

## NIPSA Newsletter 2, July 2012

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Welcome to the Summer 2012 edition of the Network for Improved Policing in South Asia (NIPSA)’s E-Newsletter!

This is our second edition containing various articles written by experts and practitioners, opinions and commentaries by CHRI staff and other specialists, and a new section for which we invite NIPSA members to use the space to showcase their organisation’s achievements and recent publications.

Maggie Bernie, an expert on democratic policing and Consultant with the Committee on the Administration of Justice, Northern Ireland, questions the ability of elected Police and Crime Commissioners (PCC) in the English and Welsh police system to strengthen police accountability. This is a major change that has taken place through the Police Reform and Social Responsibility Act 2011, replacing the current policing authority, which is a 17-member body including eight independent members. From November onwards, an elected Commissioner will be taking over its role. In her article, she discusses the advantages and disadvantages of this drastic change and the effect it will have on policing in the area.

On the topic of police accountability, a recent Amnesty International report reveals shocking data on extrajudicial killings allegedly conducted by officers of the Rapid Action Battalion. CHRI staffer, Diya Nag writes on the subject and the need for a robust independent oversight mechanism that can look into public complaints of serious misconduct by the police in Bangladesh. Though the Draft Police Ordinance of 2007 creates a Police Complaints Commission, it is a weak body with no investigative powers, which if set up, is likely to fail.

In neighboring Pakistan, recent statements by the new Inspector General of Police in Pakistan prompted CHRI staff members Navaz Kotwal and Devyani Srivastava to write about whether aggressive policing will really win public confidence. The authors put forth the argument that aggressive policing is merely a stop gap measure and will only drive the public away from the police when there is a strong need for public and community cooperation to tackle a rising crime rate.

Perhaps garnering the community and public's assistance would also be effective in India. Currently, the 'war' against the Left Wing Extremists, also referred to as the Naxals and Maoists, has been tackled with heavy military presence rather than what Pupul Dutta Prasad of the National Human Rights Commission of India describes as effective, legal, and legitimate options. He stresses the importance of human rights considerations even at a time of 'war' as well as practical and ethical considerations. Overall, a violent and brutal approach to solving the Naxal problem may not ultimately be the desirable one.

And finally, our newest section presents a publication recently released by CHRI – an analysis of the Maldivian Police Service's strategic plan. This is followed by a series of publications created by Individualland, a NIPSA member and CHRI partner in Pakistan, on women and policing. Once again, we encourage all NIPSA members to share their work, publications, and achievements with us so we may showcase it here.

Thank you to all the contributors in this edition of NIPSA. Once again, we call upon all of you to take steps to expand our network and get involved. We continue to look for articles and contributions for our following E-newsletter, due in October 2012.

Please feel free to contact us at [diya@humanrightsinitiative.org](mailto:diya@humanrightsinitiative.org) or [devyani@humanrightsinitiative.org](mailto:devyani@humanrightsinitiative.org) for any further questions, comments, or suggestions.

We look forward to the next edition of NIPSA!

Diya Nag and Devyani Srivastava

## Articles

### *Democratic policing – progress or roll-back?*

Maggie Bernie, Consultant, Committee on the Administration of Justice

Democratic societies governed by the rule of law aspire to ensure “policing by consent” because they understand that the police can only effectively deploy their powers of control, and ultimately physical force, if they have the support of the wider society. Society’s formal “consent” is normally enshrined in legislation setting out police powers and in mechanisms for holding the police to account when operationalising those powers. Both legal and democratic accountability are vital to healthy policing, but opinions vary as to how to ensure such accountability.

The English and Welsh police system is about to be radically overhauled but will this strengthen police accountability (as the government claims), or greatly weaken it? The main aim of the Police Reform and Social Responsibility Act 2011 is to introduce elected Police and Crime Commissioners. From November 2012, a Commissioner will be directly elected in each of the 43 police districts, and this elected post-holder will have the authority to hire and fire the police chief of the district, to set priorities in the policing plan for the area, and to determine budget levels.

Currently, such functions are overseen by a policing authority which consists of some 17 members (nine are appointed from and by the local Council, and eight are independent members recruited by public advertising). The government, however, argues that these arrangements are insufficiently democratic: they cite surveys which show that 96% of voters could not name the chair of their policing authority, still less explain what these bodies do. As part of a supposed move to greater localism (with decisions being made closer to home, and in a more democratic and transparent manner), government argues that the election of a single individual will ensure greater public interest in questions of policing. The argument runs that if people have to elect the commissioner, they will monitor more closely what that person does, and that individual will feel a much greater need to truly represent the “voice of the people” in their negotiations with the police.

The potential advantages of this measure are evident. Local people, galvanised by an electoral process, will hopefully engage more, reflect on who they want to represent their concerns, and what kind of messages need to be conveyed to the police etc. It is hoped that the election of a high profile Commissioner will keep policing in the public spotlight beyond the election campaign, and mobilise a steady level of public interest in policing, not merely when specific “scandals” arise. The police chief will have to engage with, and render account to, one elected commissioner rather than a policing authority which may hold competing political views and represent diverse interests. The Commissioner will be handsomely paid and will normally be expected to treat the function as a full time role, whereas Policing Board members often hold other paid and voluntary functions.

However, the disadvantages are equally evident. To get elected, the commissioner is likely to be a high profile political figure, or local celebrity – their policing expertise may not be apparent, nor indeed the main criterion securing their election. An individual

will find it harder to represent the whole population than a committee drawn from different political parties and constituencies of interest. Nearly 10% of the current membership of police authorities is drawn from minority ethnic communities, and a third of their membership is female; such (already limited) diversity is likely to diminish further in moving from 730+ authority members to 43 commissioners.

More importantly still than “representativeness” is the fear that we are moving to greater politicisation in policing. In contra-distinction to many other parts of the world, elected politicians in England and Wales cannot instruct the police operationally, and democratic accountability is guaranteed by the police accounting to the community in a way that recognises the needs of individuals or groups who are not politically popular/powerful. To cite Sir Robert Peel from 1829, it is the duty of police officers “to seek and preserve public favour, not by pandering to public opinion; but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing”. Critics of the new legislation fear that a popularly elected commissioner may not be bound by similar constraints, and may – whether intentionally or not – politicise policing practice.

The English tradition of policing (one not followed in the policing of its colonies or the constitutional legacy it left behind) sets limits to authoritarianism by assigning different functions to politicians and the police. Creating a democratically-elected commissioner for supervising the work of the professional chief of police risks merging two distinct functions. Arrangements in London at present are similar to what is going to be introduced across the country (an elected official overseeing policing), and this week the Deputy Mayor of London with responsibility for policing was interrogated at the Leveson Inquiry (into the Murdoch media hacking scandal). Kit Malthouse was asked why he had challenged police leaders early on about the resources allocated to the phone hacking investigation (the implication being that he was politically interfering in ongoing police work). His response was one of surprise: surely he had a duty, flowing from a democratic mandate, to question the proper use of police resources? There is an inherent contradiction, but surely it is precisely in such situations (or in times of public disorder, or racial tensions, or allegations of lethal force) that police accountability must be exercised – and seen to be exercised – in a politically non partisan way.

International comparative research on policing carried out as part of a major policing reform programme some years ago in Northern Ireland (both by non-governmental organisations and the Patten Commission) assessed different models of democratic accountability. The comparison led to the conclusion that an efficient, effective, impartial policing service was best secured by a balanced triumvirate of authority: a chief police officer, an elected politician, and a broadly representative civic oversight body. All three elements play distinct but complementary roles in ensuring “policing by consent”. It is of concern to many that the new English model seems to move away from rather than towards this ideal.

## Opinion/Commentaries

### I. Extra-judicial killing: Strong Police Complaints Commission needed

Diya Nag, *Programme Officer, CHRI*

*This article was first published in the Daily Star, Bangladesh, on 22 June 2012 and can be found [here](#)*

Rapid Action Battalion (Rab) is powerful. And, though the saying goes that with great power comes great responsibility, this is not the case with Rab. Officers have been accused of human rights violations and the use of excessive force, and most importantly, for extrajudicial killings. Amnesty International's current annual report reveals that at least 54 people allegedly were killed in 2011 at the hands of Rab officers.

There is a dearth of accountability mechanisms in Bangladesh, and even less so where Rab is concerned. The government seems sluggish at best, if not completely disinterested in bringing any of these officers to book, as indicated by both past and current patterns. For example, the year 2003 saw so much illegality on the part of Rab, but the government's inaction was clear.

Human Rights Watch reports this year state that the home minister refused to even acknowledge the need for accountability. Further, the report states that the Home Ministry even went to the extent of ignoring its own previous findings that Rab was behind at least two cases of extrajudicial killings.

All this points to only one thing: a complete and utter disregard in addressing illegal acts committed by the police and a lack of police accountability. As such, violations of both domestic and international laws continue. And, in the absence of accountability mechanisms, a culture of impunity has developed. What is necessary is some kind of effective oversight of the conduct of Rab officers to ensure that they behave in a lawful manner and are held accountable.

Accountability mechanisms for Bangladesh police are evidently weak. Internal disciplinary mechanisms have long collapsed. Courts have failed to play a proactive role in bringing officers to account. A national human rights commission has been set up recently but it lacks the necessary powers or teeth. External accountability mechanisms solely set up for the police are absent in Bangladesh. Without external oversight, police are essentially left to police themselves. Victims are often reluctant even to report abuse directly to the police for fear of reprisals, or simply because they do not believe a serious investigation will result.

There is a dire need for an independent external civilian oversight body which, along with already existing mechanisms, can create a network of accountability from which law enforcing personnel will find it difficult to escape in the face of misconduct or criminality.

Independent civilian police oversight is essential to build public confidence in the police, as well as ensure improved performance. Policing must be (and appear to be) more

transparent and involve stakeholders other than just the police or the political executive. Officers should perform their responsibilities in an unbiased and impartial manner. These are some of the key indicators of success when it comes to police oversight.

Currently, there is no such oversight body in Bangladesh. However, the Draft Police Ordinance introduced in 2007 had called for such a body, called the Police Complaints Commission (PCC). From a statutory perspective, however, the way this body is set up in the Ordinance portrays the PCC as a rather feeble body with no investigatory powers and many unclear provisions. Even if such a body is set up on the ground level, it is doubtful that it will have any real impact on the police violence that plagues Bangladesh today.

Several provisions of the proposed Ordinance, as found in the chapter on the PCC, point towards inherent weaknesses in the PCC if it were to be created as is. For instance, no specific time frame has been put in place to ensure that the PCC begins functioning straight away. This sends a message that stakeholders are not really serious about reform, and are setting up a mere puppet body giving the appearance of police accountability. Rather, a PCC should be set up urgently.

As per the provision, the PCC's mandate is vague and ambiguous. Though it has been tasked to look into serious police misconduct, a clear definition of what constitutes "serious misconduct" is missing from the Draft Ordinance. This would result in an ineffective commission.

One of the cornerstones of a strong oversight body is independence, both from the police department and the political executive. Here, the PCC is to be composed of five members, including a retired police officer. While many arguments have been put forth on why it is essential to have an ex- member of the department on board, this does not make for a truly independent body, nor does it give the appearance of independence. There is no doubt that retired officers may always be consulted separately when necessary. Ideally, such bodies should be composed entirely of civilian members, selected in an independent manner (such as by submission of applications) and be devoid of any serving or retired officers.

Aside from its members, the PCC must be staffed with independent investigators. As the provisions in the Draft Ordinance read, the PCC is not even set up as an investigative body. This perhaps is its greatest flaw. In terms of its function, monitoring police misconduct is not enough. PCC must investigate police misconduct, look at patterns and trends, and report to a parliamentary body at least on an annual basis. Serious criminality and violence such as custodial deaths must be instantly reported to or looked into by the PCC, followed by a thorough independent investigation. To do so successfully, the PCC must be staffed with independent investigators, preferably with a level of training, skill, and expertise equivalent to that of a senior police investigator.

While the Draft Ordinance suggests a framework for police accountability, and is indeed a welcome step, the way the provisions are drafted does not make it suitable to counter the rampant police misconduct and criminality faced by the people today. Instances of

encounter killings or shootouts continue to occur. The question one must pose is, will a body like the PCC, as formulated in the Draft Police Ordinance, be able to put a stop to this?

## **II. Will aggressive policing win public confidence?**

Navaz Kotwal and Devyani Srivastava, Coordinator and Consultant (South Asia), CHRI

*This article was first published in the Daily Times, Pakistan, on 19 May 2012 and can be found [here](#)*

The crime rate in Punjab province of Pakistan has registered a sharp increase of 10.2 percent in 2011 as compared to 2010. Promising to do something about it, the new Inspector General of Police, Muhammad Habib-ur-Rehman on assuming charge early this year, called upon his officers to adopt 'aggressive' policing rather than routine policing. This, he believes, would help improve the thana (police station) culture, reverse the negative image of the Punjab police and reinvigorate its officers.

The police chief has reportedly come up with a two-pronged strategy for tackling challenges — fighting crime and corruption across the department while simultaneously ensuring justice at the grassroots level. Going by media reports, aggressive policing forms part of the first prong and includes zero tolerance for corruption, a zealous hunt for criminals 'at any cost', and long work hours (he himself puts in 17 hours) in order to remain accessible to people at all times.

The strategy at first sounds impressive. Fighting crime, stopping violence and maintaining order is the foremost duty of the police; an active push by the police chief to improve performance is commendable and indeed the need of the hour. On digging deeper, however, the approach of aggressive policing is worrisome. Solutions to tackling crime are needed but these must be found within the constitutional framework of a society wedded to democracy. Criminals must be caught not hunted — 'caught at any cost' cannot be at the cost of complete disregard for constitutional and statutory frameworks. No action of the police can be outside the boundaries of the law, and if IG Rehman clarified that this was indeed his stand, then the unease triggered by his statement would be mitigated to some extent.

Such an approach is bound to push the police to take the law into their own hands, which is not uncommon in the country. This is evidenced by the numerous cases of extra-legal killings, custodial violence and rape and routine harassment of the citizenry at large. Reports have established well how rampant these are across the country. The latest Human Rights Commission of Pakistan Report 2011 in fact states that a police encounter occurred every 34 hours last year. The report goes on to highlight several other cases of staged encounters and torture in custody, including those where senior officers have been held guilty. Another recent study by several NGOs has reported that 90 percent of detainees in Pakistan are victims of custodial torture.

Several factors are responsible for the recourse to custodial deaths, violence and extrajudicial killings. Important among these is the approach and support of the police

leadership to such measures. The conviction rate of police officers for excesses committed is very low. Internal accountability mechanisms do not inspire much confidence among the public whereas external oversight bodies such as those implemented under the Police Order 2002 remain dysfunctional. Against this, an endorsement of catching criminals at any cost only reinforces the heavy reliance on lethal force and extrajudicial methods.

Moreover, this approach is also at odds with IG Rehman's second prong — 'ensuring justice at the grassroots'. First, it must be noted that it is not the police's duty to provide justice. The foremost role of the police is to prevent, detect and investigate crime and produce the criminals before a court of law. Justice is to be provided by the courts, not by the police.

If, by this statement, the IG meant to convey the desire to make the police more helpful and cooperative at the grassroots, this too is likely to be harmed by aggressive policing. Already, corruption in the force is very high. Early this year, the Supreme Court pulled up the Punjab police for failing to submit challans of all under-investigation cases to the courts and repeatedly extending judicial remand through fake signatures of a magistrate. Already, getting a crime registered is an arduous task in itself. Anyone who has ever tried registering an FIR with the police will bear out the fact that despite desperate efforts by complainants, only a small proportion of crimes ever get registered. In a recent gang rape of a 13-year-old in March 2012 in Rawalpindi, it took a month for the police to finally register the case. An inquiry report submitted by the Special Investigation Team held several officers responsible for first refusing to register the complaint despite medical examination confirming the crime and then tampering with daily diary records to conceal the offence.

Under pressure to show a declining crime rate, aggressive policing is only likely to encourage such malpractices, and further alienate the masses. After all, aggressive but inefficient policing is the only form of policing familiar to citizens. That has not helped in reducing crime. There is deep distrust of, and dissatisfaction with, even the day-to-day performance of the police, let alone their ability to curb serious crime or tackle terrorism.

The truth is that the police need the cooperation of the public to tackle crime. They need to be part of the community rather than apart in order to understand the social tensions, and become aware of crime patterns. Only then will they be able to meet the expectations of people and gain their trust.

Aggressive policing is only a short cut. It will only lead to greater alienation of the public. Policing by coercion has failed to win the confidence of the public or yield results. Maybe, it is time to give policing by consent a chance.

### **III. In anti-Naxal war, beware turning state into a destructive power**

Pupul Dutta Prasad, *Senior Superintendent of Police, National Human Rights Commission, New Delhi, India*



*This article was first published in the Times of India, New Delhi, on 13 May 2012 and can be found [here](#)*

Amid the continuing saga of abduction and killing of state functionaries by Maoists in their so-called war against the Indian state, the country agonises over ways of eliminating the long-festering Naxalite problem. While all effective, legal and legitimate options should be on the table of the policy makers to meet the gravest threat to internal security, an out-and-out bellicose and militaristic response to such crises would be ill-advised.

A seemingly restrained approach to counter-Naxalite operations becomes difficult to articulate in a public discourse smacking of the pervasive 'either-or' fallacy of the George Bush variety: if you are not with us, you are against us. So, point out the risks, ethical, legal and moral issues and strategic considerations which are arrayed against a purely militaristic approach, and be ready to be buttonholed as a closet Naxalite sympathiser. However, it is important to stick one's neck out if fundamental questions about the credibility of our democracy are at stake. An unambiguous understanding needs to be developed that going down the path of a self-destructive war against the Naxalites is simply not an option.

First, the enthusiasm for promoting armed conflict with the Maoists to the status of war seems to stem from the misunderstanding that once it is 'declared' as a war, the state's power to deal with the menace will be unfettered by human rights considerations. It, however, ought to be kept in mind that even in war, international humanitarian law prohibits causing unnecessary suffering to combatants as well as non-combatants, and enjoins the state to safeguard certain fundamental human rights of its enemies. A lawful state response is not constrained by the fact that the armed conflict is not characterised as a war. Neither does it undermine in any sense the gravity of the threat itself.

Second, there are practical and ethical considerations that weigh against any sort of war jingoism. The foremost among them is that a democratic state should do its utmost to avoid being pushed into a situation which makes it prone to commit excesses against its own population. India is not Sri Lanka, nor should we emulate it. Carpet-bombing all the Naxalite bastions would be the most ill-advised thing to consider. To make the case for a military solution is to play right into the hands of the Maoists who have always wanted to prove that India's democracy is a mere pretence. Moreover, the enormous might and full destructive power of the state is, in and of itself, an argument against its use when faced with an unequal challenge emanating from within. The state has responsibilities towards its citizens which the Maoists don't have. It has to worry about both legality and legitimacy of its actions. That is not to say that the state cannot adopt some of the tactics of Naxalites to defeat them. The elite commando force of Andhra Pradesh, the Greyhounds have amply demonstrated the success that lies in doing so.

Third, hailing India's own experience of defeating extremism in Punjab to endorse a no-holds-barred offensive against enemies of the state as the only effective way papers over a few home truths. No doubt, KPS Gill's leadership and determination was an important

factor in ending militancy, but it should not be forgotten that a populace tired of incessant violence had voted with its feet against militants. Had the militants not lost all sympathies of the people, who knows, the situation may have been very different today. Add to this the alleged flagrant violations of human rights on a mass scale during security operations in Punjab, and it becomes obvious that a brutal approach to the Naxalite problem can easily prove to be its own undoing.

So, should the state wait for the time when the influence which the Maoists may be conceded to have over the people in the hinterlands withers away? Of course not. A prudent, holistic approach bereft of chauvinism of any kind has to be followed to deal with the problem. The peculiar socio-economic, administrative and governance context exploited by Naxalites to entrench themselves has to be assiduously improved-if that entails deference to imperatives of security in the short run, then so be it. Offensives against brutal Naxalites must be launched to bring them to justice, but within the four corners of law and respect for human rights. Reckless and indiscriminate violence by the state to root out Naxalism would be a recipe for state terror. Even if moral, legal and ethical considerations were to be brushed aside as irrelevant where innocent lives are being lost, there are compelling pragmatic and strategic reasons for the state not to convert the confrontation into a full-scale war. The remedy after all should not be worse than the disease.

*\*The views expressed in the article are personal.*

## **Recent publications**

### *Implementation of the Maldives Police Service Strategic Plan 2007-2011*

CHRI is pleased to announce its latest report on police reforms and first Maldives-specific report titled Implementation of the Maldives Police Service Strategic Plan 2007-2011: An Analysis. The report is a culmination of research undertaken by CHRI together with the Maldivian Democracy Network and supported by the Friedrich Naumann Stiftung. Information has been gathered through a series of survey conducted across ten (of 21) atolls and meetings held in the capital city of Male'.

Since its establishment as a civilian institution in 2004, the Maldives Police Service has committed itself to a new vision of policing characterised by community service, rule of law and accountability. As such was elaborately laid out in its first Strategic Plan 2007-2011 (hereafter the Plan) which sought to define the vision and strategies for the police to emerge as a citizen-friendly and a professional police service, one in sync with democratic norms and international standards.

Strategic planning has emerged as an important component of organizational and policy reform across the police services of several countries. It was encouraging to note that the small island country adopted the practice of strategic planning in order to guide its transition from a paramilitary unit into a civilian institution. During the duration of the Plan, Maldives itself underwent historical transition with the first democratic presidential elections and framing of the new constitution in 2008. This further strengthened the hope for democratic policing.

Unfortunately, the implementation of the Plan has been very disappointing. The report highlights various gaps in both the process of planning as well as in implementation across the country. To begin with, out of the 54 listed projects, only 12 were really implemented of which the most notable ones include forensics, investigation enhancement and crime management. Most initiatives remained capital centric with little focus on the far flung islands. Additionally, the process of planning itself remained closed with very little consultation with civil society and public at large. Little emphasis was laid on evaluation of the Plan which the police itself was in charge of.

Consequently, the report concludes that although there have been significant improvement in the perception of the police vis-a-vis its image under Gayoom's regime (1978-2008), systemic reforms remain far less satisfactory. There remains disconnect between community expectations and police priorities; and there remains a tendency within the officials to act as a 'force' imposed on the people. The Plan itself was very weak on matters related to strengthening democratic oversight, and very ambitious on issues such as crime management.

In order to develop into a modern, citizen-friendly and professional police service, the Maldives police will have to significantly improve its strategic planning process, a process that has come to be accepted universally as essential for strengthening democratic oversight and police accountability.

The report can be downloaded [here](#).

#### *Series of publications on Women and Policing, Pakistan*

Police in general and women police in particular have so far remained a neglected subject in Pakistan. With less than 1% representation of women in police, the situation is evident. "Women Police as Change Agents and Gender Based Police Reforms" is not just an initiative but a systematic effort by Individualland Pakistan (IL-Pakistan) at a nationwide scale, towards showcasing and recognizing the work of women police personnel as well as highlighting the issues and challenges they are confronted with. Creating conducive environment for women police within the society, while advocating for gender based police reforms are the ultimate objectives. IL-Pakistan initially approached the subject as a research, where it highlighted the public perception, perception of male colleagues and the overall prevalent condition of women police. This information was acquired through countrywide surveys, field visits to women police stations, information requests to government departments and interviews with senior police officials, civil society and women police personnel. The effort has been presented into three groundbreaking publications "Public Perception of Women Police in Pakistan", "Male Police Perception of Women Police in Pakistan" and "Women Police in Pakistan" all available on our website [www.individualland.com](http://www.individualland.com)

The challenge has not stopped here; rather the organization has developed a visual documentary, posters and print media advertisement campaign for public consumption, aiming towards presenting the success stories and creating demand for gender based reforms. The organization further plans to engage government functionaries, policy

circles, and police department itself to implement reforms, while promoting the participation of women in the police service.