainants are able to attend hearings in Kolkata.

3.4.3 Kerala

In Kerala, the state-level PCA will inquire into all misconduct complaints against police officers of and above the rank of District Superintendent of Police, and grave complaints against officers of other ranks in respect of sexual harassment of women in custody or causing death of any person or inflicting grievous hurt on any person or rape.[195] The powers of the PCA will be that of a civil court (i.e. summon and enforce the attendance of witnesses, require the discovery and production of any document, and receive evidence on affidavit).[196] The KPA 2011 requires that the PCA take immediate steps once a complaint is registered before it.[197] In addition, the PCA can require the officer to question and record the statement of any witness; trace, examine, and seize relevant records; conduct any inspection or test; and render reasonable assistance.[198]

The PCA will include the following members:

- Retired High Court Judge (Chairperson);
- Officer not below the rank of Principal Secretary;

[188] Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action*, 2009, p. 17: www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf (accessed on 22 July 2011).
[189] Lokayukta is an anti-corruption ombudsman.
[190] West Bengal Police Act (Draft) 2007, Section 14.1.
[191] West Bengal Police Act (Draft) 2007, Section 14.2.
[192] West Bengal Police Act (Draft) 2007, Section 14.3.
[193] West Bengal Police Act (Draft) 2007, Section 14.4.
[194] West Bengal Police Act (Draft) 2007, Section 14.7(3).
[195] Kerala Police Act, 2011, Section 110(1).
[196] Kerala Police Act, 2011, Section 110(7).
[197] Kerala Police Act, 2011, Section 112(1).
[198] Kerala Police Act, 2011, Section 112(2).

- Officer not below the rank of Additional DGP;
- Person as may be fixed by the Government, in consultation with the Leader of Opposition, from a 3-member panel of retired suitable officers not below the rank of Inspector General of Police furnished by the Chairman of the State Human Rights Commission; and
- Person as may be fixed by the Government, in consultation with the Leader of Opposition, from a 3-member panel of retired suitable District Judges furnished by the State Lokayukta.[199]

Notably, there are no independent members from civil society or the legal profession included in the PCA. The accountability body only has police, bureaucrats and judges.

According to the KPA 2011, the district PCAs are currently tasked with examining complaints against police officers of and up to the rank of Deputy Superintendent of Police.[200] It is encouraging that the recommendations of the district PCA (as well as the state PCA) are binding.[201] The Authority will have as its members a retired District Judge (Chairperson), the District Collector, and the District Superintendent of Police.[202] Given the myriad obstacles involved in registering a complaint against the police, it is unfortunate that the Kerala government decided to have a serving officer on the district PCA; in the interests of objectivity, the composition should have followed the Model Police Act and included a retired senior police official.

One of the more progressive features of the KPA 2011 is the extent to which it protects the public and their procedural rights if they wish to make a complaint against the police. For instance, everyone has the right to receive a receipt acknowledging his or her complaint and to know the stage of the police investigation.[203] In addition, any complaint shall be entered in a chronologically and contemporaneously maintained permanent register at the police station.[204]

In reality, the PCAs in Kerala are not performing very well. In 2009, Kerala had established a state-level PCA, along with seven district-level PCAs for southern Kerala and seven district-level PCAs for northern Kerala. Notwithstanding difficulties related to funding, the appointment of a progressive Chairperson for the southern district PCAs meant that considerable good work was done with limited resources.[205] However, this does not appear to be the case at the moment. The previous Chairs are no longer there and pendency seems to have set in because new appointments pursuant to the KPA 2011 have not yet been made. In fact, public consultations reveal, "there is widespread dissatisfaction with the functioning and inefficiency of Kerala's Police Complaints Authorities."[206]

[199] Kerala Police Act, 2011, Section 110(2).
[200] Kerala Police Act, 2011, Section 110(3).
[201] Kerala Police Act, 2011, Section 110(9).
[202] Kerala Police Act, 2011, Section 110(4).
[203] Kerala Police Act, 2011, Section 8(4).
[204] Kerala Police Act, 2011, Section 8(5).
[205] Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action*, 2009, pp. 38-44: www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf (accessed on 22 July 2011).
[206] Commonwealth Human Rights Initiative, Press Release dated 16 November 2011: www.humanrightsinitiative.org/pressrelease/Kerala.pdf (accessed on 6 March 2012).

3.5 Community Engagement

3.5.1 Model Police Act, 2006

In a shift from the language used in the Police Act, 1861, the Model Police Act is much more community-friendly. In its preamble, the Model Police Act gives priority to human rights: "Respect for and promotion of the human rights of the people, and protection of their civil, political, social, economic and cultural rights, is the primary concern of the Rule of Law." In addition, there is a section especially devoted to itemising the social responsibilities of the police:

- Behave with the members of the public with due courtesy and decorum, particularly so in deal ing with senior citizens, women, and children;
- Guide and assist members of the public, particularly senior citizens, women, children, the poor and indigent and the physically or mentally challenged individuals, who are found in help less condition on the streets or other public places or otherwise need help and protection;
- Provide all requisite assistance to victims of crime and of road accidents, and in particular ensure that they are given prompt medical aid, irrespective of medico-legal formalities, and facilitate their compensation and other legal claims;
- Ensure that in all situations, especially during conflict between communities, classes, castes and political groups, the conduct of the police is always governed by the principles of impartial ity and human rights norms, with special attention to protection of weaker sections including minorities;
- Prevent harassment of women and children in public places and public transport, including stalking, making objectionable gestures, signs, remarks or harassment caused in any way;
- Render all requisite assistance to the members of the public, particularly women, children, and the poor and indigent persons, against criminal exploitation by any person or organised group; and
- Arrange for legally permissible sustenance and shelter to every person in custody and making known to all such persons provisions of legal aid schemes available from the Government and also inform the authorities concerned in this regard.[207]

Recognising the differences in policing rural versus urban areas, the Model Police Act develops two types of community policing initiatives. In rural areas, the District Superintendent of Police shall constitute a Community Liaison Group for each police station, comprising respectable local residents of the area with unimpeachable character.[208] The Liaison Group will identify the existing and emerging policing needs of the area, which will be taken into consideration by the Station House Officer while preparing the annual policing strategy and action plan for his jurisdiction.[209] In urban areas, the Commissioner of Police shall ensure involvement of the community in policing by constituting a Citizens' Policing Committee, every two years, for each locality or a group of localities or colonies, including slums.[210] "The police will take the assistance of the Citizens' Policing Committees in identifying the existing and emerging needs and priorities of policing in the area."[211]

[207] Model Police Act, 2006 (India), Section 58.
[208] Model Police Act, 2006 (India), Section 85.
[209] Model Police Act, 2006 (India), Section 86.
[210] Model Police Act, 2006 (India), Section 102(1).
[211] Model Police Act, 2006 (India), Section 102(2).

In order for community policing to work properly, trust between the police and public needs to be strengthened. For years this relationship has been neglected. A very effective means to build this trust is to increase the visibility and interaction of beat constables with the community. By having the beat constable forge meaningful relationships with people at the local level, he will get better intelligence on local crime and he will better understand the needs of those he is tasked with serving. It is with this understanding that the Model Police Act requires the beat constable to liaise with community elders, members of the Community Liaison Group, and the residents of each village under his charge.[212]

3.5.2 West Bengal

In the West Bengal Draft Act, the Preamble states: "The Nation's founding faith is the primacy of the rule of law and the police must be organized to promote rule of law and render impartial and efficient service to people with due concern for human rights and proper safeguards for the Security of the State and the Nation." The West Bengal Draft Act largely replicates the language used in the Model Police Act for the beat constable system,[213] the Community Liaison Group[214] and the Citizens' Policing Committee.[215]

However, a highly controversial provision related to community engagement pertains to the use of "Special Police Officers".[216] Special Police Officers, which are provided for under the Model Police Act[217] and the KPA 2011,[218] can be any able-bodied person between the age of 18 and 50 years. These normally unpaid individuals can be deployed to "Special Security Zones" and shall enjoy the same powers and privileges as an ordinary police officer.[219] Special Police Officers are problematic because community members become a de facto arm of the state security apparatus and can easily degenerate into untrained and well-armed vigilante groups who enjoy policing powers. In a recent case involving the use of Special Police Officers to fight Naxalism in Chattisgarh, the Supreme Court of India held that the use of young, ill trained and poorly educated men to fight against Naxals is a violation of their constitutional rights to equality and right to life.[220] The "Koya Commandos" and "Salwa Judum", as these groups are called, represent the worst forms of community engagement. They are nothing more than vigilante proxies who should not be included in any modern police act.

3.5.3 Kerala

In comparison to other jurisdictions in South Asia, Kerala has done a remarkable job in engaging better with the public. In the preamble to the KPA 2011, it states: "It is expedient to provide for a professional, trained, skilled, disciplined and dedicated police system to protect the integrity and

[212] Model Police Act, 2006 (India), Section 65(a).
[213] West Bengal Police Act (Draft), 2007, Sections 8.1-8.3.
[214] West Bengal Police Act (Draft), 2007, Sections 8.22 and 8.23.
[215] West Bengal Police Act (Draft), 2007, Section 9.20.
[216] West Bengal Police Act (Draft), 2007, Section 10.17.
[217] Model Police Act, 2006 (India), Section 22.
[218] Kerala Police Act, 2011, Section 98.
[219] In India, the origins of Special Police Officers can be traced back to the Police Act, 1861, which permitted an Inspector to apply to a Magistrate to appoint local residents as police officers in the event of any unlawful assembly, riot or disturbance of the peace. If an individual refused such an appointment, he was potentially subject to a fine.
[220] *Nandini Sundar and Others vs. State of Chattisgarh*, Writ Petition (Civil) No. 250 of 2007, 5 July 2011.

security of State and to ensure the rule of law with due transparency and by giving due regard to life, property, freedom, dignity and human rights of every person in accordance with the provisions of the Constitution of India." As mentioned previously, the KPA 2011 is notable for the extent to which is seeks to empower the public vis-à-vis the police. For example, all citizens shall have the right to receive efficient police services from any police station,[221] lawful services from the police station,[222] and, subject to reasonable restrictions, meet the Officer in Charge for the station.[223] In addition, the KPA 2011 also places responsibility on the police for ensuring that the public are always treated with courtesy and respect,[224] to provide explanations for police actions,[225] and to behave decently towards witnesses.[226]

A development that best exemplifies the Kerala Police's commitment to community engagement can be found with their community policing program. The KPA 2011 stipulates that the District Superintendent of Police shall constitute Community Contact Committees for each police station so that local residents may give general assistance to the police in the discharge of their duty.[227] The Community Contact Committees must fairly represent all categories of the society[228] and it shall identify existing and emerging needs for the police to turn their attention towards.[229]

To facilitate and aid this collaborative approach, the KPA 2011 strengthens the role of the beat constable. It empowers the beat constable to establish closer ties with the local community, educate the public on how to prevent crime, collect information on local criminal elements, and keep the Station House Officer constantly updated on any grievances or complaints from the general public.[230] However, this sort of beat constable "empowerment" and push towards comprehensive and effective community policing started well before passage of the KPA 2011.

After former Supreme Court of India Justice K.T. Thomas recommended that community policing be implemented on an experimental basis,[231] the State Government and the Kerala Police convened a state-level consultation in September 2007 that brought together parties from across the political spectrum, as well as a number of civil society actors, so that they could all discuss a draft community policing scheme that the Kerala Police had prepared. After amending the scheme to accommodate the participants' feedback, the State Government passed an order on 23 November 2007 that launched a pilot community policing project in 20 of the 440 police stations across the state.[232] This initiative was entitled the Janamaithri Suraksha Project.[233]

Three Janamaithri Suraksha Projects (JSPs) were set up in each of Kozhikode, Kochi, and Thiruvananthapuram, and one was set up in each of the other eleven districts of Kerala.[234] Due to the

[221] Kerala Police Act, 2011, Section 7.
[222] Kerala Police Act, 2011, Section 8(1).
[223] Kerala Police Act, 2011, Section 8(2).
[224] Kerala Police Act, 2011, Section 29.
[225] Kerala Police Act, 2011, Section 32(1).
[226] Kerala Police Act, 2011, Section 35.
[227] Kerala Police Act, 2011, Section 64(1).
[228] Kerala Police Act, 2011, Section 64(2).
[229] Kerala Police Act, 2011, Section 64(4).
[230] Kerala Police Act, 2011, Section 65.
[231] *K.T. Thomas Commission on Kerala Police Performance and Accountability*, 2006, Chapter III – Community Policing.
[232] Kerala Police, *Janamaithri Suraksha Project – Commemorative Issue 2009*, 2009, p. 25.
[233] Loosely translated as "people friendly security project".
[234] Kerala Police, *Janamaithri Suraksha Project – Commemorative Issue 2009*, 2009, p. 26.

enormous success of these initial JSPs, 23 more were set up in August 2009. At the outset it was identified that the objective of the JSP would be to prevent crime, achieve police-public cooperation on security matters, and ensure the mutual cooperation of members of the public in the domain of security.[235]

To accomplish these objectives the Kerala Police did two things. First, it assigned 10-14 "Beat Officers" to every pilot project, with each Beat Officer assigned up to one thousand households in a well-defined geographical space of approximately three square kilometres. These Beat Officers patrol their area either on foot or on motorcycle for at least 20 hours per week. By meeting community members at pre-designated times and places at least three times a week, and interacting with every family at least once within the first three months of assignment, the Beat Officer becomes intimately aware of all the community's issues and concerns.[237]

Second, the Kerala Police created Janamaitri Samithis, or "people friendly committees", the purpose of which is to have a forum whereby the community can express its security concerns and establish greater ownership over the JSP. Composed of a wide cross-section of community members, including women and Schedules Castes/Scheduled Tribes, members are nominated by the Station House Officer and ultimately selected by the District Superintendent of Police.[238] The Samithi should have at least ten members but no more than 25. Moreover, office bearers of any political party need not be included in the Samithi and care should be taken to avoid allegations that any communal or political interest is given an advantage. "The structure of the Samithi should be in such a way that ordinary citizens get an opportunity to utilise their high civic sense and sense of social responsibility for the safety of society at the local level."[239] During the meetings the following may be discussed:[240]

- Local security (i.e. theft, robbery, bootlegging, traffic offences etc....);
- Organising awareness programmes to educate the public about reducing crime and about security measures to be installed/introduced in the area;
- Patrolling with a view to prevent crime; and
- Information regarding organised crimes in the area.

Obviously with the passage of the KPA 2011, these Janamaitri Samithis are now called Community Contact Committees and they presumably function in the same way.

[235] Kerala Police, *Janamaithri Suraksha Project Book*, 2008, p. 1.
[236] Ibid., p. 6.
[237] Kerala Police, *Janamaithri Suraksha Project – Commemorative Issue 2009*, 2009, p. 19.
[238] Kerala Police, *Janamaithri Suraksha Project Book*, 2008, p. 1.
[239] Ibid., p. 2.
[240] Ibid., p. 3.

Chapter 4

PAKISTAN

"As with India and Bangladesh, Pakistan retained the Police Act, 1861 after Independence and suffered the same kind of policing the other countries endured. From 1947 onwards, periodic attempts to reform the police were undertaken but no significant progress was ever made."

4. PAKISTAN

Key Legislation:

Police Act, 1861
Police Order 2002
Balochistan Police Act, 2011

4.1 Background

As with India and Bangladesh, Pakistan retained the Police Act, 1861 after Independence and suffered the same kind of policing the other countries endured. From 1947 onwards, periodic attempts to reform the police were undertaken but no significant progress was ever made. This list summarises previous reform initiatives in Pakistan:[241]

Timeline: Police Reform Efforts in Pakistan

1948	Passage of Bill XXV of 1948 in the Sindh Assembly to introduce a Metropolitan System of Policing in Karachi; was never given to Governor General for assent
1951	Recommendations of Sir Oliver Gilbert Grace, IGP
1961	Police Commission headed by Mr Justice J.B. Constantine
1962	Pay and Services Reorganisation Committee headed by Justice Cornelius
1970	Police Commission headed by Major General A.O. Mitha[242]
1976	Police Station Enquiry Committee headed by M.A.K. Chaudhary
1976	Law and Order Sub-Committee headed by Fazal Haque
1976	Police Reforms Committee headed by General Rafi Raza
1981	Orakzai Committee on Police Welfare, Promotion and Seniority Rules
1982	Cabinet Committee on the Emoluments of Station House Officers
1983	Cabinet Committee on Determining the Status of Station House Officers
1983	Sahibzada Rauf Ali Committee
1985	The Police Committee headed by Mr Aslam Hayat[243]
1989	Report of the seven-member delegation's visit to Bangladesh and India
1990	Police Reforms Implementation Committee headed by M.A.K Chaudhary
1996	Report of the Japanese Police Delegation on the Police System in Pakistan
1997	Committee on Police Reforms under the Chairmanship of the Interior Minister
1998	Report of the Good Governance Group on Police Reforms: Committee Vision
2000	Report of the Focal Group on Police Reforms: National Reconstruction Bureau Draft, 2000

[241] Presentation made by then DG National Police Bureau Mr. Tariq Khosa at "Police Reforms in Pakistan: Beyond Analysis", Lahore, Pakistan, Commonwealth Human Rights Initiative - Human Rights Commission of Pakistan Consultation, 28 November 2008.
[242] While discussing the nature and extent of overseeing of police by the district officer, the Commission concluded: "The need is for establishing clearly and unmistakably the fact that the superintendent of police in a district is the undisputed head of the police force in his district and that the district magistrate must not interfere in the day to day or internal administration of the police force. By internal administration we mean training, recruitment, postings, transfers, punishments and awards, discipline, disposition and deployment/employment of the force."
[243] "The Committee found that the symbiotic relationship and nexus between police and the executive was a major cause of serious police misconduct. It recommended measures to address the core problem of insulating the police from illegitimate political, bureaucratic or other extraneous interference. The Committee likewise emphasized the need to secure professional independence for the police to function truly and efficiently as an impartial instrument of the law, not a tool of the ruling elite. The Police Committee also made various major recommendations to change the archaic structure of the police, especially in relation to urban policing. It recommended introduction of metropolitan police system similar to the Indian cities of Calcutta, Madras and Bombay, initially in capital cities of Islamabad, Karachi, Lahore, Peshawar and Quetta. Most significantly, the Committee recommended that Police Act of 1861 should be replaced by a new Police Act encompassing much-enlarged role of the police as an agency that promotes the rule of law in the country and renders impartial service to the community." Muhammad Shoaib Suddle, Presentation at Commonwealth Human Rights Initiative Conference, "Police Reform in South Asia: Sharing of Experiences," 23-24 March 2007 (New Delhi, India).

Unfortunately, these committees and commissions were often restricted to evaluating police organisation and were not tasked with examining fundamental issues such as, "how to police a free society; how the police should respond to mounting demands of emerging human rights concerns; how law enforcement should cope with rapidly altering psycho-social environment; and how the police should orientate itself in the age of free and independent media."[244]

In 1999, the lack of movement regarding police reforms changed after General Pervez Musharraf assumed power through a bloodless coup and then declared himself President of Pakistan. In order to establish credibility with domestic and international observers, as well as co-opt institutions for his own political purposes, Musharraf initiated several systemic reform efforts that touched on various facets of Pakistan's political, administrative, and criminal justice systems. Shortly after taking over, Musharraf established the National Reconstruction Bureau (NRB), a body tasked with recommending structural changes to local government and police.[245] The account of recent police reforms in Pakistan cannot be told without delving into the reforms of local government and the devolution of power from the federal government to the provinces.

Since Independence, Pakistan has had a federal structure of government. Although the intention at the outset was for provinces to have more power as compared to the centre,[246] what actually happened was that power became centralised because the exigencies of Partition had resulted in a dearth of qualified administrators who could be deployed to all parts of East and West Pakistan.[247] Subsequently, military rulers, who often used the administrative and coercive powers at their disposal to extend the centre's control over the provinces, exacerbated this centralisation. For instance, when General Ayub Khan suspended the Constitution in 1958 and abrogated powers from the provinces, he introduced his "Basic Democracy" plan, creating local councils at the sub-district level (i.e. tehsils, thanas and unions), in order to create the appearance of representative government.[248] In truth, "Ayub's intent was not to decentralise or democratise authority but to extend centralised control over the federal units through a new grass roots political base."[249]

Musharraf repeated this approach after he assumed power. In order to bolster his credentials with Western governments and donors, as well as circumvent established provincial power centres by using local government allies to advance regime survival and consolidation, Musharraf engineered a complete revamp of divisional and district administration wherein the Zila Nazim[250] was empowered. "The plan proposed to abolish the posts of deputy commissioner and assistant commissioner, who traditionally controlled executive, judicial and revenue functions in a district, and establish a new administrative structure led by a District

[244] Muhammad Shoaib Suddle, Presentation at Commonwealth Human Rights Initiative Conference, "Police Reform in South Asia: Sharing of Experiences," 23-24 March 2007 (New Delhi, India).
[245] Since reform of local government and administration is so intertwined with police reforms, discussion of the latter will necessarily involve an examination of the former.
[246] Prior to the partition of British India, Muhammad Ali Jinnah once said, "the theory of Pakistan guarantees that federal units of the National Government would have all the autonomy that you will find in the constitution of the United States of America, Canada, and Australia. But certain vital powers will remain vested in the Central Government such as monetary system, national defence and federal responsibilities." See Sayid Jaffar Ahmad, *Federalism in Pakistan – A Constitutional Study* (Karachi: Pakistan Study Centre, University of Karachi, 1970), pp. 32-33.
[247] Muntzra Nazir. *Federalism in Pakistan*: 1947-58, 2001, pp. 92-95: http://eprints.hec.gov.pk/1659/1/1601.htm (accessed on 14 July 2011).
[248] International Crisis Group, *Devolution in Pakistan: Reform or Regression?*, Asia Report No. 77, 22 March 2004, p. 3: http://www.unhcr.org/refworld/docid/40630aa29.html (accessed on 12 June 2011).
[249] Ibid.
[250] Zila Nazim is the Urdu equivalent of "mayor"; he was given considerable power over local affairs by virtue of the Local Government Ordinance, 2001.

Coordination Officer. Magisterial and legal powers were transferred to the district and sessions judge and police oversight powers to the Nazim. The divisional tier of administration headed by the commissioner was abolished, and the Nazim received the power to appoint and remove the District Coordination Officer, albeit with the approval of the district assembly."[251]

These NRB plans were formalised in 2001 when the Code of Criminal Procedure (Amendment) Ordinance abolished the district magistracy and the Local Government Ordinance, 2001 was promulgated in each province. According to the Ordinance, the Zila Nazim was designated as the head of district government and district administration reported to him, all of which reduced the power of the District Management Group, the very elite cadre of the Pakistani civil service that had traditionally wielded judicial and executive magisterial powers. The military's decision to dilute the District Management Group's authority arose in part because senior police and income tax officials, who occupied key posts in Musharraf's secretariat, took issue with the extent and scope of their dominance.[252] This distrust of the District Management Group was one of the main reasons why the Police Order, promulgated one year later, transferred oversight of police from the deputy commissioner to the Zila Nazim.

4.1.1 Police Order 2002, Amendments and Current Status

Although the Police Act, 1861 remained applicable in Pakistan as a central law after Independence, there was no legal bar on the provinces to amend it under the Constitution of 1973.[253] Since law and order issues are better addressed at the local level, "there is a general understanding and consensus that police legislation is a provincial subject and it is at the provincial level that legislation on police needs to be passed."[254] However, having suspended the Constitution of 1973 when he took over, Musharraf proceeded to legislate on policing matters. Along with administrative and local government reform, high on the NRB's agenda was police reforms:

> The NRB included police reform in its good governance and devolution plans. In 2000, it established a think tank composed of senior serving and retired police officers, which deliberated for over a year before presenting recommendations that were formally incorporated into a presidential ordinance promulgated as Police Order 2002. The Police Act of 1861 ceased to operate as soon as the Police Order came into force. Although policing is constitutionally a provincial subject and can be legislated by each province as it deems fit, the order, a federally created legal instrument, was extended to the four provinces. Because it was devised by a military regime, it lacked legitimacy. Even a member of Musharraf's ruling Pakistan Muslim League – Quaid-i-Azam (PML-Q) – criticised the centrally devised scheme, saying that the order was 'virtually thrust down the throats of the provinces', and 'the whole devolution plan, including the police reforms, was designed only to create an alternative political power base for Musharraf'.[255]

Notwithstanding provincial opposition to it, the Police Order 2002 ("PO 2002") was promulgated on 14 August 2002. The PO 2002 essentially modelled itself after the Japanese National Safety Commission system. It called for a number of important reforms, which are

[251] International Crisis Group, *Devolution in Pakistan: Reform or Regression?*, Asia Report No. 77, 22 March 2004, p. 7: http://www.unhcr.org/refworld/docid/40630aa29.html (accessed on 12 June 2011).
[252] Ibid.
[253] Asad Jamal, *Police Organisations in Pakistan*, HRCP-CHRI, 2010, fn 7. For example, an amendment to the Police Act, 1861 was introduced in the province of Sindh under the Police (Sindh Amendment) Act, 1996.
[254] Ibid., p. 9.
[255] International Crisis Group, *Reforming Pakistan's Police*, Asia Report No. 157, 14 July 2008, p. 6: www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/157_reforming_pakistan_s_police.pdf (accessed on 3 August 2011).

discussed in more detail in Sections 4.2 – 4.5:

- Greater operational autonomy in administration and investigation;
- Establish oversight bodies, in the form of safety commissions at district, provincial and national levels, which would have both elected and nominated members;
- Ensure accountability through police complaints authorities; and
- Engage with community by encouraging the proliferation of Citizen Police Liaison Committees.

The promulgation of PO 2002 garnered criticism from different quarters. First, the District Management Group strongly objected to the diminution of their powers in relation to the police. The powers of control and direction under the Police Act, 1861 had been in place for so long, the immediate and categorical removal of those powers was a tremendous shock to the administrative cadres. Second, the provinces were very upset that Musharraf and his inner circle were usurping another head of power traditionally within their purview under the federal structure. Had their views been solicited and taken into account, they may have been more amenable to the proposed reforms but no effort was undertaken to sincerely consult them. Third, even people within Musharraf's own party of PML-Q strongly fought PO 2002 because they felt that the order would deprive them of the power they had grown accustomed to. "Undiluted administrative control of the provincial police officer over his force would deny them opportunities to determine posting and transfers on the basis of political considerations."[256]

On account of all these objections, Musharraf significantly amended the PO 2002 in 2004. The changes made to the order fundamentally undermined its original spirit and intent. For instance, the original PO 2002 recognised that the functions of an oversight body and an external complaints mechanism were specialised and required the establishment of a distinct safety commission[257] and a distinct police complaints authority[258] at the provincial level. However, the amendments in 2004 merged the two bodies into one.[259] "This needless merger of public oversight of the police with public redress of grievances against the police has created serious problems, especially when a majority of members of the public safety commissions belong to the party in power ... the underlying objectives behind the safety commissions and the complaints authorities have remained unfulfilled; these existing bodies are neither one nor the other."[260]

Furthermore, the original PO 2002 struck a democratic and non-partisan tone when it held that the 12-member Provincial Public Safety Commission would have an equal number of members from Treasury and Opposition benches (three each), along with six independent members.[261] The subsequent amendments changed the composition to a more government-friendly model of *four* members from Treasury, *two* members from the Opposition and six

[256] Ibid., p. 7.
[257] Police Order, 2002 (Pakistan), Sections 73-84.
[258] Police Order, 2002 (Pakistan), Sections 103-108.
[259] Police Order (Amendment) Ordinance, 2004 (Pakistan). These amendments were re-promulgated a number of times, but were never passed by Parliament. The amendments lapsed in early 2010.
[260] International Crisis Group, *Reforming Pakistan's Police*, Asia Report No. 157, 14 July 2008, p. 9: www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/157_reforming_pakistan_s_police.pdf (accessed on 3 August 2011).
[261] Police Order, 2002 (Pakistan), Section 74(1).

independent members.[262] Reform measures that might otherwise have worked had they been fully and properly implemented, were systematically undermined by politically oriented amendments.

The total impact of the amendments was hugely problematic. Not only were the institutions of democratic and external accountability that were created by the PO 2002 weakened by the amendments, but the failure to notify these bodies or to allow them to function became a serious issue. For instance, although the National Public Safety Commission was established in 2006 and operated reasonably well for its first two years, the number of meetings declined considerably when the Interior Ministry failed to provide clearance for the six MPs the Speaker had nominated to sit on the Commission.[263] In addition, even when provinces have notified the creation of District Public Safety and Police Complaints Commissions, the government has not appointed members in accordance with the PO 2002 or provided them with the necessary infrastructure.[264]

Another problem was the separation of investigations from law and order. Since investigations in Pakistan are often slow and conducted by inadequately trained and unspecialised staff, the drafters of PO 2002 felt that policing would benefit by transferring the Station House Officer's powers in this regard to a specialised investigations wing.[265] The intention of separating law and order duties from investigation is a good one. Conducting a proper and thorough investigation requires specialised knowledge (i.e. forensics) that is not easily acquired. Thus, it makes sense to have police trained and well-versed in investigative techniques applying their unique skill set to analysing crimes scenes rather than walking a beat. But in order for the system to work well, someone needs to have overall supervision of both crime prevention (i.e. "law and order") and crime detection (i.e. "investigations") in the jurisdiction. The proverbial left hand needs to know what the right hand is doing.

However, because the drafters of the PO 2002 were concerned that the Station House Officer is one of the more corrupted offices in the police hierarchy, they felt that the person who occupies this position should *not* do overall supervision. They felt it was more prudent to have the files transferred to a separate investigation wing for inquiry even though FIRs would continue to be registered at the station house. "As a result of the separation of operational and investigation duties and the creation of separate hierarchies for each, the lines of authority are blurred, resulting in considerable confusion within police and public alike."[266] It is believed that a mooted government proposal to declare service in the investigation wing as a field posting, which is a mandatory requirement for promotion to a senior supervisory role, will serve as an incentive for professionally competent officers to provide their skills for investigations.[267]

Although the amendments to PO 2002 needed to be re-promulgated a number of times in the years that followed, the original PO 2002 did not have to be renewed in this way. It was afforded special

[262] Police Order (Amendment) Ordinance, 2004 (Pakistan).
[263] Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving From Force to Service in South Asian Policing*, 2010, p. 81: www.humanrightsinitiative.org/publications/police/feudal_forces_reform_delayed_2010.pdf (accessed on 1 July 2011).
[264] Ibid., p. 82.
[265] Police Order, 2002 (Pakistan), Section 18.
[266] International Crisis Group, *Reforming Pakistan's Police*, Asia Report No. 157, 14 July 2008, p. 10: www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/157_reforming_pakistan_s_police.pdf (accessed on 3 August 2011).
[267] Hassan Abbas, *Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?*, United States Institute of Peace, Special Report 266, February 2011, p. 10: www.usip.org/files/resources/sr266.pdf (accessed on 18 July 2011).

"protection" by the Constitution (Seventeenth Amendment) Act, 2003 ("Seventeenth Amendment") wherein it was included in the Sixth Schedule, which listed those laws not to be altered, repealed or amended without the previous sanction of the President.[268] The PO 2002 was accorded this "protection" for six years, until 31 December 2009. During this time provinces were barred from repealing or amending the PO 2002 on their own initiative.

As described in the timeline at the end of this chapter, there is considerable controversy as to whether the amendments to the PO 2002 lapsed in 2010 and whether the original PO 2002 can now be altered, repealed or amended without requiring the previous sanction of the President.[269] In the midst of this uncertainty, Sindh has chosen to repeal the PO 2002 and revert back to the Police Act, 1861 (amended as of 14 August 2002), not the original Police Act.[270] This is notable because the amendments in 2001, prior to the introduction of the PO 2002, removed dual control from Section 4 of the Police Act and retained a supervisory role for the Zila Nazim. Given the constantly changing rules relating to local government structures in Sindh, it is unclear whether reversion back to the amended Police Act of 1861 was intentional or an oversight.

Balochistan is another province that has objected to a national police act and as a result, it has decided to abandon the PO 2002. However, instead of resurrecting the Police Act, 1861, Balochistan has passed the Balochistan Police Act, 2011 that essentially replicates in substance the colonial-era police act.[271] This move is currently being challenged in the Balochistan High Court.[272] In 2010, Punjab considered repealing the PO 2002; they put together a new, and deeply flawed, draft police act but did not proceed with passing it.[273] With all of these provinces, there is an unsettled question as to whether they are entitled to repeal the PO 2002 and pass their own police legislation. This issue has come before the Supreme Court in the context of a case involving an overall breakdown of law and order in Karachi.[274] It remains to be seen whether the Court will provide greater clarity on this important jurisdictional matter.

The information found at Sections 4.2 – 4.5 is useful to the extent that it provides technical guidance on possible ways to design oversight and complaints bodies. However, unlike other

[268] Constitution (Seventeenth Amendment) Act, 2003 (Pakistan), Article 268(2).
[269] Proponents of the PO 2002, like former Federal Investigation Agency IGP Tariq Khosa, argue that the provinces cannot repeal the Order. See Tariq Khosa, "Repeal of the Police Act: Sindh steps back into the 19th Century," *The News*, 15 July 2011: http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=57835&Cat=2&dt=7/15/2011 (accessed on 17 July 2011). However, legal experts generally accept that with the expiration of the six-year "protection" afforded by the Seventeenth Amendment, provinces can alter, amend or repeal those statutes that were listed in the Sixth Schedule. See Usman Manzoor, "Sindh can amend Police Act, says law secretary," *The News*, 12 July 2011: http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=57450&Cat=2&dt=7/13/2011 (accessed on 17 July 2011).
[270] The Sindh (Repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011, Sindh Act No. XXII of 2011; See also Atif Raza, "Wasan issues order for restoration of Police Act 1861," *Daily Times*, 22 July 2011: http://www.dailytimes.com.pk/default.asp?page=2011\07\22\story_22-7-2011_pg12_3 (accessed on 23 July 2011).
[271] "Police Act 2011: Balochistan gets police transfer powers," *The Express Tribune*, 20 August 2011: http://tribune.com.pk/story/235538/police-act-2011-balochistan-gets-police-transfer-powers/ (accessed on 29 August 2011).
[272] "Balochistan Police Act, 2011 challenged in BHC," *Daily Times*, 15 September 2011: http://www.dailytimes.com.pk/default.asp?page=2011\09\15\story_15-9-2011_pg7_20 (accessed on 18 September 2011).
[273] Asad Jamal, *Revisiting Police Law*, Human Rights Commission of Pakistan, January 2011, p. 6. The Police establishment in Punjab have put together a Draft Punjab Police Act, 2010 ("DPPA 2010"). However, the DPPA 2010 is a tremendous disappointment. It is not a strong progressive piece of legislation designed to meet the modern day needs of society or the police. If passed, its provisions ensure that police functioning will not improve in the province.
[274] Umar Cheema, "Who controls the police, Centre or provinces?" *The News*, 12 September 2011: http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=67267&Cat=6&dt=9/12/2011 (accessed on 18 September 2011).

chapters in this study that delve into the practical experience of such institutions, the examination below places greater emphasis on the interesting legislative constructions found in the original PO 2002 and how the 2004 amendments subverted the intended reform. This analysis will primarily examine the provisions of the original PO 2002 because the original technically remains the prevailing law since the amendments lapsed as of 27 March 2010.[275]

4.2 Police-Executive Relationship

The original PO 2002 changed police-executive relations from the Police Act, 1861; superintendence remains vested with the government, but the manner in which superintendence is to be wielded is more specific and directed. "The power of superintendence ... shall be so exercised as to ensure that police performs its duties efficiently and strictly in accordance with law.[276] The order also sets out that the Provincial Police Officer is responsible for the administration of police[277] regarding all matters of recruitment, training, postings, transfers, promotions, arms, drill, discipline, clothing, distribution of duties, and any other matter concerning the efficient fulfilment of duties by the police under his control.[278]

However, the operational autonomy given to the Provincial Police Officer in the original Police Order was significantly diluted by the 2004 amendments. Due to pressure from the District Management Group, the order was amended to re-establish a role for the bureaucracy in relation to the police. In the definitions section, a number of terms were added to empower the Chief Secretary, who is always chosen from the District Management Group cadre. This was a way for administrators to re-assert the powers they had under the Police Act, 1861.

> **Superintendence:** Supervision of Police by the appropriate Government through policy, oversight and guidance and, **in case of a Province, it shall be exercised by the Chief Minister through the Chief Secretary** and the Provincial Home Department, while ensuring total autonomy of the Provincial Police Officer in operational, administrative and financial matters and, in case of Federal Capital, such supervision shall be exercised by the Ministry of Interior, Government of Pakistan (emphasis added).[279]
>
> **Ex-officio Secretary:** Provincial Police Officer who shall exercise administrative and financial powers of the Secretary to the Provincial Government with total autonomy in operational, administrative and financial matters **subject to the policy, oversight and guidance given by the Chief Minister through the Chief Secretary** and the Provincial Home Department (emphasis added).[280]
>
> **Responsible:** Police Officer who is answerable and accountable, for effective and efficient performance of assigned duties and functions, and for implementation of all lawful orders and instructions issued by an officer or an authority to whom he is responsible under this Order and non-compliance of such orders, directions and instructions which he is bound to observe or obey for action shall be liable under paragraph (c) of clause (1) of Article 155.[281]

[275] Unable to re-promulgate the Police Order (Amendment) Ordinance, 2009 due to the Supreme Court ruling in *Sindh High Court Bar Association v. Federation of Pakistan*, the amendment ordinance lapsed because Parliament never passed it into a law. However, the original PO 2002 remains in effect because it is a separate instrument from the Police Order (Amendment) Ordinance, 2009 and was never at risk of lapsing. Thus, in Punjab and Khyber Pakhtunkhwa, the law that clearly prevails is the original PO 2002. But practically, policing in Pakistan does not follow the original PO 2002, the amended PO 2002 or even the Police Act, 1861. Rather, it is currently a hybrid of these various practices with no one consistent approach.
[276] Police Order, 2002 (Pakistan), Section 9.
[277] Police Order, 2002 (Pakistan), Section 10(1).
[278] Police Order, 2002 (Pakistan), Section 27.
[279] Police Order (Amendment) Ordinance, 2004 (Pakistan), inserted Section 2(1)(xxvi-a).
[280] Police Order (Amendment) Ordinance, 2004 (Pakistan), inserted Section 2(1)(vii-a).
[281] Police Order (Amendment) Ordinance, 2004 (Pakistan), inserted Section 2(1)(xxii-a).

At the district level, the PO 2002 held that the Head of District Police (DPO)[282] shall be responsible to the Zila Nazim for police functions but that this shall not include administration of the district police, investigation of criminal cases and police functions relating to prosecution, all of which shall rest with the police.[283] This aspect to the DPO's operational autonomy was retained in the 2004 amendments, but something new was added. The Zila Nazim was given the power to write the Performance Evaluation Report for the Head of District Police, effectively giving the Nazim the power to determine whether the DPO is promoted or not.[284] Having an elected official conduct a performance appraisal in this manner seriously undermined the chain of command and internal administrative functioning of the police.

Thus, even before Provincial Police Officers or DPOs throughout the country had an opportunity to properly use the operational autonomy bestowed by the original PO 2002, that power was curtailed by the 2004 amendments. As a result, it would be unfair to suggest that the Pakistan police reforms failed because the police were given too much independence.

4.3 Democratic Accountability

The functions of the National Public Safety Commission (NPSC) include:[285]

- Oversee the functioning of Federal Investigation Agency, Pakistan Railways Police, National Motorway and Highway Police and any other Federal Law Enforcement Agency;
- Facilitate establishment of Citizen Police Liaison Committees;
- Recommend to Federal Government panels of three police officers to lead the Islamabad Police or a Federal Law Enforcement Agency;
- Recommend to Provincial Government panels of three police officers to serve as PPO;
- Facilitate coordination of Provincial Public Safety Commissions; and
- Evaluate performance of Islamabad Police and report on functioning of Federal Law Enforcement Agencies.

The NPSC will have 12 members, of which six will be nominated by the Speaker of the National Assembly (three from Treasury, three from Opposition) and six will be independent members appointed by the President from a list put together by the National Selection Panel.[286] One of the changes to the NPSC by the 2004 amendments was the exclusion of the NPSC from the process of selecting the Provincial Police Officer. This means that an independent body no longer vets the list provided to the Provincial Government of possible

[281] Police Order (Amendment) Ordinance, 2004 (Pakistan), inserted Section 2(1)(xxii-a).
[282] In the PO 2002, "Head of District Police" means District Police Officer (DPO), City Police Officer (CPO) or a Capital City Police Officer (CCPO). This paper has chosen to use the term District Police Officer (DPO) and cite the Sections relating to it when focusing on the provisions and institutions that are essentially common to all three.
[283] Police Order, 2002 (Pakistan), Section 33(1). This provision also allows the Zila Nazim to visit a police station to find out if any person is under unlawful detention and, where appropriate, they can direct the police to act in accordance with law.
[284] Police Order (Amendment) Ordinance, 2004 (Pakistan), inserted Section 33(3).
[285] Police Order, 2002 (Pakistan), Section 92.
[286] Police Order, 2002 (Pakistan), Section 86. The Selection Panel for independents will include the Chief Justice of Supreme Court of Pakistan and one nominee each of President and Prime Minister. See Police Order, 2002, Section 89.

candidates, thus increasing the likelihood that politics will dictate the composition of the list and subsequent appointment of the Provincial Police Officer.

The Provincial Public Safety Commissions (PPSCs) functions, as set out in the original PO 2002, include:[287]

- Provide the Provincial Police Officer with guidelines on how to promote the integrity, efficiency and effectiveness of police;
- Take steps to prevent the police from carrying out any unlawful orders;
- Facilitate the establishment of Citizen Police Liaison Committees throughout the province;
- Facilitate coordination of safety commissions throughout the province;
- Assist the Provincial Police Officer in setting objectives;
- Oversee implementation of the provincial policing plan; and
- Annually evaluate the performance of commissions within the province.

The PPSC is Chaired by the Provincial Home Minister[288] and composed of three members of the Provincial Assembly from governmental benches, three members of the Provincial Assembly from the Opposition, and six independent members appointed by the Governor from a list of names recommended by the Provincial Selection Panel; at least four of the members should be women (two from the Provincial Assembly and two independents).[289]

With respect to policing plans, the Provincial Police Officer is required to prepare a provincial annual policing plan for review by the PPSC that sets out the objectives of policing, the financial resources likely to be available during the year, targets for the police service, and mechanisms for achieving these targets.[290] This plan is supposed to be reviewed by the PPSC and then ultimately approved by the Provincial Government. Once approved, it is the responsibility of the PPSC to oversee its implementation.[291]

However, two developments occurred that undermined this system. First, the PPSCs were never established and they were merged with Provincial Police Complaints Authorities (PPCAs) to form Provincial Public Safety and Police Complaints Commissions (PPS&PCCs). The merger, and corresponding changes, resulted in reduced oversight functions for the PPS&PCC. For instance, the PPS&PCC's ability to assist the Provincial Police Officer was compromised when it was no longer able to provide guidance directly to the Provincial Police Officer; all recommendations to improve the efficiency and efficacy of the police were to go directly to Government.[292] Also, the PPS&PCC no longer had the authority to intervene if the police were given an unlawful order.[293] Moreover, the PPS&PCC could no longer consult with the Provincial Police Officer in determining policing objectives.[294] Essentially, the amendments of 2004 effectively neutered the oversight functions of the PPS&PCC.

[287] Police Order, 2002 (Pakistan), Section 80.
[288] Police Order, 2002 (Pakistan), Section 75.
[289] Police Order, 2002 (Pakistan), Section 74. The Selection Panel for independents will include the Chief Justice of the High Court and one nominee each of the Governor and the Chief Minister. See Police Order, 2002 (Pakistan), Section 77(1).
[290] Police Order, 2002 (Pakistan), Section 10(4).
[291] Police Order, 2002 (Pakistan), Section 80(2)(f).
[292] Police Order (Amendment) Ordinance, 2004 (Pakistan), Section 80(1)(a).
[293] Police Order (Amendment) Ordinance, 2004 (Pakistan), Section 80(1)(b).
[294] Police Order (Amendment) Ordinance, 2004 (Pakistan), removal of Section 80(2)(e).

Second, the Provincial Police Officers never actually put together annual policing plans in accordance with the PO 2002. In mid-2008, a former IGP revealed, "Not a single provincial police officer in any of the provinces has presented any such plan."[295]

At district level, the District Public Safety Commissions (DPSCs) are expected to:[296]

- Approve the local policing plan prepared by the DPO;
- Evaluate police performance against the policing plan;
- Report to PPSC any illegitimate collusion between the Nazim and DPO;
- Direct the DPO to register an FIR when he has unjustifiably refused to do so; and
- Direct the DPO to conduct an inquiry into a complaint.

The DPSC will have 8, 10 or 12 members (depending on the size of the district), with half of it composed of councillors from the Zila Council and the other half independent members appointed by the Governor from a list of names recommended by the Provincial Selection Panel; at least one third of both elected and independent members should be women.[297]

A major change that occurred with the 2004 amendments was that the DPSC had a complaints component added to its functions whereas previously, complaints regarding police misconduct could only be made at the provincial or federal levels. On the one hand, merging the DPSC with a complaints mechanism diluted both functions. But on the other hand, having a complaints mechanism available at the district level was, in theory, a positive improvement. For instance, the District Public Safety and Police Complaints Commission (DPS&PCC) had the same powers of a civil court (i.e. summon and enforce the attendance of witnesses, require the discovery and production of any document, and receive evidence on affidavit)[298] and could also conduct a fact-finding inquiry on its own.[299]

However, the problem with the DPS&PCC was twofold. First, its composition changed to include one third members appointed by Provincial Government, one third from Zila Council and one third independents, thus making it a more politicised body. Second, the DPS&PCCs were simply not created. As of February 2009, there was no DPS&PCC functioning in Sindh despite having been set up in 12 out of 15 districts.[300]

The protections afforded the DPO were also diluted by the 2004 amendments. The original PO 2002 allowed the DPO to seek recourse to the appropriate public safety commission in the event that an order issued to the police was unnecessary and/or unlawful.[301] This provision was meant to guard against illegitimate political interference but it was removed by the 2004 amendments. In addition, according the original PO 2002, the DPO could be transferred

[295] International Crisis Group, *Reforming Pakistan's Police*, Asia Report No. 157, 14 July 2008, p. 11: www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/157_reforming_pakistan_s_police.pdf (accessed on 3 August 2011).
[296] Police Order, 2002 (Pakistan), Section 44. At the district level, the District Police Officer (DPO) is supposed to consult with the Zila Nazim when drafting an annual policing plan that is consistent with the provincial policing plan. See Police Order, 2002, Section 32(1).
[297] Police Order, 2002 (Pakistan), Section 38. The Selection Panel for independents will include District and Sessions Judge and one nominee each of the Governor and the Chief Minister. See Police Order, 2002 (Pakistan), Section 41(1).
[298] Police Order (Amendment) Ordinance, 2004 (Pakistan), revised Section 44(2).
[299] Police Order (Amendment) Ordinance, 2004 (Pakistan), revised Section 44(1)(m)(ii).
[300] Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving From Force to Service in South Asian Policing*, 2010, p. 83: www.humanrightsinitiative.org/publications/police/feudal_forces_reform_delayed_2010.pdf (accessed on 1 July 2011).
[301] Police Order, 2002 (Pakistan), Section 34(3).

before his three-year tenure had expired, on the basis of inefficiency and ineffectiveness, so long as the Zila Nazim and DPSC concurred.[302] However, the 2004 amendments stripped away this protection and permitted the Government to make this decision unilaterally.

4.4 External Accountability

The Federal Police Complaints Authority shall consist of a Chairperson appointed by the President and six members appointed by the Government on the recommendation of the Federal Public Service Commission.[303] Its function is to:[304]

- Receive and process from DPSC or an aggrieved person complaints of neglect, excess or misconduct against Islamabad Police or Federal Law Enforcement Agencies; direct ordinary cases elsewhere and initiate inquiry into serious cases;
- Receive any report of death, rape or serious injury from Islamabad District Public Safety Com mission, Capital City District Police Officer or Head of Federal Law Enforcement Agencies;
- Request Chief Justice of High Court to appoint District and Sessions Judge to examine serious cases;
- Supervise inquiry proceedings;
- Send report to competent authority for departmental action; if unsatisfied with outcome, can forward report to higher authority and the process be repeated till it is considered by the final authority; and
- Recommend disciplinary action against an enquiry officer for willful neglect or mishandling of an enquiry.

The Provincial Police Complaints Authority (PPCA) shall consist of a Chairperson appointed by the Governor and six members appointed by the Government on the recommendation of the Provincial Public Service Commission.[305] Its function is to:[306]

- Receive and process from DPSC or an aggrieved person complaints of neglect, excess or misconduct; direct ordinary cases elsewhere and initiate inquiry into serious cases;
- Receive any report of death, rape or serious injury from DPSC or DPO, and take steps to preserve evidence and request Chief Justice of High Court to appoint District and Sessions Judge to examine the matter;
- Supervise inquiry proceedings;
- Direct departmental action on the basis of inquiry findings;
- Send report to competent authority for departmental action; if unsatisfied with outcome, can forward report to higher authority and the process be repeated till it is considered by the final authority; and
- Recommend disciplinary action against an enquiry officer for wilful neglect or mishandling of an enquiry.

[302] Police Order, 2002 (Pakistan), Section 15(3).
[303] Police Order, 2002 (Pakistan), Section 98.
[304] Police Order, 2002 (Pakistan), Section 100.
[305] Police Order, 2002 (Pakistan), Section 104.
[306] Police Order, 2002 (Pakistan), Section 106.

As mentioned earlier, the 2004 amendments merged the PPCA with the PPSC, forming the Provincial Public Safety and Police Complaints Commission. The conflation of safety commissions with complaints authorities undermined the objectives of both institutions and the net result was that the PPS&PCCs were "neither one nor the other". One of the more significant changes was that the PPS&PCC was no longer able to direct departmental action after an inquiry was made. The power of direction was eliminated and the PPS&PCC was only allowed to convey its recommendation to the Chief Minister.[307]

4.5 Community Engagement

Disappointingly, on the issue of formalised community engagement, the PO 2002 only has provision for the establishment of Citizen Police Liaison Committees (CPLCs), which are voluntary, self-financing and autonomous bodies.[308] CPLCs first started in Karachi in 1989 when former Governor Fahkruddin G. Ibrahim encouraged the creation of a committee where volunteers would act as a conduit for information between the police and the public. These volunteers are usually from affluent business communities who largely focus their attention on issues that affect the middle or upper class (i.e. vehicle and cell phone theft and kidnappings for extortion).

After allocating space for the CPLC at the Governor's residence, and then persuading the legislature to amend Rule 1.21 of the Police Rules 1934 so as to provide a legal framework for it, the CPLC was institutionalised. Amended Rule 1.21A sets out CPLC's functions:[309]

- Satisfy itself that FIR's are duly registered and that no FIR is refused;
- Find out if dilatory tactics are being adopted by the investigation officers in the cases assigned to them;
- Collect statistics regarding cases registered and disposed of during a specified period;
- Check if all the registers in the police station are being properly and regularly maintained;
- Find out if any person is unlawfully detained at the police station and take necessary steps for the release of such person(s) in accordance with law;
- Assist the police in taking steps for preservation of peace and the prevention or detection of crimes;
- Report misconduct or neglect of duty on the part of any police officer; and
- Perform such other functions as may be assigned by the government.

However, it has been pointed out that most of these formal tasks are largely of an oversight nature and not actually the focus of the CPLC's work. "In practice, the CPLC has focused on improving the shortcomings of the police as a law enforcement and public service agency by providing critical inputs in law enforcement. It has often consciously refrained from exercising its formal powers of oversight for fear of jeopardising its close working

[307] Police Order (Amendment) Ordinance, 2004 (Pakistan), inserted Section 80(2)(r)(ii).
[308] Police Order, 2002 (Pakistan), Section 168.
[309] Citizens Police Liaison Committee website, "Notified Functions": http://www.cplc.org.pk/content.php?page=10 (accessed on 29 July 2011).

relationship with the police."[310] It has in practice concentrated on supporting operational policing in four areas: information collection, information analysis, direct participation in police operations, and assistance to citizens.

This author has visited the CPLC in Karachi and can verify that its operations are designed to fill a gap in policing borne mostly out of the Sindh Police's insufficient resources. Unlike other community policing initiatives in Northern Ireland, South Africa and Kerala, where proactive outreach has been instigated by the police organisation, in Karachi it has been the CPLC that has taken the initiative. Concerned by the failure of police to check crime in Karachi, the CPLC has made a conscious decision to reduce their focus on monitoring the police and to expend more effort in providing services that the police ought to be providing (i.e. tracking incidences of crime throughout Karachi, providing expertise in hostage negotiations, and compiling useful databases on criminal activity).

While the CPLC's activities have definitely been helpful to certain communities, particularly the more affluent, it should not serve as a model for community policing in Bangladesh. The pseudo-privatisation of policing in this fashion relieves the police of their responsibility to work with the community to secure public safety; essentially, it enables the police to outsource their duties and functions.

CHRONOLOGICAL TIMELINE OF POLICE ORDER 2002

14 October 1999: State of emergency is declared. General Musharraf assumes power as Chief Executive and the Provisional Constitution Order No. 1 of 1999, which suspended the Constitution, federal Parliament and provincial Legislative Assemblies, is issued.

18 November 1999: National Reconstruction Bureau (NRB) is established. NRB is tasked with recommending structural changes to local government and police.

14 August 2001: District magistracy is abolished by the Code of Criminal Procedure (Amendment) Ordinance. Police (Amendment) Order (Chief Executive's Order 7 of 2001) amends the Police Act, 1861 to remove references to the District Magistrate and transfers his powers to the police, thus addressing long-standing police concerns regarding duality of control. These changes are kept when the Police Order 2002 is promulgated the following year. Also, Local Government Ordinance, 2001 is promulgated in each province and Zila Nazim is designated as head of district government with district administration reporting to him.

14 August 2002: PO 2002 is promulgated.

31 December 2003: Constitution (Seventeenth Amendment) Act, 2003 is passed. Among other things, the Seventeenth Amendment includes PO 2002 on the Sixth Schedule of the Constitution.[311] The Sixth Schedule lists those laws not to be altered, repealed or amended without the previous sanction of the President. PO 2002 is accorded this "protection" for six years, until December 31, 2009. Effectively, this means that the provinces cannot on their own initiative do anything to change the PO 2002 for a six-year period.

November 2004: Significant amendments are made to the PO 2002 with the promulgation of the Police Order (Amendment) Ordinance, 2004. Provincial governments are highly dissatisfied with the devolution of power to local government (i.e. Zila Nazim) and the impact this has on their control over the police. Moreover, greatly concerned by the lack of consultation prior to the promulgation of the PO 2002, provincial governments put considerable pressure the government to dilute some of the more democratic/progressive features of the PO 2002.

[310] Mohammad O. Masud, "Co-producing citizen security: the Citizen-Police Liaison Committee in Karachi," Institute of Development Studies, Working Paper 172, October 2002, p. 7: http://www2.ids.ac.uk/gdr/cfs/pdfs/wp172.pdf (accessed on 30 July 2011).
[311] Constitution (Seventeenth Amendment) Act, 2003 (Pakistan), Section 268(2).

December 2005 – July 2007: Police Order (Amendment) Ordinance, 2004 is re-promulgated several times during this period but never passed by Parliament.

3 November 2007: Provisional Constitution Order No. 1 of 2007 (PCO 2007) is issued. Police Order (Amendment) Ordinance, 2007 is protected by PCO 2007.[312]

31 July 2009: Police Order (Amendment) Ordinance, 2007 loses its "protection" after the Supreme Court of Pakistan[313] directs that within 120 days of its judgment all the ordinances protected under the Provisional (Constitution) Order, 2007 must be laid before Parliament for consideration as to whether to pass them into Acts or not.

28 November 2009: Before the Supreme Court's 120-day deadline, the Police Order (Amendment) Ordinance, 2007 is re-promulgated by the President one last time as the Police Order (Amendment) Ordinance, 2009 (XLIV of 2009).

31 December 2009: As of this date, provinces no longer require presidential sanction to alter, repeal or amend the PO 2002.

27 March 2010: Unable to re-promulgate the Police Order (Amendment) Ordinance, 2009 due to the ruling in *Sindh High Court Bar Association v. Federation of Pakistan*, the Ordinance lapses because the National Assembly never passed it into a law. However, the original PO 2002 remains in effect because it is a separate instrument from the Police Order (Amendment) Ordinance, 2009 and was never at risk of lapsing.

18 April 2010: Constitution (Eighteenth Amendment) Act, 2010 is passed. All laws, including President's Orders, made between 12 October 1999 and 31 December 2003 (and still in force as of this day), were permitted to remain in force until altered, repealed or amended by the competent authority.[314] Thus, because the original PO 2002 was still in force as of this day, it remains in force (but is stripped of the 2004, 2006 and 2007 amendments which have since lapsed) until such time it is formally repealed or amended by Parliament or the Provincial Assemblies.

21 July 2011: Sindh formally repeals the PO 2002 and reintroduces the Police Act, 1861, as amended on 14 August 2001. This means that dual control in Sindh no longer has a statutory basis.

20 August 2011: Balochistan replaces the PO 2002 with the Balochistan Police Act, 2011. The new act basically replicates the Police Act, 1861.

12 September 2011: In a hearing related to the law and order situation in Karachi, Chief Justice Iftikhar Muhammad Chaudhry suggested that a provincial assembly could not repeal the PO 2002. The jurisdictional question of whether provinces can unilaterally amend or repeal the PO 2002 in accordance with the Eighteenth Amendment remains an unresolved question.

[312] Section 4 and 5 of Provisional Constitution Order No. 1 of 2007 read as follows:

> 4(1) Notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the President, all laws other than the Constitution, all ordinances, orders, rules, bye laws, regulations, notifications and other legal instruments in force in any part of Pakistan, whether made by the President or the governor of a province, shall continue in force until altered, or repealed by the President or any authority designated by him.
>
> 5(1) Any ordinance promulgated by the President or by the governor of a province shall not be subject to any limitations as to duration prescribed in the Constitution.
>
> (2) The provisions of clause (1) shall also apply to an ordinance issued by the President or by a governor which was in force immediately before the commencement of the Proclamation of Emergency of the 3rd day of November 2007.

[313] See *Sindh High Court Bar Association v. Federation of Pakistan*: PLD 2009 SC 879.

[314] See Constitution (Eighteenth Amendment) Act, 2010 (Pakistan), Section 96(2).

Chapter 5

NORTHERN IRELAND

"Up until 1922, policing in Northern Ireland was rooted in the Irish Constabulary model. From 1922 to 2001, the police were known as the Royal Ulster Constabulary (RUC). During that period of time, and especially in the 30 years preceding the 1998 Belfast Agreement, the RUC was at the forefront of the conflict between the largely Catholic Irish Republicans and the largely Protestant Ulster Unionists."

5. NORTHERN IRELAND

Key Legislation:

Police (Northern Ireland) Act, 1998
Police (Northern Ireland) Act, 2000

5.1 Background

Shortly after Ireland was partitioned and the south became the Irish Free State in 1922, the Royal Irish Constabulary was disbanded and the Irish created a new police organisation they eventually named An Garda Síochána (Civil Guards, or "Guardians of the Peace"), which incorporated the Dublin Metropolitan Police and followed a civilian model of policing similar to the London Metropolitan model. However, six counties in the northeast continued to remain under direct British control (albeit with a significant level of autonomy, including a devolved government). These six counties were, and continue to be, referred to as Northern Ireland.

Up until 1922, policing in Northern Ireland was rooted in the Irish Constabulary model. From 1922 to 2001, the police were known as the Royal Ulster Constabulary (RUC). During that period of time, and especially in the 30 years preceding the 1998 Belfast Agreement, the RUC was at the forefront of the conflict between the largely Catholic Irish Republicans and the largely Protestant Ulster Unionists. Beginning in the late 1960s, when the dispute over the constitutional status of Northern Ireland manifested in widespread violence colloquially referred to as "The Troubles", the RUC was deployed to restore public order, which usually meant being seen to defend the Unionist position.

Since the RUC was utilised in this manner, and its personnel were disproportionately Protestant and Unionist, they were viewed by Catholics as agents of the state rather than members of the community.

> Policing has been contentious, victim and participant in past tragedies, precisely because the polity itself has been contentious. The consent required right across the community in any liberal democracy for effective policing has been absent ... Since 1922 and the establishment of the Royal Ulster Constabulary (in part drawn from the ranks of the old Royal Irish Constabulary), the composition of the police has been disproportionately Protestant and Unionist ... Both in the past, when the police were subject to political control by the Unionist government at Stormont, and more recently in the period of direct rule from Westminster, they have been identified by [Catholics] not primarily as upholders of the law but as defenders of the state ... This identification of police and state is contrary to policing practice in the rest of the United Kingdom.[315]

5.1.1 Independent Commission on Policing for Northern Ireland

The Belfast Agreement (also known as the "Good Friday Agreement") was signed in April 1998. It was the culmination of years of negotiation, between multiple parties, to bring peace to Northern Ireland. In the Agreement, policing was identified as a critical and important element in achieving a sustainable peace. The participants agreed that it is "essential that

[315] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 1.3.

policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and cooperative criminal justice system, which conforms with human rights norms."[316] As a result, the parties approved the creation of the Independent Commission on Policing for Northern Ireland so that it could bring forward proposals for future policing structures and arrangements, including means of encouraging widespread community support for those arrangements.

To carry out the mandate of the Independent Commission, former Hong Kong Governor and former junior minister in Northern Ireland Christopher Patten was tasked with consolidating suggestions on how the RUC could be reformed to better reflect the ideals of democratic policing. After holding numerous public consultations and comprehensively examining the RUC, Patten made 175 recommendations on how to transform the RUC into the Police Service of Northern Ireland. However, Patten was very clear that "the separate chapters of this report represent different aspects of an integral whole; they are all inter-related. We advise in the strongest terms against cherry-picking from this report or trying to implement some major elements of it in isolation from others."[317] Patten correctly understood that reforming the police would only work if the totality of his recommendations were followed and not merely those that were politically expedient or easy.

Patten made a number of compelling points regarding police reform that still resonate today, 12 years after his report was released. First, he stressed the importance of police accountability to any democracy that is truly committed to the rule of law:

> The rule of law binds together a healthy, democratic society; under the rule of law we are all of us both governors and governed – we help to make the laws that govern us equally. In such a society, the police are in a uniquely privileged position. It is their task to uphold the rule of law, exercising their independent professional judgment in doing so. That independence is rightly prized as a defence against the politicisation of policing and the manipulation of the police for private ends. The police do not serve the state, or any interest group; they serve the people by upholding the law that protects the rights and liberties of every individual citizen. But the proper assertion of independence should not imply the denial of accountability.[318]

Second, when deconstructing the issue of accountability, Patten delved into the significance of the police-community relationship:

> In a democracy, policing, in order to be effective, must be based on consent across the community. The community recognizes the legitimacy of the policing task, confers authority on police personnel in carrying out their role in policing and actively supports them. Consent is not unconditional, but depends on proper accountability, and the police should be accountable in two senses – the "subordinate or obedient" sense and the "explanatory and cooperative" sense.
>
> In the subordinate sense, police are employed by the community to provide a service and the community should have the means to ensure that it gets the service it needs and that its money is spent wisely. Police are also subordinate to the law, just as other citizens are subordinate to the law, and there should be robust arrangements to ensure that this is so, and seen to be so. In the explanatory and cooperative sense, public and police must communicate with each other and work in partnership, both to maintain trust between them and to ensure effective policing,

[316] The Belfast Agreement, 10 April 1998.
[317] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 19.2.
[318] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 1.12.

> because policing is not a task for the police alone.[319]

Third, transparency and communication is crucial if there is to be police-community trust and there is to be accountability for police functioning:

> People need to know and understand what their police are doing and why. This is important if the police are to command public confidence and active cooperation. Secretive policing arrangements run counter not only to the principles of a democratic society but also to the achievement of fully effective policing.[320]

Since his terms of reference were quite broad and open-ended, the Commission was able to suggest a radical overhaul that would adequately address these critical issues of accountability. On the basis of the recommendations set forth, work commenced on amending the Police (Northern Ireland) Act, 1998 shortly after the report was released in September 1999.

That legislation was the Police (Northern Ireland) Act 2000 ("PNIA 2000") and it incorporated all of the major recommendations made by Patten. First, it created the Police Service of Northern Ireland (PSNI).[321] Second, it established the Northern Ireland Policing Board, an independent public body made up of 19 political and independent members that replaced the Policing Authority.[322] The Board was set up to ensure that PSNI became an effective, efficient, impartial, and representative police service ultimately accountable to the people of Northern Ireland.

Third, the PNIA 2000 created District Policing Partnerships, which are composed of ten elected members of district council and nine independent members representative of the community that are appointed by the Policing Board. These bodies are supposed to serve as a bridge between the local community and the police, with the ultimate objective of improving public safety.

Fourth, to ensure that PSNI is subject to legal accountability, the PNIA 2000 strengthened the Police Ombudsman for Northern Ireland, which was first created in the 1998 Act. Bestowed with considerable powers, the Police Ombudsman has been effective in providing independent scrutiny of police conduct. Taken together, these major initiatives of reform have substantially altered the policing landscape in Northern Ireland (these institutional reforms are explained in greater detail at Sections 5.2 – 5.5).

Along with additional amendments made to the Police Act in 2003, another significant event was when Sinn Féin[323] finally agreed to join the Policing Board in February 2007. Initially the party - the largest nationalist party in Northern Ireland - boycotted the Board because they felt that insufficient power over policing had been devolved locally after the Patten Report was released and the subsequent amendments were passed. However, once they did agree to participate on the Board, "this decision paved the way for the ultimate devolution of police and criminal justice functions to the Northern Ireland Assembly, which was finally achieved

[319] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraphs 5.2 and 5.3.
[320] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 5.14.
[321] Police (Northern Ireland) Act, 2000, Section 1.
[322] Police (Northern Ireland) Act, 2000, Schedule I, paragraph 6(1).
[323] Sinn Féin is a leftist, Irish Republican political party in Ireland and Northern Ireland. It originally was started in 1905 and is closely associated with the nationalist movement.

in early 2010.[324] The devolution of policing from Westminster to Stormont occurred with the Hillsborough Castle Agreement. Beginning in April 2010, with the appointment of David Ford as the first Northern Ireland Justice Minister in 38 years, key appointments and consultations required under the Police Act will be done by someone elected from Northern Ireland rather than London.[325] The passage of 12 years from the signing of the Belfast Agreement until full devolution occurred is indicative of the need for patience when seeking to implement police reforms.

On the question of why the Patten Report was so effective in reforming the police, there are many possible explanations:[326]

- Broad terms of reference meant that the Commission had a lot of latitude when making its recommendations;
- High quality of appointments made to the Commission;
- The Commission was sufficiently resourced to allow it to approach its work independently and effectively;
- The Commission's extensive recommendations and considerable detail meant that a wide range of people could pursue the reform agenda over many years;
- The Commission focused on outreach to the community – it sought and used input from civil society, and it undertook a wide range of public meetings; and
- The Commission's proposal that a robust mechanism be put in place to monitor the implementation of its recommendations was vital.

On the last point, the mechanism put in place to monitor adherence to the Patten Report was known as the Independent Police Oversight Commissioner and was in operation until May 2007. The first Oversight Commissioner, Tom Constantine, was a well-respected policing expert from the United States who oversaw the production of three reports a year between 2001 and 2006.[327] When the 19th, and last, report of the Oversight Commissioner was issued in May 2007, all but 35 of Patten's 175 recommendations had already been implemented.[328] These reports provided detailed updates on reform progress and kept key stakeholders accountable for any tardiness in meeting the targets set by Patten. With the end of Independent Police Oversight Commissioner, the remaining recommendations continue to be monitored by the Policing Board and the Northern Ireland Office.

5.2 Police-Executive Relationship

Possibly the most valuable contribution of Patten's Report to the general discourse on police reforms are his thoughts and insights into the nature and dynamic of the police-executive relationship. Historically in Northern Ireland, due to its tenuous security situation, the Secretary of State (a United Kingdom cabinet minister) was much more involved in the day-to-day

[324] Peter Joyce "Policing: development and contemporary practice", SAGE publication, 2011, at pp. 21-22.
[325] Denis Foynes, "Dissident Resurgence Seen in Northern Ireland", *Inter Press Service News Agency*, 6 July 2011: http://www.ipsnews.net/news.asp?idnews=56385 (accessed on 30 July 2011).
[326] Commonwealth Human Rights Initiative, "Police Reform: An Exchange of Experiences from South Asia," Roundtable Report, April 2007, at p. 11: www.humanrightsinitiative.org/programs/aj/police/exchange/police_reform_an_exchange_of_experiences_from_south_asia_roundtable_report.pdf (accessed on 22 July 2011).
[327] David Bayley, "Post-conflict Police Reform: Is Northern Ireland a Model?" *Policing* 2, no 2 (2008): 233-240.
[328] Office of the Oversight Commissioner, *Final Report of Oversight Commissioner – Report* 19, May 2007, p.8: www.oversightcommissioner.org/reports/pdfs/may2007.pdf (accessed on 22 June 2011).

decision-making regarding policing than the Home Secretary was for Britain. When reviewing the police-executive relationship in Northern Ireland, Patten made the following observation:

> There is in Northern Ireland a tripartite arrangement which resembles the arrangements in Britain – whereby a Police Authority, the Chief Constable and central government share responsibilities – the arrangement in Northern Ireland does not work as in Britain. A problem in applying the tripartite model to policing in Northern Ireland is the one-to-one relationships: one police force, one police authority and one Secretary of State. In England and Wales, the Home Secretary relates to a large number of police authorities. He is a more remote figure – less interventionist – and chief constables there have to forge a working relationship with their police authorities. In Northern Ireland the Secretary of State is much more directly involved and the security situation has been a major factor in bringing about a situation in which, in effect, the Chief Constable has been responsible to the Police Authority for what might be called ordinary crime policing and directly to the Secretary of State for security-related policing. Given the proverbial difficulty of serving two masters, it is not surprising if at times chief constables have tended to develop a more direct relationship with the one who appeared more influential.
>
> These arrangements are not a basis for democratic accountability in the sense of the police in Northern Ireland being "subordinate" or responsible to the community of Northern Ireland. The Secretary of State exercises both direct influence over the police, through direct links with the Chief Constable, and also indirect influence through the appointment of Police Authority members. He/she also determines the budget. The Secretary of State, although a democratically elected minister and answerable to Parliament, is never a member of a Northern Ireland political party and therefore never someone elected by the people of Northern Ireland. So, neither through the Police Authority nor through government are the people of Northern Ireland – whether unionists or nationalists – able to hold the police of Northern Ireland to proper democratic account in the "subordinate" sense of the term.[329]

If the tripartite relationship model was to work in Northern Ireland, there had to be a rethink of what the roles of each player should be. Pointing out that "the anxiety to avoid political direction of the police is strong in Northern Ireland,"[330] Patten recognised that in order for policing in Northern Ireland to change, there had to be a clearer delineation of what kind, and in what context, political direction was permissible. Believing the provisions of the 1998 Act to be too complicated and convoluted in this regard, Patten suggested a more succinct formulation:

> In essence we believe that the Secretary of State (or successor after responsibility for policing is devolved) should be able to set long-term governmental objectives or principles; the Policing Board should set medium-term objectives and priorities; and the police should develop the short-term tactical plans for delivering those objectives.[331]

Patten took issue with the fact that under Section 39 of the Police Act, 1998, the Secretary of State had the power to issue guidance to police as to the exercise of their functions, a power that was not available to the Home Secretary in England and Wales. For Patten it was irrelevant that such power was only to "guide" and not direct; he did not think the recipients of such "guidance" would view it in the same spirit.[332]

Aside from recommending that Section 39 of the 1998 Act be repealed, Patten charted out an alternative approach. He believed that in a democracy it is important that the police are

[329] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraphs 5.6 and 5.7.
[330] Ibid., paragraph 5.9.
[331] Ibid., paragraph 6.4.
[332] Ibid., paragraph 6.18.

ultimately accountable to democratic institutions, but that decision-making on operational matters should reside with the police. He acknowledged the inherent difficulties in demarcating theboundaries of this relationship. In order to clarify his position, he explored the concept of "operational independence" and how it can be understood in the context of police-executive relations:

> [I]t is important to allow a chief constable sufficient flexibility to perform his or her functions and exercise his or her responsibilities, but difficult if not impossible to define the full scope of a police officer's duties. The term "operational independence" is neither to be found in nor is it defined in any legislation. It is an extrapolation from the phrase "direction and control" included in statutory descriptions of the functions of chief constables ... **Long consideration has led us to the view that the term "operational independence" is itself a large part of the problem. In a democratic society, all public officials must be fully accountable to the institutions of that society for the due performance of their functions, and a chief of police cannot be an exception.** No public official, including a chief of police, can be said to be "independent". Indeed, given the extraordinary powers conferred on the police, it is essential that their exercise is subject to the closest and most effective scrutiny possible. The arguments involved in support of "operational independence" – that it minimises the risk of political influence and that it properly imposes on the Chief Constable the burden of taking decisions on matters about which only he or she has all the facts and expertise needed – are powerful arguments, but they support a case not for "independence" but for "responsibility". We strongly prefer the term "operational responsibility" to the term "operational independence".[333] (Emphasis added)

Preferring the term "operational responsibility" to "operational independence" because it accorded better with democratic values, Patten further clarified how he would distinguish the two terms:

> Operational responsibility means that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case. But the term "operational independence" suggests that it might be, and invocation of the concept by a recalcitrant chief constable could have the effect that it was. It is important to be clear that a chief constable, like any other public official, must be both free to exercise his or her responsibilities but also capable of being held to account afterwards for the manner in which he/she exercises them. *We recommend that the Chief Constable should be deemed to have operational responsibility for the exercise of his or her functions and the activities of the police officers and civilian staff under his or her direction and control.* Neither the Policing Board nor the Secretary of State (or Northern Ireland Executive) should have the power to direct the Chief Constable as to how to exercise those functions.[334]

To achieve the kind of "operational responsibility" Patten described as the ideal, the PNIA 2000 makes it clear that although "the police shall be under the direction and control of the Chief Constable,"[335] a Policing Board will be able to hold the Chief Constable accountable through the submission of annual reports,[336] requested reports[337] and possible inquiries.[338] In addition, to comply with Patten's recommendation that the Policing Board ought to be responsible for setting medium-term objectives, the PNIA 2000 compels the Chief Constable

[333] Ibid., paragraphs 6.19 and 6.20.
[334] Ibid., paragraph 6.21.
[335] Police (Northern Ireland) Act, 2000, Section 33(1). Some contend that Section 33(2), which states that the Chief Constable shall only have regard to the policing plan and codes of practice, is too nebulous. In order to properly reflect the participatory and inclusionary vision of policing articulated by Patten, it is believed that this provision places more emphasis on police "independence" than on "responsibility". See Barry J. Ryan, "The logic of a justified hope: The dialectic of police reform in Northern Ireland", *Capital and Class* 95, Summer 2008, pp. 83-107.
[336] Police (Northern Ireland) Act, 2000, Section 58.
[337] Police (Northern Ireland) Act, 2000, Section 59.
[338] Police (Northern Ireland) Act, 2000, Section 60.

to submit a draft annual policing plan for the Board to consider.[339] However, the Board cannot issue a policing plan without first consulting the Minister of Justice.[340] Moreover, the Minister of Justice sets long-term policing objectives, but he must consult with the Board and the Chief Constable when doing so.[341] This sort of tripartite interaction is exactly the sort envisioned by Patten in his report.

Another example of the tripartite approach is reflected in senior police appointments. The Board, subject to the approval of the Minister of Justice, will appoint the Chief Constable.[342] In addition, the Board, after consulting with the Chief Constable and getting the approval of the Minister, will appoint other senior officers.[343] Such three-way forms of consultation and decision-making is peppered throughout the PNIA 2000 in the form of developing codes of practice,[344] auditing of performance plans,[345] making action plans to increase representation of women in PSNI,[346] and issuing a code of ethics.[347]

Despite the anxiety surrounding devolution negotiations, and what impact those negotiations would ultimately have on police-executive relations, the final devolution agreement confirmed the importance of providing operational responsibility to the Chief Constable, while at the same time maintaining democratic accountability of the police service. "As part of the devolved policing arrangements the Chief Constable will be operationally responsible for directing and controlling the police. The PSNI will have operational responsibility for policing, and for implementing the policies and objectives set by the Department of Justice and the Policing Board."[348]

After reviewing the relationship between the Policing Board and the Police Service, the Oversight Commissioner concluded that co-operation between the two bodies has been excellent. "No disputes have arisen over the operational responsibility of the Chief Constable."[349] Despite the long-standing and deeply entrenched conflict between Unionists and Republicans, both, eventually, came to accept that direct political control of the police is not the way to cultivate democratic policing.

5.3 Democratic Accountability

As described in Section 5.2, the Policing Board was designed to serve as a buffer between the police and the politicians. Established on 4 November 2001, the Policing Board was named as it was because Patten felt that the word "board" more accurately reflected the multi-disciplinary approach the body would need to adopt in order to be effective (i.e. not just interact with the police, but to also liaise with additional agencies whose work touches on public safety and social services).[350]

[339] Police (Northern Ireland) Act, 2000, Section 26(4).
[340] Police (Northern Ireland) Act, 2000, Section 26(6).
[341] Police (Northern Ireland) Act, 2000, Section 24.
[342] Police (Northern Ireland) Act, 2000, Section 35(1).
[343] Police (Northern Ireland) Act, 2000, Section 35(2).
[344] Police (Northern Ireland) Act, 2000, Section 27(2).
[345] Police (Northern Ireland) Act, 2000, Section 29(9).
[346] Police (Northern Ireland) Act, 2000, Section 48(4).
[347] Police (Northern Ireland) Act, 2000, Section 52(5).
[348] Hillsborough Castle Agreement, 5 February 2010.
[349] Office of the Oversight Commissioner, *Final Report of Oversight Commissioner – Report 19*, May 2007, p. 34: www.oversightcommissioner.org/reports/pdfs/may2007.pdf (accessed on 22 June 2011).
[350] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 6.10.

The Policing Board's principal function is to secure the maintenance, efficiency and effectiveness of PSNI.[351] In discharging this function, the Board must hold the Chief Constable and PSNI to account for the performance of their duties,[352] and it does this by requiring the Chief Constable to report to it on a regular basis.[353] The Board must also:

- Monitor the performance of the police in carrying out its general duties, in complying with the Human Rights Act 1998, and implementing the Annual Policing Plan;[354]
- Keep itself informed about the workings of Part VII of the Police (Northern Ireland) Act 1998 (police complaints and disciplinary proceedings);[355]
- Oversee the manner in which the Chief Constable deals with public complaints against traffic wardens;[356]
- Assess the effectiveness of measures taken to ensure that its membership and support staff is representative of the community;[357]
- Assess the effectiveness of the District Policing Partnerships and the measures taken by them to obtain the views of the public about policing matters;[358] and
- Develop a code of practice for District Policing Partnerships.[359]

As part of its work, the Board also monitors PSNI's compliance with a number of other mechanisms including the Criminal Justice Inspection Northern Ireland and the Human Rights Act 1998.[360] Additionally, the Board meets regularly with the Police Ombudsman to discuss a range of issues raised in his Annual Report. Moreover, the Board's Human Rights and Professional Standards Committee monitors PSNI internal disciplinary procedures to ensure that lessons are learned from the outcomes of the proceedings and that best practice is promoted across the service.[361]

Furthermore, the Board also seeks to focus the accountability lens on itself. For instance, the Board regularly enlists the use of outside consultants to assess the efficiency of its operations and approach. In March 2008, KPMG conducted a review of the Board's engagement with the community and found that the Policing Board should clarify what it regards as a "community engagement activity" and identify how each activity will contribute to the strategic objectives of the Board.[362] In addition, when the Oversight Commissioner assessed the Policing Board's performance, he concluded that one of its major accomplishments has been the creation of 26 District Police Partnerships. According to him, they have performed admirably and have more than met his performance expectations.[363]

Looking at the PNIA 2000 and the most recent annual report of the Policing Board,[364] it is

[351] Police (Northern Ireland) Act, 2000, Sections 3(1) and (2).
[352] Police (Northern Ireland) Act, 2000, Section 3(3)(a).
[353] Police (Northern Ireland) Act, 2000, Sections 58-60.
[354] Police (Northern Ireland) Act, 2000, Section 3(3)(b).
[355] Police (Northern Ireland) Act, 2000, Section 3(3)(c)(i).
[356] Police (Northern Ireland) Act, 2000, Section 3(3)(c)(ii).
[357] Police (Northern Ireland) Act, 2000, Section 3(3)(c)(v).
[358] Police (Northern Ireland) Act, 2000, Section 3(3)(d)(iii).
[359] Police (Northern Ireland) Act, 2000, Section 19(1).
[360] Northern Ireland Policing Board, *Annual Report and Accounts*, 1 April 2010 – 31 March 2011, pp. 64-65.
[361] Ibid., p. 69.
[362] KMPG, *Northern Ireland Policing Board: Final Best Value Review of Community Engagement*, March 2008, p. 2.
[363] Office of the Oversight Commissioner, *Final Report of Oversight Commissioner – Report* 19, May 2007, p. 34: www.oversightcommissioner.org/reports/pdfs/may2007.pdf (accessed on 22 June 2011).
[364] Northern Ireland Policing Board, *Annual Report and Accounts*, 1 April 2010 – 31 March 2011, p. 10.

clear that priority is placed on the PNSI being as efficient and effective as possible. All the key stakeholders have a role to play in making this happen. The Policing Board is to issue policing plans every year[365] and make arrangements to secure continuous improvement in functioning by publishing a performance plan;[366] the concerned Minister shall exercise his functions to promote the efficiency and effectiveness of the PNSI;[367] auditing of records is done to ensure proper use of resources;[368] and, in the interests of efficiency and effectiveness, the Board can, subject to Ministerial approval, call on any senior officer to resign.[369]

For the Policing Board to be democratic in nature, Patten recognised that the previous system of selecting Police Authority members had to be changed. "Police Authority members are all appointed by the Secretary of State after selection through open competition; some may also be elected councillors, but it is the Secretary of State, not the electoral process, that appoints them to membership of the Authority."[370] Thus, when the PNIA 2000 was passed, it was agreed that with devolution the Policing Board would have 10 political members (selected according to a complex formula)[371] and 9 independent members (selected by the Secretary of State and, from 2010, the Minister of Justice).[372] When selecting independent members, the Minister should select people who are representative of the community.[373] Also, he must consult with the First Minister, Deputy First Minister, district councils and other appropriate bodies before making an appointment.[374]

One of the reasons that the Policing Board has been successful in gaining the public's trust and confidence is because it is required to act transparently by holding public meetings at least eight times a year.[375] In fact, the Board held two public engagement meetings this past year wherein the public could attend and ask questions directly of the Board Members, Chief Constable and his senior team.[376]

5.4 External Accountability

Due to the intense distrust that had developed between Republican members of the community and the RUC, it was firmly believed by many that any new police service in Northern Ireland would require a robust and truly independent police complaints authority. In his report, Patten favourably cited the findings and conclusions of Dr. Maurice Hayes who had previously been asked by the Northern Ireland Secretary of State to make recommendations regarding an independent police complaints mechanism. In his January 1997 report, Dr. Hayes urged the government to change the standard of proof required in police disciplinary cases and to create a mechanism that would have its own investigators.[377]

[365] Police (Northern Ireland) Act, 2000, Section 26(1).
[366] Police (Northern Ireland) Act, 2000, Section 28(4).
[367] Police (Northern Ireland) Act, 2000, Section 69(1).
[368] Police (Northern Ireland) Act, 2000, Section 12(1).
[369] Police (Northern Ireland) Act, 2000, Section 35(3)(a).
[370] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 5.5.
[371] Police (Northern Ireland) Act, 2000, Schedule 1, paragraph 7.
[372] Police (Northern Ireland) Act, 2000, Schedule 1, paragraph 6(1)(b).
[373] Police (Northern Ireland) Act, 2000, Schedule 1, paragraph 8(1).
[374] Police (Northern Ireland) Act, 2000, Schedule 1, paragraph 8(2).
[375] Police (Northern Ireland) Act, 2000, Schedule 1, paragraph 19.
[376] Northern Ireland Policing Board, Annual Report and Accounts, 1 April 2010 – 31 March 2011, p. 41.
[377] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 6.40.

Subsequently, the Police (Northern Ireland) Act, 1998 was passed and it included the creation of the Police Ombudsman for Northern Ireland (PONI). Originally, the British Government made the appointment of Ombudsman.[378] However, with devolution, the Government now does it on the recommendation of the First Minister and Deputy First Minister (acting jointly).[379]

The initial Ombudsman appointed was Mrs. Nuala O'Loan and during her examination of the infamous Omagh bombing of 1998 she quickly established that she would work "independently".[380] In her review, O'Loan provided the Northern Ireland Policing Board with a detailed and scathing indictment of RUC's conduct prior to the blast, as well as their handling of the investigation in the aftermath. According to the Ombudsman, many of the creditable recommendations that emerged from the internal RUC Omagh Bomb Review, which had been conducted in the aftermath of the bombing, were not implemented and that this meant bringing those responsible to justice was less likely.[381] In fact, the Ombudsman concluded that the judgement and leadership of the Chief Constable during the internal investigation was "seriously flawed".[382] The Chief Constable disputed her findings and issued a reply wherein he accepted that some errors were made but rejected the majority of the Ombudsman's findings.[383] Specifically, he firmly disagreed with O'Loan's suggestion that PSNI was uncooperative with the Ombudsman's investigation.[384]

In order to bridge the chasm between PSNI and the Ombudsman's office, the Policing Board (newly created by the PNIA 2000) intervened. Since PSNI felt that its investigators were doing an adequate job, and the Ombudsman was adamant that an independent Senior Investigation Officer be brought in to determine questions of evidentiary relevance, the Policing Board staked out a compromise by suggesting that a PSNI Senior Investigating Officer should have operational command of the investigation, but that regular reporting to the Policing Board would be required.[385]

This early test set the tone for what has subsequently evolved into a healthy working relationship between PONI, PSNI and the Policing Board. Some people believe that had O'Loan not staked out her position on Omagh so steadfastly, the dynamic between these institutional actors may have evolved differently.

> It is certainly interesting comparing the reception of an early report from the Ombudsman into a tragedy in Omagh, where her findings were loudly and vociferously challenged by the police, and where she was left isolated by the government, and a very recent and almost equally

[378] Police (Northern Ireland) Act, 1998, Schedule 3, paragraph 1(1).
[379] The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, Section 39. As a matter of practice, the First Minister and the Deputy First Minister belong to two different parties. Therefore, this means that there is always a coalition government in place in Northern Ireland.
[380] The Omagh bombing was a car bomb attack that took place on 15 August 1998. The Real Irish Republican Army, a splinter group of former Provisional Irish Republican Army members opposed to the Belfast Agreement, carried out the attack that killed 29 people and injured approximately 220.
[381] Police Ombudsman for Northern Ireland, "Statement by the Police Ombudsman for Northern Ireland on her Investigation of Matters Relating to the Omagh Bombing on August 15, 1998," 12 December 2001, paragraph 6.21.
[382] Ibid., paragraph 7.4.
[383] PSNI Response to Ombudsman's Report on the Omagh Bomb Investigation, 24 January 2002, paragraph 7.5: http://www.irishtimes.com/newspaper/special/2002/flanagan/index.htm (accessed on 13 June 2011).
[384] Ibid., paragraph 8.1.
[385] Specially Convened Meetings Of The Policing Board To Discuss The Omagh Reports, Tuesday 5th and Thursday 7th of February 2002: http://cain.ulst.ac.uk/issues/police/policingboard/nipb050202omagh.htm (accessed on 13 June 2011).

> controversial report into police collusion (into the murder of Raymond McCord). Interestingly, several years on, the public and political response has been very different. No one has seriously challenged her findings and her report has been accepted by both the relevant minister and the Chief Constable. There are probably several reasons for this, but it is difficult to imagine that she could have issued the second (and many other interim) reports to such wide-scale acceptance, if she had not been stiff in her resolve in those first few months of her tenure.[386]

PONI has been successful at holding police accountable because its operating legislation has sufficiently empowered it to have full responsibility for receiving and investigating all complaints. Police are mandated to report to PONI any complaints it receives;[387] PONI investigators have the same legal powers as police officers;[388] and PONI has supervisory function over all complaints, including those that have been assigned to PSNI.[389] In fact, even when no complaint has been filed, the Ombudsman can still on his own motion investigate whether a police officer has committed a criminal offence or behaved in a manner that would justify disciplinary proceedings.[390]

Additionally, PONI has the power to make recommendations to the Director of Public Prosecutions for criminal prosecution;[391] make recommendations[392] and directions[393] in respect of disciplinary action against police officers; notify the Department of Justice, the Policing Board and the Chief Constable of the outcome of certain complaints and referred matters;[394] and to provide statistical information to Policing Board.[395]

The Police Ombudsman's annual reports contain comprehensive data including the full scale and details of all complaints handled by the Ombudsman for that year. PONI reports to the Department of Justice annually[396] and in accordance with the recent Devolution Order, the report will be laid in the Northern Ireland Assembly.[397] The PONI website provides considerable data on complaint outcomes, as well as information on ongoing and closed investigations.[398] "The Ombudsman's office keeps up a steady stream of information on complaints flowing to the police, at the level of each district command. Each month, the Ombudsman forwards statistical reports to the police detailing the numbers and types of allegations associated with each station within each district. Also every month, the office reports to local police commanders information on individual officers who have been complained of three or more times in a 12-month period, including the number of complaints, number of allegations and details of the allegations."[399]

[386] Maggie Beirne, Presentation at Commonwealth Human Rights Initiative Conference, 23-24 March 2007, New Delhi, India, p. 6: www.humanrightsinitiative.org/programs/aj/police/exchange/problems_with_policing_in_northern_ireland.pdf (accessed on 1 July 2011).
[387] Police (Northern Ireland) Act, 1998, Section 52(1)(b).
[388] Police (Northern Ireland) Act, 1998, Section 56(3).
[389] Police (Northern Ireland) Act, 1998, Section 57(4).
[390] Police (Northern Ireland) Act, 1998, Section 55(6).
[391] Police (Northern Ireland) Act, 1998, Section 58(2).
[392] Police (Northern Ireland) Act, 1998, Section 59(2).
[393] Police (Northern Ireland) Act, 1998, Section 59(5).
[394] Police (Northern Ireland) Act, 1998, Section 55(7).
[395] Police (Northern Ireland) Act, 1998, Section 61AA(1).
[396] Police (Northern Ireland) Act, 1998, Section 61(3).
[397] The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, Section 32(5).
[398] Police Ombudsman for Northern Ireland website: http://www.policeombudsman.org/index.cfm (accessed on 1 July 2011).
[399] Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action*, 2009, p. 13: www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf (accessed on 24 July 2011).

In the most recent Annual Report, current Ombudsman Mr. Al Hutchinson reported that the Chief Constable referred 36 complaints to him this past year and that he initiated six independent investigations that he considered to be in the public interest.[400] Furthermore, his office made 325 disciplinary recommendations that were forwarded to the Chief Constable's attention and also suggested to the Public Prosecution Service that 17 criminal charges be filed against 13 police officers.[401]

However, in the past couple of years the Office of PONI has come under criticism for not being as impartial or effective as it once was. For example, some have expressed concern that the independence of Mr. Hutchinson is compromised because during the selection process for replacing Mrs. O'Loan, the Northern Ireland Office inserted additional criterion at the last moment that benefited him over other possible candidates.[402] In addition, another complaint is that the Office of PONI has been slow to deal with historic cases and has adopted a far too narrow understanding of "collusion" when dealing with serious allegations of police wrongdoing that allegedly took place during The Troubles.[403]

In addition to PONI, another form of external accountability exists in the form of Her Majesty's Inspectorate of Constabulary. In accordance with Section 41 of the Police (Northern Ireland) Act, 1998, Her Majesty's Inspectorate of Constabulary is to conduct an annual inspection of PSNI. In 2011, Her Majesty's Inspector Mr. Bernard Hogan-Howe performed this inspection and found that "PSNI is delivering mixed performance against the *Policing Plan* targets."[404]

5.5 Community Engagement

Due to the historically fractured relationship between RUC and the public, it was imperative that the police improved its engagement with the community. During the meetings that Patten convened, irrespective of whether people were Catholic or Protestant, both communities expressed a desire for law enforcement to become an effective policing service that maintains order and protects their rights.[405] The Patten Commission stated very firmly, "We cannot emphasize too strongly that human rights are not an impediment to effective policing but, on the contrary, vital to its achievement."[406]

To achieve policing that would protect the public and be accountable to it at the same time, Patten argued that a true partnership was required.

> Accountability involves creating a real partnership between the police and the community – government agencies, non-governmental organisations, families, citizens; a partnership based on openness and understanding; a partnership in which policing reflects and responds to the

[400] Police Ombudsman for Northern Ireland, *Annual Report and Accounts*, 31 March 2011, p. 5: www.policeombudsman.org/.../Annual%20Report%202011-12.pdf (accessed on 20 June 2011).
[401] Ibid., p. 6.
[402] Committee on the Administration of Justice, *Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland*, June 2011, p. 9: www.caj.org.uk/files/2011/06/16/OPONI_report_final1.pdf (accessed on 23 August 2011).
[403] Ibid., p. 7.
[404] Her Majesty's Inspectorate of Constabulary, Police Service of Northern Ireland: Inspection Findings, February 2011, p. 4: http://www.hmic.gov.uk/media/police-service-of-northern-ireland-inspection-findings-20110220.pdf (accessed on 20 June 2011).
[405] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 3.18.
[406] Ibid., paragraph 4.3.

> community's needs … Policing should be a collective community responsibility: a partnership for community safety. This sort of policing is more difficult than policing the community. It requires an end to "us" and "them" concepts of policing. If it is to work, it has to become the core function of a police service, not the work of a specialised command or a separate cadre of police officers.[407]

Thus, with so much emphasis placed on police-community partnerships, the drafters of the PNIA 2000 included District Policing Partnerships (DPP) in the Act. Its membership is made up of political members who are councillors nominated to the DPP by the council[408] and independent members drawn from the local community and appointed by the Policing Board.[409] The Board has a statutory responsibility to ensure that, when appointing independent members that, as far as practicable, members of the DPP are representative of the district.[410]

The role of the DPPs is a consultative, explanatory and monitoring one. In summary, their functions include:

- Provide views to the District Commander on any matter concerning policing in the district;[411]
- Monitor the performance of the police in carrying out the policing plan;[412]
- Make arrangements for obtaining the views of the community on matters concerning the policing of the district and gaining their cooperation in preventing crime;[413]
- Act as a general forum for discussion and consultation on matters affecting the policing of the district;[414] and
- Report on these matters to the district council[415] and Policing Board.[416]

In order to properly understand the community's needs, DPPs carry out a biennial Public Consultation Survey. They also conduct qualitative research, road shows and themed meetings.[417] During this process, the DPPs will outreach to all segments of the community including victims of crime, youth, women and people who are lesbian/gay/bi-sexual/transgender.[418] All of this data helps the DPPs identify priorities that then inform the development of the Local Policing Plan which is required under Section 22 of the PNIA 2000. For instance, the top five issues that DPPs/Belfast Sub-Groups identified in 2009-10 were:[419]

- Antisocial behaviour (including underage drinking and vandalism);
- Drugs;
- Neighbourhood policing;
- Domestic burglary and theft; and
- Road traffic offences and violent crime.

[407] Ibid., paragraph 1.16.
[408] Police (Northern Ireland) Act, 2000, Schedule 3, paragraph 3(1).
[409] Police (Northern Ireland) Act, 2000, Schedule 3, paragraph 4(1).
[410] Police (Northern Ireland) Act, 2000, Schedule 3, paragraph 4(1A).
[411] Police (Northern Ireland) Act, 2000, Section 16(1)(a).
[412] Police (Northern Ireland) Act, 2000, Section 16(1)(b).
[413] Police (Northern Ireland) Act, 2000, Section 16(1)(c).
[414] Police (Northern Ireland) Act, 2000, Section 16(1)(d).
[415] Police (Northern Ireland) Act, 2000, Section 17(1).
[416] Police (Northern Ireland) Act, 2000, Section 18(1).
[417] Northern Ireland Policing Board, *Annual Report and Accounts*, 1 April 2010 – 31 March 2011, p. 47.
[418] Ibid., p. 49.
[419] Ibid., p. 48.

The DPPs work with the local PSNI Commander to ensure that the community's priorities shape the development of the Local Policing Plan.[420] In the event that a DPP has not made satisfactory arrangements in facilitating community consultation with PSNI, then the Policing Board may make alternative arrangements to ensure such consultation.[421] Since the PNIA 2000 requires DPPs to act as a general forum for discussion and consultation on policing matters that affect the district, DPP meetings are open to the public and must be held at least four times in a year.[422] In addition, DPPs hold at least two discussion forums each year, which may be themed around a particular community concern or one of the key areas within the Local Policing Plan.[423]

In addition to DPPs, another means to ensure that policing is oriented locally has been the strengthening of the beat officer. In his report, Patten placed emphasis on the need for consistently present and available beat officers.[424] In fact, he recommended that beat officers should serve three to five years in the same neighbourhood, so as to become a part of the community.[425] PSNI has taken this suggestion on board and reported in July 2008 that there were 562 officers assigned to community beat teams across the 29 District Command Units.[426]

Interestingly, Northern Ireland appears to be moving away from having DPPs operate in isolation. With devolution, there is a proposal to merge Community Safety Partnerships (which are voluntary groups involving police, local councils, community and business people working together to address crime) with DPPs to create "Policing and Community Safety Partnerships".[427] Again, the emphasis is on building partnerships and it is believed that merging these two groups into one will ultimately improve community safety.

[420] Police (Northern Ireland) Act, 2000, Section 22(3).
[421] Police (Northern Ireland) Act, 2000, Section 23(2).
[422] Northern Ireland Policing Board, *Functions and Responsibilities of District Policing Partnerships and Belfast District Policing Partnership Sub-Groups: Code of Practice*, April 2008, paragraph 4.1.
[423] Northern Ireland Policing Board, *Annual Report and Accounts*, 1 April 2010 – 31 March 2011, p. 50.
[424] *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 7.10.
[425] Ibid., paragraph 7.11.
[426] Criminal Justice Inspection Northern Ireland, *Policing with the Community: An inspection of Policing with the Community in Northern Ireland*, March 2009, p. 19.
[427] Department of Justice, *Building Safer, Shared and Confident Communities: A consultation on a new community safety strategy for Northern Ireland*, January 2011, p. 5.

Chapter 6

SOUTH AFRICA

"The genesis of colonial policing in South Africa can be traced back to the Second Anglo-Boer War that took place from 1899-1902. After British forces captured the capitals of the Boer republics Orange Free State and the Transvaal, arrangements were made to establish British administration over those territories."

6. SOUTH AFRICA

Key Legislation:

Constitution of the Republic of South Africa, 1996
South African Police Service Act, 1995
Civilian Secretariat for Police Service Act, 2011
Independent Police Investigative Directorate Act, 2011
Interim Regulations for Community Police Forums and Boards, 2001

6.1 Background

The genesis of colonial policing in South Africa can be traced back to the Second Anglo-Boer War that took place from 1899-1902. After British forces captured the capitals of the Boer republics Orange Free State and the Transvaal, arrangements were made to establish British administration over those territories.[428] Along with the appointment of a military Governor and a number of District Commissioners for each colony, the British created the South Africa Constabulary. However, this police force was not to be used for everyday policing; it was divided into 4 divisions, 3 for the Transvaal and 1 for the Orange Free State, and used by the British commander-in-chief as a military force to participate in the guerrilla conflict that was being waged outside of the capitals.[429]

In 1913, although the South Africa Police replaced the Constabulary as the policing force, the military character of policing did not change much. Under the Defence Act, 1912, part of the police force could be directed towards national protection and the consolidation of the Police Act (No. 7) of 1958 did not change that.[430] In fact, the 1958 Police Act broadened the mission of the South Africa Police beyond conventional police functions (i.e. maintaining law and order and investigating and preventing crime), and gave the police extraordinary powers to quell unrest and to conduct counterinsurgency activities. Further, the Police Amendment Act (No. 70) of 1965 empowered the police to search without warrant any person, receptacle, vehicle, aircraft, or premise within one mile of any national border and to seize anything found during such a search.[431]

One of the roles of the South Africa Police during apartheid was to enforce laws of racial segregation. They were often regarded as the face of a cruel and racist regime. "South Africa under apartheid was notorious for the brutality of the security forces and the widespread violation of human rights. Over the 30 years of formal apartheid (1960-1990) an estimated 78 000 people were detained without trial by the police because of their political activism against apartheid, and 73 deaths in police detention were recorded. In the last years of the system, security forces were responsible for high levels of torture, extra-judicial executions and disappearances of pro-democracy activists."[432]

[428] Albert Grundlingh, "'Protectors and friends of the people'? The South African Constabulary in the Transvaal and Orange River Colony, 1900-1908," in *Policing the empire: government, authority, and control*, 1830-1940, eds. David M. Anderson and David Killingray (Manchester: Manchester University Press, 1991), p. 169.
[429] Ibid., pp. 168-169.
[430] "History of South Africa Police", South African History Online website: http://www.sahistory.org.za/article/south-african-police-south-african-history-online (accessed on 20 June 2011).
[431] "South African Police Service", Wikipedia website: http://en.wikipedia.org/wiki/South_African_Police_Service (accessed on 20 June 2011).
[432] Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa*, October 2006, p. 20.

6.1.1 Democratisation and Post-Apartheid Era (1990-2006)

It was the South Africa Police's reputation for abuse that spurred considerable focus on police reform when democracy started to take root in South Africa in the early 1990s. When F.W. de Klerk assumed the Presidency in 1989 and Nelson Mandela was released from prison in 1990, the South Africa Police accelerated a process of internal reform. Their 1991 Strategic Plan highlighted six areas of change:[433]

- Depoliticisation of the police force;
- Increased community accountability;
- More visible policing;
- Reform of the police training system (including more racial integration);
- Establishment of improved and effective management practices; and
- Restructuring of the police force.

Reform was also needed from an administrative perspective. At the time of Mandela's release from prison, there were eleven police forces in South Africa, each constituted under its own piece of legislation and operating within its own jurisdiction.[434] The need to rationalise the system was much needed. However, internal reform alone was not going to be sufficient. The legislative framework for policing at that time was made for apartheid South Africa and had no place in the "new" South Africa.

As a result, when the multi-party National Peace Accord was signed on 14 September 1991, new structures and procedures related to policing were introduced. While those measures proved effective in improving the policing of public gatherings, it had negligible impact on improving overall conduct and in dealing with reported misconduct.[435]

The effort to improve post-apartheid policing continued with the drafting of the Constitution of the Republic of South Africa, 1993 ("Interim Constitution"). The Interim Constitution was notable because it called for the establishment of an act that would consolidate all of the policing organisations in the country under the South African Police Service (SAPS).[436] The document outlined critical elements of how the SAPS would function,[437] including spelling out policing structure,[438] the need for community police forums[439] and the creation of an independent complaints mechanism.[440] These provisions laid the groundwork for how policing would be dealt with in the South African Police Service Act (No. 68) of 1995 ("SAPS Act")[441] and the Constitution of the Republic of South Africa, 1996 ("Constitution").[442]

[433] Annual Report of the Commissioner of the South African Police, 1991.
[434] Janine Rauch, "Police Reform and South Africa's Transition," Paper presented at the South African Institute for International Affairs conference, 2000: http://www.csvr.org.za/wits/papers/papsaiia.htm (accessed on 20 June 2011).
[435] Ibid.
[436] The Interim Constitution of the Republic of South Africa, 1993, Section 214(1). Renaming the police was symbolic of the shift from a "force" to a "service". This was a key component of the African National Congress's policy approach.
[437] The Interim Constitution of the Republic of South Africa, 1993, Section 215.
[438] The Interim Constitution of the Republic of South Africa, 1993, Sections 216-219.
[439] The Interim Constitution of the Republic of South Africa, 1993, Section 221.
[440] The Interim Constitution of the Republic of South Africa, 1993, Section 222.
[441] Assented to on 28 September 1995 and came into effect 15 October 1995.
[442] Assented to on 16 December 1996 and came into effect 4 February 1997.

In April 1994, shortly after the Interim Constitution was assented to, the Mandela-led African National Congress (ANC) won the first free election in South Africa. One of its key policies was to institutionalise civilian oversight and control, and thereby separate the civilian policy function from the operational command function of police management.[443] Notably, post-apartheid, the Ministry in charge of policing was changed from the Ministry for Law and Order to the Ministry for Safety and Security. Currently, there is a dedicated Ministry of Police that oversees the SAPS.

When passed in 1995, and then subsequently amended to accord with the 1996 Constitution, the SAPS Act, along with the Constitution, set out the following:

- Restructured the SAPS to function in the national, provincial and municipal spheres;[444]
- Ensured that policing responsibilities were partly devolved to the provincial level;[445]
- Permitted the National Police Commissioner to organise or reorganise the Service at national level into various components, units or groups,[446] ensure provincial demarcations to match the new provincial boundaries,[447] and establish "areas" (groups of stations in a district) and stations;[448]
- Created National and Provincial Secretariats for Safety and Security, which would advise the political executives in the provinces on police policy matters and monitor the SAPS adherence to new policy;[449]
- Created community police forums where local police station commissioners would liaise with, and account to, the local community;[450]
- Required the National Commissioner of Police to publish his plans, priorities and objectives for the year;[451] and
- Created the Independent Complaints Directorate, which would receive and investigate public complaints of police misconduct. The Directorate would be independent of the police and would report directly to the Minister of Safety and Security (now the Minister of Police).[452]

There was a concerted effort to have the SAPS reflect a civilian approach to policing and move away from the militaristic model that began with the South Africa Constabulary and continued with the South Africa Police. Thus, rankings were re-designated to a civilian model

[443] Janine Rauch, "Police Reform and South Africa's Transition", Paper presented at the South African Institute for International Affairs conference, 2000: http://www.csvr.org.za/wits/papers/papsaiia.htm (accessed on 20 June 2011).
[444] The Constitution of the Republic of South Africa, 1996, Section 205(1).
[445] The Constitution of the Republic of South Africa, 1996, Section 206(3).
[446] The South Africa Police Service Act, 1995, Sections 11(2)(b) and (d)
[447] The South Africa Police Service Act, 1995, Section 12(1).
[448] The South Africa Police Service Act, 1995, Section 12(2).
[449] The South Africa Police Service Act, 1995, Section 2; also see The Constitution of the Republic of South Africa, 1996, Section 208.
[450] The South Africa Police Service Act, 1995, Sections 18-23.
[451] The South Africa Police Service Act, 1995, Section 11(2)(a).
[452] The South Africa Police Service Act, 1995, Sections 50-54; also see The Constitution of the Republic of South Africa, 1996, Section 206(6).

(i.e. Commissioner, Director, Superintendent etc…) and the military system of rank identification (i.e. General, Brigadier, Colonel etc…) was abandoned. In addition, uniforms were made more informal and a more community-oriented approach to policing was adopted, as evidenced by the emphasis placed on local initiatives like community police forums and the creation of municipal police services (which have been mostly established in metropolitan areas).[453]

6.1.2 Recent Events (2007-2011)

In the midst of tremendous democratic and institutional reform after the 1994 election, there was considerable movement and enthusiasm to create a South African Police Service that was effective, efficient and accountable. While the reforms implemented did have an overall positive impact, which will be described in more detail in Sections 6.2 – 6.5, the integrity of policing in South Africa is currently under fire from a number of directions.

First, the proliferation of crime, particularly violent crime, is a very serious issue in South Africa and it is felt in some quarters that the SAPS has not done enough in this regard.[454] As a result, the recent trend has been for the SAPS to take a "tough-on-crime" approach, partly reflected in the reversion to the more militaristic model of rank designations[455] and partly reflected in the controversial statements of former National Police Commissioner, General Bheki Cele, regarding the permissible use of force when apprehending suspected criminals.[456]

Second, the integrity of the last two National Police Commissioners has been called into question. Cele, suspended in October 2011, is alleged to have engaged in financial improprieties when the SAPS signed an R500m lease for a new Headquarters.[457] Also, Jacob Selebi, who was National Police Commissioner from 2000-2009, was recently convicted of corruption on 2 July 2010 and ultimately sentenced to serve 15 years in jail.[458] Some suggest his appointment in 2000, and then subsequent "protection" during the investigation of corruption charges, was due to his friendship with then-President Thabo Mbeki.[459] The allegations against Selebi are arguably borne out by the fact that when the former head of the National Prosecuting Agency initiated the corruption investigation against Selebi, Mbeki suspended the Head Prosecutor.[460] The willingness of Mbeki to tolerate the corruption of his ally Selebi, and the very friendly relationship that existed between President Jacob Zuma and

[453] The South Africa Police Service Act, 1995, Sections 64A-Q. Their functions are limited to crime prevention, traffic enforcement and municipal bylaw enforcement. They do not have investigation or intelligence functions and their powers can only be exercised within the municipal boundary.
[454] Johan Burger and Henri Boshoff, *The state's response to crime and public security in South Africa*, Institute for Security Studies, Pretoria, 2008: www.afriforum.co.za/wp-content/uploads/2008/12/states-response-to-crime-etc.pdf (accessed on 3 September 2011).
[455] "Peer review suggests police probe," *News24*, 28 June 2011: http://www.news24.com/SouthAfrica/Politics/Peer-review-suggests-police-probe-20110628 (accessed on 14 July 2011).
[456] Carvin Goldstone, "Police must shoot to kill, worry later – Cele," *IOLNews*, 1 August 2009: http://www.iol.co.za/news/south-africa/police-must-shoot-to-kill-worry-later-cele-1.453587 (accessed on 14 July 2011).
[457] Sam Mkokeli, "Public protector puts Zuma in a tight spot," *Business Day*, 7 July 2011: http://www.businessday.co.za/articles/Content.aspx?id=147762 (accessed on 14 July 2011).
[458] David Smith, "South Africa's former police chief Jackie Selebi sentenced," *The Guardian*, 3 August 2010: http://www.guardian.co.uk/world/2010/aug/03/jackie-selebi-south-africa-corruption-sentence (accessed on 15 July 2011).
[459] Pierre de Vos, "More Questions than Answers," *Sowetan Live*, 5 July 2010: http://www.sowetanlive.co.za/sowetan/archive/2010/07/05/more-questions-than-answers (accessed on 15 July 2011).
[460] "Motlanthe decides against reinstating Pikoli", *Mail & Guardian*, 8 December 2008: http://mg.co.za/article/2008-12-08-motlanthe-decides-against-reinstating-pikoli (accessed on 15 July 2011).

Cele, has raised important questions about the Police-Executive relationship in South Africa.[461]

Notwithstanding the progress made on police reforms post-1994, it has not surprised some commentators that corruption continues to plague the SAPS. They argue that when organisational reforms took place in the 1990s, insufficient attention was paid to the issue of corruption, particularly the legacies of corruption that were attached to the former 'Bantustan' or 'homeland' police forces. "It was only later during SAPS' 'Transformation' phase that corruption came to be seen as a key element of the overall change management effort, and even then, efforts to tackle police corruption have been criticised as inadequate."[462]

A recent judgement from the Constitutional Court has brought into stark relief the importance of encouraging institutional independence when combating corruption. The Directorate of Special Operations (also known as the "Scorpions") was established on 1 September 1999 in order to investigate and prosecute serious cases of corruption and organised crime. Set up as a unit within the National Prosecuting Authority, the Scorpions were a distinct and autonomous directorate composed primarily of prosecutors, special investigators and forensic accountants. They were responsible for a number of high-profile prosecutions and garnered considerable public praise for their efforts to aggressively combat corruption.[463]

However, in 2009, the Government passed an amendment to the SAPS Act that moved the Scorpions from the National Prosecuting Authority and shifted it to the SAPS where it was renamed the Directorate for Priority Crime Investigation (also known as the "Hawks"). The inserted amendment, Chapter 6A, was challenged by businessman Hugh Glenister who argued that compromising the independence of the anti-corruption unit was unconstitutional. The Constitutional Court ultimately *agreed in Glenister v President of the Republic of South Africa and Others.*

The Court made two key findings. First, it held that the Constitution imposes an obligation on the state to establish and maintain an independent body to combat corruption and organised crime. Second, it concluded that the requirement of independence had not been met and the Court declared the impugned legislation invalid, giving Parliament 18 months to remedy the constitutional defect.[464] The significance of this judgement on police-executive relations is discussed in greater detail at Section 6.2.

Aside from the issue of corruption and policing, many in South Africa have argued that the legislative framework for policing, promulgated in the mid-1990s, required an update. In particular, it was felt that the provisions in the SAPS Act pertaining to the Independent Complaints Directorate were not specific enough and that new legislation for the National and Provincial Secretariats for Safety and Security would address any deficiencies. As a result, President Zuma recently assented to two new laws that directly affect policing: the Civilian Secretariat for Police Service Act, 2011, and the Independent Police Investigative Directorate Act, 2011. These two acts and their implications for policing in South Africa will be discussed at Sections 6.3 and 6.4, respectively.

[461] However, on the flip side, South Africa is a relatively rare example of a developing country where genuine investigations can be launched into the activities of the Chief of Police.
[462] See for instance Gareth Newham, "Strengthening Democratic Policing in South Africa through Internal Systems for Officer Control," *South African Review of Sociology* 36, no. 2 (2005): 160-177.
[463] Organisation for Economic Cooperation and Development, *South Africa: Phase 2,* 17 June 2010 (updated on 13 July 2010).
[464] *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6, paragraphs 163-164.

6.2 Police-Executive Relationship

When the new Constitution was debated, a considerable amount of discussion centred on police reform and the question of, "who will control the police and to what extent should they be controlled?" These questions arose because political interference in the SAPS during apartheid was not uncommon.[465] Sections 206 and 207 in the Constitution substantially addressed these challenging issues. The Constitution states "a member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives."[466] The provinces are entitled to monitor police conduct, oversee the effectiveness and efficiency of the SAPS and to promote the good relations between the police and the community.[467] In the event that there is a complaint about police efficiency or a breakdown in relations between the police and the community, then the province may investigate or appoint a commission of inquiry.[468]

The Constitution also establishes that in the performance of its functions, the security services (which the SAPS is a part of) may not prejudice a political party interest that is legitimate in terms of the Constitution or further, in a partisan manner, any interest of a political party.[469]

As for the National Commissioner, the Constitution allows him to exercise control over the general administration of the SAPS in accordance with the national policing policy established by the Minister of Safety and Security.[470] In turn, as part of the new federal arrangement in South Africa, Provincial Commissioners shall have command and control over the SAPS in the area under his or her jurisdiction,[471] subject of course to the National Commissioner's overarching authority in the administration of the SAPS.[472]

Though the President of South Africa appoints the National Commissioner of Police Service,[473] the National Commissioner appoints the Provincial Commissioner of Police for each province.[474] Even though he is required to do so with the "concurrence of the provincial executive,"[475] the fact that the head of the police force in a province is appointed by another police officer and not by the political executive is very significant. Both the National and

[465] Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa,* October 2006, p. 23.
[466] The Constitution of the Republic of South Africa, 1996, Section 206(1).
[467] The Constitution of the Republic of South Africa, 1996, Section 206(3). "There is a provincial Minister (called Members of Executive Councils or MECs) for Community Safety in each of the nine Provincial governments. These MECs are politically responsible for policing in their provinces. The Provincial governments do not allocate budgets to the police, but play some role in directing and monitoring the activities of the police in their province. The Provincial Commissioners of Police report directly to the National Commissioner, but also report and account, for some of their functions, to the Provincial government through the MEC for Community Safety and the Provincial Departments of Community Safety." See Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa,* October 2006, p. 24.
[468] The Constitution of the Republic of South Africa, 1996, Section 206(5).
[469] The Constitution of the Republic of South Africa, 1996, Section 199(7).
[470] The Constitution of the Republic of South Africa, 1996, Section 207(2).
[471] The South Africa Police Service Act, 1995, Section 12(1).
[472] The Constitution of the Republic of South Africa, 1996, Section 207(4)(b).
[473] The Constitution of the Republic of South Africa, 1996, Section 207(1).
[474] The South African Police Service Act, 1995, Section 6(2).
[475] The Constitution of the Republic of South Africa, 1996, Section 207(3).

Provincial Commissioners have a fixed minimum tenure of five years,[476] which can be extended for another term, subject to a maximum of ten years.[477]

In a departure from previous practice, senior positions in the SAPS were publicly advertised and the selection process was competitive and relatively transparent. "The positions of the nine Provincial Commissioners were advertised; and the selection committees that interviewed the short-listed candidates included representatives of the National Minister for Safety and Security, as well as the Provincial Ministers (MECs) for Safety and Security and the National Commissioner."[478]

An example of how policing matters will be handled between the President, National Commissioner and Provincial Commissioners can be found under Section 17 (National public order policing unit) of the SAPS Act. The National Commissioner is tasked with establishing and maintaining a national public order policing unit.[479] If an issue of public order arises, the National Commissioner will deploy the unit after he receives a request from the Provincial Commissioner.[480] Once deployed, the Provincial Commissioner has operational authority over the unit (subject to any directions issued by the President).[481] In the event that the Provincial Commissioner is unable to maintain public order and neglects to make the necessary request, the President may direct the National Commissioner to deploy the unit.[482]

The initial approach police reforms in South Africa was motivated by the ANC-led Government's desire to achieve political control of the police, with a correlating strong emphasis on accountability and oversight. "It was only in the second term of the democratically elected government, after political control and legitimacy had been achieved, that the government began to strongly emphasise the role of the police in crime combating." [483]

Returning to the issue of corruption, although the Scorpions were not a policing agency, the Constitutional Court's judgement in Glenister is worth examining for its important discussion on the need for law enforcement agencies to be free from undue political interference. In their majority judgement, Deputy Chief Justice Moseneke and Justice Cameron favourably cited an OECD Report that concluded:

> Independence primarily means that the anti-corruption bodies should be shielded from undue political interference. To this end, genuine political will to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive anti-corruption strategy. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the structural and operational autonomy that is important, along with a clear legal basis and mandate for a special body, department or unit. This is particularly important for law enforcement bodies. Transparent procedures for appointment and removal of the director together with proper human resources management and internal controls are important elements to prevent undue interference.[484]

[476] The South African Police Service Act, 1995, Section 7(1).
[477] The South African Police Service Act, 1995, Section 7(2).
[478] Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa,* October 2006, pp. 34-35.
[479] The South African Police Service Act, 1995, Section 17(1).
[480] The South African Police Service Act, 1995, Section 17(2).
[481] The South African Police Service Act, 1995, Section 17(3).
[482] The South African Police Service Act, 1995, Section 17(5).
[483] Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa,* October 2006, p. 19.
[484] *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6, paragraph 188.

Referring back to the discussion on Police-Executive relations at Section 1.4.1 of this study, the OECD's argument for why anti-corruption bodies need to be independent are similar to the reasons for why the police require operational responsibility in order to properly perform their duties. As the Court pointed out:

> [T]he question is not whether the [Hawks] has full independence, but whether it has an adequate level of structural and operational autonomy, secured through institutional and legal mechanisms, to prevent undue political interference. To these formulations we add a further consideration … public confidence in mechanisms that are designed to secure independence is indispensable. Whether a reasonably informed and reasonable member of the public will have confidence in an entity's autonomy-protecting features is important to determining whether it has the requisite degree of independence. Hence, if Parliament fails to create an institution that appears from the reasonable standpoint of the public to be independent, it has failed to meet one of the objective benchmarks for independence. This is because public confidence that an institution is independent is a component of, or is constitutive of, its independence.[485]

The Court ultimately concluded, in part, that the Hawks did not have the requisite level of independence to properly perform its job because a reasonable and informed member of the public may question the true nature of that "independence" in light of the tenuous protections afforded to the Hawks when compared against the protections given to the Scorpions.

Furthermore, the Court held that "adequate independence does not require insulation from political accountability. In the modern polis, that would be impossible. And it would be averse to our uniquely South African constitutional structure. What is required is not insulation from political accountability, but only insulation from a degree of management by political actors that threatens imminently to stifle the independent functioning and operations of the unit."[486]

The Court felt that insecure tenure was one of the ways in which the independence of the Hawks was compromised. The National Commissioner, who is eligible for renewable tenure and therefore more susceptible to political pressure, appoints the head of the Hawks whereas the National Director Public Prosecutions, an individual not entitled to have his term renewed, was tasked with appointing the head of the Scorpions. The Court was also extremely troubled by the fact that a Ministerial Committee (composed of Ministers for Police, Finance, Home Affairs, Intelligence and Justice) had the power to coordinate the Hawk's activities and determine its policy guidelines without the necessary protections to safeguard against possible "far-fetched conduct" by the Committee.[487] The Court held that all of these issues, particularly the level of direct oversight and control wielded by the Ministerial Committee over the Hawks, could not be overcome by having a retired judge investigate complaints of improper influence.[488] Thus, the Court declared the impugned legislation invalid and granted Parliament 18 months to remedy the constitutional defect.[489]

[485] Ibid., paragraphs 206-207.
[486] Ibid., paragraph 216.
[487] Ibid., paragraph 231.
[488] Ibid., paragraph 246.
[489] The Government has proposed an amendment to the SAPS Act wherein the Head of the Hawks could only be appointed for a non-renewable term of seven years. However, according to the amendment, the Hawks remain a unit within SAPS and still report to the Police Minister. In the opinion of Glenister and his lawyer, this proposed amendment is insufficient to provide the Hawks with the independence it requires to do its job effectively. See Craig Dodds, "Glenister set to fight SAPS

While *Glenister* deals with the independence of a specialised anti-corruption unit, and does not address issues of independence in the larger SAPS context, the judgement's conclusions illustrate the negative correlation between greater institutional independence and diminished political interference.

6.3 Democratic Accountability

One of the unique features of the South African model was the establishment of Civilian Secretariats for Safety and Security at both the national and provincial levels. The Secretariats had two key functions:

- Advising the Minister (or the MEC, in the case of Provincial governments) on policy matters – to counterbalance the technical policy expertise held by the police and to ensure a civilian approach to policies on safety, crime, policing, etc.
- Monitoring police adherence to policy, and reporting on this to the Minister or MECs. In the case of provincial secretariats, they might also monitor adherence to Provincial Policy Directives issued by the MEC or the Provincial Government; and they also monitor the Municipal Police Services that operate in their provinces.[490]

"In effect, the Secretariats gave civilian capacity to the political heads responsible for policing. If they had sufficient resources (which depends on allocations made to them in the respective National or Provincial Budgets), they could draw on non-government expertise, and conduct citizen surveys and other research in order to inform their advisory and monitoring work."[491] The creation of the Secretariats was a response to specific historical features of the South African policing situation at the time of transition:

- In the pre-democracy period, the apartheid government had relied solely on the police for advice on policy matters concerning policing. The police used to draft all legislation and write all policy documents on matters of policing and crime. There was no input from civil society, from critics, or from international experience.
- Prior to 1994 (and for some time after that), there was almost no civilian (civil society) expertise on policing and crime policy matters. The police held a monopoly on this kind of knowledge.[492]

The problem was that both the Provincial and National Secretariats underperformed. A 2004 evaluation of the Provincial Secretariats found that they were generally not carrying out all the functions provided for in legislation, and therefore not realising the full extent of the powers available to them.[493] In addition, the functions and powers of the provincial secretariats and the status of their recommendations to the SAPS were not made adequately clear in the SAPS Act.

These problems were compounded by the National Secretariat's failure to coordinate[494] and

[490] Amendment Bill," IOL News, 4 March 2012: http://www.iol.co.za/news/politics/glenister-set-to-fight saps-amendment-bil 1.1248121?showComments=true (accessed on 6 March 2012).
Janine Rauch and Elrena van der Spuy, Recent Experiments in Police Reform in Post-Conflict Africa, October 2006, pp. 31-32.
[491] Ibid.
[492] Ibid.
[493] Ibid.
[494] Open Society Foundation for South Africa, "Strengthening Oversight of Police in South Africa," May 2004, p. 7: www.soros.org/initiatives/justice/articles_publications/publications/southafrica_20040510/southafrica_20040510(2).pdf (accessed on 28 July 2011).

the fact that it was funded from the police budget, which effectively reduced it to being a unit of the police and not nearly as independent as it should be.[495] Moreover, a restructuring of the National Secretariat in 2004 resulted in a diminution of its role so that it appeared to exist only to advise the Minister of Safety and Security, without playing any significant monitoring role.[496]

It has been suggested that the duplication of the National and Provincial Secretariats' roles and responsibilities was partly a result of unclear legislation and partly the result how executive discretion was exercised. "Whereas the role of the secretariat appears to be prescribed by legislation, in practice its mandate and authority, vis-à-vis the other executive wings, is not clearly defined. It is apparently subject to the Minister's discretion, which has led to considerable variations in the experiences of different provinces under successive ministers and MECs."[497]

As a result of these concerns, Parliament conducted a review of the system and recently passed new legislation to try and provide greater clarity to the Secretariat structure. The Civilian Secretariat for Police Service Act, 2011 ("Secretariat Act") was assented to on 12 May 2011. The basic thrust of the Secretariat Act is to provide the national Civilian Secretariat and the provincial secretariats with more powers and a greater overall ability to coordinate the various actors on police oversight.

Under the new Act, the Civilian Secretariat's functions and powers include:

- Exercise civilian oversight over the police service;[498]
- Provide the Minister with strategic advice regarding policing policy;[499]
- Implement the operations (and coordinate functions) of the Secretariat at national and provin cial levels;[500]
- Promote co-operation between the Secretariat, Independent Police Investigative Directorate and the SAPS; [501]
- Monitor, assess and evaluate the SAPS performance; [502]
- Monitor the SAPS budget to ensure compliance with Ministerial directives; [503]
- Provide the Minister with regular reports on the performance of the SAPS;[504]
- Assess the SAPS ability to deal with complaints;[505]
- Serve as a policing information resource for the Secretary, Minister and Parliament;[506] and
- Implement intergovernmental co-operation on safety and encourage nationaldialogue on crime.[507]

[495] Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay,* 2005, pp. 42-43: www.humanrightsinitiative.org/publications/chogm/chogm_2005/chogm_2005_full_report.pdf (accessed on 15 June 2011).
[496] Duxita Mistry and Judy Klipin, *South Africa: Strengthening Civilian Oversight over the police in South Africa: The national and provincial secretariats for safety and security,* Institute for Security Studies Occasional Paper 91, Pretoria, September 2004: www.iss.co.za/pubs/papers/91/Paper91.htm (accessed on 13 July 2011).
[497] Ibid.
[498] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 5(a).
[499] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 5(b).
[500] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 5(f) and (g).
[501] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 5(h).
[502] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 6(1)(a) and (2)(b).
[503] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 6(1)(b).
[504] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 6(1)(i).
[505] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 6(1)(j).
[506] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 6(2)(a).
[507] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 6(2)(c).

In addition, the functions and powers given to the provincial secretariats are designed to ensure that there is greater coherence between their activities and the Civilian Secretariat:

- Align plans and operations at provincial-level with the plans of the Secretariat;[508]
- Monitor and evaluate implementation of policing policy and police conduct in province;[509] and
- Promote community-police relations and enhance community safety.[510]

One of the key features of the new Secretariat Act is the level of co-operation found at Chapter 5 of the legislation. In total, there are six distinct and important collaborative features. First, the Secretary and heads of the provincial departments responsible for safety and security are to meet at least on a quarterly basis in order to ensure the alignment of the performance and strategic plans, as well as the priorities and objectives, of the provincial secretariats and the Civilian Secretariat.[511] Second, a senior management forum is established whereby the Secretary, the heads of provincial secretariats, and their senior staff are to meet at least bi-monthly to report on the activities of each provincial secretariat and facilitate co-operation amongst them.[512] Third, the Minister may, after consulting with the relevant MEC, instruct the Civilian Secretariat to intervene in the affairs of an underperforming provincial secretariat.[513] Fourth, a Ministerial Executive Committee (consisting of the Minister, MEC from each province, and any other member the Minister considers necessary) is established to facilitate closer co-operation between the national and provincial spheres of government.[514] Fifth, the Civilian Secretariat must consider reports submitted to it by the Independent Police Investigative Directorate (IPID) and monitor the SAPS' implementation of IPID's recommendations.[515] Sixth, it is expected that members of the SAPS will provide the Civilian Secretariat with their full co-operation.[516]

The fact that the Secretariat Act was only recently passed means that the enumerated changes have not been implemented yet. Thus, it remains to be seen whether the modifications that have been made will be effective. However, the emphasis on clarifying roles and responsibilities, as well as establishing greater co-operation between various stakeholders, is commendable and will most likely result in the improved democratic accountability of the SAPS.

6.4 External Accountability

Similar to the Secretariats, the external complaints system in South Africa has recently changed. Originally, the Constitution stipulated that "on receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of

[508] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 17(1)(a).
[509] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 17(2)(a).
[510] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 17(2)(b).
[511] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 23.
[512] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 25.
[513] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 26.
[514] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 29.
[515] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 31.
[516] Civilian Secretariat for Police Service Act, 2011 (South Africa), Section 32.

the police service in the province."[517] As a result, the SAPS Act provided for the creation of the Independent Complaints Directorate (ICD).[518] The ICD began work in 1997 and had its own investigators to look into the most serious complaints against the SAPS.

The ICD was successful in changing the culture of accountability surrounding police. Although the SAPS Act did not stipulate that ICD's recommendations were to be binding, the reality was that because of the reputation and stature of the ICD, the National Commissioner could not just ignore their advice. "This is the result of many years of relationship building between the police and the ICD. Also, police leaders now see the benefit of having an independent investigation agency for complaints and controversial cases; and the police themselves sometimes refer cases to the ICD for investigation."[519]

In its most recent annual report, the ICD reports the following statistics:

- A total of 6377 complaints were received during the financial year, and 98% were allocated within the specified 48 hours;
- The ICD made 526 recommendations for decisions to the Director of Public Prosecutions in criminal matters, and a total of 1 666 recommendations were made by the ICD to SAPS management with regard to various offences;
- In 47 cases, members of the SAPS were convicted for various criminal offences – 25 were convicted in relation to deaths in police custody and deaths as a result of police action, and 22 convictions were related to other criminal offences.[520]

However, notwithstanding the success of ICD in fulfilling its mandate under the Constitution and the SAPS Act, it was felt that having a complaints-driven model of accountability was lacking and that more emphasis should be placed on investigations. "The need to transform the current ICD from a complaints-driven organization to a new investigative-driven institution – the Independent Police Investigative Directorate – was instrumental in the development of a new legislative framework."[521]

This new legislative framework took the form of the Independent Police Investigative Directorate Act, 2011 ("IPID Act"). The new act, which is expected to come into operation at the end of 2011, provides greater clarity and detail on a number of points. At Section 2, IPID is required to: ensure independent oversight of the South African Police Service and Municipal Police Services;[522] align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate; provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the SAPS and Municipal Police Services; make disciplinary recommendations in respect of members of the SAPS and Municipal Police Services resulting from investigations conducted by the Directorate; and provide for close co-operation between the Directorate and the Secretariat. To achieve these objectives, the IPID Act stipulates that IPID is independent from the SAPS[523] and anyone that interferes with its work is liable to up to 2 years imprisonment.[524]

[517] The Constitution of the Republic of South Africa, 1996, Section 206(6).
[518] The South African Police Service Act, 1995, Sections 50-54.
[519] Janine Rauch and Elrena van der Spuy, *Recent Experiments in Police Reform in Post-Conflict Africa,* October 2006, p. 31.
[520] Independent Complaints Directorate Annual Report, 2009-2010, p. 7: www.info.gov.za/view/DownloadFileAction?id=132678 (accessed on 24 July 2011).
[521] Ibid.
[522] Section 64 0 of the SAPS Act, read with Regulation 9 and Annexure 5 of the Regulations for Municipal Police Services, gives the ICD the same civilian oversight duties in respect of Municipal Police Services that it has in respect of the South African Police Service. See ICD website: http://www.icd.gov.za/about%20us/legislation.asp (accessed on 24 July 2011).
[523] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 4(1).
[524] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 33(1).

According to the IPID Act, the Minister shall nominate an Executive Director whose appointment, for a maximum of five years,[525] will be contingent on the Parliamentary Committee's approval.[526] Critically, the IPID Act recognises the importance of agencies and other governmental institutions working together and coordinating their activities. Thus, the Act proposes the establishment of a Management Committee that looks to improve coordination between the Executive Director and provincial heads of IPID.[527] The Committee is responsible for ensuring the coordination and alignment of performance and strategic plans, as well as the priorities and objectives, of IPID at the national and provincial levels.[528]

In addition, a Consultative Forum is also set up wherein the Executive Director of IPID and the Secretary of the Civilian Secretariat meet at least four times a year to discuss issues of common interest so that closer co-operation can be facilitated between the two institutions.[529]

Significant changes can be found with the powers bestowed to IPID and its scope of work. The SAPS Act had previously held that ICD, on its own motion or upon receipt of a complaint, may investigate any misconduct or offence[530] and that it must investigate any death in police custody or as a result of police action (emphasis added).[531] While the IPID Act only allows the Executive Director to exercise his own motion powers in relation to cases involving corruption,[532] the new legislation provides much greater specificity about what matters can be investigated and what powers its investigators are entitled to.

First, in relation to the type of matters to be investigated, Section 28(1) stipulates that the Directorate *must* investigate:

(a) any deaths in police custody;
(b) deaths as a result of police actions;
(c) any complaint relating to the discharge of an official firearm by any police officer;
(d) rape by a police officer, whether the police officer is on or off duty;
(e) rape of any person while that person is in police custody;
(f) any complaint of torture or assault against a police officer in the execution of his or her duties;
(g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
(h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.

Significantly, there is a requirement in the IPID Act that the Station Commander, or any member of the SAPS or Municipal Police Service, must immediately notify the Directorate of any matters referred to in Section 28(l)(a) to (f) and submit a written report of the same within 24 hours.[533] Failure to do so could result in up to two years imprisonment.[534] Recent statements by the newly appointed provincial head of ICD in KwaZulu-Natal seems to suggest that this provision will be enforced once the IPID Act comes into operation. "In the past, commanders were not legally bound to report [police misconduct or criminality] to us.

[525] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 6(3)(b).
[526] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 6(2).
[527] Independent Police Investigative Directorate Act, 2011 (South Africa), Sections 11 and 12.
[528] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 13(1).
[529] Independent Police Investigative Directorate Act, 2011 (South Africa), Sections 15-18.
[530] The South African Police Service Act, 1995, Section 53(2)(a).
[531] The South African Police Service Act, 1995, Section 53(2)(a).
[532] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 28(1)(g).
[533] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 29(1).
[534] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 33(3).

This law will now close that gap. It also ensures all types of offences committed by police officers are accounted for, and we can investigate with support from commanders."[535]

Second, there is greater clarity regarding the powers available to IPID investigators. Section 24 (2) holds:

> An investigator has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to—
> (a) the investigation of offences;
> (b) the ascertainment of bodily features of an accused person;
> (c) the entry and search of premises;
> (d) the seizure and disposal of articles;
> (e) arrests;
> (f) the execution of warrants; and
> (g) the attendance of an accused person in court.

Importantly, no longer is IPID merely a recommendatory body as it was as ICD. After receiving recommendations from IPID, the National Commissioner *must* initiate disciplinary proceedings within 30 days.[536] Also, any self-incriminating statements (i.e. a confession) given to an IPID investigator cannot be used as evidence in a criminal proceeding, unless the charge involved is perjury.[537] The functions of the directorate shall be funded by money appropriated by Parliament for that purpose, and not from the general police budget.[538]

6.5 Community Engagement

Similar to updated police legislation in other jurisdictions around the world, the SAPS Act has formally embraced community policing. What is unusual about South Africa is that it initially included community policing in its Interim Constitution.[539] Although community policing-related provisions were not retained in the final 1996 Constitution, community policing has subsequently become an important feature of building public trust and confidence in the SAPS.

In the SAPS Act, community policing is found at Sections 18-23. First, Section 18 details the objectives of community police forums:

> (a) establishing and maintaining a partnership between the community and the Service;
> (b) promoting communication between the Service and the community;
> (c) promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing;
> (d) improving the rendering of police services to the community at national, provincial, area and local levels;
> (e) improving transparency in the Service and accountability of the Service to the community; and
> (f) promoting joint problem identification and problem-solving by the Service and the community.

To accomplish these objectives, the Act requires the Provincial Commissioner to create voluntary

[535] Yogas Nair, "Warning on Police Brutality," *IOL News*, 5 July 2011: http://www.iol.co.za/news/crime-courts/warning-on-police-brutality-1.1093701 (accessed on 20 July 2011).
[536] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 30.
[537] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 24(5).
[538] Independent Police Investigative Directorate Act, 2011 (South Africa), Section 3(3).
[539] The Interim Constitution of the Republic of South Africa, 1993, Section 219(1)(b)

community police forums (CPFs) at every police station in the province, which are representative of the community.[540] To ensure the proper functioning of these forums, the Minister passed interim regulations which stipulate, among other things, that each CPF must draft a constitution,[541] must develop a community safety plan,[542] and may establish a community police sub-forum (more commonly known as a "sector CPF") to deal with policing matters mainly affecting a significant section of the community.[543]

However, crime levels are affected by a range of economic, social and political factors, and therefore cannot be addressed solely by the policing response provide for by CPFs. Addressing crime prevention needs requires a multi-disciplinary and integrated approach, which must involve the community. This recognition was expressed in the National Crime Prevention Strategy in 1996 and the White Paper on Safety and Security in 1998, ultimately leading to the creation of community safety forums (CSFs).[544] While CSFs have not been systematised across the country, some efforts have been undertaken by non-governmental organisations in this regard. For instance, the Western Cape Community Policing Project, run by the NGO U Managing Conflict, has been a successful attempt to engineer and run a CSF.[545]

Instead, the SAPS have started to focus more on sector policing, which essentially divides each police station area into four or five manageable sectors.[546] When determining sector boundaries, consideration is given to resource, geographical size, infrastructure, demographic features, and community needs.[547] The Station Commissioner is expected to appoint a Sector Commander for each sector and a Sector Co-ordinator (to co-ordinate all the different sectors in the police station area). In each sector the Sector Commander and his beat officers are encouraged to meet and get to know as many people as possible. This often involves going door-to-door and making the necessary introductions. Each sector nominates one person (usually the Chairperson) to represent the sector at the police station area CPF. Interestingly, a sector does not have to be a geographical area; a sector can be related to a service industry, such as the taxi business.[548]

According to some observers, the CPFs have become less popular in comparison to sector policing. "If one examines recent strategic plans and annual reports of the SAPS, it is clear that CPFs have been pushed to the back and greater emphasis is on sector policing."[549] One of the reasons that sector policing is popular with both the police and the community is that it is very practically oriented and does a good job of engaging the community in jointly creating a safe environment. Those neighbourhood watches that actively coordinate with the SAPS in sector policing are the most effective; those that do not can sometimes become involved in physical confrontations with "suspects" or exceed their powers with respect to stop and search.[550]

[540] The South African Police Service Act, 1995, Section 19.
[541] South African Police Service Interim Regulations for Community Police Forums and Boards, 2001 (No. 22273, No. R. 384), Regulation 7.
[542] Ibid., Regulation 8.
[543] Ibid., Regulation 3.
[544] Sean Tait and Dick Usher, "Co-ordinating prevention: the role of Community Safety Forums", in *Crime Prevention Partnerships,* ed. Eric Pelser (Pretoria: Institute for Security Studies, 2002), pp. 57-58.
[545] Ibid., p. 59.
[546] South African Police Service website, "Sector Policing": http://www.saps.gov.za/comm_pol/sector_policing/sector_policing.htm (accessed on 30 July 2011).
[547] National Instruction 3/2009, Sector Policing, p. 3.
[548] Interview with retired SAPS Colonel, 17 August 2011.
[549] Interview with retired SAPS Assistant Commissioner and Head of Operational Coordination, 31 August 2011.
[550] Ibid.

In addition to CPFs and sector policing, the SAPS Act also permits the National Commissioner to determine the requirements of the Reserve Police Force.[551] Comprised of volunteers between the ages of 18-70, the reservists are a volunteer force that assists the SAPS in performing policing functions and, when they are on duty, do so with the same powers as permanent members of the service.[552] Additionally, there are "patrol groups" who are affiliated with a community police sub-forum but only have limited powers (i.e. citizens arrest).[553] Both reservists and patrol groups can be utilised in sector policing.

[551] The South African Police Service Act, 1995, Section 48.
[552] South African Police Service website, "Reservists": http://www.saps.gov.za/comm_pol/reservists/reservist_index.htm (accessed on 30 July 2011).
[553] South African Police Service website, "Sector Policing": http://www.saps.gov.za/comm_pol/sector_policing/sector_policing.htm (accessed on 30 July 2011).

Chapter 7

KENYA

> At first, laws for the region were imported from India, including the Indian Penal Code, the Criminal Procedure Code, the Indian Evidence Act and the Police Act, 1861. However, recognising that new laws needed to be tailored to the context of East Africa, the British enacted the Police Ordinance of 1906, which legally constituted the British East Africa Police.

7. KENYA

Key Legislation:

Constitution of Kenya, 2010
National Police Service Bill, 2011
National Police Service Commission Act, 2011
Independent Policing Oversight Authority Act, 2011

7.1 Background

Kenya's policing history originated between 1887-1902, a period of time when the British East Africa Company, later known as the Imperial British East Africa Company ("Company"), was founded in order to advance the British Empire's commercial interests in that particular region.[554] The Company oversaw an area of 639,000 km^2 along the East African coast and established an armed security force in 1896 to assist with administration. Initially, it recruited its police personnel from the Indian police and had them safeguard trading routes and centres. But as time passed, and the Company realised that it had shouldered a burden far beyond its financial resources, the British Colonial Office took over many of its responsibilities (including policing).[555]

At first, laws for the region were imported from India, including the Indian Penal Code, the Criminal Procedure Code, the Indian Evidence Act and the Police Act, 1861. However, recognising that new laws needed to be tailored to the context of East Africa, the British enacted the Police Ordinance of 1906, which legally constituted the British East Africa Police. "The British East Africa Police was then organized along military lines and the training was military in nature. Put simply, the Royal Irish Constabulary Course for training European officers placed an emphasis on a military element at the expense of police training."[556]

During World War I, the police were deployed to fight alongside the military. It was in 1920 that the modern Kenya Police force was founded. "Africans were recruited to fill only the lowest ranks of the force – subservient to European and Asian officers. Within the urban areas, the police force strategy of keeping Nairobi safe for the settlers meant containing the potential crime and disorder perceived to emanate from the Africans residing illegally in the slum areas of East lands."[557]

A tumultuous time in the history of the Kenya Police, and Kenya more generally, was during the Mau Mau Uprising that took place between 1952-1960. This anti-colonial (and mainly Kikuyu) insurgency precipitated Governor Baring's declaration of a state of emergency on 20 October 1952. To keep control over the colony, the British waged a military campaign wherein the army took over from the police as the primary law enforcement agency. During this time the Kenya Police, Special Branch and the Criminal Investigation Department

[554] *Report of the National Task Force on Police Reforms,* October 2009, p. 13.
[555] Yoshiaki Furuzawa, "Two Police Reforms in Kenya," *Journal of International Development and Cooperation* 17, no. 1, 2011, p. 52.
[556] Ibid., p. 53.
[557] Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability in Kenya, Report,* 2006, p. 4: www.humanrightsinitiative.org/publications/police/kenya_country_report_2006.pdf (accessed on 12 June 2011).

were all involved in using torture as a means to combat the revolt.[558] To limit the damage caused by the insurgency, emergency regulations passed in 1953 relaxed the rules of evidence and other safeguards of the criminal justice system in order to allow District Commissioners to more directly control the Kikuyu population.[559] When Kenya achieved Independence in 1963, it retained the 1961 Police Act and the corresponding Police Regulations that, among other things, set out disciplinary offences, private use of the police and the storage of firearms. These two statutory instruments were supplemented by Standing Orders that the Police Commissioner could issue to deal with day-to-day administrative matters.[560]

The 1963 Constitution originally envisaged the Kenya Police as an operationally autonomous force. "The 1963 Constitution had included provisions designed to establish a professional, neutral police force. The Constitution gave autonomy to the police force. It envisaged that the police force would be set up by legislation and overseen by a Police Service Commission and a National Security Council. The IGP was to be appointed by the President on the advice of the Police Service Commission."[561] Unfortunately, these provisions were never implemented. "In 1964, a constitutional amendment removed the force's autonomy and the police became an extension of the civil service."[562] The significance and impact of these changes are discussed more at Section 7.2.

Operating parallel to the Kenya Police is the Administration Police, which has traditionally been separate from the "normal" police and subject to the Administration Police Act, 1958. "The origins of the Administration Police can be traced back to 1902 with the enactment of the village headman ordinance. The object of this ordinance was to bring the then native barter economy into harmony with the colony's emerging money economy, which entailed taxation, regulated agriculture and livestock farming as well as other social matters."[563] The Administration Police typically deal with customary law of a localised nature, whereas the Kenya Police deal with civil law across the country. But when it became more difficult for the District Commissioners to properly supervise the Administration Police, there was a move to provide the force with a national structure.[564]

TABLE: Comparison of Duties of Kenya Police and Administration Police

Mandate of Kenya Police[565]	Mandate of Administration Police[566]
• Maintain law and order; • Preserve peace; • Protect life and property; • Investigate crime; • Collection of criminal intelligence; • Prevent and detect crime; • Apprehend offenders; and • Enforce all laws and regulations with which it is • charged.	• Provide border patrol; • Prevent stock theft; • Protect government property, vital installations and strategic points; • Support government agencies in exercise of their lawful duties; • Complement government agencies in conflict management/peace building; and • Apprehend offenders

[558] *Report of the National Task Force on Police Reforms,* October 2009, p. 15.
[559] Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Account ability in Kenya, Report*, 2006, p. 5.
[560] The Police Act, Chapter 84, Laws of Kenya, Section 5(1).
[561] Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability in Kenya, Report,* 2006, p. 6:
[562] Ibid.
[563] Kenya Administration Police, *Strategic Plan 2009-2013,* 2009, p. 12.
[564] *Report of the National Task Force on Police Reforms,* October 2009, p. 18.
[565] National Police Service Bill, 2010 (Kenya), Section 15.
[566] National Police Service Bill, 2010 (Kenya), Section 24

7.1.1 Reform Efforts from 2003-2007

With regressive amendments to the 1963 Constitution, including a move in June 1982 to make Kenya a one-party state, the Kenya Police remained an undemocratic, regime-style force throughout the 1980s and 1990s. Police reform efforts in Kenya took on greater urgency when the National Rainbow Coalition (NARC), led by current President Mwai Kibaki, won the national election at the end of 2002 and assumed power in early 2003. As part of its mandate, NARC initiated a constitution drafting process that included police reforms as a central element. These constitutional negotiations culminated in the "proposed new constitution".

Although the proposed new constitution was rejected in a 2005 referendum, certain positive steps were taken on the policing side. First, the Kenya Police and the Administration Police drafted strategic plans. In its first draft of a strategic plan for 2003-2007, the Kenya Police acknowledged the shortcomings of the institutional framework that governed its activities:

> The absence of strong institutional mechanisms for holding the police accountable to the people and to the rule of law must receive particular emphasis. Under the current law, formal mechanisms for holding the Kenyan police accountable do not extend beyond the office of the President. The result of this legal arrangement has been that, in practice, the police, have been vulnerable to interference by powerful individuals outside of formal mechanisms of accountability and the regular chain of command, such as politicians and wealthy business owners. These powerful individuals have been able to use the police for their own political and personal agenda, often in direct contravention of the interests of the Kenyan people. Dependence "for their own career advancement and well being on politicians", has made the police acquiescent to politicians, bureaucrats and their friends even when orders have been in contravention of the law or clearly in the interests of some and unfair to others.[567]

Second, policing issues were recognised as critically important because they touch on so many areas of well-being, including economic prosperity. The Economic Recovery Strategy (2003-2007), which informed the first Administration Police Strategic Plan (2004-2009),[568] affirmed the following:

> A well functioning police force is vital for maintenance of peace and security and, enforcement of the rule of law. In the last two decades the Kenya public security system deteriorated to the point where the government was unable to guarantee its citizens personal security, and that of their property. This had emerged because of low morale in the police force, low professionalism, inadequate allocation of required resources, and endemic corruption in the force. The contribution of the efficient enforcement of law, the maintenance of public safety, and the guaranteeing of law and order to economic growth, and the improvement of quality of life cannot be over-emphasized. This sector is crucial in creating an enabling environment for private sector-led growth and development.[569]

Third, the government accepted that a successful and sustainable police reform programme required partnerships with civil society. Thus, following a national consultation on police reforms, the Government of Kenya asked Saferworld, a London-based international NGO, to support the police reform agenda by focusing on six key areas: strategic management,

[567] Kenya Police, *Draft Strategic Plan 2003-2007*, 2003, p. 11.
[568] Kenya Administration Police, *Strategic Plan 2009-2013,* 2009, p. 15.
[569] Government of Kenya. *Economic Recovery Strategy for Wealth and Employment Creation 2003-2007,* Ministry of Planning and National Development, June 2003, p. 9.

national policy development, training, capacity-building and institutional development, establishment of pilot sites, and a media and outreach strategy. According to Saferworld, "after an assessment of the programme in 2006, it was revised and refined to focus on three key areas: policy development and implementation, transforming CBP pilot sites into model sites, and capacity-building. Implemented in partnership with the Office of the President, the Kenya Police, the Administration Police and civil society, the programme has made significant progress in these areas as well as in strategic management development."[570] In partnership with the NGO PeaceNet, Saferworld established community based policing programmes at Isiolo and Kibera. These programmes are discussed more at Section 7.5.

Fourth, the NARC Government established a 15-member Police Reforms Task Force in 2004 so that it could provide a roadmap for police reforms in Kenya. The Task Force issued its report in 2005 but the Government and Kenya Police did not do very much with the recommendations.[571] The experience with the Task Force was similar to the Kenya Police's attempt at strategic planning and community policing – there was initial enthusiasm and momentum for reform that soon dissipated. The Kenya Police, with a notorious reputation for extrajudicial killing, continued perpetrating such atrocities even in the midst of efforts to "reform".[572] The Kenya Police changed very little until the tragic events of early 2008.

7.1.2 Election Violence in 2007 and 2008

The 2005 Constitution was primarily rejected by referendum because the various coalition members of NARC could not agree on fundamental issues of power sharing. As a result, the coalition split into two main factions – the Kibaki-led Party of National Unity (PNU) and the Raila Odinga-led Orange Democratic Movement (ODM). When the national elections were held on 27 December 2007, the vote was bitterly contested and the outcome in favour of PNU was hotly disputed by ODM. What followed was tremendous violence between the two camps, particularly in the Rift Valley. However, most disturbing was the extent to which security agencies were both active and passive participants in the rapes and murders that had occurred. When the Commission of Inquiry on Post Election Violence (also known as the "Waki Commission") had an opportunity to receive evidence from witnesses and experts, "the Commission learned that the perpetrators of the post election sexual violence included ... state security agents (e.g. administrative police, regular police, and members of the General Service Unit)."[573]

It is estimated that 1500 people died and hundreds of thousands were displaced by he post-election violence. The violence only ended when the power-sharing National Accord and Reconciliation Act was signed on 28 February 2008.[574] Since security agencies played a central role in perpetrating violence during the carnage, the Waki Commission strongly

[570] Saferworld, *Implementing community-based policing in Kenya,* February 2008, p. 9: www.saferworld.org.uk/downloads/pubdocs/Report.pdf (accessed on 3 August 2011).
[571] Commonwealth Human Rights Initiative and Kenya Human Rights Commission, T*he Police, The People, The Politics: Police Accountability in Kenya, Report,* 2006, pp. 61-62.
[572] UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Addendum – Mission to Kenya,* 16-25 February 2009: http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.6.pdf (accessed on 3 August 2011).
[573] Commission of Inquiry on Post Election Violence, October 2008, p. 252: http://reliefweb.int/node/319092 (accessed on 3 August 2011).
[574] "Deal to end Kenyan crisis agreed," *BBC News,* 12 April 2008: http://news.bbc.co.uk/2/hi/africa/7344816.stm (accessed on 5 August 2011).

recommended that both the Kenya Police and the Administrative Police undergo significant reforms.[575]

Subsequent to the Waki Commission, two additional and contemporaneous developments greatly impacted on police reforms in Kenya. First, both PNU and ODM agreed to finally update Kenya's Constitution. Thus, a harmonised draft Constitution written by a committee of experts was released for public feedback on 17 November 2009. It was officially published on 6 May 2010 and then approved by 67 percent of the electorate during a referendum held on 4 August 2010. In order to ensure that its various elements are implemented, the Constitution provides for the creation of the Commission for the Implementation of the Constitution (CIC)[576] and the Constitutional Implementation Oversight Committee (CIOC).[577]

The second process was the National Task Force on Police Reforms (also known as the "Ransley Report"), set up by the President on 8 May 2009. This was a task force designed to examine the existing policies and institutional structures of the police, and to recommend comprehensive reforms that would enhance the effectiveness, professionalism and accountability of police services in Kenya. The Ransley Report, which was submitted to the President in October 2009, called for the creation of the Police Reform Implementation Committee, a 15-member committee tasked with implementing the report's over 200 recommendations.

Between these two processes, tremendous change is potentially in the offing for police services in Kenya. For instance, although the Ransley Report held that the Kenya Police and the Administration Police should not merge because "they have different mandates, training, face different policing needs and require different reforms,"[578] the Constitution stipulates that both services will operate as the "National Police Service" under one Inspector-General to ensure uniformity of command and control.[579] Another recommendation was to decentralise decision-making within the police services so as to give more operational autonomy to officers not located in Nairobi, the capital. While the Ransley Report focused on empowering provincial commanders in this respect, the 2010 Constitution has actually eliminated provinces altogether and devolved power to county governments.[580] Thus, it will be county commanders that will benefit from the decentralisation of decision-making.

Most importantly, in order to implement Ransley's recommendations and meet the requirements of the 2010 Constitution, new policing legislation has been passed – the National Police Service Bill 2011,[581] the National Police Service Commission Act 2011, and the Independent Policing Oversight Authority Act 2011.

7.2 Police-Executive Relationship

Under the old Constitution and the 1961 Police Act, the President had considerable powers related to policing, as well as significant ability to direct and control the Commissioner of

[575] Commission of Inquiry on Post Election Violence, October 2008, pp. 478-481.
[576] Constitution of Kenya, 2010, Sixth Schedule, paragraph 5.
[577] Constitution of Kenya, 2010, Sixth Schedule, paragraph 4.
[578] *Report of the National Task Force on Police Reforms,* October 2009, p. 42.
[579] Constitution of Kenya, 2010, Article 245(2)(b).
[580] Constitution of Kenya, 2010, Articles 174-200.
[581] As of 6 March 2012, the National Police Service Bill 2011 has been passed by Parliament but has not received Presidential assent.

Police. With respect to the former, the 1963 Constitution permitted the President to enact the Preservation of Public Security Act,[582] which allows the President to make regulations in a broad sphere of powers, many of which are normally in the domain of police (i.e. detention, restriction of movement, imposition of curfews, prohibition of any meeting, and suspending the operation of any law).[583] With respect to the latter, the President had unfettered control to appoint and terminate the Commissioner of Police. Parliament, nor any other body, had any role in the appointment or removal of Commissioner of Police.[584]

Prior to the 2010 Constitution and the National Police Service Bill, 2011, ostensibly no criteria guided the President on how to appoint or terminate the Commissioner of Police. In addition, neither the 1961 Police Act nor the 1963 Constitution provided the Commissioner of Police with tenure. "The appointment of the Commissioner is the sole prerogative of the President. It follows that this power is unfettered and without checks. He can appoint anyone and dismiss an appointee without assigning any reasons. It is not clear how the decision on appointment is arrived at, the process of appointment is not competitive or transparent, and there are no guidelines on performance, appraisal process and mechanism of disengagement of the person in the event of non-performance, incompetence or misconduct. The person appointed is beholden to the appointing authority for all intents and purposes."[585]

However, the police atrocities during the post-2007 election violence forced policy makers to address these gaps. As a result, the new Constitution and the National Police Service Bill, 2011 ("NPS Bill") change the police-executive relationship in a few key respects:

- It stipulates that the President appoints the Inspector-General of the National Police Service (NPS) with the approval of Parliament.[582] The NPS Bill is more specific and states that if the Parliament rejects the Presidential nominee for Inspector-General, then it must request the President to submit a new nominee;[587]
- Criteria for Inspector-General selection is made more clear, including that he/she must be a university graduate and that he/she have at least 15 years experience in a senior management position related to criminal justice, policy development, public administration, strategic management, security, law, sociology or Government. There is no stipulation that the Inspector-General must be a current or former police officer;[588]
- Inspector-General to be appointed for a non-renewable four-year term;[589]
- Inspector-General shall exercise independent command over the NPS;[590]
- The NPS shall be under the overall and independent command of the Inspector-General;[591]
- Inspector-General can only be removed from office if he has committed a serious violation of the Constitution, committed gross misconduct, is physically or mentally incapable of

[582] Constitution of Kenya, 1963, Article 85.
[583] The Preservation of Public Security Act, Chapter 57, Laws of Kenya, Section 4(2).
[584] Constitution of Kenya, 1963, Article 108(1).
[585] *Report of the National Task Force on Police Reforms,* October 2009, pp. 34-35.
[586] Constitution of Kenya, 2010, Article 245(2)(a).
[587] National Police Service Bill, 2011 (Kenya), Section 12(10).
[588] National Police Service Bill, 2011 (Kenya), Section 11(1). The fact that the Inspector-General can be a civilian has been a source of controversy. See Patrick Muigai, "Police not ready to accept civilian Inspector-General," *The Kenya Post,* 16 January 2012: http://www.thekenyanpost.com/2012/01/police-not-ready-to-accept-civilian.html (accessed on 6 March 2012).
[589] Constitution of Kenya, 2010, Article 245(6); National Police Service Bill, 2011 (Kenya), Section 18.
[590] Constitution of Kenya, 2010, Article 245(2)(b).
[591] National Police Service Bill, 2011 (Kenya), Section 8(1).

performing his duties, incompetent or bankrupt; [592] and

- Cabinet secretary for policing can give policy direction (in writing) to Inspector-General, but cannot direct him to: [593]
- Investigate a particular offense;
- Enforce the law against a particular person; or
- Employ, assign, promote, suspend or dismiss any member of the NPS.

These changes will also apply to the Administration Police, a force traditionally subject to considerable political direction from the Minister for Provincial Administration and Internal Security.[594] "One of the main concerns with the Administration Police Force is the fact that it is under the command of the Minister. This arrangement opens an armed, paramilitary force to direct political influence and undermines its political neutrality, autonomy and professionalism."[595] The new Constitution stipulates that the Administration Police and the Kenya Police will both belong to the NPS.[596] Though the Administration Police will still operate under a Deputy Inspector-General[597] (as will the Kenya Police),[598] it will ultimately function under an operationally autonomous Inspector-General.

The newly created National Security Council is another form of executive control over the NPS. The 2010 Constitution designates the NPS, the Kenya Defence Forces and the National Intelligence Service as "national security organs" and prevents them from acting in a partisan manner, furthering the interest of a political party or cause, or prejudicing a political interest or political cause that is legitimate under the Constitution.[599] Since the NPS and other national security organs are ultimately subordinate to civilian authority,[600] the National Security Council has been created to exercise supervisory control over them.[601] The Council will be composed of the following people:[602]

- President;
- Deputy President;
- Cabinet Secretary responsible for defence;
- Cabinet Secretary responsible for foreign affairs;
- Cabinet Secretary responsible for internal security;
- Attorney-General;
- Chief of Kenya Defence Forces;
- Director-General of the National Intelligence Service; and
- Inspector-General of the National Police Service.

However, there are some concerns regarding the National Security Council. First, the current ethnic composition of the Council may be too heavily in favour of the President's

[592] Constitution of Kenya, 2010, Article 245(7).
[593] Constitution of Kenya, 2010, Article 245(4).
[594] The Administration Police Act, Chapter 85, Laws of Kenya, Section 3(2).
[595] *Report of the National Task Force on Police Reforms,* October 2009, p. 21.
[596] Constitution of Kenya, 2010, Article 243(2).
[597] National Police Service Bill, 2011 (Kenya), Section 26.
[598] National Police Service Bill, 2011 (Kenya), Section 23.
[599] Constitution of Kenya, 2010, Article 239(3).
[600] Constitution of Kenya, 2010, Article 239(5).
[601] Constitution of Kenya, 2010, Article 240(3).
[602] Constitution of Kenya, 2010, Article 240(2).

community.[603] One of the central elements to the "Grand Coalition Government", as well as the Constitution, was that key government institutions would properly reflect the ethnic make-up of Kenya. This is viewed as essential if Kenya is to avoid the 2008 political bloodshed when they hold their next national election in 2012. Second, the Constitutional definition of national security as "protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests"[604] is so broad that the Council may choose to exercise considerable executive control over the IGP in the name of "national security" and doing so would not necessarily exceed its mandate. To date, this has not been tested.

7.3 Democratic Accountability

Similar to the Police Establishment Boards found in India, Kenya will soon create the National Police Service Commission (NPSC). With the passage of the National Police Service Commission Act, 2011 ("NPSC Act"), the NPSC will be responsible for the recruitment, promotion and the terms and conditions of service for police officers. In addition, the NPSC will be responsible for disciplinary control over the police. The 2010 Constitution provides for the creation of the NPSC and stipulates that it must reflect the regional and ethnic diversity of Kenya.[605] It must consist of the following people:[606]

- High Court Judge (appointed by President);
- Two retired senior police officers (appointed by President);
- Three persons of integrity who have served the public with distinction (appointed by President);
- Inspector-General of the NPS;
- Deputy Inspector-General of the Kenya Police Service; and
- Deputy Inspector-General of the Administration Police.

The NPSC Act provides much greater detail on the composition, functions and powers of the NPSC. In terms of composition, the Act stipulates that one of the Presidentially appointed retired senior police officers must come from the Kenya Police Service and one must come from the Administration Police.[607] They must have held a rank of at least Senior Superintendent of Police.[608] The independent members appointed by the President must have at least ten years of experience in finance and administration, economics, public administration, human resources management, or any other relevant discipline, and must not have served as a police officer for the NPS.[609]

The NPSC's numerous functions include the following:[610]

[603] Juma Kwayera, "Concern raised over ethnic imbalance in security council," *The Standard,* 17 July 2011: http://www.standardmedia.co.ke/InsidePage.php?id=2000039084&cid=4&ttl=Concern%20raised%20over%20ethnic%20imbalance%20in%20security%20council (accessed on 5 August 2011).
[604] Constitution of Kenya, 2010, Article 238(1).
[605] Constitution of Kenya, 2010, Article 246(4).
[606] Constitution of Kenya, 2010, Article 246(2)(a).
[607] National Police Service Commission Act, 2011 (Kenya), Section 5(2).
[608] National Police Service Commission Act, 2011 (Kenya), Section 5(3).
[609] National Police Service Commission Act, 2011 (Kenya), Section 5(4).
[610] National Police Service Commission Act, 2011 (Kenya), Section 10(1). The first two functions are enumerated at Article 246(3) of the Constitution of Kenya, 2010.

- Recruit and appoint persons to hold or act in offices in the NPS, confirm appointments and determine promotions and transfers within the NPS;
- Exercise disciplinary control over the NPS;
- Review all matters relating to standards or qualifications;
- Establish remuneration and benefits for the NPS and the Commission;
- Co-operate with other State agencies;
- Ensure the efficiency and effectiveness of the NPS;
- Receive and refer civilian complaints to the Independent Police Oversight Authority, the Kenya National Human Rights and Equality Commission, the Director of Public Prosecutions or the Ethics and Anti-Corruption Commission;
- Develop policies and provide oversight of NPS training; and
- Monitor and evaluate the performance of the NPS.

The NPSC's powers include being able to:[611]

- Gather and compel the production of any information;
- Interview people to fill vacancies of the NPS, taking into account gender, county and ethnic balancing;
- Hold disciplinary hearing proceedings when necessary;
- Require the Inspector-General to report;
- Conduct any investigation within its mandate;
- Make recommendations to the Government on any matter relating to the NPS;
- Conduct public inquiries and publish the outcome;
- Issue summons to witnesses; and
- Take lawful disciplinary action against any officer under its control.

The NPSC is expected to report annually and this report must be submitted to the President and Parliament no later than three months after year-end.[612] When reporting, the Commission is expected to provide an update on a number of issues, including financial information, description of activities, recommendations made to the Inspector-General, the impact of its activities, the progress and overall welfare of the NPS, and an administrative evaluation of the NPS.[613]

With the elimination of provinces and the establishment of county governments under the 2010 Constitution, a need emerged to have a body at the county level that could help oversee police functioning locally. As a result, the NPS Bill has provided for the creation of a County Policing Authority (CPA) in each county, which will comprise of:[614]

- Governor (or his representative from the County Executive Committee) – Chair;
- Representatives for the Kenya Police Service, the Administration Police Service, the National Intelligence Service and the Directorate of Criminal Investigation and the Inspector-General (all appointed by the Inspector-General);
- Two elected members nominated by the County Assembly;
- Chairperson of the County Security Committee; and

[611] National Police Service Commission Act, 2011 (Kenya), Section 11(1).
[612] National Police Service Commission Act, 2011 (Kenya), Section 26(2).
[613] National Police Service Commission Act, 2011 (Kenya), Section 26(2).
[614] National Police Service Bill, 2011 (Kenya), Section 41(1).

- At least six (but not more than ten) Governor-appointed members from the business sector, community based organisations, women, people with special needs, religious organisations and the youth. These members are recruited through a competitive process.[615]

The Governor-appointed members must serve for a two-year term and are eligible for one additional term.[616] The functions of the CPA shall be to:[617]

- Develop proposals on priorities, objectives and targets for police performance in the county;
- Monitor trends and patterns of crime in the county, including those with specific impact on women and children;
- Promote community policing initiatives;
- Monitor progress and achievement of set targets;
- Provide financial oversight of the NPS in the county;
- Provide feedback on police performance at the county level;
- Facilitate public participation on county policing policy;
- Ensure policing accountability to the public;
- Receive reports from Community Policing Forums and Committees; and
- Ensure compliance with the national policing standards.

7.4 External Accountability

Although historically there has been minimal external oversight of the police services in Kenya,[618] this has changed with the recent passage of the Independent Policing Oversight Authority Act, 2011 ("IPOA Act"). The Act creates the Independent Policing Oversight Authority (IPOA), which will have jurisdiction over the entire National Police Service.

The independence of IPOA is safeguarded as every government officer or institution must accord it the assistance and protection necessary for it to be independent and effective.[619] The IPOA will be run by a Director[620] but ultimately governed by a Board. The Board will consist of the following people:[621]

[615] When appointing these members, the Governor must uphold the principles of gender representation and geographical representativeness. National Police Service Bill, 2011 (Kenya), Section 41(4).
[616] National Police Service Bill, 2011 (Kenya), Section 41(7).
[617] National Police Service Bill, 2011 (Kenya), Section 41(9).
[618] The Police Oversight Board was created by Gazette Notice 8144 (4 September 2008) to receive and evaluate both internal and external complaints made against members of the Kenya Police and the Administration Police. When reviewing the effectiveness of the Board, the National Task Force on Police Reforms concluded that it was not functioning because it was set up under a weak legal framework. "Although this Committee was set up to act as an External Oversight over public officials and institutions, including the police, it lacks powers to summon those who do not respond to their request, or to compel institutions to produce information that the Committee requires in order to address the Complaints that they receive. Without these powers and the power to demand co-operation, the role of the Committee as an Oversight is very minimal." See *Report of the National Task Force on Police Reforms,* October 2009, pp. 85-86. Also see Philip Alston's report where he described the Board as doing "no more than make recommendations to the Commissioner of Police, and has no authority to enforce its recommendations, make any binding decisions, or impose disciplinary measures on police officers." UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Addendum – Mission to Kenya,* 16-25 February 2009, p. 37.
[619] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 4(3).
[620] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 19.
[621] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 9(1).

- Judge of High Court of Kenya (Chair);
- 7 persons with at least 10 years' experience in criminology, law, psychology, human rights and gender, medicine, alternative dispute resolution, security or community policing; and
- Chair of National Human Rights and Equality Commission

In order to select Board members, the President must constitute a selection panel comprised of a representative from each of the Office of the President, the Office of the Prime Minister, the Judicial Commission, the Anti-Corruption Commission, the National Commission on Human Rights and the Women's Commission.[622] The selection panel cannot select anyone for the Board who is a former Board member, current MP/Governor/Deputy Governor/member of county assembly, holds office in a political party, serving police officer, or a police officer that is out of the service for less than five years.[623]

The functions of the IPOA include:[624]

- Investigate any complaints related to disciplinary or criminal offences committed by any member of the NPS, whether on its own motion or on receipt of complaints from the public, and make appropriate recommendations, including prosecution, compensation and internal disciplinary action;
- Receive and investigate complaints made by serving police officers;
- Monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the NPS in response to complaints received;
- Conduct inspections of police premises and places of detention;
- Co-operate with other institutions on issues of police oversight;
- Review patterns of misconduct; and
- Publish findings and make recommendations to the NPS.

Under the IPOA Act, the Authority must investigate any police death or serious injury that takes place while in police custody, as a result of police action, or when caused by NPS members while on duty.[625] In addition, the police have an obligation to notify IPOA whenever such a death or serious injury occurs, as well as a duty to protect the integrity of relevant evidence.[626]

The powers of the IPOA include the right to:[627]

- Investigate complaints against the NPS by members of the public or on its own motion;
- Enter any establishment or premises with a warrant;
- Seize and remove any object from premises that is related to the matter under investigation;
- Interview and take statements under oath;
- Summon any person, including serving or retired police officers, to meet with its staff or to attend any of its sessions/hearings, and to compel the attendance of any

[622] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 11(1).
[623] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 10(2).
[624] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 6.
[625] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 25(1).
[626] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 25(2).
[627] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 7 (unless otherwise indicated).

person who fails to respond to its summons;
- Administer oaths or affirmations before taking evidence or statements;
- Take over on-going internal investigations into police misconduct if such investigations are inordinately delayed or manifestly unreasonable;
- Re-open an investigation and amend or withdraw previous findings;[628]
- Receive complaints from the police. Anyone who does complain against fellow officers cannot be subject to disciplinary proceedings; and
- Recommend prosecution of a police officer to the Director of Public Prosecution[629]

IPOA must annually report to the Cabinet Secretary, which will then be laid before the National Assembly.[630] To ensure that people and institutions comply with the orders of the IPOA, the Act sets out that a fine of up to 500,000 shillings (approximately $6,000 USD) and/or imprisonment not exceeding three years may apply to anyone convicted of:[631]

- Disobeying a summons by the Authority;
- Failing to produce any document or thing on the order of the Authority;
- Refusing to be examined by the Authority;
- Failing to comply with any lawful order or direction of the Authority;
- Misleading investigation officers with false documents/statements; and
- Obstructing or hindering a person who is acting pursuant to the Act.

A commendable aspect to the IPOA Act is the extent to which it seeks to protect and safeguard the rights of the complainant. In the event of a vexatious or frivolous complaint, the IPOA may simply refuse to conduct an investigation.[632] This is a progressive departure from the typical South Asian approach of imposing a fine or imprisonment for those who have initiated a vexatious or frivolous complaint.[633] The South Asian approach has a chilling effect on people's willingness to file a complaint because the risk of penalty will dissuade them from registering legitimate complaints.

The IPOA Act acknowledges that witnesses or victims of police abuse are often the recipients of harassment and intimidation. It explicitly states that any criminal prohibition against such activity will also apply in the context of the IPOA Act.[634] Moreover, the complainant is entitled to have his identity remain confidential, unless it is demonstrably in the interest of justice not to do so.[635] In addition, the IPOA can provide relevant information to enable a victim of unlawful NPS conduct to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income.[636]

Finally, to foster greater accountability of its National Police Service, the Government of Kenya has elected to include a Schedule to the NPS Bill that explicitly outlines the conditions for use of force by the police. The Sixth Schedule makes it very clear that the police can use

[628] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 24(9).
[629] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 29(1)(a).
[630] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 38(2).
[631] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 31(1).
[632] Independent Policing Oversight Authority Act 2011 (Kenya), Section 24(8).
[633] Model Police Act, 2006 (India), Section 169(b); West Bengal Police Act (Draft) 2007, Section 14.7(3); Police Order, 2002 (Pakistan), Section 152.
[634] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 24(14).
[635] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 24(16).
[636] Independent Policing Oversight Authority Act, 2011 (Kenya), Section 7(1)(c).

force after non-violent methods have been attempted, it is proportional to the desired objective, and it is reported immediately to the supervising officer.[637] Moreover, the Sixth Schedule implicitly links to Section 25(2) of the IPOA Act and indicates that when reporting a death or serious injury to IPOA, the scene must be secured for the purposes of investigation.[638]

7.5 Community Engagement

The seed for community-based policing (CBP) was first planted in March 2002 when the Office of the President, in response to public pressure, created the national steering committee on community policing. Soon after the NARC was elected at the end of 2002, a national consultation was undertaken that revealed that communities were keen to work with the police to improve public safety.[639] At this point Saferworld was invited to assist the Government of Kenya in setting up community policing in the country (see earlier discussion at Section 7.1.1).

The initial focus of collaboration was on training and building the capacity of the Kenya Police and the Administration Police to effectively deliver CBP. While projects were set up throughout the country, including the first launch of community policing in Ruai (outside Nairobi) on 27 April 2005,[640] intensive efforts were undertaken at two pilot sites – Kibera and Isiolo. These two CBP initiatives achieved a certain degree of success in breaking down barriers between the community and police. As a result, genuine co-operation and a reduction in crime rates followed.[641] However, "the idea to turn CBP pilot projects in Kibera and Isiolo into model projects for the entirety of Kenya collapsed after the 2008 post-election violence, especially in Kibera."[642]

But post-election violence was not the only reason that CBP failed to take hold. The Internal Security permanent secretary has admitted that although community policing was initiated six years ago, there has been very little to show regarding its success and effectiveness.[643] A major reason for the failure to institutionalise CBP resides in the fact that a national policy on community policing was never implemented. Despite having been discussed since 2002, a national policy was still forthcoming when the Ransley Report was issued in October 2009. In fact, Justice Ransley pointed out in his recommendations that in order for community policing to work in Kenya, it had to be anchored in a legal framework.[644]

Heeding his advice, the Government of Kenya has included community policing in the NPS Bill. To achieve the Constitutional objective of having the NPS foster and promote relationships with broader society,[645] the NPS Bill provides for the creation of community

[637] National Police Service Bill, 2011 (Kenya), Sixth Schedule, 1,2 and 4.
[638] National Police Service Bill, 2011 (Kenya), Sixth Schedule, 7(a).
[639] Saferworld, *Implementing community-based policing in Kenya,* February 2008, p. 8.
[640] *Report of the National Task Force on Police Reforms,* October 2009, p. 184.
[641] Saferworld, *Implementing community-based policing in Kenya,* February 2008, pp. 9-22. According to police reports, the community-based policing approach resulted in crime rates being reduced by up to 40% in one of the pilot sites.
[642] Yoshiaki Furuzawa, "Two Police Reforms in Kenya," *Journal of International Development and Cooperation* 17, no. 1, 2011, p. 64.
[643] Zadock Angira, "Police Reforms to Cost Kenya Sh78 billion," *allAfrica.com,* 10 June 2011: http://allafrica.com/stories/201106100956.html (accessed on 5 August 2011).
[644] *Report of the National Task Force on Police Reforms,* October 2009, p. 265.
[645] Constitution of Kenya, 2010, Article 244(e).
residential assent.

policing forums and committees in an "area" designated by the County Policing Authority.[646] The purpose of these forums and committees is to:[647]

- Establish and maintain a partnership between the community and the NPS;
- Promote communication between the NPS and the community;
- Promote co-operation in fulfilling the policing needs of the community;
- Improve the delivery of police services to the community at national, county, and local levels;
- Improve the transparency and accountability of the NPS in relation to the community; and
- Promote policing problem identification and policing problem solving by the NPS and the community.

The County Policing Authority is responsible for implementing community policing principles, facilitating the training of community members on community policing, receiving reports from local community policing structures, and preparing county community policing reports for the Cabinet Secretary.[648] The NPS Bill also sets out that area community policing committees will be created in all areas within the county and other administrative structures, and will consist of representatives of community policing forums in the area concerned.[649] In terms of composition, the community policing committee must elect a civilian Chairperson and a police Vice Chairperson to spearhead its activities.[650]

[646] National Police Service Bill, 2011 (Kenya), Section 2(1). An "area" can be any geographical area, village, residential estate, location, ward or community of interest.
[647] National Police Service Bill, 2011 (Kenya), Section 96.
[648] National Police Service Bill, 2011 (Kenya), Section 97.
[649] National Police Service Bill, 2011 (Kenya), Section 98.
[650] National Police Service Bill, 2011 (Kenya), Section 100.

Chapter 8

FINDINGS & RECOMMENDATIONS

> “Like the British before them, the governments of Bangladesh, Pakistan, and India have also placed considerable emphasis on law and order. With domestic insurgencies, separatist movements and terrorism threatening the integrity of the state, law and order considerations have assumed great importance in post-Independence South Asia.”

8. FINDINGS & RECOMMENDATIONS

When applying the four themes of analysis used in this study, the Police Act, 1861 is found to be significantly lacking. First, the inclusion of the undefined term "superintendence" to describe the executive's supervisory role vis-à-vis the police has resulted in the police often being forced to serve the partisan interests of the regime in power. Second, given that democratic police have an obligation to be accountable to the law, elected representatives and the community, the problem with the Police Act, 1861 is that it places great emphasis on accountability to the government but less importance on accountability to the law and to the community. Third, notwithstanding the Bangladesh Police's move to establish the Police Internal Oversight body, failure of the Act to institute some form of independent and external review of police misconduct is a glaring omission. Fourth, the Act is silent on the police's relationship towards the community and the need to work closely with them in order to secure public safety.

Having examined how selected jurisdictions have redrafted their respective police laws, this final chapter will seek to do the following:

1. Answer the central question of whether the Police Act, 1861 remains fit for purpose?
2. Draw key lessons from the case studies; and
3. Provide a basic roadmap for how Bangladesh can proceed.

8.1 Does the Police Act, 1861 Remain Fit for Purpose?

Before answering this question one has to first agree on the "purpose" of police legislation and consensus on this point is not necessarily easy to achieve because different stakeholders have different conceptions of what the purpose should be.

Government

The Police Act, 1861 has remained the operating framework for policing in Bangladesh for over 150 years because throughout that time one priority has trumped all others for the Government of the day – the maintenance of law and order. Dating back to the immediate aftermath of the 1857 War of Independence, the Indian Police Commission of 1860 chose to continue magisterial control over the police because they were more concerned with maintaining law and order than they were about having the police work with the community to prevent crime and secure public safety. If the Magistrate's monitoring of police resulted in better or more effective crime prevention, so much the better, but that was not the intent. The intent was for the Magistrate to know as much as possible about what was going on in the district so that he could then make the best administrative decisions possible to maintain law and order in that particular jurisdiction.

Like the British before them, the governments of Bangladesh, Pakistan, and India have also placed considerable emphasis on law and order. With domestic insurgencies, separatist movements and terrorism threatening the integrity of the state, law and order considerations have assumed great importance in post-Independence South Asia. The problem is that even from a "law and order" paradigm, the 1861 Act falls short. With vigilante justice not

unusual,[651] public disturbances quite frequent[652] and the sexual harassment of women disturbingly common,[653] it is difficult to argue that the Police Act, 1861 has been successful in establishing law and order in Bangladesh.

Police

If the "purpose" of police legislation is to establish an efficient and effective police service that gives top operational priority to servicing the needs of the public interest, then the "fitness" of the Police Act, 1861 can certainly be called into question. As one former Bangladesh IGP has correctly stated, the continued relevance of the Act for modern Bangladesh is seriously in doubt because "it presupposes a society without any constitution, basic and fundamental rights, organized public opinion and mass media projecting and agitating the public interest."[654]

It is not inconsequential that commission after commission has recommended an update to the Police Act, 1861. Dating as far back as the Indian Police Commission 1902-03, compelling entreaties to reform the legislative framework have been made, as well as observations that Bengal, in particular, was a province ridden with policing problems. Unfortunately, the deficiencies of the Act have only become more pronounced with the passage of time. Although the Bangladesh Police has recently invested significant time and resources into building bridges with the community, the truth is that the people of Bangladesh continue to perceive the police as agents of the party in power and not of the State. This is not in the interest of the Bangladesh Police because it undermines their credibility.

Civil Servants

If the purpose of police legislation is to help facilitate the proper functioning of Government generally (i.e. a working criminal justice system, institutions free from corruption etc...), then an inadequate statutory framework that results in an inefficient police service is a problem that needs to be addressed. As an example, an antiquated police act, which prevents the Bangladesh Police from becoming a professional service, means that improving technical skills (i.e. evidence collection) remains a challenge and this adversely affects conviction rates. Since maintenance of law and order and access to justice are central elements to good governance, civil servants should be interested in seeing that the police operate effectively and efficiently. While bureaucrats may argue that the current approach of "control and direction" provided for under the 1861 Act gives them the requisite level of authority to ensure police effectiveness and efficiency, this paper has shown that this is patently untrue. The problem is that the Police Act of 1861 lacks substantive provisions in any of the four themes of analysis used for this study. As a result, it is very difficult for the police or administrative cadres to effect positive changes without the necessary statutory authority to do so.

[651] "Bangladesh mob kills six suspected thieves," *BBC News*, 27 July 2011: http://www.bbc.co.uk/news/world-south-asia-14307971 (accessed on 12 August 2011); "Police helped mob in killing," *The Daily Star,* 9 August 2011: http://www.thedailystar.net/newDesign/news-details.php?nid=197873 (accessed on 12 August 2011).
[652] "Investors again riot in Bangladesh over stock market plunge," *International Business Times*, 10 January 2011: http://www.ibtimes.com/articles/99203/20110110/bangladesh-stock-markets-riots.htm (accessed on 12 August 2011); "Bangladesh workers riot over wages," *Al Jazeera,* 30 July 2010: http://english.aljazeera.net/news/asia/2010/07/201073081556414975.html (accessed on 12 August 2011).
[653] "Bangladesh 'Eve teasing' takes a terrible toll," *BBC News,* 11 June 2010: http://www.bbc.co.uk/news/10220920 (accessed on 12 August 2011).
[654] Muhammad Nurul Huda, "Conceptualising Police Reforms," *NIPSA Newsletter,* Commonwealth Human Rights Initiative, October 2009: http://www.nipsa.in/conceptualising-police-reforms-muhammad-nurul-huda/ (accessed on 13 June 2011).

Public

"Democratic" police have to be accountable to the law, elected representatives and the community. Another problem with the Police Act is that it places great emphasis on accountability to the Government but less importance on accountability to the law and to the community. In order to have democratic policing, legislation governing the police should ideally address all three components and the failure of the Police Act, 1861 to do so is another of its shortcomings. As a result, the public suffers the most. Whether it is poor maintenance of law and order, inefficient delivery of policing services, abusive treatment at the hands of law enforcement, or inability to obtain justice due to poor policing, the continued operation of the 1861 Act has been a great disservice for the people of Bangladesh. If the purpose of police legislation is to allow Bangladeshis to live with dignity, then the 1861 Act is no longer fit for purpose and probably never was.

8.2 What Can Facilitate Reform?

In light of the fact that this paper has assessed the Police Act, 1861 as being unable to provide an efficient and effective police service that gives top operational priority to servicing the needs of the public interest, the question arises: What can be done to facilitate reform? Experience has shown that four elements are incredibly helpful in order to achieve successful police reform.[655]

8.2.1 Achieve Political Consensus

Each of the successful police reform efforts profiled in this study had one thing in common: broad political agreement that reforms were essential. In Northern Ireland, despite the long-standing and deeply entrenched conflict between Unionists and Republicans, both sides accepted in the Belfast Agreement that direct political control of the police had to stop if democratic policing was to be achieved. In South Africa, the end of apartheid and subsequent democratic elections provided the basis not only for reconciliation between blacks and white but also an opportunity for both communities to revamp the South African Police so that it transitioned from a force to a service. In Kenya, tragic post-election violence in early 2008 served as an impetus for the two major political coalitions to enter into a power-sharing agreement that finally followed through with the age-old promise of police reforms. Although in Kerala there was no "grand political bargain" as such, there has been sufficient bipartisan consensus between Congress and the Left on the issue of police reforms that even when there was a change in government, the reform process continued.

Conversely, Pakistan demonstrates what happens when reforms are initiated in the absence of political consensus. Although the original Police Order 2002 is a reasonably well-crafted piece of legislation, it was doomed from the outset because a dictator implemented it without agreement from the provinces or other parties. In Pakistan, the initiated "democratic" reforms were not democratic in nature. Similarly, if stakeholders in Bangladesh decide to update or replace the Police Act, 1861, it is imperative to muster, *at the outset,* the political will required to actually implement reform initiatives. The failure of the Caretaker Government in

[655] It is important to recall from the Introduction that using overseas models as a template for reform can carry some risk. As David Bayley argues, Northern Ireland was successful in democratising its police because certain conditions existed that may not be evident in another country trying to similarly reform its police.

2007 and 2008 to include the Awami League and Bangladesh Nationalist Party in the development of the Draft Police Ordinance, 2007 was a mistake. Any new piece of progressive police legislation must have broad political buy-in if it is to work. This is what happened in Northern Ireland, South Africa, Kenya and Kerala and that is why each of these jurisdictions has been able to transition (or is in the process of transitioning) from a people-unfriendly force to a democratic service.

8.2.2 Establish High-level Commission

The Independent Commission on Policing for Northern Ireland demonstrates the value of having a well-respected individual, without ties to a particular political party, assess the state of policing and suggest detailed recommendations on how to improve police performance. By appointing a highly qualified and non-partisan person to conduct such a review, with a supportive secretariat in place, it becomes politically easier for opposing sides to accept his/her recommendations.

8.2.3 Create Formal Mechanism to Monitor Reforms

In the event that a country chooses to task a high-level commission with providing a detailed roadmap for reform, to ensure compliance it is important to create a formal mechanism that can monitor the implementation of proposed reforms. For instance, the Independent Police Oversight Commissioner in Northern Ireland was in operation for nearly eight years after the Independent Commission first released its report and during that time it provided regular updates on the status of Patten's recommendations. In Kenya, when Justice Ransley released his report he called for the creation of the Police Reform Implementation Committee, a body tasked with implementing the report's over 200 recommendations.

The value of having a properly resourced and robust body provide updates on compliance is that it makes certain valuable recommendations regarding police reform are not permitted to gather dust, an unfortunately common experience with police reform commissions throughout the world. In the South Asian context, the Indian National Police Commission of 1979 is an example of when useful and effective recommendations were ignored because there was neither political will for implementation nor a mechanism in place to oversee compliance.

8.2.4 Implement Reforms Package in Total

For wholesale police reforms to work, they must be treated as a package. When making his recommendations, Patten was very clear that the various facets of his report represented different aspects of an integral whole. He strongly advised against "cherry-picking" from the report or to try and implement some major aspect in isolation from other aspects. Patten correctly understood that reforming the police would only work if the totality of all recommendations were followed and not merely those that were politically expedient or easy to put into practice.

In this respect, Pakistan is once again a useful guide on what not to do. Despite the progressive tone and approach of the original Police Order 2002, key elements that were integral to the whole were subverted with the 2004 amendments. As a result, the institutions created bythe Police Order 2002 were never permitted to function in the way they were intended to. This compromised approach to police reforms has spurred Sindh and Balochistan to revert to some version of the anachronistic Police Act, 1861. If Bangladesh decides to

establish a new or updated legal framework for the police, it is highly advisable that implementation be comprehensive and not piecemeal.

8.3 How to Improve Police-Executive Relations?

Since a healthy Police-Executive relationship is so critical to the democratic functioning of the police, considerable thought should be given to this issue.

8.3.1 Clearly Define Roles of Police and Executive

The failure of the Police Act, 1861 to properly define the scope and extent of government's "superintendence" over the police is a significant weakness. Patten's formulation of "operational responsibility", wherein the Chief of Police has the right and duty to take operational decisions but that his decisions should also be subject to review, provides a possible alternative. Under Patten's tripartite model, the executive is responsible for long-term policy (i.e. budgetary allocation and matters of national security), an oversight body that has both elected and independent members is responsible for medium-term policy (i.e. oversee implementation of policing plans), and the Chief of Police is responsible for short-term policy (i.e. autonomy over operational and administrative decisions that pertain to specific investigative matters and personnel decisions).

Kenya has done a very good job of encapsulating many of these principles in Article 245 of its new 2010 Constitution (emphasis added):

> 245 (1) There is established the office of the Inspector-General of the National Police Service.
> (2) The Inspector-General ––
> (a) **is appointed by the President with the approval of Parliament;** and
> (b) shall exercise independent command over the National Police Service, and perform any other functions prescribed by national legislation.
> (3) The Kenya Police Service and the Administration Police Service shall each be headed by a Deputy Inspector-General appointed by the President in accordance with the recommendation of the National Police Service Commission.
> **(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to —**
> **(a) the investigation of any particular offence or offences;**
> **(b) the enforcement of the law against any particular person or persons; or**
> **(c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.**
> (5) Any direction given to the Inspector-General by the Cabinet secretary responsible for police services under clause (4), or any direction given to the Inspector-General by the Director of Public Prosecutions under Article 157(4), shall be in writing.
> (6) **The Inspector-General shall be appointed for a single four-year term, and is not eligible for re-appointment.**
> (7) The Inspector-General may be removed from office by the President only on the grounds of —
> (a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;
> (b) gross misconduct whether in the performance of the office holder's functions or otherwise;
> (c) physical or mental incapacity to perform the functions of office;
> (d) incompetence;
> (e) bankruptcy; or
> (f) any other just cause.
> (8) Parliament shall enact legislation to give full effect to this Article.

Article 245 clearly articulates that no one is able to control or direct the Inspector-General to investigate a particular offence, enforce a law against a particular person, or make a personnel decision that is properly within his power. Assuming the newly created National Security Council does not abuse its supervisory role under Article 240 of the Constitution, important decisions about whom to investigate, search, question, detain, arrest and prosecute in a particular case will no longer be subject to political interference. In addition, Article 245 sets out that the Inspector-General should be provided a guaranteed tenure of four years and that his removal can only be undertaken under very clearly defined circumstances.

The Police Act, 1861 and the Constitution of Bangladesh are silent on many of the issues raised by Kenya's Article 245. Thus, the statutory framework for policing in Bangladesh would undoubtedly benefit from updated or new legislation that explicitly addresses the police-executive relationship.

8.3.2 Compromise on "Dual Control"

All of the elements outlined in Section 8.3.1 are critically important in providing the Chief of Police with the space to do his job effectively, while at the same time making sure that he is accountable for his conduct. However, Section 4 of the Police Act, 1861, sets out that the police must operate under the general control and direction of the Magistrate. This adds an important element to the police-executive relationship in the South Asian context that cannot be ignored.

The question posed in Section 2.2.1 was: *Given the rights and protections afforded by Bangladesh's Constitution, as well as the fact that the people of Bangladesh are able to freely express their democratic aspirations, is strict dual control (a type of supervision rooted in an undemocratic tradition) the most suitable form of oversight for a modern and developing country?*

From the evidence and arguments presented in this report, it should be evident that the answer is "no"; strict dual control is not appropriate for a nation that wishes to cultivate democratic policing. However, one cannot ignore that dual control has been the practice in Bangladesh for 150 years. Radically altering that arrangement is bound to meet stiff resistance from many quarters, the effect of which may be to doom any reform effort.

Once again, Pakistan provides helpful instruction on what to avoid. The import of a completely foreign system of oversight and accountability to Pakistan resulted in the significant marginalisation of administrative cadres vis-à-vis the police. For instance, the Police Order 2002 provides for the creation of The Criminal Justice Coordination Committee, which shall consist of a number of different actors (i.e. District and Sessions Judge, Head of District Police, District Public Prosecutor, District Superintendent Jail, District Probation Officer, District Parole Officer and Head of Investigation), but no role for the District Coordination Officer. Delegating greater operational responsibility to the Head of District Police and providing the Nazim with supervisory powers over the police meant that the Police Order 2002 instantly changed 140 years of practice. It is not surprising that the District Management Group never accepted the reforms instituted by Musharraf.

In order to move away from strict dual control, but not radically overhaul a 150-year old system such that opposition derails any nascent reform efforts, the key is to adopt a hybrid of

the “operational responsibility” and “governmental policing” models of police-executive relations outlined in Section 1.4.1. The Kenya/Northern Ireland models examined in Section 8.3.1 address the “operational responsibility” component. But guidance on how to move away from strict dual control, whilst still retaining a proper and legitimate role for the Magistrate in relation to policing, can be found in the Kerala Police Act, 2011 (which essentially mirrors the language of the Model Police Act, 2006 in this regard).

On the complex matter of the District Magistrate’s role in relation to police functioning, the Kerala Police Act, 2011 moves away from the “control and direction” approach of the Police Act, 1861, and provides a much more precise articulation of what the relationship should be. It accepts that the Magistrate has an important role to play in the administration of the district and this will naturally touch on matters of pertinence for the District Superintendent of Police. Thus, to ensure efficiency of administration, Section 19 of the Kerala Police Act, 2011 makes it lawful for the District Magistrate to coordinate functioning of the police with other agencies.

> **19. Co-ordination by District Magistrate -** (1) In order to ensure the efficient general administration of the District, the District Magistrate shall have the authority to co-ordinate the functioning of the Police in the following matters with other agencies connected with the administration of the District:
>
> a) matters relating to the promotion of land reforms and the settlement of land disputes;
> b) matters relating to extensive disturbance of the public peace and restoration of tranquillity;
> c) matters relating to the conduct of elections to any public body;
> d) matters relating to handling of natural calamities and the rehabilitation of the persons affected by natural calamity;
> e) matters relating to situations arising out of any external aggression; and
> f) any other similar matters that does not come within the purview of any one department and affecting the general welfare of the people of a District.
>
> (2) For the purpose of such co-ordination the District Magistrate may,
>
> a) call for information of a general or special nature, as may be necessary, from the Police and other agencies connected with the general administration of the District;
> b) call for a report regarding the steps taken by the Police or other agencies in handling the situation;
> c) give such directions to the Police and the connected agencies in respect of matters as the District Magistrate deems necessary;
> d) for the purpose of co-ordination, the District Magistrate may ensure that all departments of the District whose assistance is required for the efficient functioning of the Police is rendering all necessary assistance to the District Police Chief.

In order to facilitate such coordination, the Magistrate may call for information of a general or special nature from the District Superintendent of Police and when necessary, he shall pass orders and issue directions in writing. By acknowledging the importance of the District Magistrate and clearly delineating (as well as circumscribing) his role in relation to the police, the Kerala Police Act, 2011 charts out an interesting compromise that respects the operational autonomy of the Superintendent of Police but permits the Magistrate to retain his important position in overall district coordination. However, attention should be paid to the overly permissive language of Section 19(2)(c). If exploited by ill-intentioned people, this provision could provide the District Magistrate with exactly the same power that he has enjoyed for 150 years. In this way, the language used in Section 14 of the Model Police Act is tighter and preferable to the Kerala Police Act.

Combining some version of Section 19 of the Kerala Police Act, 2011 (or Section 14 of the Model Police Act, 2006) with Article 245 of Kenya's 2010 Constitution possibly provides Bangladesh with a workable middle path that addresses the issue of illegitimate political interference while also avoiding the problems encountered by Pakistan.

8.4 How to Increase the Democratic Accountability of Police?

The case studies examined in this report reveal the importance of having people's representatives tell the police what sort of service they want, and then holding the police accountable for delivering it. In order to make that happen, the following are critical:

8.4.1 Create Decision-Making Buffer Between the Police and Executive

On the matter of democratic accountability, the Police Act, 1861 is deficient in two respects. First, it does not establish any institutional arrangements to insulate the police from illegitimate control and influences. Second, it does not make it necessary for the police to adhere to objectives and/or performance standards, nor does it set up independent mechanisms to monitor and inspect police performance. To address these shortcomings, it would be helpful for Bangladesh to emulate most other jurisdictions surveyed in this study and create an oversight body that seeks to secure the maintenance, efficiency and effectiveness of the police service it monitors while at the same time serving as a buffer between the police and the executive.

The Northern Ireland Policing Board provides the best example of an independent oversight body that sets out medium-term policing policy in a manner consistent with the tripartite model espoused by Patten. Having already discussed the importance of the Chief of Police to set short-term policy and the desirability for the concerned Minister to set long-term policy, it is equally important to have an autonomous body, which enjoys the trust and confidence of the public, to be responsible for monitoring police performance and to help set policy through the joint formulation of policing plans. In this regard, the Policing Board has demonstrated considerable aptitude in assisting the Police Service of Northern Ireland to meet collaboratively set objectives. But irrespective of the varying success that oversight bodies in this survey have had, the fact remains that every jurisdiction that has updated its police law has created a body to protect the police from direct executive control and to facilitate optimum police performance.

8.4.2 Prioritise Transparency and Co-operation

The need for transparent functioning is not specific to oversight bodies. Whether it is the police, an oversight body or an external accountability mechanism, they each need to operate transparently if the public is to trust it. To guard against the natural temptation of governments to use these institutions for their own partisan interests, it is critical to make the activities of the police, and the decisions governments make in relation to them, as transparent as possible to as many people as possible. An example of how genuine transparency can be achieved can be found in the Police (Northern Ireland) Act, 2000. The Act stipulates that Policing Board meetings must be public.

In addition, for these institutions to function most effectively, they must co-operatively share information with one another. For instance, the six collaborative features found in Chapter 5

of the new South African Civilian Secretariat for Police Service Act, 2011, is an example of the kind of co-operation required for these institutions to successfully work together.

8.4.3 Emphasise Independence of Buffer Body

Ideally, independent members should constitute half of the seats on an oversight body with government members comprising the remaining half. Public trust in the oversight body will be weakened if it is seen as a government functionary. Inclusion of independent members will strengthen public perception that the body is truly non-political in nature. The Northern Ireland Policing Board provides guidance in this respect; it has ten elected members and nine independent members. In South Asia, the State Police Board created by the Model Police Act of India also has a fairly strong independent flavour to it:

- Home Minister (Chair);
- Leader of the Opposition;
- Retired High Court Judge;
- Chief Secretary;
- Secretary in charge of the Home Department;
- Director General of Police; and
- Five independent members.

One of the ways such bodies are subverted is by making appointments (or removing people) on the basis of political considerations rather than meritorious ones. Although this study has not delved too deeply into term limits or removal procedures for these buffer bodies, it is important that any new legislation in Bangladesh has the necessary protections to safeguard against political interference in the composition of a possible oversight body. As an example, in the Model Police Act, 2006 a Selection Panel is supposed to recommend the five independent members of the State Police Board. This is not a task left solely for the Government to complete.

In addition, "independent" membership should normally be reserved for people who have not emerged from policing and administrative cadres. This will minimise potential conflicts of interest. And if retired police officers or bureaucrats are included, then two years should lapse (post-service) before they can be eligible for appointment. When possible, independent members should be selected from an open application process to ensure that diverse and qualified candidates are chosen.

8.4.4 Limit Political Interference in Treatment of IGP and Other Officers

In light of the discussion at Sections 8.3.1 and 8.3.2, it stands to reason that the selection, possible transfer and termination of the IGP should be much more depoliticised than it currently is in Bangladesh. However, the Police Act, 1861 permits the Government to appoint the IGP, other senior officers and officers who will lead the administration of police in a given district. This level of direct appointment is not ideal in a system that seeks to have police wield greater operational responsibility.

Even if the government is genuinely committed to choosing the most meritorious candidate possible for IGP, having an independent body involved bolsters public trust in the integrity of the selection process. For instance, subject to approval from the Minister of Justice, the Northern Ireland Policing Board actually selects the Chief Constable. While this practice

might be too radical for South Asian policymakers, the Draft West Bengal Police Act, 2007, the Model Police Act, 2006 and the original Police Order 2002 all stipulate that the government must select the IGP from a short list provided to it by the oversight body. Alternatively, Bangladesh could consider having Parliament endorse the government's selection of IGP, as Kenya does under its new 2010 Constitution.[656] In terms of job security for the Chief of Police, Bangladesh may wish to emulate Kenya and provide the IGP with a non-renewable tenure of four years. As the Constitutional Court of South Africa pointed out in *Glenister*, an individual who is eligible for renewable tenure is more susceptible to political pressure.

In regards to the transfer, posting and promotion of officers other than IGP, countries like Northern Ireland and South Africa largely leave that responsibility to the IGP since he will have the necessary administrative and operational understanding to make those determinations. However, due to the politicised nature of policing in South Asia, it might be prudent to have more than just the IGP involved in such decisions. In India, the Model Police Act, 2006 has done a very good job of incorporating effective checks and balances with the creation of Police Establishment Committees. It makes sense for Bangladesh to allow the police to make personnel decisions as the organisation sees fit, as well as ensure that authority to transfer, post and promote at the district level is decentralised to the Superintendents of Police.

8.4.5 Formulate Performance Standards and Policing Plans

As part of its mandate to ensure the efficiency and effectiveness of the police service, the oversight body ought to formulate specific performance standards that the police organisation can meet and draft policing plans that the police can follow. With benchmarks in place and plans prepared, it is much easier for the police to understand and meet the community's expectations. For instance, the State Security Commission in Kerala appoints three external experts each year to assess police performance. Similarly, the Civilian Secretariat in South Africa is expected to conduct quality assessments of the South African Police Service, as well as monitor and evaluate its performance. Also, the Northern Ireland Policing Board will issue an annual policing plan after it has received a draft from the Chief Constable and it has had an opportunity to consult with the Minister of Justice.

8.5 How to Ensure the Sufficient External Accountability of Police?

Robust and effective scrutiny of the police is a powerful tool in ensuring that the police wield their tremendous power in a responsible and legal manner.

8.5.1 Create Dedicated External Accountability Body

There are a number of drawbacks in relying only on the internal disciplinary proceedings of police when one of its members is alleged to have engaged in misconduct. As described in Section 2.2.3, police adjudication and disciplinary processes tend not to reflect public standards and expectations regarding appropriate investigative outcomes. In addition, because

[656] As of 18 September 2011, there is serious discussion in Kenya that interviews for the new IGP will be a public and transparent exercise. See Alphonce Shiundu, "House approves two more Bills," *Daily Nation*, 9 September 2011: http://www.nation.co.ke/News/politics/House+approves+two+more+Bills/-/1064/1233168/-/9f06b8/-/ (accessed on 14 September 2011).

of exclusive police involvement in all stages of the complaint and adjudication process, internal police investigations are seen by many to fail to meet the basic standards of public accountability.

> One crucial factor contributing to impunity … is the lack of any, or any effective, dedicated external civilian oversight of the police force. Without external oversight, police are essentially left to police themselves. Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result. Especially in cases of intentional unlawful killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences. Importantly, external oversight also plays a role in increasing community trust of the police service, and can thereby increase public-police cooperation and improve the effectiveness of the police force's ability to address crime.[657]

Each of the jurisdictions examined in this study have made provision for the creation of a dedicated external accountability body. For Bangladeshis to have trust in the police, they must believe that misconduct committed by serving officers will be fairly and thoroughly examined by an independent agency. If no such external scrutiny is brought to bear, then even if the Bangladesh Police conduct fair and impartial proceedings, the public will still perceive the process as illegitimate and without credibility.

South Africa and Northern Ireland have chosen to create external accountability bodies headed by a Director or Ombudsman who has highly technical personnel at his disposal to carry out investigations. In contrast, the South Asian preference is to have a panel of people adjudicate complaints with limited investigative staff available to them.[658] Although the latter may be more "democratic", the fact remains that the former is probably more robust and effective by virtue of its specialisation.

Kenya provides a compromise position that might work for Bangladesh. The Independent Policing Oversight Authority has a Director empowered to direct and guide the agency (much like the Executive Director for IPID in South Africa), but the Board that governs it has a composition that mirrors the police accountability bodies found in South Asia. This arrangement ensures that the specialised Director/Ombudsman makes the necessary technical decisions related to the body's mandate, while at the same time well-respected individuals are able to monitor the overall performance and conduct of this newly created, and possibly very powerful, institution.

Regardless of whether a Director/Ombudsman model is chosen, or a panel composed of eminent people, both should be permitted to operate independently and without political interference. Consequently, it is important that appointments to this body are non-political and that adequate protections are afforded in terms of transfer or termination.

Some argue that in the event of police malfeasance, courts provide an adequate form of external review. While this point has some merit, it ignores some important considerations. First, the court system in Bangladesh is seriously overburdened and backlogged. Any complainant would have to wait a very long time for the resolution of his grievance and this is

[657] UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Addendum – Study on police oversight mechanisms,* A/HRC/14/24/Add.8, 28 May 2010, p. 3.
[658] Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action, 2009, p. 21: www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf (accessed on 22 July 2011.*

not in the interests of justice.

Second, the courts only have the capacity to hear evidence, not investigate. Of course a judicial probe can always be established in a particular case,[659] which would have powers above and beyond that of a regularly constituted court, but such mechanisms are ad hoc and only seem to be established when there is significant public outrage over a particular incident. Judicial inquiries are exceptional proceedings that are inappropriate for "normal" complaints of police misconduct.

Third, court cases against police officers have to cross the additional hurdle of Section 197 of the Code of Criminal Procedure, which states that "when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government." Having a permanent external accountability body in place avoids these challenges and provides a much better alternative in checking police excess.

8.5.2 Provide Accountability Body with Necessary Powers

Merely setting up an external accountability body on paper is insufficient. In order to ensure it works, it must be given the necessary powers and tools to perform its job. "Far too many external mechanisms are not given the investigatory powers, political support, human and financial resources, powers of recommendation and follow-up, and financial and operational independence from the executive and police necessary to be truly effective. Without these basic elements, an external agency will be little more than a paper tiger – set up as a buffer to civilian complaints, but with no real impact on police violence."[660]

The powers bestowed to an external accountability body will largely be contingent on the kind of mechanism that is adopted. For instance, if the Director/Ombudsman model described at Section 8.5.1 is selected, then it stands to reason that strong investigative powers will be given to it so that the body can properly perform its functions. In the case of the Police Ombudsman for Northern Ireland, investigators have the powers of a constable. Similarly, investigators for the Independent Police Investigative Directorate in South Africa also have the same powers of a police officer in relation to investigation of offences, entry and search of premises, seizure/disposal of articles, arrests, and execution of warrants. With these powers in hand, investigators (who are sometimes former police officers themselves) are able to carry out thorough and effective inquiries.

In India, the states that have partially adhered to the ruling in Prakash Singh have in most cases conferred to police complaints authorities the powers of a civil court. That is why in Kerala both the district-level and state-level complaints authorities are able to summon and enforce the attendance of witnesses, examine them on oath, request the discovery and production of documents, receive evidence on affidavit, and requisition any public record from any court or office. These are useful tools but without police powers, or something akin

[659] "HC orders judicial inquiry into Aminbazar student killing," The Daily Star, 3 August 2011: http://www.thedailystar.net/newDesign/latest_news.php?nid=31287 (accessed on 13 August 2011); "Judicial probe body formed," The Daily Star, 11 August 2011: http://www.thedailystar.net/newDesign/news-details.php?nid=198085 (accessed on 13 August 2011).
[660] UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Addendum – Study on police oversight mechanisms,* A/HRC/14/24/Add.8, 28 May 2010, p. 3.

to the powers of the Independent Policing Oversight Authority in Kenya,[661] it is unlikely that investigators in Kerala will be able to uncover information that the police wish to keep secret. Therefore, if Bangladesh wants to properly investigate police misconduct, then it is in its interest to empower the accountability body with more than just the powers of a civil court.[662]

It is also important for the external accountability body to be able to initiate an investigation on its own motion. Such powers are also given to the Ombudsman in Northern Ireland, the Independent Policing Oversight Authority in Kenya, the Independent Police Investigative Directorate in South Africa (on matters involving corruption), the Police Accountability Commission in the Model Police Act, 2006 (on matters involving serious misconduct), and the Police Complaints Authority in the Draft West Bengal Police Act, 2007 (on matters involving serious misconduct). This enables the accountability bodies to examine wrongdoing even if people choose not to complain because of their fear of law enforcement agencies.

The recommendations of the accountability body should be binding. In Kerala, the recommendations of both the state-level and district-level complaints authorities are binding. Under the Model Police Act, 2006, the Police Accountability Commission has the power to direct the DGP or State Government to register an FIR and/or initiate departmental action. In Northern Ireland, if the Chief Constable declines to accept the Ombudsman's recommendations, the Ombudsman can direct him to do so. The Ombudsman has additional powers, including full responsibility for receiving and investigating all complaints. As a result, the police are mandated to report to the Ombudsman any complaints it receives and he will have supervisory function over all these complaints, including even those that have been assigned to the police for investigation.[663]

The external accountability body should be able to require that the police automatically report serious matters to it. For instance, there is a requirement in the Independent Police Investigative Directorate Act that the Station Commander, or any member of the SAPS or Municipal Police Service, must immediately notify IPID of serious matters[664] and submit a written report of the same within 24 hours. Failure to do so could result in up to two years imprisonment. In Kenya, police must report any death or serious injury to the Independent Policing Oversight Authority.

A serious problem that external accountability bodies sometimes encounter is that they do not have the requisite power to enforce their findings. "Important obstacles to external

[661] The Independent Policing Oversight Authority in Kenya will not have arrest powers but it will be allowed to enter any establishment or premises with a warrant, seize and remove any object, or take over internal investigations if they are inordinately delayed or manifestly unreasonable.

[662] Pakistan's police complaint authorities are more supervisory in nature and one of the weaker models surveyed. The investigations are either done by a senior police officer or a judicial inquiry is established for more serious cases. The Authorities have none of the civil court powers of their Indian counterparts, or the robust investigative powers of their counterparts in Northern Ireland, South Africa or Kenya.

[663] The Ombudsman utilises a wide ranges of powers when conducting its work. "As well as identifying and interviewing witnesses, the Police Ombudsman's Office will also conduct or arrange any required forensic and medical examinations, and will consider the full range of investigative options including house-to-house enquiries, securing available CCTV footage, media appeals, computer analysis etc ... In order to conduct their duties, Police Ombudsman investigators have the powers of constable when conducting their enquiries. This means that, when required in connection with an investigation, and with lawful authority, they can search police premises and filing systems and seize documentation and other police material. They can also establish incident scenes and direct SOCO and forensic services at the scene." See the Ombudsman's website at:
http://www.policeombudsman.org/modules/infoPoliceOfficers/index.cfm/id/7 (accessed on 14 August 2011).

[664] Matters include deaths in police custody; deaths as a result of police actions; any complaint relating to the discharge of an official firearm by any police officer; rape by a police officer, whether the police officer is on or off duty; rape of any person while that person is in police custody; and any complaint of torture or assault against a police officer in the execution of his or her duties.

mechanism effectiveness often arise after it has completed its investigation. Many mechanisms have no real 'teeth', even where their investigations found strong evidence of police wrong-doing."[665] Thus, it is important that an external accountability body has the ability to recommend criminal prosecution when it comes across egregious misconduct.[666] Each of the Independent Police Investigative Directorate, the Ombudsman and the Independent Policing Oversight Authority has this power.

8.5.3 Ensure Rights of Complainant or Witness

Since an external accountability body is ostensibly meant to protect the interests of the general public, it stands to reason that it should also safeguard the rights of the complainant as much as possible. Drawing from the Model Police Act, 2006 and the Draft West Bengal Police Act, 2007, the complainant ought to be informed of his complaint's progress, completion and final determination. Also, as with the Kerala Police Act, 2011, the complainant should receive a receipt acknowledging his complaint.

More substantively, a complainant or witness must be protected if he is going to make serious allegations against the police or provide incriminating testimony. Thus, the South African Police Service Act and the Independent Policing Oversight Authority Act (IPOA Act) are praiseworthy for their inclusion of provisions that protect the identity of the complainant or witness. The IPOA Act goes even further and allows IPOA to provide a victim with relevant information of unlawful police conduct so that he may institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income.

A commendable aspect to the IPOA Act is the extent to which it seeks to protect and safeguard the rights of the complainant. In the event of a vexatious or frivolous complaint, the IPOA may simply refuse to conduct an investigation. This is a progressive departure from the typical South Asian approach of imposing a fine or imprisonment for those who have initiated a vexatious or frivolous complaint. The South Asian approach has a chilling effect on people's willingness to file a complaint because the risk of penalty will dissuade them from registering legitimate grievances.

8.5.4 Create District-Level Complaints Commission

In *Prakash Singh,* the Indian Supreme Court explicitly ordered that police complaints authorities be constituted at both district and state levels because of the significant distances that some people would have to travel in order to register a complaint at the state capital. Since infrastructure is poor in India, and people may not be able to afford to travel long distances, the Court firmly believed that the issue of accessibility required a district-level mechanism. Thus, the Kerala Police Act, 2011 and Model Police Act, 2006 both provide for district-level complaints authorities.

Although South Africa has not created district level complaints bodies, Provincial Directorates of IPID have been established. This is owing to the federal character of South Africa. Despite the unitary structure of Bangladesh, setting up district-level mechanisms might be in Bangladesh's interest because doing so facilitates greater accessibility.

[665] UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Addendum – Study on police oversight mechanisms,* A/HRC/14/24/Add.8, 28 May 2010, p. 17.
[666] The IPID Act also stipulates that if anyone hinders or obstructs IPID's investigation, they are liable to imprisonment of up to two years.

8.6 How to Facilitate Sincere Police Engagement with the Community?

While it is unclear whether former British Home Secretary Sir Robert Peel truly said that the "police are the public and the public are the police", the principle contains an inherent truth: the police cannot do their job effectively unless they have the cooperation of the people they police.

8.6.1 Develop Statutory Framework

The experience of Kenya demonstrates the importance of having a statutory framework for community-based policing. Notwithstanding genuine interest and enthusiasm for community-based policing initiatives, the failure to have properly defined structures in place can compromise the sustainability of such ventures. South Africa and Kerala include specific provisions related to community-based policing in their respective police acts. This is something that Bangladesh might want to consider.

8.6.2 Empower the Beat Constable

As part of their effort to establish closer ties with the community, both the Kerala Police and the Police Service of Northern Ireland have placed considerable importance on the beat constable. Recognising that building trust with the public requires regular and healthy interaction, the beat constable is expected to spend substantial time in getting to know community members personally. The Kerala Police has formally integrated the beat constable into its community-based policing program with significant success. By having properly trained and reliable constables hand-picked to forge productive relationships with the community, the dynamic between the police and the people has radically changed for the better. But in order for this approach to work, it is absolutely imperative that constables are permitted to stay in the community for at least three years; this is the minimum amount of time required to cultivate the necessary ties.

Aside from building a closer bond with community members, the beat constable system is also useful in curtailing crime. When an officer patrols a small geographic area on foot, the mere presence of law enforcement discourages the commission of crime. In addition, better ties with the community means better intelligence and this can also lead to crime reduction.

8.7 What is a Possible Roadmap for Reform?

The purpose of a police organisation in a modern and democratic Bangladesh is to be an efficient and effective service that gives top operational priority to servicing the needs of the public interest. Assessing the Police Act, 1861 against that standard, it is evident from this study that it falls short. The question that remains for Bangladesh policy makers is whether the gaps posed by an antiquated statute are best addressed by an update to the Police Act, 1861 or with completely new legislation. It is the opinion of this paper that in order to clearly define the police-executive relationship, create institutions that can properly monitor the police for both performance and conduct, and ensure that the police effectively engage with the community it is meant to serve, mere amendments to the Police Act, 1861 would be insufficient. As evident from the foregoing analysis, the Police Act, 1861 simply has no conception of the elements necessary for a modern policing organisation.

Northern Ireland and South Africa have shown that if the requisite political will is brought to bear on the issue, the passage and implementation of progressive police legislation can help a country transition from regime style policing to one that is more democratic in nature. Although the National Police Service of Kenya has not achieved the same level of professionalism as the Police Service of Northern Ireland or the South African Police Service, the reform initiatives currently underway in Kenya provide that country with a real opportunity to improve the delivery of its policing services. Kerala provides guidance on how a South Asian jurisdiction can transparently draft and pass new legislation that ushers in an era of greater police professionalism. Conversely, Pakistan illustrates the dangers of attempting police reform without political consensus.

Immediate Recommendations

- Build Awareness of International Good Practice: Convene targeted consultations that will educate key policymakers international good practice that can help inform Bangladesh's police reform effort. These consultations should include leadership from the Bangladesh Police, senior members of the Ministry of Home Affairs, leading NGOs, media and Members of Parliament.

- Establish Inter-Ministerial Working Group: In order to begin an intergovernmental conversation about possible police legislation, a small working group involving key stakeholders from across Government (i.e. Bangladesh Police, Ministry of Home Affairs, Ministry of Justice etc...) should be created.

- Sponsor Visiting Programmes: Facilitate exchanges between key Bangladeshi policymakers and those outside of Bangladesh who have been successful in democratising police performance. Ideally, participants would include senior staff from both major political parties. Such interactions may help create a positive domestic environment for police reform.

Intermediate Recommendations

- Appoint a non-partisan Eminent Citizens Council: Appoint five eminent citizens, including a very high-profile Chairperson, and provide them with a broad mandate to put forward a comprehensive set of recommendations for police reform. These five people should be acceptable to both major political parties.

- Appoint an Independent Police Oversight Commissioner: After the Eminent Citizens Council puts forward their recommendations, the Government should appoint a non-partisan, but well-respected, Independent Police Oversight Commissioner who will be tasked with ensuring that the recommendations are implemented.

- Conduct Public Hearings: Once a formal draft police law has been put together, it is imperative to solicit the input of the public. It is important that the lay public and non-governmental organisations have an opportunity to express their views on how the police should be reformed so as to ensure that any new police law is modern and relevant to their needs. These hearings should be held across the country.

APPENDIX

	BANGLADESH Police Act, 1861	INDIA Model Police Act, 2006	Kerala Kerala Police Act, 2011		West Bengal West Bengal Police Act (Draft), 2007	PAKISTAN Police Order, 2002 (Original)	NORTHERN IRELAND Police (Northern Ireland) Act, 2000	SOUTH AFRICA South African Police Service Act, 1995 Constitution of the Republic of South Africa, 1996	KENYA National Police Service Bill, 2010 Constitution of Kenya, 2010
SUPERINTENDENCE	3: Superintendence over the police vests with the Government 4: Administration of police shall generally vest in the IGP and other senior officers; Administration of police at district level shall, under the general control and direction of Magistrate, be vested in District SP 5: IGP magisterial powers subject to governmental limitation 12: Subject to Government approval, IGP can frame rules	39: Superintendence over police to vest in State Govt; it is to ensure an efficient, effective, responsive and accountable police that adheres to its policies and guidelines; police to have functional autonomy 51: Administration of police (i.e. framing orders, promotions, transfers, deployment of police) will vest with DGP; Govt. may intervene in administration in exceptional situations 52: DGP has to put into operation policies, Strategic Plan and Annual plan	18(1): Administration, supervision, direction and control of police in the State shall, subject to the control of the State Govt, be vested in DGP 128: Notwithstanding anything contained the Act, State Govt may give lawful directions to the DGP for taking actions in accordance with the Act.		6.3: Superintendence over police to vest in State Govt; it is to ensure an efficient, effective, responsive and accountable police that adheres to its policies and guidelines; police to have functional autonomy 6.1: Administration of police (i.e. framing orders, promotions, transfers, deployment of police) will vest with DGP; Govt. may intervene in administration in exceptional situations 6.2: DGP is to advise Govt. and the State Police Board (SPB) in all matters of policing; implement the policies, strategic Policing Plan and annual policing sub plans laid down by the State Government;	9: Superintendence over police to vest in the appropriate Government; it is to ensure that police performs its duties efficiently and in accordance with law 10: Depending on the jurisdiction, administration of police will vest with Provincial Police Officer (PPO), Capital City Police Officer (CCPO) or City Police Officer (CPO); PPO shall prepare annual policing plan to be reviewed by Provincial Public Safety and Police Complaints Commission 33: DPO responsible to Zila Nazim for police functions but investigation of cases and police functions relating to prosecution will reside with DPO	**TRIPARTITE SYSTEM** Minister of Justice (MOJ) 24: MOJ sets long-term policing objectives, but must consult Northern Ireland Policing Board (NIPB) to get its agreement and also consult Chief Constable (CC), Ombudsman, Human Rights Commission, Equality Commission Northern Ireland Policing Board (NIPB) 25: NIPB sets medium-term objectives, but must consult CC and district policing partnerships 58-60: NIPB holds CC accountable through reporting requirements Chief Constable (CC) 33: CC sets short-term objectives as police are under his direction and control; CC shall have regard to policing plan and codes of practice	**206(1):** Cabinet Minister responsible for policing; determine policing policy after consulting with provincial governments **206(3):** Provinces to monitor police conduct, oversee effectiveness and efficiency of SAPS, promote good relations between police and community **207(2):** National Commissioner (NC) exercises control over general administration in accordance with policies set down by Minister 12(1): Provincial Commissioners (PCs) have command and control of SAPS in their jurisdiction (subject to the authority of NC – **207(4)(b)**)	**245(2)(b):** Inspector-General (IG) shall exercise independent command over National Police Service (NPS) 7(2): NPS shall perform functions and duties under overall direction, supervision and control of IG **245(4):** Cabinet secretary for policing can give policy direction (in writing) to IG but cannot direct him to investigate a particular offense, enforce the law against a particular person, or employ, assign, promote, suspend or dismiss any member of NPS. **240(3):** National Security Council (NSC) to exercise supervisory control over NPS **239(3):** NSC to prevent NPS from behaving in politicised manner
MINIMUM TENURE	N/A	6(3): 2 years minimum tenure for DGP, irrespective of superannuation 13(1): 2 years min tenure (3 year max) for SP and OIC	97(1): 2 years minimum tenure for DGP, IG, SP, and OIC, subject to superannuation		2.4(3): 2 years minimum tenure for DGP, subject to superannuation 2.12: 2 years min tenure (3 year max) for senior officers	12: 3 years tenure for PPO, CCPO or Head of Federal Law Enforcement Agency 15(2): 3 years tenure for CPO/ DPO	N/A	7(1): 5 years minimum tenure for NC and PCs 7(2): Can be renewed for additional term; maximum 10 years	**245(6):** IG appointed by President for a non-renewable 4-year term
SELECTION OF CHIEF OF POLICE	2B: Government selects IGP directly	6(2): State Government selects from panel of 3 put forward by State Police Board	18(2): State Government selects DGP directly		2.4(1): From a panel of 3 presented to it by the SPB, State Government selects DGP	11: National Public Safety Commission provides provincial and federal governments with lists of 3 candidates so that they may make key appointments of senior police leadership	35(1): NIPB, subject to MOJ approval, will select CC	**207(1):** President selects NC directly 6(2): NC selects Provincial Commissioners (with concurrence of provincial executive – **207(3)**)	**245(2)(a):** President appoints IG of NPS with approval of Parliament 12(10): National Assembly must approve Presidential nominee; if National Assembly rejects candidate, then must request President to submit new nominee
ROLE OF DISTRICT MAGISTRATE (DM) OR DEPUTY COMMISSIONER (DC)	4: Administration of police at district level shall, under the general control and direction of Magistrate, be vested in District SP	14(1): Coordinate functioning of the police with other agencies regarding: • Promotion of land reforms/settlement of land disputes; • Extensive disturbance of public peace; • Conduct of public elections; • Handling of natural calamities and rehabilitation of affected persons; • Situations arising out of external aggression/internal disturbances; • Any matter not within the purview of any one department and affecting general welfare; and • Removal of any persistent public grievance. 14(2) and (3): To coordinate, DM may call for information of a special/general nature from District SP; when necessary, DM shall pass orders/issue directions in writing; ensure that other departments provide District SP with assistance	19(1): Coordinate functioning of the police with other agencies regarding: • Promotion of land reforms or settlement of land disputes; • Extensive disturbance of public peace; • Conduct of public elections; • Handling of natural calamities and rehabilitation of affected persons; • Situations arising out of external aggression; and • Any matter not within the purview of any one department and affecting general welfare 19(2): To coordinate, DM may call for information of a special/general nature from police; call for a report regarding the steps taken by the police in handling the situation; give such directions to the police as the DM deems necessary; ensure that other departments provide District SP with assistance 80: Power to make regulations in respect of environmental damage and construction 81: Power to issue orders regarding law and order when a public assembly involves some sort of dispute		2.13(1): Coordinate functioning of the police with other agencies regarding: • Promotion of land reforms/settlement of land disputes; • Extensive disturbance of public peace; • Conduct of public elections; • Handling of natural calamities and rehabilitation of affected persons; • Situations arising out of external aggression/internal disturbances; • Any matter not within the purview of any one department and affecting general welfare; and • Removal of any persistent public grievance. 2.13(2) and (3): To coordinate, DM may call for information of a special/general nature from District SP; when necessary, DM shall pass orders/issue directions in writing; ensure that other departments provide District SP with assistance	34: Where Zila Nazim so directs, the District Coordination Officer shall coordinate police support in exigencies threatening law and order, natural calamities and emergencies	N/A	N/A	N/A

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	BANGLADESH Police Act, 1861	INDIA Model Police Act, 2006	Kerala Kerala Police Act, 2011	West Bengal West Bengal Police Act (Draft), 2007		PAKISTAN Police Order, 2002 (Original)	NORTHERN IRELAND Police (Northern Ireland) Act, 2000	SOUTH AFRICA Civilian Secretariat for Police Service Act, 2011	KENYA National Police Service Bill, 2010 National Police Service Commission Bill, 2010 Constitution of Kenya, 2010
OVERSIGHT BODY: COMPOSITION	N/A	41: State Police Board (SPB) 42(1): Members of SPB: • Home Minister (Chair); • Leader of the Opposition; • Retired High Court Judge, nominated by the Chief Justice of the High Court; • Chief Secretary; • Secretary in charge of the Home Department; • Dir. Gen. of Police; and • 5 independent members appointed on recommendation of Selection Panel 42(2): No less than 2 women as members on SPB 42(3): No serving government employee shall be appointed as an independent member	24: State Security Commission (SSC) shall have as its members: • Home Minister (Chair); • Law Minister; • Leader of Opposition; • Retired High Court Judge nominated by the Chief Justice of the High Court; • Chief Secretary; • Secretary in charge of the Home Department; • Dir. Gen. of Police; • 3 non-official independent members, nominated by the Governor, one of whom shall be a woman.	6.6: State Police Board (SPB) 6.7(1): Members of SPB: • Chief Minister or Minister in charge of police (Chair); • Leader of the Opposition; • Chief Secretary; • Principal Secretary of the Home Department; • Dir. Gen. of Police; and • 3 independent members of integrity, one of whom will be a former DGP 6.7(2): No serving government employee shall be appointed as an independent member		National Public Safety Commission (NPSC) 86: NPSC shall have as its members: • 3 Government MNAs • 3 Opposition MNAs • 6 independents, appointed by President from list given by Selection Panel (min. 2 women from MNA, 2 women ind.) Provincial Public Safety Commission (PPSC) 74: PPSC shall have as its members: • 3 Government MPAs • 3 Opposition MPAs • 6 independents, appointed by Governor from list given by Provincial Selection Panel (min. 2 women from MPA, 2 women from ind.) District Public Safety Commission (DPSC) 38: DPSC shall have as its members: • Half from Zila Council • Half independents • 1/3 of all members should be women	2: Northern Ireland Policing Board (NIPB) Sch.1, 6: NIPB shall have 10 members from Assembly and 9 independent members Sch.1, 7: Formula for selecting political members Sch.1, 8: Minister of Justice will appoint independent members after consulting First Minister, deputy First Minister, district councils, and other bodies he considers appropriate	Civilian Secretariat (CS) 7: Minister appoints Secretary for 5 years, renewable for one more term; cannot be a serving or former member of SAPS [8: Secretary is responsible for the performance, efficiency and effectiveness of CS, along with a number of other duties, including advising Minister and managing budget] 8(4): Secretary will appoint staff in order to carry out the CS's mandate Provincial Secretariat (PS) 18: MEC, after consulting Minister, appoints head of PS for 5 years, renewable for one more term; cannot be serving or former member of SAPS [19: Head of PS is responsible for the performance of PS and monitor whether Minister's national policing policies are implemented in the province]	National Police Service Commission (NPSC) 246(2): NPSC shall have as its members: • High Court Judge (appointed by President); • 2 ret'd senior police (appointed by President); • 3 persons of integrity (appointed by President); • Inspector-General of the NPS; • Deputy IG of Kenya Police Service; and • Deputy IG of Administration Police 246(4): NPSC must reflect Kenya's ethnic diversity County Policing Authority (CPA) 30(1): CPA shall have as its members: • 3 representatives from business; • County police commander from KP (or rep); • County police commander from AP (or rep); • County head of Criminal Investigation (or rep); • 2 representatives of civil society; • 2 representatives of professional bodies; • Representative of persons with disabilities; • 2 elected members of County Assembly; • Governor (or his representative); and • 3 representatives of religious organisations.
OVERSIGHT BODY: FUNCTIONS, POWERS & REPORTING	N/A	48: SPB functions: • Frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing; • Provide State Government with 3 candidates for DGP; • Identify performance indicators to evaluate the functioning of the Police • Review and evaluate police against (i) the Annual Plan, (ii) performance indicators and (iii) available resources [181(2): State Government may appoint Inspectorate of Performance Evaluation to assist in this regard] 50 and 182: SPB submit annual report; Government will lay before Assembly	25: SSC functions: • Frame general policy guidelines; • Issue directions for the implementation of crime prevention tasks and service oriented activities; • Evaluate police performance [26: SSC must appoint 3 experts to assess police performance in previous year]; • Submit annual report that will be placed before Assembly; and • Prepare guidelines for any changes to be carried out by police • Directions of SSC are binding on the police • Notwithstanding anything issued by SSC, State Government may lawfully issue necessary directions	6.10: SPB functions: • Frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing; • Provide State Government with 3 candidates for DGP; • Identify performance indicators to evaluate the functioning of the Police • Review and evaluate police against (i) the Annual Plan, (ii) performance indicators and (iii) available resources 6.12: SPB submit annual report; Government will lay before Assembly		National Public Safety Commission (NPSC) 92: NPSC functions include: • Oversee functioning of Islamabad Police (IP)/ Federal Law Enforcement Agencies (FLEAs); • Facilitate establishment of CPLCs; • Recommend panel of 3 to lead IP and FLEAs; • Recommend panel of 3 for PPOs; • Facilitate coordination of PPSCs; and • Evaluate IP and FLEAs. Provincial Public Safety Commission (PPSC) 80: PPSC functions include: • Provide PPO with guidelines re integrity, efficiency and effectiveness; • Prevent police from acting unlawfully; • Facilitate establishment of CPLCs; • Coordinate safety commissions in province; • Assist PPO in setting objectives; • Oversee provincial policing plan; and • Evaluate commissions in province. District Public Safety Commission (DPSC) 44: DPSC functions include: • Approve local policing plan prepared by DPO; • Evaluate performance against policing plan; • Report to PPSC illegitimate collusion between Nazim and DPO; • Direct DPO to register FIR when he has unjustifiably refused to do so; and • Direct DPO to conduct inquiry into complaint. 35: If Nazim believes police officer committed misconduct, he may direct DPO to register FIR in the matter; DPO must reply within 45 days 36: DPO and Head of FLEA shall inform PPSC (or Federal Police Complaint Authority) of rape, death or serious injury in police custody	3(1) and (2): Secure maintenance, efficiency & effectiveness of PSNI 3(3)(a): Hold Chief Constable (CC) and PSNI accountable for performance 3(3)(b): Monitor compliance with Human Rights Act 1998 and implementation of policing plan 3(3)(c)(i): Keep informed about police complaints and disciplinary proceedings 3(3)(c)(ii): Oversee how CC deals with public complaints against traffic wardens 3(3)(c)(v): Assess whether PSNI is representative of the community 3(3)(d)(iii): Assess whether DPPs obtain public's views on policing 19(1): Develop code of practice for DPPs 57: NIPB submits annual report 58: CC to report annually 59: CC has a duty to generally report to NIPB 60: NIPB can inquire into any matter except in a few rare instances (in which case MOJ will look into it)	Civilian Secretariat 5(a): Exercise civilian oversight over SAPS 5(b): Provide Minister with advice on policing policy 5(f) and (g): Implement and coordinate operations of Secretariat at national and provincial levels 5(h): Promote cooperation of CS, SAPS and IPID 6(1)(a) and (2)(b): Monitor, assess and evaluate SAPS performance 6(1)(b): Monitor SAPS budget to ensure compliance with Ministerial directives 6(1)(i): Provide Minister with regular reports on performance of SAPS 6(1)(j): Assess SAPS ability to take up complaints 6(2)(a): Serve as a policing information resource for Secretary, Minister and Parliament 6(2)(c): Implement intergovernmental cooperation on safety; encourage national dialogue on crime 13: Secretary submits quarterly reports to Minister and the parliamentary committee for policing 15: Secretary submits annual report to Minister, which is tabled in Parliament 23: Secretary and Heads of PSs must meet quarterly in order ensure alignment on strategic and performance plans, as well as priorities, strategies and objectives Provincial Secretariat 17(1)(a): Align plans and operations at provincial-level with plans of CS 17(2)(a): Monitor and evaluate implementation of policing policy and police conduct in province 17(2)(b): Promote community-police relations and enhance community safety 22(1): PS Head submits quarterly reports, through head of prov. department, to MEC and Secretary	National Police Service Commission 10(1): NPSC functions include: • Exercise disciplinary control over NPS; • Review matters re standards or qualifications; • Cooperate with the IPOA in identifying patterns and trends in complaints against police 11: NPSC powers include: • Gather and compel production of information; • Interview people to fill vacancies of the NPS; • Hold disciplinary hearing proceedings; • Impose punishment on any officer; and • Receive written or oral statements as evidence 25(2): NPSC to report annually County Policing Authority 30(8): Functions of the CPA include: • Develop proposals on priorities, objectives and targets for police performance in the county; • Monitor trends and patterns of crime in county; • Monitor progress and achievement of targets; • Provide financial oversight of NPS in the county; • Ensure policing accountability to the public; and • Ensure compliance with national policing standards 30(9): CPA to report quarterly to Cabinet Secretary
POSTING, TRANSFER & PROMOTION	N/A	53: Police Establishment Committee consists of DGP and 4 senior officers; accept complaints from officers about being subjected to illegal orders; recommend names for ASP/DySP and higher (not DGP); recommend to DGP postings of SI or Inspector; inter-district transfers/postings decided by DIG, on suggestion of district SPs; transfers / postings in district decided by SP, on recommendation of Add'l/Dy/ASPs; and 2 year tenure should be respected.	105: Police Establishment Board consists of DGP and 4 senior officers 106: PEB to decide on complaints related transfers and postings for officers at or below Inspector 107: DySP will hear complaints of Sub Inspector or below and submit recommendations to SP	6.14: Police Establishment Committee consists of DGP and 3 senior officers; approve all posting and transfers between various wings of police; make posting and transfer recommendations to Govt for officers at or above Add'l SP; hear appeals regarding transfer and promotion from all ranks		12(2): Transfer of PPO or CCPO requires approval of PPSC 12(4): Transfer of Islamabad CCPO or Head of FLEA requires NPSC approval 165: Constitution of promotion boards; composed of serving officers	35(2): NIPB shall, subject to MOJ approval and consultation with CC, appoint senior officers 36(2): Except for officers described in 35(2), CC will make all other appointments and promotions	N/A	246(3) and 10(1)(a): NPSC will recruit and appoint persons to NPS, and determine promotions and transfers
POLICING PLANS	N/A	40(1)(a): State Government, in consultation with SPB, will draft 5-year Strategic Plan 40(1)(c): Every financial year the State Government will lay before Legislative Assembly a Progress Report on previous year performance and an Annual Plan for the upcoming year	N/A	6.4: After receiving report from DGP, and recommendations of SPB, State Govt will finalize 5-year Strategic Plan and annual Sub-Plans; these plans will be laid before Assembly and every year a progress report will also be placed before it		10(4): PPO provides PPSC with plan that sets out objectives, targets, available resources and mechanism for achieving targets 80(2)(f): PPSC oversees implementation of provincial policing plan 32(1): DPO consults with Nazim to draft annual policing plan consistent with provincial plan 44(a): DPSC to approve policing plan drafted by DPO in consultation with Zila Nazim	22: District commander will issue local policing plan 26: NIPB will issue a policing plan after receiving a draft from CC and consulting with MOJ; it will address training and education, as well as other matters	11(2)(a): National Commissioner to develop policing plan for the next year	9(2): IG to formulate annual plan setting out policing priorities and objectives 30(8): CPA to develop budgets and policing plans for County

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ACCOUNTABILITY BODY: COMPOSITION	N/A	STATE-LEVEL BODY 160: Police Accountability Commission ("Commission") will include: • Retired High Court Judge (Chair); • Retired DGP from another state; • Person with 10+ years in law; • Person of repute from civil society; and • Retired public servant from another state [At least one women, and no more than one retired police officer] 161(1): State Government selects Chair from panel of 3 retired High Court Justices put forward by Chief Justice of the High Court 161(2): Other members based on recommendation of Selection Panel (composed of Commission Chair; Chair of State Public Service Commission; Chair of State HRC (or Lokayukta or State Vigilance Commission) DISTRICT-LEVEL BODY 173(2): District Accountability Authority (DAA) will include a retired District and Sessions Judge (Chair); retired senior police officer; person with 10+ years in law/public administration (State Government will appoint on basis of Selection Panel's recommendations)	STATE-LEVEL BODY 110(2): Police Complaints Authority (PCA) will include: • Retired High Court Judge (Chair); • Officer not below Principal Secretary; • Officer not below Additional DGP; • Person as may be fixed by the Government, in consultation with the Leader of Opposition, from a 3-member panel of retired suitable officers not below the rank of Inspector General of Police furnished by the Chairman of the State Human Rights Commission; and • Person as may be fixed by the Government, in consultation with the Leader of Opposition, from a 3-member panel of retired suitable District Judges furnished by the State Lok Ayuktha DISTRICT-LEVEL BODY 110(4): District PCA will have: • Retired District Judge (Chair); • District Collector; and • District SP	STATE-LEVEL BODY 14.1: Police Complaints Authority (PCA) will be the Lokayukta West Bengal		Federal Police Complaints Authority (FPCA) 98: FPCA shall consist of: • Chair, appointed by President • 6 members, appointed by Government on suggestion of Fed. Pub. Service Commission) Provincial Police Complaints Authority (PPCA) 104: PPCA shall consist of: • Chair, appointed by Governor • 6 members, appointed by Government on suggestion of Prov. Pub. Service Commission)	51: Police Ombudsman for Northern Ireland (PONI) to secure the efficiency, effectiveness and independence of the police complaint system Sch.3, 1: Appointed by her Majesty, on recommendation of First Minister and deputy First Minister, for 7-year term	3: Independent Police Investigative Directorate (IPID) established at national level with provincial offices 6: Minister nominates Executive Director (ED) for IPID; Parliamentary Committee has 30 days to confirm or reject nominee; if accepted, ED is appointed for 5-year term and can be renewed for an additional term 7(2): ED appoints heads of provincial offices 8: National office also consists of: • Corporate Services Unit; • Investigation and Information Management Unit; • Legal Services Unit; and • Any other unit, subject to Minister and Parliament approval	21: Independent Policing Oversight Authority (IPOA) run by Director 10(1): IPOA will be governed by a Board that will include: • High Court Judge (Chair); • Person with administrative experience; • Person with security experience; • 3 people with experience in human rights, civil society and medicine; • Person with community grassroots experience; and • Chair of the soon to be created Ombudsman Commission 11(1): Board cannot have as a member the following people: • Member of Parliament or local authority; or • Member of a political party's executive body 12: Board candidates are recruited through an open process and ultimately appointed by President, in consultation with Prime Minister
ACCOUNTABILITY BODY: FUNCTIONS & POWERS	N/A	STATE-LEVEL BODY 167: Receive complaints, or initiate suo moto inquiry, regarding allegations of "serious misconduct" (defined as death in police custody; grievous hurt as defined under s.320 of Indian Penal Code; rape or attempted rape; or arrest or detention without due process of law) 168: Powers of a civil court: • Summon and enforce attendance of witnesses, examine them on oath; • Discovery/production of documents; • Receive evidence on affidavit; and • Requisition any public record from any court or office 171: Binding powers to direct DGP or State Government to register FIR and/or initiate departmental action 172: Submit annual report to Assembly 176: Control and supervise DAA DISTRICT-LEVEL BODY 173(1): DAA will monitor departmental inquiries into complaints of "misconduct" (defined as any willful breach or neglect of law that adversely affects someone's rights) 174(1)(a): Forward complaints of "serious misconduct" to Commission 174(1)(b): Forward complaints of "misconduct" to SP (unless complaint is against ASP/DySP or higher, in which case complaint will be forwarded to DGP and under intimation to Commission) 175: Submit annual report to Commission	STATE-LEVEL BODY 110(1): PCA will inquire into all complaints against SP or higher, and all complaints dealing with death in police custody; grievous hurt; sexual harassment or rape) 110(7): Powers of a civil court: • Summon and enforce attendance of witnesses, examine them on oath; • Discovery/production of documents; and • Receive evidence on affidavit 112: PCA can require officer to question and record statement of any witness; trace, examine, and seize relevant records; to conduct any inspection or test 110(9): Recommendations of PCA are binding DISTRICT-LEVEL BODY 110(3): District PCA inquire into all complaints against DySP or lower 110(7): Powers of a civil court: • Summon and enforce attendance of witnesses, examine them on oath; • Discovery/production of documents; • Receive evidence on affidavit 110(9): Recommendations of District PCA are binding	14.2: Receive complaints, or initiate *suo moto* inquiry, into complaints of "serious misconduct" (defined as death in police custody; grievous hurt as defined under s.320 of Indian Penal Code; rape or attempted rape; or arrest or detention without due process of law) 14.3: Powers of a civil court: • Summon and enforce attendance of witnesses, examine them on oath; • Discovery/production of documents; • Receive evidence on affidavit; and • Requisition any public record from any court or office 14.4: State Government shall consider findings and recommendations of PCA		FPCA 100: Functions of FPCA include: • Receive/process complaints of misconduct, neglect, or excess; look into serious cases • Receive any report of death, rape or serious injury from agencies it oversees; • Request HC CJ to appoint a Sessions Judge to examine serious cases; • Supervise inquiry proceedings; • Send report to competent authority for departmental action and escalate until satisfied with outcome; and • Recommend disciplinary action against an enquiry officer for willful neglect or mishandling of an enquiry PPCA 106: Functions of the PPCA include: • Receive/process complaints of misconduct, neglect, or excess; look into serious cases • Receive any report of death, rape or serious injury from DPSC or DPO; • Preserve evidence and request HC CJ to appoint Sessions Judge to examine case; • Supervise inquiry proceedings; • Direct departmental action; • Send report to competent authority for departmental action and escalate until satisfied with outcome; and • Recommend disciplinary action against an enquiry officer for willful neglect or mishandling of an enquiry 33(1): Nazim can visit a police station to find out if any person is under unlawful detention and, where appropriate, they can direct the police to act in accordance with law 36: DPO shall inform PPCA of any incident/complaint of rape, death or serious injury to any person in police custody.	52: All complaints to be received by PONI; will deal with complaints about conduct of an officer; complaints regarding control and direction of PSNI will be handled by CC, NIPB or DOJ 53: Complaints can be resolved informally if complainant agrees and the complaint is not serious 55(6): Investigate on own motion 55(7): Notify the DOJ, NIPB and CC of the outcome of certain complaints and referred matters 56(1): Formal investigation may be conducted by PONI 56(3): PONI investigators will have same powers and privileges of a constable 57(4): Supervisory function over all investigations, including those assigned to PSNI 58(2): Recommend charges to Director of Public Prosecutions 59(2): Make recommendations and directions regarding disciplinary action against police 59(5): PONI may direct CC to bring disciplinary proceedings if he declines to follow recommendations under 59(2) 61(3): Report annually to DOJ 61AA(1): Supply NIPB with statistical information Sch.3, 6: PONI can request PSNI assistance in conducting investigation	NATIONAL DIRECTORATE (ND) 7(9): ED may investigate any complaint 28: IPID must investigate custodial deaths, deaths due to police action, complaint relating to police firing, rape by officer (on or off duty), rape of person while in police custody, complaint of torture, and corruption 29(1): SAPS must inform IPID of any non-corruption matters under section 28 within 24 hours (failure to do so could result in up to 2 years in prison – 33(3)) 24: IPID investigators have same powers of a police officer relating to: investigation of offences; entry and search of premises; seizure/disposal of articles; arrests; and execution of warrants 7(4): Refer criminal offences to National Prosecuting Authority (NPA) 7(6) and (7): Recommendations regarding disciplinary action are referred to National & Provincial Commissioners 30: National & Provincial Commissioners must follow recommendations of IPID 32: Report annually to Minister 33(1): Hindering/obstructing an investigation could result in up to 2 years in prison PROVINCIAL DIRECTORATES (PDs) 21: PDs must facilitate investigation of cases, control and monitor active cases, refer appropriate matters to prosecuting agency, and refer disciplinary matters to Provincial Commissioner	7: Functions of IPOA include: • Investigate complaints against the NPS by members of the public or on its own motion; • Receive and investigate complaints by serving officers; • Monitor, review and audit NPS action in response to complaints; • Co-operate with other institutions re police oversight 8(1): Powers of IPOA include: • Enter any establishment or premises with a warrant; • Seize and remove any object; • Summon and enforce attendance of witnesses, and examine them on oath; and • Take over internal investigations if they are inordinately delayed or manifestly unreasonable; 27(9): Re-open an investigation and amend or withdraw previous findings 32(1)(a): Recommend prosecution of a police officer to the Attorney General 32(2): IPOA may apply to be substituted as prosecutor if AG chooses not to proceed 28: Police are compelled to "forthwith" report any death in police custody or control, but also when the person who died was the target of a police operation or an innocent bystander
RIGHTS OF COMPLAINANT	N/A	177: Complainant shall have a right to be informed of the progress of the inquiry by the Commission or the DAA; upon completion of inquiry, the complainant shall be informed of the conclusions; the complainant may attend all hearings in the inquiry; and all hearings shall be conducted in a language intelligible to the complainant	8(4): Everyone has right to receive a receipt acknowledging their complaint and to know the stage of police investigation 8(5): Any complaint shall be entered in a register at police station. 34: Police must take complaints 50: If a person is injured while in police custody, he is entitled to complain before a judicial or deputy magistrate 111: Elected representatives (i.e. President of Panchayat, Chair of Municipal Councils, MLA) can forward all complaints received to the PCA	14.5: Complainant shall have a right to be informed of the progress of the inquiry by the PCA; upon completion of inquiry, the complainant shall be informed of the conclusions; the complainant may attend all hearings in the inquiry; and all hearings shall be conducted in a language intelligible to the complainant		100(g): FPCA to inform complainant outcome of enquiry	52(6): If PONI forwards complaint to CC, DOJ or NIPB, complainant will be notified 53(2): Complaint can only be informally resolved if complainant gives his consent 58(2): If after investigating, PONI decides on mediation, complainant must be informed 64(2): Complainant must be furnished a copy of the complaint	The SAPS Act provides at 53(9) that the Minister may prescribe procedures regarding: • Protecting the identity and integrity of complainants; • Witness protection programmes	27(8): IPOA may simply refuse to conduct an investigation in the event of a frivolous or vexatious complaint; no fine or criminal sanction is applied 27(13): Laws prohibiting harassment and intimidation of witnesses shall also apply to IPOA Act 27(15): Complainant is entitled to have his identity remain confidential 8(1)(i): IPOA can provide victim of unlawful NPS conduct with information that will assist in civil suit

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	BANGLADESH Police Act, 1861	INDIA Model Police Act, 2006	Kerala Kerala Police Act, 2011	West Bengal West Bengal Police Act (Draft), 2007		PAKISTAN Police Order, 2002 (Original)	NORTHERN IRELAND Police (Northern Ireland) Act, 2000	SOUTH AFRICA South African Police Service Act, 1995 Interim Regulations for Community Police Forums and Boards, 2001	KENYA National Police Service Bill, 2010
PREAMBLE	"It is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime."	"Respect for and promotion of the human rights of the people, and protection of their civil, political, social, economic and cultural rights, is the primary concern of the Rule of Law."	"It is expedient to provide for a professional, trained, skilled, disciplined and dedicated police system to protect the integrity and security of State and to ensure the rule of law with due transparency and by giving due regard to life, property, freedom, dignity and human rights of every person in accordance with the provisions of the Constitution of India."	"The Nation's founding faith is the primacy of the rule of law and the police must be organized to promote rule of law and render impartial and efficient service to people with due concern for human rights and proper safeguards for the Security of the State and the Nation."		"Functioning of the police requires it to be professional, service-oriented, and accountable to the people."	N/A	"There is a need to provide a police service throughout the national territory to … ensure co-operation between the Service and the communities it serves in the combating of crime."	N/A
COMMUNITY POLICING	N/A	85: District SP to constitute Community Liaison Group (CLG) in rural area 86: CLG will identify existing and emerging police needs; meet at least 4 times/year 102: Commissioner of Police to constitute Citizens' Policing Committee (CPC); similar profile to CLG	64: Community Contact Committee (CCC) must be established by District SP in each police station, composed of cross-section of community (including professionals, women, and SC/ST); CCC will identify existing and emerging police needs and will meet when required (meetings open to general public)	8.22: District SP to constitute Community Liaison Group (CLG) in rural area 8.23: CLG will identify existing and emerging police needs; meet at least 4 times/year 9.2: Commissioner of Police to constitute Citizens' Policing Committee (CPC); similar profile to CLG		168: Citizen Police Liaison Committee may be established as voluntary, self-financing and autonomous bodies to help serve as a bridge between the public and the police	14: District Policing Partnership (DPP) 16: Functions of the DPP: • Provide views to District Commander regarding policing in the district • Monitor performance of police in carrying out policing plan • Obtain views of community regarding policing in the district and gain their cooperation in preventing crime • Act as general forum for discussion and consultation on policing matters 17(1): Report to district council 18(1): Report to Policing Board Sch.3, 3: Political members who are councillors nominated by the district council Sch.3, 4: Independent members who are appointed by Policing Board	18: Community Policing Forums (CPFs) are to establish a partnership with SAPS by communicating, cooperating and assisting them 19: Provincial Commissioner (PC) shall establish CPFs representative of community at all stations; 20: PC shall establish area community police boards (ACPB) with selected CPF representatives from that area 21: PC shall establish provincial community police board with selected ACPB members 3: CPF may form community police sub-forum to deal with policing matters that affect significant section of community 7: CPF draft constitution to set out objective, structure, funding and decision-making process 8: Develop community safety plans	73: Community Policing Forums (CPFs) must be set up and must be representative of community 72: Functions of the CPF: • Establish and maintain partnership between community and NPS; • Promote communication between NPS and community; • Promote co-operation in fulfilling the policing needs of community; • Improve delivery of police service; • Improve transparency and accountability of NPS; and • Promote problem solving by NPS and community. 74: Area community policing committees will be created
DUTY OF POLICE TOWARDS COMMUNITY & RIGHTS OF THE COMMUNITY	N/A	58: Treat public with respect and courtesy; assist public at all times	7: Citizens have right to efficient police service 8: Citizens have right to receive lawful services from police station and meet OIC (subject to reasonable restrictions) 29: Treat public with respect and courtesy; assist public at all times 32: Police officers liable to explain their actions 35: Police to behave decently towards witnesses	7.2: Treat public with respect and courtesy; assist public at all times		3: Treat public with due decorum and courtesy; promote amity; assist public, particularly the poor and disabled; and aid individuals in danger of physical harm	Although there are no specific statutory provisions that articulate the police's duty towards the public, or the rights that the public have in relation to the police, the intent and purpose of DPPs is to empower and strengthen the ability of police and local communities to work together in achieving public safety.	N/A	N/A
BEAT CONSTABLE	N/A	63-65: Beat Constable to liaise with community elders and local policing committees; keep tabs on local crime	65: Beat Constable to keep in close contact with CCC; inform OIC of community grievances and collected info on criminals, terrorists and anti-social elements	8.2: Beat Constable to liaise with community elders and local policing committees; keep tabs on local crime		N/A	Beat constables are an integral part of PSNI's strategy of community engagement; per Patten's recommendation, neighbourhood policing teams have been set up with beat officers	N/A	N/A
WORKING HOURS	22: Always on duty	155: Always on duty, but will have one day off/week 188: 8 hours/day (unless exceptional situation)	89: Always on duty	13.5: Always on duty 15.4: 8 hours/day (unless exceptional situation)		115: Always on duty	N/A	N/A	33: Always on duty
SPECIAL POLICE	17: Special officers can be appointed 18: Have same powers as police 19: Can be fined if refuse to serve	22: Any able-bodied person between 18-50 can be appointed by SP to serve, with same powers, as police	11: Special Police Stations 98: Able-bodied people between 18-60 can be appointed by SP to serve, with same powers, as police; these people must be ex-service men, retired police officers or persons having experience in the National Service Scheme, National Cadet Corps, or Student Police Cadet	10.17: Any able-bodied person between 18-50 can be appointed by SP to serve, with same powers, as police		29: Allows for the appointment of special officers	Part-time officers are permitted under the Police Service of Northern Ireland Reserve (Part-Time) Regulations, 2004.	48: Reserve Police Service; voluntary but has same powers as police.	52: Allows IG, after consulting with NPC, to appoint special officers who will be deemed to be a police officer 87: National Police Reserve; voluntary force
SPECIAL SECURITY ZONES (SSZ)	15: Government can declare an area "disturbed"	112-120: Allows for the creation of parallel policing structures in SSZ	45: Special powers for police in "disturbed areas" 83: Government can invoke reasonable restrictions in designated SSZ	10.10-10.16: Allows for the creation of parallel policing structures in SSZ		N/A	N/A	N/A	83: Government can declare an area disturbed or dangerous; police can conduct searches for arms without warrant

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POLICE REFORM OPPORTUNITIES FOR BANGLADESH

A Comparative Survey of Police Legislation in India, Pakistan, Northern Ireland, South Africa and Kenya

> In no branch of the Administration in Bengal is improvement so imperatively required as in the police. There is no part of our system of government of which such universal and bitter complaint is made, and none in which, for the relief of the people and the reputation of Government, is reform in anything like the same degree so urgently called for.

Sir John Woodburn, Former Lieutenant-Governor of Bengal
12 December 1901

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