

NEPAL STEPSTONES PROJECTS

Policing  
in Federal  
States

Philipp Fluri and Marlene Urscheler (Eds.)

# **Policing in Federal States**

Edited by  
Philipp Fluri and Marlene Urscheler

Geneva Centre for the Democratic Control  
of Armed Forces  
(DCAF)  
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# PREFACE

In this book we will be looking at specimens of federative police organisations. As can be expected, the federative organisation of such states as Germany, Switzerland, the USA, India and Russia will be reflected in their police organisation, though the extremely decentralised approach of Switzerland with hardly any central management structures can hardly serve as a paradigm of 'the' federal police organisation. We have enclosed a description of the Spanish police as an example of a 'federal police system in the making,' as we thought readers from prospective federal states might find it interesting to look into the management of change from a centralised unitary system to a more decentralised one.

The editors of the book find it appropriate to add at this point a word of caution. The political and security arrangements of most federal states are an expression of, and reflection on, their history of state- and nation-building. They were not first centralised states (or if, only briefly so) whose governments then decided to 'federalise' in the hope of solving pressing social, ethnic, caste, etc. problems, but rather: they were confederate conglomerates of quasi-independent subjects which historically grew together but wished to maintain much of their previous sovereignty. And equality before the law for each and every citizen was an important building element in this process.

The editors hope that these handy studies will help readers to understand how and why federal police organisations came into being, and function according to decentralised legislative and decision-making frameworks. The articles also seek to highlight the increased demand for coordination and harmonisation of the policing approaches in federal states.

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Geneva, February 2011



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# The Federal Police System in India

G.P. Joshi

## Introduction

### Political Profile

India, with an area of 3,287,782 km<sup>2</sup> and a population of about 1.15 billion, is a sovereign, secular, democratic republic, following a parliamentary system of governance.

The Indian parliament is a bicameral legislature consisting of a lower house (the Lok Sabha or House of the People) and an upper house (the Rajya Sabha or Council of States). State legislatures are mostly unicameral with a legislative assembly (Vidhan Sabha) composed of members elected for five-year terms.

The state has a federal structure. India is a union of 28 states and seven union territories,<sup>1</sup> including the National Capital Territory of Delhi.

The government at the centre is composed of a council of ministers headed by the Prime Minister. Collectively, they are responsible to the Lok Sabha (House of the People in the Parliament). In states, the council of ministers headed by the Chief Minister is responsible to the Vidhan Sabha of the state.

Direct elections are held on the basis of adult franchise to elect members both to the Lok Sabha as well as Vidhan Sabhas. The political party winning the majority of seats forms the government.

### Legislatures

Powers, functions and responsibilities of the union and states are defined in the Constitution of India. The Constitution distributes the legislative powers between the Parliament and the State Legislatures.<sup>2</sup> It prescribes three lists of subjects, which are spelt out in the Seventh Schedule of the Constitution.

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<sup>1</sup> Union territories are areas that do not form part of states' jurisdiction and are governed by the central government.

<sup>2</sup> *The Constitution of India* (1949), Article 246.

List I is the *Union List* that contains the subjects over which the Parliament has the sole power to make laws. List II is the *State List* that specifies the items over which the state legislature has the exclusive power to make laws. Finally, List III is the *Concurrent List* that documents subjects on which both the Parliament and the State Legislatures have concurrent powers to make laws.

The Parliament has the power to make laws for the whole or any part of the country, while the State legislature can make laws for the whole or any part of the state only.<sup>3</sup>

The Parliament is also empowered to make any law with respect to any subject not enumerated in the State or Concurrent List.<sup>4</sup>

If any provision of a law passed by the State legislature is incompatible with any provision of a law made by the Parliament, the latter prevails.<sup>5</sup>

The parliament has the power to legislate in respect of any matter in the State List if there is a Proclamation of Emergency.<sup>6</sup>

Even when the Proclamation of Emergency is not in operation, the Parliament can legislate with respect to a matter in the State List provided the Upper House of the Parliament has passed a resolution supported by two thirds of the members present and voting that it is in the national interest to do so.<sup>7</sup>

## Courts

The Supreme Court is at the apex of the judicial system. It has a threefold jurisdiction – original,<sup>8</sup> appellate<sup>9</sup> and advisory.<sup>10</sup> Any law declared by the Supreme Court is binding on all courts within the country.<sup>11</sup>

Below the apex court are the High Courts at the state level, followed by subordinate courts in the districts. High Courts exercise superintendence over all courts and tribunals in their jurisdiction.<sup>12</sup> The Constitution empowers the High Courts to issue directions, orders or writs for the enforcement of fundamental rights of citizens or for any other purpose.<sup>13</sup>

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<sup>3</sup> Ibid., Article 245.

<sup>4</sup> Ibid., Article 248 (1).

<sup>5</sup> Ibid., Article 251.

<sup>6</sup> Ibid., Article 249.

<sup>7</sup> Ibid., Article 250.

<sup>8</sup> Ibid., Article 131.

<sup>9</sup> Ibid., Articles 132-134.

<sup>10</sup> Ibid., Article 143.

<sup>11</sup> Ibid., Article 141.

<sup>12</sup> Ibid., Article 227.

<sup>13</sup> Ibid., Article 226.

The Criminal Procedure Code of 1973 establishes the following four classes of criminal courts:<sup>14</sup>

1. Courts of Session
2. Judicial Magistrates of the First Class and, in any metropolitan area,<sup>15</sup> Metropolitan Magistrates
3. Judicial Magistrates of the Second Class, and
4. Executive Magistrates.

The courts of session exercise both original and appellate jurisdiction. Major offences like murder, dacoity, rape, robbery, etc., cannot be tried in a court below the sessions.

One of the Directive Principles of State Policy laid down in the Constitution required the State to take steps to separate the judiciary from the executive.<sup>16</sup> This was done by revising the Criminal Procedure Code in 1973.

## **Criminal Law**

Criminal law and Procedure are subjects in the Concurrent list. There are three major central criminal laws of relevance and importance to the state police forces in their day to day work. One is the Indian Penal Code (1860), which describes different types of crimes and prescribes punishment for them. It has 511 Sections of which 330 prescribe punishments. In addition, the police enforce numerous special and local laws enacted from time to time by the central as well as state governments to deal with emerging socio-economic crimes and to protect the weaker sections of society.

The other two main laws are the Code of Criminal Procedure (1973) and the Indian Evidence Act (1872). The Criminal Procedure Code prescribes the procedure to be followed in a criminal case right from the registration of complaint up to the investigation and final trial. The state police forces derive their powers of policing mainly from this law. It also prescribes the boundaries within which the police have to operate while exercising their powers of arrest, search, seizure, examination of witnesses, etc.

The Indian Evidence Act prescribes principles and procedures for tendering evidence in courts of law, spelling out rules governing the admissibility of evidence in judicial proceedings.

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<sup>14</sup> *The Code of Criminal Procedure* (1973), Section 6.

<sup>15</sup> A metropolitan area is an area comprising a city or a town with a population exceeding one million, which has been declared as a metropolitan area by the state government.

<sup>16</sup> *The Constitution of India* (1949), Article 50.

The police are not required to take cognizance of all penal offences. Criminal law makes a distinction between two categories of offences – cognisable and non-cognisable.<sup>17</sup> The police cannot investigate a non-cognisable offence without the permission of the magistrate or arrest anyone in such an offence without warrant.

## The Police System

### Constitutional Provisions

'Police' and 'Public Order' are in the State list of the Seventh Schedule. However, there are certain provisions in the Constitution that empower the central government to establish police organisations and to intervene in certain situations having a bearing on the maintenance of public order in states.

The Union List authorises the Parliament to make laws, *inter alia*, regarding the following subjects:

- "Deployment of any armed force<sup>18</sup> of the union... in any state in aid of the civil power..." and "powers, jurisdiction, privileges and liabilities of members of such forces while on such deployment"<sup>19</sup>
- "Central Bureau of Intelligence and Investigation"<sup>20</sup>
- Union agencies and institutions for (a) professional training, including the training of police officers; or (b) promotion of research; or (c) scientific or technical assistance in the investigation or detection of crime<sup>21</sup>
- All India Services.<sup>22</sup>

Furthermore, there are some provisions in the Constitution regarding the administrative relations between the Union and the States. The Constitution makes it mandatory for every state to exercise its executive authority so as to ensure compliance with laws made by the Parliament, and for this purpose the central government has the authority to issue directions to the states it considers necessary.<sup>23</sup> It is also the responsibility of every state to exercise its executive power so as "not to impede or preju-

<sup>17</sup> The First Schedule of the Criminal Procedure Code lists all offences in the IPC and mentions whether they are cognisable or non-cognisable.

<sup>18</sup> Includes the central paramilitary forces under the administrative control of the Ministry of Home Affairs, Government of India.

<sup>19</sup> *The Constitution of India* (1949), Union List, Entry 2 (A).

<sup>20</sup> *Ibid.*, Entry 8.

<sup>21</sup> *Ibid.*, Entry 65.

<sup>22</sup> *Ibid.*, Entry 70. The Indian Police Service is one of the three all India Services set up by the central government.

<sup>23</sup> *Ibid.*, Article 256.

dice the exercise of the executive power of the Union” and for this purpose the central government is empowered to issue necessary directions to the state.<sup>24</sup>

There are certain “Emergency Provisions” in the Constitution. According to one of these, it is the “duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.”<sup>25</sup> If there is a breakdown of the constitutional machinery in any state, the central government can take over all functions of the state government.<sup>26</sup>

### Unity in Diversity

It is against this backdrop of constitutional provisions regarding centre-state relations that the structure of the federal police system and its functioning need to be examined.

Each of the 28 states and 7 union territories has its own police force. Each state legislature has exclusive power to make laws relating to the police force and its functioning. Since the executive power of the state extends to subjects in the State List,<sup>27</sup> it is the responsibility of the state governments to establish and maintain police forces and exercise superintendence over them. Rules and regulations governing the state police forces are framed by the state governments and contained in their police manuals.

Despite the existence of numerous state police forces and their manuals, there is considerable uniformity in their structure and functioning. This element of unity is brought about by many factors.<sup>28</sup> Firstly, the structure and working of the State Police Forces are governed by the Police Act of 1861 which is applicable to most parts of the country or by the State Police Acts modeled mostly on the 1861 legislation. Secondly, major criminal laws, like the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act are uniformly applicable to almost all parts of the country. Thirdly, there exists an All India Service i.e. the Indian Police Service, which is recruited, trained and managed by the Central Government and which provides the bulk of senior officers to the State Police Forces. Lastly, but not the least important, is the quasi federal character of the Indian polity, with specific provisions in the Constitution, implying a

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<sup>24</sup> Ibid., Article 257.

<sup>25</sup> Ibid., Article 355.

<sup>26</sup> Ibid., Article 356.

<sup>27</sup> Ibid., Article 165.

<sup>28</sup> Commonwealth Human Rights Initiative, *Police Organisation in India* (2002).

coordinating and counseling role for the Centre in police matters and even authorising it to set up certain central police organisations.

## **State Police Forces**

### *Organisational Structure*

Superintendence over the police force is exercised by the state government.<sup>29</sup> The word “Superintendence” has not been defined in the Police Act or in any other law. This results in giving unlimited discretionary powers to those who exercise superintendence. There is considerable evidence to show that superintending powers are not always exercised in a judicious way by the state governments.

The head of the state police force is an officer of the rank of Director General of Police, who is responsible to the state government for the administration of the force and for advising the government on police and public order matters. He is assisted by senior officers in charge of different departments, like Police Training, Crime Investigation Department, Police Telecommunications, Human Resources, Human Rights, Armed Police, Vigilance & Anti-corruption, Intelligence/ Security, Railway Police, Civil Defence/ Home Guards, Traffic Police, Police Housing, etc. There may be minor variations in the headquarters establishment of different state police forces, but generally each of the departments is headed by an officer of the rank of Additional Director General or Inspector General of Police and in some cases even by a Director General of Police.

For administrative purposes, states are divided into districts. There are presently about 672 police districts in the country.<sup>30</sup> The police force in the district is headed by an officer of the rank of Superintendent of Police, subject to the “general control and direction” of the District Magistrate.<sup>31</sup> The phrase “general control and direction” has not been defined in any law either.

A few districts form a police range, which is headed by an officer of the rank of Deputy Inspector General of Police. Two or three police ranges generally form a zone, which is under the charge of an officer of the rank of Inspector General of Police.

A district is divided into sub-divisions. The sub-division is under the charge of an officer of the rank of Assistant or Deputy Superintendent of Police. The sub-division, depending on its area, population and volume of crime, has a number of police stations in its jurisdiction.

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<sup>29</sup> *The Police Act* (1861), Section 3.

<sup>30</sup> Bureau of Police Research & Development, *Data on Police Organisation in India* (2008), p. 2.

<sup>31</sup> *The Police Act*, Section 4.

The police station is generally in charge of an officer of the rank of Inspector of Police. The police station is the basic unit of police administration in a district. Under the Criminal Procedure Code, all crime has to be recorded at the police station and all preventive, investigative and law and order work is done from there.

The number of police stations in the country on January 1<sup>st</sup>, 2008 was 13,057, of which 8,290 were rural, 4,328 urban and 439 Railway Police Stations.<sup>32</sup>

The rank structure of the state police force is as follows:

- Director General of Police (DGP).
- Additional Director General of Police (Addl. DGP)
- Inspector General of Police (IGP)
- Deputy Inspector General of Police (Dy.IGP)
- Senior Superintendent of Police (SSP)
- Superintendent of Police (SP)
- Additional Superintendent of Police (Addl.SP)
- Assistant/ Deputy Superintendent of Police (ASP/ Dy. SP)
- Inspector of Police
- Sub-Inspector of Police (SI)
- Assistant Sub-Inspector of Police (ASI)
- Head Constable of Police (HC)
- Constable of Police.

Every state police force has two major components – the civil and armed police. The armed police are used as a striking reserve to deal with emergent law and order situations. The remaining part of the state police force is the civil police, which include district police forces, supervisory structures at the range, zone and state police headquarters and specialized branches to deal with crime, intelligence, training, vigilance, etc. The district police force also includes armed reserves, used mainly to meet the district police requirements of armed guards and escorts. They are a part of the district police strength and not of the state armed police.

The state armed police are formed by battalions and their rank structure is different from that of the civil police. On January 1<sup>st</sup>, 2008, there were 377 battalions<sup>33</sup> in states and union territories.

### *Police Strength*

The total sanctioned strength of the police forces in states and union ter-

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<sup>32</sup> Bureau of Police Research & Development, *Data on Police Organisation in India*, p. 18.

<sup>33</sup> *Ibid.*, p. 24.



ritories on January 1<sup>st</sup>, 2008 was 17.46 lakhs,<sup>34</sup> of which the civil police accounted for 13.34 lakhs and the armed police for 4.12 lakhs.<sup>35</sup> The actual strength was much less, as there were as many as 2.67 lakh vacancies in the police forces on that date.

On the basis of total actual strength of police forces in states/union territories, the police-population ratio (number of police personnel available per one hundred thousand of population) worked out to 129.65 and police area ratio (number of police personnel available per 100 km<sup>2</sup>) to 46.71 on January 1<sup>st</sup>, 2008.<sup>36</sup> The police population and police area ratios were much less if calculated on the basis of actual strength of civil police.<sup>37</sup> The civil police population and area ratios were only 100.49 and 36.20 respectively.

The police is a hierarchical organization. The constabulary (Constables & Head Constables) accounts for about 86.39% of the total police strength. Inspectors, Sub-Inspectors and Assistant Sub-Inspectors constitute about 12.69% and the officers, i.e. Deputy Superintendents/ Assistant Superintendents of Police to Directors General of Police, account for 0.92% of the police strength.<sup>38</sup> It is thus a very small group of officers, who decide the policies of the organisation, issue instructions to be followed by the rest of the force and supervise the work of the subordinates. This has implications for the working of the federal system as this less than 1% strength consists mostly of officers belonging to the Indian Police Service, which is an All India Service.

## Central Police Organisations

Just as the state police forces have two main components – the civil and the armed police, the central police organizations (CPOs) can also be divided into two parts. One category consists of paramilitary and the other of non-paramilitary or civil police organizations.

### *Central Paramilitary Forces (CPMFs)*

Numerous paramilitary organizations were established by the central government in order to deal with occasional emergencies. The first post-independence specialized paramilitary force was the Indo Tibetan Border Police (ITBP), created in the wake of Chinese aggression in 1962. Its main

<sup>34</sup> A lakh is equivalent to one hundred thousand.

<sup>35</sup> Bureau of Police Research & Development, *Data on Police Organisation in India*, p. 39.

<sup>36</sup> *Ibid.*, p. 40.

<sup>37</sup> These ratios are more meaningful as it is the civil police personnel who come in contact with the public on a day to day basis.

<sup>38</sup> Bureau of Police Research & Development, *Data on Police Organisation in India*, p. 54.

role was to provide protection to Intelligence Bureau's posts, secure the Indo-Tibetan border and check border crimes. The Chinese aggression led to the creation of another force in 1963, the Special Service Bureau (SSB), which is now known as Seema Shastra Bal. Its present role is to ensure the security of the country's borders and promote a sense of safety among the people living in the border areas by preventing trans-border crimes.

In 1965, following the Indo-Pakistan war, the BSF was established. It had more or less a similar role as that of the ITBP, but as its name suggests, it was confined to the border with Pakistan. The role of the BSF included the prevention of border crimes, such as unauthorized infiltration across the international border and generally promoting a sense of security among border crimes.

With the growth of public sector undertakings in the country, the government set up a Central Industrial Security Force in 1969 mainly aimed at looking after the security of industrial projects in the public sector.

Another federal contingency force called the National Security Guard was set up in 1984 to handle anti-hijack and rescue operations and to support other organisations in dealing with anti-terrorist activities. It was this force which was deployed to deal with terrorists during the Mumbai attack. Having learned the lessons from the Mumbai experience, the central government set up four new NSG hubs in different parts of the country so that they could be deployed in emergencies without wasting any time.

Prior to Independence, only two central paramilitary forces existed – the Assam Rifles (AR) and the Crown Reserve Police Force (CRPF). The Assam Rifles was raised by the British in 1835 to guard British settlements and tea estates in the North East. Today, this Force is used mainly in order to deal with law & order disturbances in the north-eastern region of the country.

The other pre-Independence force raised in 1939 was brought under a new central Act in 1949 and renamed as Central Reserve Police Force. This is the largest and one of the most prominent central paramilitary forces, whose main role is to help the states/union territories to maintain law and order.

All these central paramilitary forces have seen huge and rapid expansion during the last few decades. The total combined strength of central paramilitary forces had reached a staggeringly large figure of 820,902 on January 1<sup>st</sup>, 2008.<sup>39</sup> They thus constituted slightly less than 50% of the total strength of the state police forces, which were 17.46 lakhs strong at the beginning of the year 2008. If the strength of the armed component of the state police forces, which was 4.12 lakhs on January 1<sup>st</sup>, 2008, is

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<sup>39</sup> *Ibid.*, p. 76.

added to the strength of the central paramilitary forces, the total combined strength of the armed police in the country was more than 1.2 million in January 2008.

This huge expansion, which is still continuing, has been necessitated by an increasing deployment of central paramilitary forces on law and order duties. The Central Government has been playing a wide and active role in maintaining law and order in different parts of the country, something that was not initially envisaged by the Constitution of India for them, except in emergencies. Law enforcement is a civil function and it is the responsibility of the state governments to discharge this function effectively through their own police forces.

Unfortunately, most state governments have failed to do so. They have neglected the development of their police forces and have instead preferred to depend heavily on the central paramilitary assistance to meet urgent and emergent law and order needs. This heavy dependence on the central assistance has been the result, while at the same time one of the causes of comparatively poor development of some state police forces. The state governments requisition the central assistance on the ground that their own police forces lack adequate strength, arms, equipment and training to deal with difficult situations effectively. The availability of the central assistance in turn stops them from proceeding with the modernization of their police forces. Consequently, many state police forces are still in bad shape because there is no political will to make them professionally efficient.

#### *Other Central Police Organisations*

The centre has established many non-paramilitary organizations too. These are the Central Bureau of Investigation (CBI), Intelligence Bureau (IB), Bureau of Police Research & Development (BPR&D), National Crime Records Bureau (NCRB), National Institute of Crime & Forensic Science (NICFS), Directorate of Coordination of Police Wireless (DCP W) and National Police Academy (NPA).

The CBI is the leading investigating agency at the disposal of the central government. The IB, as the name implies, is an intelligence organization. Its main task is to collect and disseminate intelligence about subversive and other activities of people and organisations that threaten the internal security of the country and its institutions. The BP R&D was set up in 1970 to undertake a systematic study of police problems and to promote rapid application of science and technology to police work. The NCRB is responsible mainly for collecting, storing, analysing and disseminating information on crime and criminals and to develop computer-based systems for police organisations. The NICFS is meant mainly to do research and training work in the field of criminology and forensic science.

The DCPW is responsible for the coordination and development of police telecommunication systems throughout country. The NPA is the main central police training institution in the country. It trains officers of the Indian Police Service.

### **Expenditure on Police**

A fairly important sum of money is being spent on the Police every year. The state governments spent Rs 26,269.09 crores<sup>40</sup> on their police forces in 2007-08, while the central government spent Rs 12817.06 crores<sup>41</sup> on its paramilitary organisations. Thus even if the central expenditure on its other police organisations like IB, CBI, BPR&D, NCRB, NICFS and DCPW is not taken into account, the total expenditure on the Police in the country was amounted to over Rs 39,806.15 crores in 2007-08 – not a small sum by any means.

The central government's expenditure on its paramilitary forces has been increasing by leaps and bounds. From Rs 6,077.33 crores in 2000-01, it had gone up to Rs 18,027.26 crores in 2008-09.<sup>42</sup>

## **Federal Policing – Some Important Issues and Schemes**

### **The Central Bureau of Investigation**

There are two important central police organizations, which are primordial in any discussion on centre-state relations in policing in this country. One of them is the CBI, which has been in existence in its present form since 1963, and the other is the National Investigating Agency established in 2008 in the aftermath of the terrorist incidents that occurred in Mumbai in November 2008.

The CBI owes its origin to an organisation called the Special Police Establishment set up by the British Government in 1941 to deal with corruption involving war time purchases and supplies. In 1946, they enacted the Delhi Special Police Establishment Act to give the organisation a statutory cover. This organisation provided the basis for the CBI. It was established on April 1<sup>st</sup>, 1963, mainly as an anti-corruption agency, but its role over a period of time has extended beyond its original charter to include investigation of major crimes entrusted to it.

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<sup>40</sup> Bureau of Police Research & Development, *Data on Police Organisation in India* (2009), p. 87. A crore is equivalent to ten millions.

<sup>41</sup> Ministry of Home Affairs, Government of India, *Annual Report 2009-2010*, p. 100.

<sup>42</sup> *Ibid.*

Though the CBI is more than 47 years old now, no law has been enacted to govern its functioning so far. It is still being governed by an outdated Act of the Second World War period – the Delhi Police Establishment Act of 1946, some provisions of which were amended by the Central Vigilance Commission Act, 2003. The Act vests the superintendence of the organisation in respect of its work relating to investigation of cases under the Prevention of Corruption Act, 1988 in the Central Vigilance Commission. The superintendence of the organisation in all other matters vests in the Central Government.<sup>43</sup>

The Act also makes it clear that the organisation cannot “exercise powers and jurisdiction in any area in a state ... without the consent of the Government of that State.”<sup>44</sup> The CBI thus does not have any original jurisdiction to do crime investigation work in a state. If the state government does not invite the CBI, the only way it can do work there, is when the Supreme or some High Court asks it to do so. The apex court in a recent judgment ruled that the constitutional courts in the country (i.e. the Supreme Court and High Courts) have the power to order a CBI probe without State’s consent into crimes committed within the state’s territory. These courts get this power by virtue of their obligation and duty under the Constitution to protect citizens’ fundamental rights. According to the judgment, “ordering a CBI probe without the State’s consent will neither impinge on the federal structure nor violate the doctrine of separation of power and shall be valid in law.”<sup>45</sup>

The CBI as the leading investigating agency in the country is very often in the news, sometimes for the right, sometimes for the wrong reasons. Over a period of time, being a specialised agency doing only crime investigation work, unlike state police forces which are required to perform multifarious tasks, it has acquired skills in investigating major crimes. Another reason for CBI’s prominence in the field of crime investigation is that despite the Police being a state subject, the public do not have faith in their own local police forces, particularly when it comes to inquiring into cases involving rich and influential people. There is invariably a demand for such cases to be handed over to the CBI.

However, the unpleasant part of CBI’s performance emerges when it has to deal with crimes committed by ruling party politicians or those who are close to them. There have been many cases where the CBI has shown either reluctance to take up cases against ruling party politicians, or when forced to do so, adopted slow tactics. In what is popularly known

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<sup>43</sup> *The Delhi Special Police Establishment Act* (1946), Section 3(1) & (2).

<sup>44</sup> *Ibid.*, Section 6.

<sup>45</sup> J. Venketeshan, “High Courts can order CBI probe without State’s nod,” *The Hindu*, 17 February 2010 (Chennai), p. 1.

as the Havala case,<sup>46</sup> the Supreme Court pulled up the CBI for showing “inertia” to investigate offences involving such persons. The political parties in opposition at the centre and in states have often made allegations that the CBI is used by the party in power to harass and intimidate political opponents and to favour those who are the ruling party members or supporters. There is evidence to support such allegations. The CBI’s misfortune is that it is a police organisation. Like all police forces in the country, it has been open to undesirable illegitimate influences from its political masters at the centre.

### **National Investigating Agency (NIA)**

The need for a central police agency to investigate certain types of crimes committed in states has often been debated. This need has been intensified in recent times due to the increase in terrorist violence across country. After the 26/11 terror attack on Mumbai, amongst the many steps taken by the Government of India to upgrade the security system, the most important was the establishment of a National Investigation Agency in 2008.

The idea of setting up such an agency was not new. Back in 2001, the then ruling government at the centre had prepared a proposal to establish a Central Law Enforcement Agency to investigate certain crimes having interstate or international ramifications, like terrorist incidents, arms and drug trafficking, hijacking, money laundering, counterfeiting of currency, espionage and crimes targeting national infrastructure. The proposal fell through because some of the state chief ministers were not willing to accept it. They felt it was an unwarranted and avoidable intrusion into their jurisdiction.

The Mumbai incidents led to the revival of the demand to treat certain types of crime as a national problem and controlling them as a federal responsibility. The rationale for the demand is convincing. Criminals nowadays often cross interstate as well as international boundaries, using highly sophisticated methods, equipment and tactics to commit such crimes. The state police forces’ capability to prevent, investigate and deal with such crimes or to apprehend such criminals is limited by their reach, training and resources. The record of the state police forces in dealing with even ordinary crimes and law and order disturbances has been ordinary, if not poor. They cannot be expected to either prevent major incidents of terrorist crimes or investigate them successfully. Terror requires fighting on many fronts and a well-established national agency can coordinate the preventive and investigative efforts with other departments

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<sup>46</sup> *Writ Petition (Criminal)*, Nos. 340-343 of 1993.

much more speedily and efficiently than the state police forces can do on their own.

There was considerable public debate about the Parliament's competence to enact the National Investigating Agency Act in 2008. Many arguments were given to support the competency. According to one view, offences aimed at destabilising the country cannot be construed as falling within "Public Order." Terrorist activities blur the line of distinction between external aggression and internal disturbance. Measures taken to curb such activities are covered in terms of Entry 1 of the Union List of the Seventh Schedule of the Constitution, which is about the "Defence of India." The other contention was that residuary powers conferred by Article 248 read with Entry 97<sup>47</sup> of the Union List of the Constitution authorise the Parliament to legislate on the subject. In addition, Entry 8 of the Union List covers the "Central Bureau of Intelligence and Investigation."

The charter of the NIA is narrow and limited. It has been established only to investigate and prosecute the scheduled offences.<sup>48</sup> The Commission on Centre State Relations has recommended the enlargement of its charter to include "all crimes related to terrorism, such as terrorism, production and distribution of Fake Currency Notes (FCNs), espionage, smuggling of arms and ammunition, money laundering, drug trafficking, organized crime, hijacking and assassination/assassination attempts on the life of iconic figures/ political leadership, cyber crimes, crime related to acquisition of radio-active and poisonous substances, bio-terrorism, Narco-terrorism, i.e. drug trafficking money used for organizing terrorist operations, etc."<sup>49</sup>

The Act vests the superintendence of the Agency in the central government.<sup>50</sup> The word 'Superintendence' has not been defined. There is no provision in the legislation to ensure the Agency will be autonomous in its functioning and not be misused. The record of the other central agency—the CBI—does not inspire confidence.

The Act requires the state government to inform the central government about the commission of a scheduled offence.<sup>51</sup> It is for the central

<sup>47</sup> Article 97 incorporates the residuary powers of legislation that the Constitution gives to the Parliament by saying: "Any other matter not enumerated in List II or III including any tax not mentioned in either of those Lists."

<sup>48</sup> *The National Investigating Act* (2008), Preamble & Section 3 (1).

<sup>49</sup> Commission on Centre State Relations, *Internal Security, Criminal Justice and Centre-State Co-operation*, Report, Volume V, Para 3.6.04(i) (March 2010).

<sup>50</sup> *The National Investigating Act*, Section 4 (1).

<sup>51</sup> The list of offences given in the Schedule to the Act includes offences under The Atomic Energy Act of 1962; The Unlawful Activities Prevention Act of 1967; The Anti-Hijacking Act of 1982; The Suppression of Unlawful Acts Against Safety of Civil Aviation Act of 1986; The SAARC Convention on Suppression of

government to decide, firstly, whether it is a scheduled offence and, secondly, whether it is an appropriate case to be taken up for investigation by the Agency.<sup>52</sup> The Act forbids the state government to proceed with the investigation once the Agency has been asked to do so.<sup>53</sup> Since the Centre has been given the overriding discretion to pick and chose what cases to investigate and prosecute, it creates an objectionable concentration of power at the central level.

As per the Statement of Objects and Reasons of the Act, the National Investigating Agency is being established in a “concurrent jurisdiction framework.” However, investigation, as defined in Section 2 (h) of the Criminal Procedure Code, is mainly police work and ‘Police’ is an item confined to the State List in the Constitution. That is why Section 6 of the Delhi Special Police Act that governs the functioning of the CBI prohibits its jurisdiction in a state without the consent of that government.

An Agency of this type cannot function effectively without full support and cooperation of the state governments. Whether this Agency will get cooperation from the states ruled by opposition parties is yet to be settled.

### **Power to Declare an Area as Disturbed**

Any discussion on the federal system in policing in this country would remain incomplete without reference to a somewhat unpopular law called the Armed Forces Special Powers Act, 1958 (AFSPA). This law authorises the Governor of a State or the Central Government to declare the whole or any part of the state to be a disturbed area if in either’s opinion it is in such a disturbed or dangerous condition as to make it necessary to use the armed forces in aid of civil power.<sup>54</sup> This law gives special powers to the commissioned as well as non commissioned officers of the armed forces to deal with the disturbed situation, like using force even to cause death; arresting people without warrant; destroying shelters, camps, structures, arms dumps, etc., and entering and searching premises without warrant.<sup>55</sup> The Act provides protection to armed forces’ personnel working under the Act, as no prosecution can be launched against them without sanction from the central government. However, the state police

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Terrorism Act of 1993; The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act of 2002; The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act of 2005; and offences under Sections 121 to 130 of Chapter VI and under sections 489-A to 489-E of the Indian Penal Code.

<sup>52</sup> *The National Investigating Act*, Section 6 (1) to (3).

<sup>53</sup> *Ibid.*, Section 6 (6).

<sup>54</sup> *The Armed Forces Special Powers Act* (1958), Section 3.

<sup>55</sup> *Ibid.*, Section 4.



force working in the same area as the armed forces of the Union do not get the powers and protection that AFSPA provides to the central forces.

Neither this nor any other law defines what constitutes 'disturbed or dangerous condition.' It is thus left to the discretion of the central authorities to decide that the law and order situation in an area in a state has become disturbed or dangerous enough to call for the deployment of the army. The Act was originally intended to be a short-term measure, but it has remained in force for decades in some north eastern states, like Manipur. Despite massive public agitation in that state against this law, the central government has declined to repeal it, even though there is considerable evidence that it has led to gross violations of human rights. Unfortunately, the Supreme Court in a much maligned judgment<sup>56</sup> upheld the constitutional validity of this law. The Union Government has justified the promulgation and continuation of this law in terms of its responsibility to protect a state against internal disturbance.

### Deployment of CPMFs

From the federal policing point of view, the main issue that has often been discussed in this country is whether the central government can deploy CPMFs in a state *suo motu* or this can be done only at the request, or with the consent, of the state government. There have been arguments and counter arguments from both sides.

The view that the central government can deploy its armed forces *suo motu* is based on the provision in the Constitution that makes it the duty of the Union to protect States against internal disturbance (Article 355). In addition, Entry 2 (A)<sup>57</sup> in the Union List authorises deployment of the armed forces of the Union, including the central paramilitary forces, in any state in aid of the civil power. According to the two Commissions on Centre-State Relations set up by the Central Government, the first (1983-88) under Justice R.S. Sarkaria and the second (2007-10) under Justice M.M.Punchhi, these two provisions clearly empower the Centre to deploy *suo motu* CPMFs in states, when needed. It is not necessary to wait for state governments' requisition. If the consent of state governments were to be a precondition, the centre would not be able to discharge its responsibility effectively.

The state governments, which have challenged this contention, argue that the phrase 'in aid of civil power' connotes that such deployment can be done only at the request of the state government or with its concur-

<sup>56</sup> Naga Peoples' Movement of Human Rights vs. the Union of India, 1998.

<sup>57</sup> Inserted in the Constitution by the 42nd Amendment in 1976. Though this amendment of the Constitution was done when the Emergency was in force in the country, the successive governments at the centre retained the amendment.

rence. Aid is asked for, and not forced on, the recipient. The Sarkaria Commission on Centre-State Relations, however, felt that this phrase signifies that the “deployment is in aid of the instrumentalities of the State charged with the maintenance of public order. It does not necessarily imply that such deployment should take place only at the request of the State Government.”<sup>58</sup>

The state authorities are responsible for controlling law and order disturbances in their area and for this purpose requisition the assistance of the armed forces in aid of the civil power. It first requires such authorities to disperse an unlawful assembly by the use of civil force.<sup>59</sup> If this proves ineffective, they can requisition the assistance of the Armed Forces.<sup>60</sup> Law makes it mandatory for the officer in charge of the armed force to obey the requisition, but leaves it to the officer to do so “in such manner as he thinks fit.”<sup>61</sup> The only condition to be kept in view is that the use of force must be minimal to achieve the objective.

However, the law and order situations envisaged in the CrPC cannot be equated to those which are being faced in the country on the internal security front due to terrorist or extremist violence and it is precisely to deal with such situations that the Constitution requires the centre to intervene. As long as it remains an ordinary law and order disturbance, it should remain the state government’s responsibility to control it; but once it threatens internal security, the centre must intervene. Thus both the states’ and centre’s power and responsibility can coexist.

Even if the CPMFs can be deployed without the consent of the state government, it is an accepted fact that internal security operations can succeed only through concerted and coordinated action on the part of both the central and state police forces. This has been borne out by experience of failure encountered by CPMFs on some occasions in dealing with extremist violence on their own in states like Chattisgarh, Jharkhand and West Bengal. It is the state police personnel who have the knowledge of local people, area and culture, which is absolutely essential for the success of internal security operations. The Commission on Centre State Relations, while referring to the Centre’s power to deploy paramilitary forces in states, observed: “Although the legality and the constitutionality of such an action is already established, the Union Government will do well to ensure the functional viability of the action which will be in every

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<sup>58</sup> Commission on Centre State Relations, *Report*, Part I (1988), p. 623.

<sup>59</sup> *The Code of Criminal Procedure* (1974), Section 129.

<sup>60</sup> *Ibid.*, Section 130 (1).

<sup>61</sup> *Ibid.*, Section 130 (2).

one's interest."<sup>62</sup> The Commission, therefore, expressed the view that "Cooperative Federalism' holds the key for a healthy Centre-State relationship in our country. Such situations handled correctly keeping the sensitivities of the State Governments in mind can become the lasting ground for a harmonious relationship."<sup>63</sup>

### Modernisation Scheme

A very important initiative to build up and upgrade the capacity of the state police forces was taken by the central government in 1969-70 when it introduced a scheme for the modernization of state police forces. Through this scheme the central government decided to extend financial assistance to the state governments for the purchase of data processing machines, equipment for crime investigation, forensic science laboratories, wireless, communication and training institutions and vehicles for improved mobility.

The original pattern under the scheme involved a central assistance with 25% grant and 25% loan and the remaining 50% was to be the state contribution. When the National Police Commission examined the working of the scheme in January 1980, they found that the state governments were not making adequate matching contribution. They emphasized the need "for a greater involvement of the resources of the State Governments in modernizing their police forces."<sup>64</sup> During the first phase of the scheme, which lasted for 30 years, i.e. from 1969 to 1999, the central government had released a total amount of only Rs. 465 crores,<sup>65</sup> which proved completely insufficient to meet the requirements of the state police forces.

The scheme was revised in 2000 and thereafter occasionally reviewed. In 2001, the annual allocation under the Scheme was enhanced significantly to Rs 1000.00. From 2000-01 to 2008-09, the central government released an amount of Rs 8,856.56 crores to the state governments for the modernisation of their police forces under this scheme.<sup>66</sup> The pattern of assistance was revised many times. With an increase in terrorist and Left Wing extremist activities, the government divided states into two categories – 'A' & 'B.' The former category included eight states (Jammu

<sup>62</sup> Commission on Centre State Relations, *Report*, Volume VI, Para 4.6.01 (March 2010).

<sup>63</sup> *Ibid.*

<sup>64</sup> National Police Commission, Government of India, *Third Report* (January 1980), p.40.

<sup>65</sup> P.C. Sabbarwal, "Police Modernization Fund: An Overview," Paper presented at the 40<sup>th</sup> All India Police Science Congress, held at Raipur, Chattisgarh, 2-4 June 2010.

<sup>66</sup> Ministry of Home Affairs, *Annual Report 2009-2010*, p.145.

& Kashmir and all seven states in the North East) which are facing a very high rate of terrorist or extremist violence. These were entitled to 100% assistance and the remaining 20 states were put in category 'B' to be given 75% funding.

The scheme presently gives assistance for the following purposes:

- Construction of police buildings
- Purchase of vehicles
- Purchase of arms and ammunition
- Purchase of equipment
- Enhancement of infrastructure facilities for police training
- Computerisation
- Purchasing forensic science equipment and developing infrastructural facilities for forensic science laboratories.

The scheme has helped in providing better equipment and weaponry to state police forces and in improving their transport and communication facilities. However, despite bigger central allocations for money, the state police forces have not yet been able to modernise as much as is required. The scheme has yet to achieve adequately either of its two main objectives – meet the identified deficiencies of the state police forces and to reduce the dependence of the state governments on the army and the central police organisations in dealing with major law and order challenges.

### **India Reserve Battalions (IRBs)**

To strengthen the capabilities of states to deal with law and order disturbances and to reduce their dependence on the central armed police forces, the Government of India launched an innovative scheme in the early 1970s: raising of India Reserve Battalions. The scheme provided for central assistance to be given to states for raising armed police battalions.

Presently, 75% of the standard raising cost of a battalion up to a ceiling of Rs. 17 crores and additional assistance to meet infrastructural and capital costs up to Rs. 15 crores is provided to the state government raising such a battalion. The expenditure incurred after the battalion has been raised is to be met by the concerned state government.

Since the battalion is a part of the India reserve, in case of requirements elsewhere, it can be deployed outside the state that has raised it. In such a case, the recurring expenditure is to be borne by the borrowing state government.

So far, 105 out of 145 sanctioned India Reserve Battalions have been raised.<sup>67</sup>

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<sup>67</sup> *Ibid.*, p. 103.

## **Amendment of All India Service Rules**

There are three All India Services – the Indian Administrative Service, the Indian Police Service and the Indian Forest Service.

In the month of January this year, the central government, in a move aimed at protecting civil servants from being victimised by the state governments' arbitrary use of powers, amended the All India Services (Discipline and Appeal) Rules. The Amendment withdrew powers of state governments to suspend the heads of these three services in states – Chief Secretary, Director General of Police and Chief Conservator of Forests. This power was earlier available with state governments; now they are required to refer all such cases to the central government. Through this Amendment, the centre has also prescribed a time frame within which departmental proceedings against these officers will have to be completed. If a state government is unable to complete the departmental inquiry within the stipulated time, it will have to approach a high-level review committee set up by the Centre and extension of suspension will depend only on the recommendation of the central review committee.

## **Police Accountability**

### **Police System – A Colonial Legacy**

The police as an organised institution in this country was established by the British with the Police Act of 1861. In this system and through this Act, the police remained unaccountable to anyone except their own hierarchy and the political and administrative executive. The need to make the police accountable to the community or other institutions did not figure in the regime policing model of control established through this Act.

The advent of Independence changed the political system, but the police system more or less remained unaltered. No attempt was made by the government to introduce reforms and to change the system inherited from the colonial days. A highly feudal and colonial system of policing, without any community involvement, support or oversight, continued to function in an environment which became increasingly democratic.

For a few decades after Independence, the police system did not cause much unease, partly due to euphoria of freedom and partly due to the fact that the standards of leadership in the country, both at political and police levels, were much better than what they later became. Later, politics became increasingly contentious and criminalized. This led to a perceptible decline in the quality of control exercised over the police and increasing misuse of the police organisation by people in positions of power for partisan interests. This had its inevitable fall out on the stan-

dards of police leadership and discipline of the force. The instances of police personnel committing infractions of law continued to multiply.

## Police Deviance

There is ample evidence of increasing police deviance in India. The newspapers everyday report incidents of brutality, extortion and other crimes committed by police personnel in different parts of the country. The annual reports of the National Human Rights Commission (NHRC) contain details of public complaints against police personnel received by them. NHRC data shows that they received 370,000 complaints against police forces in the last 10 years relating to human rights abuses.<sup>68</sup> Complaints against police included arbitrary use of power, abduction, rape, custodial violence and death, fake encounters, unlawful detention, etc. The majority of complaints received by the NHRC are against police personnel.

Even official statistics indicate that the number of public complaints received by the police departments against their employees is very high. *The Crime in India*, an annual publication of National Crime Records Bureau (NCRB), Ministry of Home Affairs from the Government of India shows that during the 5 year period (2004-08), as many as 276,148 complaints against the police were received from the public, out of which 48,939 were for the year 2008 alone. About 36% of the 2008 complaints, i.e. 17,518 were inquired into.<sup>69</sup> 60.4% of these complaints were not substantiated.<sup>70</sup>

In a recent study, the Human Rights Watch has documented human rights abuses committed by police in India.<sup>71</sup> It shows how the police fail to investigate crimes because they do not register complaints, a practice which of course affects the poor and marginalised people more than the rich and influential citizens. Instead of acting professionally and carrying out scientific investigations, they rely on threats, intimidation and coercions to extract confession and adopt short cuts. They arrest people on false charges and detain suspects and their family members illegally for prolonged periods, subject them to torture and ill treatment and indulge in fake encounter killings with impunity.

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<sup>68</sup> Rahman Azera, "Over 3.7 Lakh Complaints Against Police on Human Rights Abuse," *NERVE*, 29 April 2010, [www.nerve.in/news](http://www.nerve.in/news).

<sup>69</sup> Departmental inquiries were done in 17,215, magisterial – in 99 and judicial – in 204 complaints.

<sup>70</sup> National Crime Records Bureau, *Crime in India* (2008), Chapter 16, p. 161, <http://ncrb.nic.in>.

<sup>71</sup> Human Rights Watch, *Broken System – Dysfunction, Abuse and Impunity in the Indian Police* (August 2009).

## **Internal Accountability Mechanisms**

The police in India are policed mainly by themselves. The Police Act of 1861<sup>72</sup> authorises senior police officers of the rank of Superintendent of Police and above to dismiss, suspend or reduce the rank of any police officer of subordinate ranks<sup>73</sup> whom they think remiss or negligent in the discharge of his or her duties or unfit for the same. They are also authorised to impose one or more of the minor punishments.

The rules divide punishments into 'major' and 'minor.' Though the rules differ from state to state, generally, dismissal, removal, reduction in rank or pay and forfeiture of service are regarded as 'major punishments.' They cannot be imposed on any police officer without conducting a regular departmental inquiry. To give major punishments to guilty police personnel is difficult and takes time because the procedure of conducting departmental inquiry is highly elaborate, cumbersome and time consuming.

Even in cases where the police department takes citizens' complaints seriously and institute inquiries, the system lacks credibility. The public distrust the police and feel that the department is incapable of conducting inquiries into public complaints in a fair and effective manner.

The success of internal accountability mechanisms depends upon the effectiveness of police leadership. Unfortunately, the authority of police leadership has gradually been eroded over a period of time, leading to loss of discipline in the force and promoting a tendency at different levels in the police to seek outside patronage for rewards and for being shielded against punishment.

## **External Mechanisms**

### *Courts*

The courts constitute one of the most important external mechanisms of ensuring police accountability. A number of significant judgments have been passed by the higher courts, prescribing safeguards or guidelines to regulate police conduct during arrest, interrogation and other stages of investigation. The courts have also passed orders regarding payment of compensation in cases of custodial violence. The courts have censored many cases where defective or inadequate police investigation or biased handling of communal and caste riots was noticed.

Citizens can, of course, take their complaints to the courts to seek redress. However, if the complaint is against a police officer or a public official and is respected for acts done by him while he was acting or purporting to act in the discharge of his official duties, the court cannot take cog-

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<sup>72</sup> *The Police Act (1861)*, Section 7.

<sup>73</sup> Subordinate officers mean officers of and below the rank of Inspector of Police.

nizance of the complaint without the sanction of the concerned government.<sup>74</sup> In addition to this, involvement in court cases is time consuming and costly, thus inhibiting the average citizen to approach the courts. The courts are clogged with huge arrears of cases under trial.

### *Human Rights Commissions*

The other institution to which the citizens can go with their complaints is the National Human Rights Commission. The problem, however, is that an institution like this in a country of India's size becomes too remote from the scene to be effective in many cases. A large number of police atrocities are committed in small towns and villages of India, where people are not aware either of the Commission's existence or of its procedures. Many State Governments have yet to set up their own Commissions. Even where these bodies have been established, all of them are not functioning viably. In addition, the Protection of Human Rights Act, 1993, under which the National or State Human Rights Commissions have been set up, is known to be weak and inadequate in its present form. Under the Protection of the Human Rights Act, the Commission has no power to enforce its decisions. It can only give advice, leaving it for the government to accept or reject it. The Act does not authorise the Commission to enquire into complaints against members of the armed forces.

### *Media*

One of the most vigilant watchdogs over the police functioning in this country is the media. The media in India enjoys a wide measure of freedom. It has enormous reach and power.

The media has shown interest in reporting on human rights violations committed by police personnel. In some cases, it has shown missionary zeal in investigating abuses of power and exposing impunity enjoyed by people in positions of power. It has succeeded in some recent cases to force the system to review and reconsider cases where injustice had been done.

However, the incidents covered by the media only represent a small part of all the incidents actually taking place. Furthermore, the media's coverage is quite often inadequate and selective. Political news, politicians and celebrities dominate the media coverage. Bias and lack of sensitive appreciation of issues involved affect the quality of coverage, selection of subjects and contents. The tendency to sensationalise issues and events has often been noticed.

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<sup>74</sup> *The Code of Criminal Procedure* (1973), Section 197.



### *Vigilance Organisations*

The three most prominent features of the “ugly face” of the policeman in this country are his corruption, brutality and partiality. To deal with the problem of corruption, there are separate laws, like the Prevention of Corruption Act, 1988 and also vigilance organisations at the central and state levels. Even if the police agencies like the Central Bureau of Investigation (CBI) and the specialized police units in the states are not taken into account, the vigilance set up is quite widespread. In addition to the Central Vigilance Commission, there are about six hundred Chief Vigilance Officers working in different central establishments. So far as the State Governments are concerned, there are Anti-Corruption Bureaux, Lok Ayuktas and Vigilance Commissioners.

The most well known organisation at the central level is the Central Vigilance Commission (CVC). It was established by the Government of India in 1964 to check corruption in the Government of India organisations. The CVC has made some admirable efforts to deal with corruption amongst senior officers, but in a politicised culture of impunity prevailing in government institutions—including the Police—it has not succeeded in making a big dent on the problem. The Central Vigilance Commission’s website shows a large number of officers who were found guilty after inquiry or investigation but who remained unscathed because the government did not accord sanction to prosecute them.

### *Police Complaints Authorities*

In an important landmark judgment delivered on September 26, 2006,<sup>75</sup> one of the seven directives issued by the Supreme Court was to order the establishment of Police Complaints Authorities (PCAs) at state and district levels with immediate effect. These Authorities are to be headed by retired judges. The State Authority will be empowered to look into complaints of serious misconduct by the police, like death, grievous hurt or rape in police custody, while the district level committee will look into other complaints, like extortion, land/house grabbing and any other abuse of authority. The findings of inquiries conducted by the Authorities shall be binding.

In 2009, the Commonwealth Human Rights Initiative (CHRI), an international NGO working on police reform issues, did a national overview of compliance by the state governments in implementing this directive of the Supreme Court. Their study revealed that since September 2006, only 13

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<sup>75</sup> Commonwealth Human Rights Initiative (CHRI), *Prakash Singh and Others vs. Union of India and Others*, Analysis of the Supreme Court Directives on Police Reforms (2006) 8 SCC 1, [www.humanrightsinitiative.org/programs/aj/police/india/initiatives/compliance\\_with\\_supreme\\_court\\_directives.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/compliance_with_supreme_court_directives.pdf).

states<sup>76</sup> had set up the complaints authorities. However, only five states have functional police complaints authorities. The CHRI concluded: “No state government has established Police Complaints Authorities at both district and state level that fully comply with the Supreme Court’s orders .... A significant majority of states—Andhra Pradesh, Jammu & Kashmir, Karnataka, Madhya Pradesh, Mizoram, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal—have completely ignored this directive.”<sup>77</sup>

## Police Reform – Initiatives and Resistance

### Two Approaches

The need for police reforms in this country is obvious and urgent. What is questioned is not the need but the type of reforms that should be prioritised. The subject of police reforms is vast and covers many issues and concerns. The need can be interpreted in terms of (i) reforms that can take place within the existing system; and (ii) reforms that require structural and institutional changes in the existing set up.

The list of issues covered under the first heading itself is fairly long, covering areas like recruitment, training, service and living conditions, career planning, improving infrastructure, resource management, community policing, etc. The other approach is that police reforms will not be lasting and meaningful unless substantial changes are made, preferably by setting up new institutions which make the police professional enough to function in accordance with the requirements of law rather than perform according to the wishes of people in positions of power and which hold the police accountable for the wrongs they do.

### Initiatives

The governments’ initiatives for police reforms, invariably half hearted, have always been guided by the first rather than the second approach. It was mainly during the 1960s and 1970s that some state governments set up Police Commissions<sup>78</sup> to examine the problems and requirements of their police forces, but they never showed the will to accept the package

<sup>76</sup> These are Assam, Bihar, Chattisgarh, Goa, Haryana, Himachal Pradesh, Kerala, Maharashtra, Orissa, Rajasthan, Sikkim, Tripura and Uttarakhand.

<sup>77</sup> Devika Prasad and Navaz Kotwal, *Complaints Authorities – Police Accountability in Action* (Commonwealth Human Rights Initiative, 2009), p. 17, [www.humanrightsinitiative.org/publications/police/complaints\\_authorities\\_police\\_accountability\\_in\\_action.pdf](http://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf).

<sup>78</sup> Police Commissions were set up in Bihar in 1958-61, UP & West Bengal in 1960-61, Punjab in 1961-62, Maharashtra in 1962-64, Delhi in 1966-67, Assam in 1969 and Tamil Nadu in 1969-71.

of reform measures recommended by the expert bodies. The state governments' reluctance was seen particularly in accepting and implementing two types of recommendations – one that required major budgetary allocations and the other, which aimed at changing the organisational structure.

### *National Police Commission*

Like state governments, the central government has also appointed commissions and committees<sup>79</sup> from time to time to examine police problems, without showing the determination to implement their recommendations. The most important initiative in police reform in this country was taken when the Government of India set up the National Police Commission (NPC) in 1977. This Commission was appointed by the new government, which had assumed office at the centre on winning the election held after the Emergency<sup>80</sup> was revoked. The police during the Emergency had committed atrocities on a wide scale and some victims were the members of political parties which formed the new government. It was the total misuse of the police during the Emergency by the government of the time that led to the appointment of the NPC by the new government.

The Commission had fairly wide terms of reference. One of its most important terms of reference, and this is what distinguished it from other central or state initiatives, required it to recommend measures and institutional arrangements to prevent “misuse of powers by the police” and “misuse of the police by administrative or executive instructions, political or other pressure, or oral orders of any type, which are contrary to law.”<sup>81</sup> For the first time, the government seemed to have felt “that employing the police to the advantage of any political party is a sure source of subverting the rule of law.”<sup>82</sup> These two terms of reference indicated that while it was considered necessary to insulate the police from illegitimate control of politicians, they must simultaneously be made accountable for their performance and behaviour. Unfortunately, it was the NPC's examination of the theme of political control over the police and its observations and rec-

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<sup>79</sup> The main expert groups set up by the central government were the Working Group on Police in 1966, Gore Committee on Police Training in 1971, National Police Commission in 1978, Ribeiro Committee on Police Reforms in 1998 and Padmanabhaiah Committee on Police Reforms in 2000.

<sup>80</sup> The Emergency was declared on June 26, 1975 and remained in force till March 21, 1977.

<sup>81</sup> The Ministry of Home Affairs, Government of India's *Resolution No. VI.24021/36/77-GPA I* dated November 15, 1977, para 2 (10) (i) & (ii).

<sup>82</sup> Shah Commission of Inquiry, Government of India, *Interim Report* (Delhi, April 1978), para 15, 16.

ommendations on the subject that became the main stumbling block to the acceptance and implementation of its major recommendations.

During the period between 1979 and 1981, the NPC produced eight reports. Some major recommendations centering around the problem of isolating the police from illegitimate political practice included: (i) the setting up of a Security Commission in each state to see that the government exercises its superintendence over the police in an open manner within the framework of law; (ii) prescribing a selection procedure that would ensure the appointment of the best officers to head the state police forces; (iii) giving these officers a fixed minimum tenure so as to reduce their vulnerability; (iv) amending rules so that arbitrary transfers of police officers done without authority would become null and void; and (v) replacing the Police Act of 1861 with a new Police Act.

None of the above recommendations of the NPC was accepted. The central government, in fact, wrote<sup>83</sup> to the state governments, asking them not to take note of the Commission's observations and recommendations on the subject of political control over the police as they lacked an "objective and rational approach" and revealed a "biased attitude." After such advice, it was not at all surprising that the state governments conveniently put the major recommendations of the NPC on hold until a writ petition was filed by two retired Directors General of Police in the Supreme Court. The Petition prayed for apex court's intervention to direct the government to seriously consider the NPC's recommendations for implementation. This writ petition<sup>84</sup> was admitted on July 30, 1996.

### *Supreme Court's Judgment*

The Supreme Court pronounced its judgment on September 22, 2006. Through this historic judgment, the Court issued a package of seven directives to the central and state governments. The package of reforms required the state governments to (i) establish State Security Commissions to protect the police from illegitimate outside pressures and influences; (ii) select and appoint the head of police force through a merit-based transparent process and provide him a minimum secure tenure of two years; (iii) provide a minimum secure tenure of two years for officers on operational duties like Zonal Inspectors General of Police, Range Dy. Inspectors General of Police, District Superintendents of Police and Officers in charge of Police Stations; (iv) separate the investigation and law and order functions of the police; (v) set up a Police Establishment Board to decide transfers, postings, promotions and other service related mat-

<sup>83</sup> The Ministry of Home Affairs, Government of India's *Letter No. 11013/11/83-NPC Cell* dated March 31, 1983.

<sup>84</sup> *Writ Petition (Civil) No. 310* of 1996 in the matter of Prakash Singh and others versus Union of India and others.

ters of police officers of and below the rank of Deputy Superintendent of Police and (vi) establish Police Complaints Authorities at the state and district levels. The seventh directive asked the central government to set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) with a minimum tenure of two years.

In the meantime, the central government, annoyed by the constant criticism that the police in the country was still being governed by a colonial piece of legislation that had been enacted more than a century and four decades ago, appointed<sup>85</sup> a committee to draft a model Police Act under the chairmanship of Soli Sorabjee, former Attorney General of India. The Committee drafted a comprehensive Model Police Act and sent it to the Government on October 30, 2006.

#### *Soli Sorabjee Committee*

Soli Sorabjee's Model Act focused on ensuring functional autonomy for police by insulating them from external pressures and influences; defining the new role and duties of Police; promoting professionalism through improved training, research and development and increasing use of science and technology in police work; setting up new accountability mechanisms at district and state levels; looking after the welfare of police personnel and establishing grievance redress mechanisms for them and improving their working and living conditions; and prescribing special provisions for internal security and public order.

### **Resistance**

The effort made by Soli Sorabjee committee met the same fate as the endeavours of the previous expert bodies. The Model Act was put on the website of the Ministry of Home Affairs and circulated to the state governments. It has not been used to bring out an updated Police Act applicable to Delhi and other union territories. A similar response of the central government was noticed three decades ago when the NPC had drafted a model Police Bill, which incorporated their recommendations made in eight reports. The central government always had the option of implementing the important recommendations of the NPC by introducing that model Police Bill in the Union Territories. If it had done so, it would have acquired the moral authority to ask the state governments to follow suit. It never did that and thus failed to convince the state governments about its genuineness in implementing the NPC's recommendations. More recently, the Central Government could take a lead in complying with the Supreme

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<sup>85</sup> Vide Ministry of Home Affairs, Government of India's *Office Memorandum No. 25019/15/2005-PM II* dated September 20, 2005.

Court's directives in those territories which are within its jurisdiction, but it failed to do so.

The response of the state governments towards the directives of the Supreme Court has been apathetic. While a few smaller states complied with the directives fully or partially and a few others filed for an extension of time, some states, particularly the bigger ones,<sup>86</sup> objected to the directives and asked the Court to review them. The Court dismissed the review petition on August 23, 2007. The progress remained slow and finally on July 16, 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 centre and state governments.

Till date, only nine states<sup>87</sup> have enacted new Police Acts to replace the old legislation and three states<sup>88</sup> have amended their earlier laws on the subject to accommodate the new directives of the Court. According to CHRI, the new laws were drafted without public consultation and "disturbingly, many provisions in these new police acts dilute the directives of the Supreme Court, to the point where the letter and spirit of the decision has been completely undermined."<sup>89</sup>

Thus both the union and state governments have shown resistance to the idea of police reform, particularly when it aims to insulate the police forces from illegitimate control of politicians and bureaucrats and establish civic oversight structures to make them accountable for their misconduct and poor performance. The reason – no government is willing to let its control over its police force be weakened. They have developed a vested interest in retaining control and superintendence over the police organisation.

However, threatened by the increasing incidence of terrorist and extremist violence witnessed in the country over the last few years, particularly after the 26/11 Mumbai massacre, the central government appears to have realised that some basic needs of the police cannot be neglected any more. Nevertheless, the concept of reform guiding the government even now is somewhat narrow. Fill up vacancies and raise the strength of police forces, modernize their weaponry and equipment, revamp their recruitment procedures and standards, strengthen the intelligence network,

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<sup>86</sup> Tamil Nadu, Gujarat, Punjab, Maharashtra, Uttar Pradesh and Karnataka.

<sup>87</sup> These are Assam, Bihar, Chattisgarh, Haryana, Himachal Pradesh, Punjab, Rajasthan, Tripura, and Uttarakhand.

<sup>88</sup> These are Gujarat, Kerala and Sikkim.

<sup>89</sup> Navaz Kotwal, Programme Coordinator, Police Reforms, "Police reform: We need it, but do we want it?" InfoChange News & Features (New Delhi: Commonwealth Human Rights Initiative, April 2008), <http://infochangeindia.org/200804187068/Human-Rights/Analysis/Police-reform-We-need-it-but-do-we-want-it.html>.

set up counter insurgency and anti-terrorism training schools and enact or amend anti-terror law with stringent provisions – these are the main ideas which emerged from the deliberations of the Union Home Minister's meetings with the state chief ministers held on August 16 and with the heads of police forces held on September 14 to 17, 2009.

All the above measures are essential, but the concept of police reform must go beyond these to include the establishment of statutory institutional arrangements, which would ensure that the power of superintendence of the State Governments over their police forces is limited to guarantee that police performance is in strict accordance with law and that the police are held accountable for their wrongdoings. Modernisation of equipment and weaponry is important, but equally, if not more, significant is the need to change the mindset. The Force must become a Service.

## **Conclusion**

Despite the Police and Public Order being State subjects under the Constitution of India, the central government has taken interest in policing in the country. This interest, however, has been exercised selectively. From the very beginning, it has focused on raising and expanding its own paramilitary set up. Most of its expenditure on Police every year is spent on meeting the requirements of paramilitary forces. This expenditure has been rising every year. There has been very heavy deployment of these forces on law and order duties in states. While the state governments have found it administratively convenient and economically beneficial to let the central forces handle their serious law and order problems, the availability of central assistance has unwittingly inhibited the development of their police forces.

From the public point of view, improving the functioning of the local police at the station level should receive the top priority in modernisation schemes and policies targeting police reform. However, the police station is the most neglected unit of administration in the country. The state governments have not paid adequate attention towards meeting the requirements of police stations and improving their conditions. Most police stations in the country, particularly in rural areas, are in bad shape. They are understaffed and lack basic facilities. As the Human Rights Watch in its latest report (August, 2009) on the Indian police system pointed out: "Police infrastructure is crumbling. Decaying, colonial-era police stations and posts across India are stocked with antiquated equipment and lack sufficient police vehicles, phones, computers, and even stationery. A severe police staffing shortage is compounded by additional demands on an al-

ready stretched force.”<sup>90</sup> If the centre had released even a part of money they have been spending every year on their paramilitary forces, the conditions at police station level would have improved. But then the centre has never considered it their responsibility. The central government has always taken refuge behind the provisions of the Constitution to wash its hands off the responsibility on the ground that Police is a State subject and improving its functioning is the responsibility of state governments. Thus police reforms, interpreted even in terms of the first approach, remained largely unimplemented for a long time. Though it started its Police Modernisation Scheme in 1969-70, it was only after three decades, when terrorist and extremist violence started increasing and spreading, that it augmented its grant to the state governments substantially. Most state governments have neither found the political will nor funds to modernize and reform their police forces.

The increasing paramilitarisation of police forces has led to promoting a law and order and security oriented model of policing in the country. An impression is gaining ground that winning the war against violence requires a tough warrior cop’s policing approach. One may require that occasionally, but a sustained war against violence requires the development of a police force that is well organised, well controlled, well led, well equipped and well trained a force that is friendly, sensitive and impartially fair, but firm. This is yet to be realized either by the centre or states.

The Constitution establishes a federal system that tilts the balance in favour of the Union. The central government has used the constitutional provisions to underscore its increasing role in policing. Heavy expansion of paramilitary forces and the power to deploy them in aid of civil power, increase in modernisation grants, use of CBI to browbeat the ruling opposition in some states, establishment of a National Investigation Agency, setting up of four new NSG hubs in state capitals and amendment of All India Service Rules to dilute the disciplinary power of the state governments are some of the factors that indicate a trend towards centralisation of policing. If extremist or terrorist violence increases further in the country, this trend is likely to be accentuated.

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<sup>90</sup> Human Rights Watch, *Broken System – Dysfunction, Abuse and Impunity in the Indian Police*.



# **The Police in a Federal System: The Case of the USA**

**Otwin Marenin**

The USA is a unique case in terms of policing. Hence it will be quite difficult to extract specific comparative lessons on structure, policies, performance, transparency and accountability from a description of the police. I will indicate some of the lessons, or principles that can be derived from an analysis of the policing systems in the USA, but those principles will have to be translated into policies and practices which fit the political and societal contexts of Nepal. That translation, or transformation, cannot be done by outsiders but has to be done, in order to be legitimized, by local personnel – public groups, political leadership, and by the police themselves.

## **Political Structure**

The United States of America is a federal political system that slowly grew from 13 colonies, at the end of the revolutionary war in the 1780s against British occupation, into the large territorial entity it is now. The last two of the current 50 states (Hawaii and Alaska) were not admitted to the USA until the 1950s. As the country expanded from the initial colonies at the eastern seaboard to its current limits, new territories were added as they become populated and applied for, and were granted, statehood by a vote of existing states. A substantial part of USA territory was gained by warfare against other colonizers (i.e., Spain which ultimately ceded what are now the states of Florida, Texas, New Mexico, Arizona and California), by forcefully dispossessing the indigenous Native American (Indian) population and ultimately confining them to reservations, and by purchase from other European states (France, which sold its right to the central parts of the USA; and Russia which sold the current state of Alaska to the USA). It was not until the 1870s that the whole territory of the current USA became effectively under the control of the federal government.

The discussion which follows focuses on the 50 states. Other territories, e.g., the islands of Puerto Rico, the Virgin Islands and Micronesia, which are governed by US law and whose citizens are also US nationals,

are not covered by this discussion. I will use the state of Washington, where I work, as the main source of specific local examples to illustrate general points.

The political structure of the country was established by the Constitution, which was passed in 1787, ratified in 1788, and went into effect in 1789. It has proven remarkably stable, effective and legitimate. Only 27 amendments have been added since its ratification, mostly dealing with electoral procedures and representation, the right to vote of formerly disenfranchised groups, and minor adjustments in language.

The first ten amendments, the so-called Bill of Rights, were ratified in 1891, as part of an important compromise between the large and the small original 13 colonies. Colonies with small populations were afraid that they could be outvoted by majority vote of eligible voters (at that time only white males who had some property interests), hence insisted that fundamental rights of all persons were protected against majority control and arbitrary or discriminatory policies of the government which infringed on the rights of minorities (except, initially, of African slaves). Those rights are specified in the first ten amendments which basically prohibit the government from exercising its powers in a manner that violates basic civil and human rights.

The Bill of Rights language has become the fundamental constraint on government, police and criminal justice powers. The 14<sup>th</sup> amendment, passed in 1868 following the end of the civil war, extended the bill of rights to the states, most notably that “no state shall make or enforce any law which shall abridge the privileges and immunities of citizens,” nor “deprive any person of life, liberty, or property without due process of law; nor deny any persons the equal protection of the laws.”

The notion of rights reflects British common law (a natural consequence of having been a British colony) and establishes a clear distinction between public and private spheres of life. The central principle is that the government, despite all its powers, cannot enter people’s private spheres without compelling and verifiable justification. This distinction has a powerful influence on policing practices in the USA. The police must abide in their work by due process requirements in order to enter a home (or curtilage in legal terms), stop and question people in public places, search and seize evidence, effect an arrest, conduct an interrogation, and cannot treat people differently based on discriminatory criteria. The Constitution always says persons have rights, which translates that any person in the USA, whether there legally or illegally, whether a citizen or not, has the same rights.<sup>1</sup>

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<sup>1</sup> The basic rights which govern policing are mentioned in the Fourth and Fifth Amendments, to cite: “Amendment 4. The right of people to be secure in their

Because of the slow and incremental way in which the USA became a country, the Constitution has had a fundamental impact on the structure and dynamics of political life, and on how the criminal justice system functions. The Constitution established the basic political structures: a division at the federal level between legislative (Congress, divided into the Senate where each state has two representatives, and the House of Representatives which is based on population), executive and judicial powers.

The Constitution is a short document, comparatively speaking. It says nothing about the criminal justice system, or the police, and only mentions that the judicial power rests in a Supreme Court which has the power of judicial review and that Congress may establish other courts as it sees fit. Many important phrases and terms in the Constitution which govern law and criminal justice are written in a general and imprecise language which has no specific meaning until placed into social or criminal contexts and cases and, of course, require some political body to make authoritative interpretations.

The brevity and impreciseness of Constitutional language means that every important issue has to be re-argued, creatively, as times and conditions change. This is a great advantage for reform and change. There is no established, once and for all, interpretation of what each phrase means for policing or for federalism. Since the focus of Constitutional wording is on the rights of persons, and not the structures, policies, and practices of

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persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particular describing the place to be searched and the persons or things to be seized.

Amendment 5. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." In practice, the warrant requirement for search and seizure has been defined that only a judge, or judicial officer, can issue a warrant requested by the police; the governing phrase for police in the Fifth is be compelled to be a witness against oneself, or to confess to a crime. 'Taking the Fifth' when questioned in a legal situation, or refusing to answer is a basic right based on this phrase.

There are numerous exceptions allowed by court decisions to the requirement that the police have to have a warrant to search and seize or effect an arrest (the so called warrantless searches). It takes legal experts to explain all these conditions. Of course, the police will also have to know when they do not have to ask for a warrant.

the police or the criminal justice system, reforms and change are natural consequences of the absence of specification within the foundation document. Change does not require a Constitutional amendment process, but merely the passing of normal legislation. Policing in the USA has always been characterized by fluidity, diversity, and a search for better ways of providing security and justice to the public as societal conditions, ideological currents, social science findings, and public sentiments change.

Most importantly, the Constitution and acts of Congress properly passed by Congress, signed by the President and validated against challenges by Supreme Court decisions, are the supreme law of the land. Two important federal phrases in the Constitution are that states must give “full faith and credit to the laws of other states” (Article IV, Section 1), and that Congress has the authority to make laws controlling interstate commerce (Article I, Section 8). For example, if Congress decides on immigration or gun laws, its decisions will override state laws in that area. A recent controversial change in social norms—gay marriage—which has been legalized by some states, means that states which do not recognize gay marriage, which is most of the 50 states, will have to give full faith and credit to such marriages if married gay people move to their state (of course, those states will challenge that interpretation in courts). The interstate commerce clause means that Congress can pass legislation on practically any, and not just economic activity. Very few events or activities happen only in one state. For example, the authority of the FBI to deal with bank robberies is based on the interstate commerce clause, as is gun control legislation which requires local gun sellers to verify the particulars of a buyer (e.g., whether they have a felony record, as typically the right to own a gun is lost on a felony conviction).

The Supreme Court of the US decides, on the basis of actual cases (the Court cannot give an advisory opinion whether a law or policy is constitutional or not), what is the meaning of such phrases in the Bill of Rights as probable cause, unreasonable search and seizure, equal protection of the law, due process, trial by an impartial jury of the State, cruel and unusual punishment, or the right to free speech or assembly means at any one time. The Court can overturn its own earlier rulings and decisions, though precedent is an important legal standard derived from British common law. The Supreme Court (SC) is the most important constraint on government power, using its interpretation of the language of the body of the Constitution and the Bill of Rights, to overturn legislation passed by Congress or lower level agencies and limit the power of all government agencies, including the police, by declaring decisions made by other governments and agencies beyond their authority and in violation of guaranteed civil rights.

In the USA, every important political, economic, social, legal and criminal justice decision on which there is substantial disagreement among the states and the federal government, among interests groups, political organizations, and among individuals, will ultimately reach the SC and will be decided by it. In that sense, the SC is the ultimate arbiter, and fallback agency in the system on what is allowed and what is prohibited. If there is conflict about the respective distribution or rights and powers among and across the federal level, or any other issues which cannot be decided by political negotiations and compromise, the SC defines the law and decides the issue, at least temporarily.

The Court is comprised of nine Justices, who are appointed for life (or good behavior) and can be removed only through impeachment procedures, a practice which is extremely difficult and rarely even attempted. Justices are nominated by the President and confirmed or rejected by majority vote of the 100 Senators, who must 'advise and consent.' Confirmation hearings can be extremely contentious since everyone knows that the Court has tremendous legal and political power.

The Court has original jurisdiction over cases which involve disagreements among states and federal government and other selective issues, and appellate jurisdiction over every civil and criminal case and conviction which is appealed on constitutional grounds. The SC controls its own agenda and workload and each year selects the cases which it wants to consider on appeal, and has to give no reasons why it takes or rejects an appeal. Decisions are by majority vote. In recent times, many important decisions have been 5-4 votes, meaning that the laws and practices of the land can be decided by five unelected Justices. The SC is, in theory and practice, the most undemocratic political institution in the USA but precisely so because its job is to uphold fundamental rights and due process. Many of its decisions are controversial because they go against dominant popular beliefs and established political powers.

Political structures at the state level echo those at the federal level, as all states have a Constitution and the basic democratic tripartite division of governmental authority. Each state controls its own political structures, electoral practices, and legal, judicial, criminal justice and policing systems. Some state constitutions provide greater rights to people than does the federal Constitution. For example, some state constitutions incorporate the right to privacy, a right that is not specifically stated in the federal Constitution but has become accepted as a legal right through various decisions by the SC arguing that it is implied in the Bill of Rights language. State constitutions can enhance the rights of people but they cannot deprive them of rights written in the federal Constitution.

For example, the right of women to have an abortion, up to the third trimester, is not stated anywhere in the federal Constitution but is based

on decisions by the SC that other rights specifically mentioned imply an umbrella of privacy which protects individuals and gives those rights real meaning.

States control the creation of local subdivisions, typically counties which govern rural areas and cities (municipalities), which are chartered by the state and granted specific competencies, such as the authority to tax, maintain infrastructure, provide needed services (e.g., sanitation, regulating business licenses), and provide policing services. Counties and cities have different forms of local governance, normally some form of elected councils, which can issue local regulations, respond to citizens' concerns and priorities, and control the local budget, a large portion of which is always allocated for police services (capital investments in buildings and needed equipment, salaries and benefits, and maintenance).

In effect, the USA had 52 legal and criminal justice systems: one at the federal level, 50 at the state level, and one for Indian land. The definition of crime differs somewhat among the 52 systems, especially in terms of the elements (or the body of a crime) stated in statutes, hence crime data are not directly comparable. It is only in the 1930s that the federal government established a Uniform Crime Report (UCR) system for the country as a whole. According to the UCR data (which are inaccurate estimates of the real numbers of crimes and criminal victimizations experienced by people), the USA has a fairly high rate of violent, anti-people crimes, and a property crime rate comparable to that of other Western democratic countries. The inaccuracies of the UCR have been widely studied. In the 1980s, the federal government established a system of bi-annual victimization surveys, which found that only about half of all crimes people experience are reported to the police and enter the official data streams.

Some criminal issues are still unresolved and one has to wait until a case reaches the SC to see what the current 9 members will decide. For example, federal law includes a list of illicit substances (drugs), the production, trafficking, possession and use of which are considered serious offenses. That list includes marijuana. Some states have deregulated or decriminalized marijuana if for private (largely on the basis that a state constitution specifically states a right to privacy) or for medical use. In legal theory and by the phrasing in the Constitution, federal law is the supreme law of the land, yet states in which marijuana is now allowed and regulated argue that they have the authority to decriminalize marijuana. The federal government threatens to prosecute individuals who use marijuana, citing federal law, while states claim that a prosecution of a citizen of a state (technically, persons are citizens of a state and of the USA) would be a violation of a state's rights and sovereignty. Some states, and local police, have even threatened to arrest federal officers who want to arrest

a marijuana user. Until the SC decides it is still unclear whose conceptions of the authority to define illicit drugs, that of the federal government or that of the state, govern this situation.

For another example (and these are all controversial issues), some states have passed 'right to die' or assisted suicide laws. Terminally ill persons who have no hope of recovery can decide to ask for medical assistance (pain and killing drugs) to end their lives without the doctor who prescribes the drugs being liable for prosecution for murder. The federal government, or rather the Attorney General, the head of the Justice Department, had threatened to prosecute doctors if they assisted in a suicide. A test case reached the SC which decided that state law was constitutional, and that doctors could assist in suicide but under very tight regulation.

In short, the relations between the federal and state governments are subject to continuous political and legal negotiations and compromise. The basic federal arrangement is a minimal one which does not specify many of the policing or criminal justice institutions and policies. Those decisions are left to the creativity and priorities of political leaders, criminal justice professionals, and public inputs, mainly through NGOs and interest groups.

## **The Policing Systems of the USA**

There is no National Police Force in the USA. There is no national police law.<sup>2</sup> There is no overarching hierarchy or institutional arrangements articulating the police at federal, state and local levels.

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<sup>2</sup> Definitions of law enforcement and police and their authority and powers are stated within the state and federal codes dealing with crimes and punishment.

For example, the definition of police in the Washington State statutes on crimes, traffic and powers of the police are stated in the Washington Criminal, Vehicle & Related Statutes, section 10.93.020 (Definitions). To cite: "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally." In other sections of the statutes, law enforcement officer and police officer are discussed as subsumed under the label peace officer. (As can be seen, to be a peace officer requires employment by a legally established law enforcement agency, agencies which are created by cities under powers delegated from the state.)

The definition of sheriff is found under statute 36.28.010, to cite: "The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of the office, [the sheriff] (1) Shall arrest and commit to prison all persons who break the peace, attempt to break it, and all persons guilty of public offenses; (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace and safety; (3) Shall execute the process and orders

Because the USA grew in ad hoc steps and in a piecemeal fashion, no national system of criminal justice or policing developed. Unlike many current countries which became independent after they had achieved territorial unity, the USA had to invent itself one state and political and legal system at a time, guided only by the basic strictures of the Constitution as interpreted by the SC.

Policing power and competence is divided among federal, state and local levels. The police in the USA are more decentralized than practically any other countries (only Switzerland is close), and one cannot even get an accurate count of the number of police departments which exist. The basic estimate is that there are about 17,800 police agencies in the USA. Of the total of about 800,000 sworn police officers, about 11% work for federal agencies, 10% at the state level, and 80% at the local level.

Each police agency at each of the three levels is autonomous and no police agency can tell or command another agency what they do and how to do it. For example, the FBI or any other federal police force cannot command a local agency to investigate a crime or enforce a regulation. To work together among local agencies, or across federal and local levels, requires negotiation, memoranda of understandings, and good interpersonal relations skills.

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of the courts of justice or judicial officers, when delivered for that purpose, according to law; (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes; (5) Shall attend the sessions of the courts of record within the county, and obey their lawful orders and directions; (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil and criminal cases, and in apprehending or securing any person for felony or breach of peace, they may call to their aid such persons, or power of the county, as they may deem necessary.”

The definition of peace officer or police at the federal level is not precisely nor consistently defined from agency to agency, but generally includes three criteria and phrases. Federal peace officer “means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of the criminal laws of the United States” (cited in Washington State statutes at 10.93.020 (6)). For a discussion of an attempt to have Congress pass a consistent definition see [www.govexec.com/dailyfed/0210/022410ar1.htm](http://www.govexec.com/dailyfed/0210/022410ar1.htm); “Union calls for expanding definition of law enforcement officers. The American Federation of Government Employees on Wednesday called on Congress to standardize the definition of federal law enforcement officers across agencies, so employees who perform similar jobs will be eligible for the same enhanced pay and benefits.”



## **Local Police**

There are about 800,000 full-time sworn police officers in the USA. The vast majority of police agencies exists at the local level and can range in personnel from about 38,000 police for the New York Police Department to one police officer in a small rural town.

One has to make a distinction between general service police, which provide all crime control, order maintenance and security or emergency related services, and police agencies which have limited or special jurisdiction, or authority, over specific activities, persons or territories.

A second important distinction in personnel who work in police agencies is that between sworn officers and civilian. Sworn officers are certified by state agencies and have full police powers. Many jobs in police agencies are staffed by civilians (e.g. support and technical personnel and the important position of dispatcher – personnel who receive calls and relay them, based on a priority list of calls, to patrol officers on the beat). Civilians are less costly than sworn officers, yet they perform functions which are essential to the success of sworn personnel.

Local police are the only full service, full authority police in the USA. They can deal with all contingencies and violations of laws which threaten people, property and order. They also provide normal and emergency services when people cannot take care of themselves. When people in the USA say police they normally mean local police, who are visible patrolling and whom one can call for services and protection (through a 911 telephone system). Most people will never see, other than in popular films and television shows, or come into contact with a federal police officer or agent.

Personnel working in city police departments are recruited and hired by local government in a competitive process. Applicants have to meet minimum qualifications (e.g., education levels, citizenship or legal immigrant status, body mass), pass a series of written and oral tests, background checks, and perform fairly easy physical tests. Recruitment and hiring is governed by a series of federal and state laws, which prohibit discrimination against categories of people (e.g., women, minorities, people with physical disabilities). Until quite recently, policing at local levels was staffed mainly by white males who resisted hiring people they felt were not qualified for police work. It took the power of federal law to open up the occupation to other categories of people. Still women make up only about 14% of the sworn police force at the local levels. Conditions of work (e.g., salaries, shift rotation, pension plans, and promotion policies) are set by local government and each police agency, frequently through negotiations with a police union or another representative group. Police unions negoti-

ate the conditions of work within each agency, but police do not have the right to strike.

The impact of legal changes on hiring practices, starting with the civil rights revolution during the 1960s, is captured in the requirement that any rejection of an applicant must be based on bona fide occupational qualifications (BFOQs). That standard requires that police agencies (or any other government agency) must state why and how a restriction on hiring (e.g., we do not hire women) is specifically and directly linked to the nature of the job. Police agencies have to have clear job definitions and convincing reasons why an applicant cannot do that job. For example, many department used to have minimum height requirements (normally 5 foot 8 inches for males), but when required to show that a male applicant 5 foot 6 inches tall could not perform that job as defined by the department, the police could not show that. Suits were filed and the courts threw out height requirements, along with many other arbitrary criteria based on stereotypes and whim. Of course, BFOQs are also a powerful accountability mechanism as they require the police to justify to outsiders hiring and promotion practices.

Once hired, all police start work at the lowest level, the level of patrol officer. They have to attend a formal police academy, normally about 15-16 weeks long. Most training modules concentrate on legal knowledge (definitions of crimes, due process requirements) and the use of force for self defense and control of suspects and belligerents. Teaching is done by experienced police officers. When officers return from the academy, they tend to be placed with a field training officer (FTO) who evaluates their performance and advises on work related issues, for a probationary period of 1-2 years. Once off the probationary period they begin work and a career as patrol officers and are protected from arbitrary firing and discipline by agreements between the department and a police union/benevolent association, by an Officer Bill of Rights<sup>3</sup> adopted by many states, and by civil service regulations.

The structure and content of academy training and certification as a sworn officer (having full police powers as defined by the state) is set by a state agency. Most states have a certification agency (variously titled) which sets the minimum standards for being a sworn officer for that state, in term of training, retraining, proper work performance and continued

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<sup>3</sup> Officer bill of rights laws basically guarantee an officer that s/he will be treated fairly within an agency. For example, if accused of corruption, they have the right for legal representation at all stages of an internal inquiry, and the right to appeal an agency decision to the outside. The goal is to prevent arbitrary decisions by police management against an officer and to treat police as having the same rights, of course limited by legitimate occupational priorities, as have all persons.

employment. Police can be de-certified, but that happens rarely. Most state certification agencies were created in the late 1970s, under federal pressures and incentives, and to upgrade and systematize the professionalism of local and state police.

There is very little chance for lateral entry in most police departments, the exception being chiefs of police. Chiefs are screened and appointed by city governments based on their experience and record and interview performance in assessment center scenarios. All chiefs started as patrol officers and have worked their way up the rank structure, hence have experience with different levels and functional work in policing.

Police agencies at the county level are typically called sheriff departments. Lower ranks are staffed as with city agencies, but the sheriff is elected by popular partisan vote for periods of four years. Deputy sheriffs have full police powers. Control of the budget and resources is with local county governments.

## **State Police**

States have state police, typically called State Troopers or, in the state of Texas, Texas Rangers. There are about 80,000 state police. Their jurisdiction and work is normally limited to traffic control on state highways and roads (but not city roads), accident investigations, managing state training academies, and conducting crime investigations. Some Troopers have specific other duties. In the state of Washington, the State Troopers manage the State Crime Lab. Police in smaller agencies which lacks the resources to assess evidence, such as DNA, send their evidence for processing and testing to the Lab.

State police are under the control of state agencies, normally the Governor's office; their budget is provided by state legislature; and they are staffed through a competitive recruitment and hiring process.

In Alaska, which has no counties and no sheriffs, the State Troopers are a full service agency in all unincorporated areas of the states, which include mainly Alaskan Native (Inuit, Aleuts, Athabascan Indian, Coastal Indian) villages.

Alaska is unusual in that a large percentage of its population are Alaskan Natives (a general label for all indigenous people) who live in isolated, small villages along the coast or waterways. Villages had no permanent police or criminal justice presence. In cases of serious crimes, State Troopers have to fly into the villages to deal with the situation. Most crimes (e.g. domestic violence, thefts) were dealt with through traditional and informal proceedings. To help support local order, the state legislature created the position of Village Public Safety Officers (VPSOs) who live in the villages. VPSOs, after they are hired, receive training in policing, fire fighting, search and rescue, water safety, and emergency medical

care. They are considered to be sworn police officers under Alaska statutes. They are the all purpose order maintenance providers people in the villages can turn to for help and assistance when the informal system fails. VPSOs are under the operational control of the State Troopers; they are hired, paid and supervised by a private Alaska Native Corporation; and they are to be responsive to the wishes of village councils. The VPSO system is probably the most unusual local policing system in the USA.

## **Federal Police**

Police at the federal level are all limited jurisdiction forces and formally have very little interactions with each other.

Federal police are housed in different executive Departments (Ministries). For example, the FBI, the DEA and the U.S. Marshals Service are in the Department of Justice; the Secret Service and the Bureau of Alcohol, Tobacco and Firearms (which polices and regulates the production, sale and misuse of alcohol, gun and tobacco products, as well investigates crimes involving explosives) is in the Department of the Treasury; the Custom and Border Protection Force (CBP) is located in the Department of Homeland Security; the National Parks Police, which has general jurisdiction and control in national parks, is located in the Department of the Interior. Most federal Departments and Agencies have their own investigative units, such as the Postal Service police which deals with crimes committed using the mail or the Internal Revenue Service police which investigates suspected tax fraud. There are about 80 federal police which have the right to carry firearms and make arrests.

Federal police have no authority to provide the vast range of general service policing which protects communities and individuals. For example, the FBI has jurisdiction over crimes committed on federal land (e.g. in a federal court house); over major crimes committed on 'Indian land,' a legal term; and over crimes specifically delegated to it by act of Congress, such as bank robberies. As another example, the DEA (Drug Enforcement Administration) has jurisdiction over drug crimes and other crimes directly linked to drugs crimes, such as murders committed as part of trafficking. The jurisdiction of the Custom and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) is limited to checking on persons crossing the borders at checkpoints or in between, and in a border zone, normally defined to include the territory about 50 miles away from the actual borders; ICE agents can also conduct investigations of employers to check whether they have hired illegal or irregular immigrants (those without proper papers) which is a violation of federal and also state law.

Funding for federal police agencies is typically contained within funding for the federal bureaucracy in which they are housed. Funding decisions

are made initially by committees of the House and passed by a majority vote in both chambers of Congress.

Requirements for hiring, salaries, promotion policies and work conditions are largely determined by each agency, and the Department in which it is housed. For example, the FBI and DEA will do a background check of applicants, and will ask about prior drug use. The DEA will not hire anyone who admits to having used any drugs, even if sparingly and long time ago, while the FBI will consider prior admitted drug use, unless it is for hard drugs, on a case by case basis.

### **Other Police Forces**

As mentioned, many governmental units have their own police, normally limited by function or territory, such as transit, harbor, airport or school districts.

School districts (which are separate governmental entities funded typically by local property taxes and guided by elected Boards) can have their own police force. School police forces deal with security within schools and adjacent playgrounds; they sometimes conduct drug awareness lessons (DARE programs); and they attend parent-teacher meetings to explain to parents what the security concerns and policies are in a school.

Universities can have their own police force. The university where I teach has its own police force which is an autonomous, separate full service police agency, but its jurisdiction is limited to policing the campus.

### **Indian Police**

Most unique are Indian police who protect and service Native American reservations, and enforce Indian Law, which is a different legal system than USA law and contains slightly different due process requirements and civil rights than USA law. To be recognized legally as an 'Indian Tribe' requires an act of Congress. Relations between Indian Tribes and the federal government are based on treaties, the tribes being considered, in a famous SC decision, 'semi-sovereign' nations. They have retained sovereignty but also exist within the basic political and legal structures of the USA. Congress, in various pieces of legislation, has granted tribes the right to have their own criminal justice and policing systems, if they so wish. For example, one of the largest tribes, the Navajo Nation, has its own court system, correctional lockups, a tribal police and a police academy.

Indian police have both limited and general jurisdiction. They are limited to dealing with crimes that occur on Indian land, are committed by Native Americans, and are not major crimes (which Congress has allocated to the FBI). If these conditions are satisfied, Indian police can han-

de all police work and situations which occur on Indian land and involve Native Americans.

Clearly, the articulation of this policing system with surrounding local, state and federal police has been quite difficult. The SC has had to step in numerous times to clarify who has what authority in specific situations. For example, Indian reservations have state and federal roads running through them. The question whether Indian police can enforce traffic laws on these roads (which are not, legally, Indian land) has led to numerous lawsuits when people stopped by Indian police for speeding and giving a traffic fine rejected the authority of the Indian police to do so and refused to pay the fine.

### **Private Police**

By most estimates, there are about 2-3 times the number of private police compared to public, that is state employed police. Some private police look like public police (uniforms, cars, guns and equipment), such as private police which patrol gated communities; most private police have fairly limited authority, dealing mainly with loss prevention and the protection of stores, factories, airports, seaports, internal proprietary knowledge, equipment, restaurants, markets, and private homes. Many of such guards are quite sophisticated in technology and skills, but many are part-time employees, poorly trained, with no enforcement authority other than that granted any citizen.

Private security or police companies typically are registered with a state government (with little in the way of preconditions to be accepted), have to be bonded (in cases of misbehaviors by their employees), and work for and are supervised by private agencies.

### **Challenges and Reform Projects**

As noted earlier, policing arrangements in the USA have always been fluid and changeable. Conceptions of good, effective and legitimate policing change over time, and lead to reforms of policing structures and policies. A number of recent developments have again begun to shift the way the police do their job toward new manners of doing the work.

Dissatisfaction with how well the police performed during the 1960s and 1970s led to community policing and problem-solving approaches to policing. Basically, the police and reformers began to argue that the police cannot do the job alone but need support from the community; and that rather than focusing on specific events after they occurred, the police should problem-solve why such crimes occur in patterned ways. The main difficulty in implementing both COP and POP for the police is that the job of the police has become more difficult, requiring additional knowledge and skills beyond that normally taught in academies and in practice.

Another important development is the move toward evidence based policing, namely that reforms and new policies should be assessed and accepted based on empirical and validated evidence. Acquiring and analyzing evidence requires sophisticated Information Technology (IT) equipment and skills by the police, as well as an acceptance by the police that social science matters in the planning and implementation of policies. The best known example of this development is COMPSTAT, created in the New York Police Department as a managerial oversight technique of local commanders, using real time crime information.

Another development which has attracted critical oversight is the 'militarization' of the police. Many large police departments have developed a more aggressive outlook toward perceived violent crime problems and groups (e.g. urban gangs, crime ridden neighborhoods) and adopted military style policing. The best known are SWAT (special weapons and tactics) teams which are beginning to be used for other activities than they were initially established for. SWAT teams are trained by the military, employ military discipline within the team, use military style weapons and tactics, hence—so critics argue—have begun to undermine the civil service orientation of regular police, are used against particular and not always criminal groups, and routinely are more likely to use excessive and abusive force.

The most complicated and controversial development follows from the creation of the Department of Homeland Security in response to terrorist attacks on the USA. The Department and federal police agencies have sought to enlist local police in their investigation, information acquisition, and arrest policies, which are less restrictive than normal policing in protecting the civil rights of persons. This 'federalization' of policing has many critics, from both the liberal (the alleged violations of civil rights) and the conservative side (federal intrusion and mandates, justified by national security claims, violate the traditional autonomy of local policing and states' rights). The issue—the degree to which the federal government and police can mandate, or command, local police—remains unsettled.

## **Accountability**

Accountability and control mechanisms are normally categorized as internal and external procedures and means. External controls alone do not work unless the police accept and follow findings, demands and recommendations; internal controls do not work, especially if transparency is lacking, since it is unclear whether allegations are seriously dealt with, hence lack public and political legitimacy. In the end, one needs both external and internal mechanisms since police managers will have to implement external demands within their organization.

The effectiveness of control varies with the nature of police activity that needs to be overseen and controlled. One can categorize four types of misconduct by the police: 1) the commission of normal crimes, 2) corruption, 3) abuse of power at the individual officer and at the organizational levels, 4) the willingness of the police to be used for partisan political work (such as preventing campaign rallies by opponents of the ruling party).

Police who commit normal crimes (steal from crime scenes, beat up their spouse, commit murder) should be dealt with as are other criminals through the normal and established criminal justice process. The fact that they are police should make no difference. The difficulty is that the investigations of allegations cannot be conducted by the police themselves. There has to be an independent, autonomous investigative agency, normally associated with the prosecutor's office.

Corruption is defined as the use of one's official position for material personal or organizational gain, which could be money but also includes any other service that has value, provided for free or extorted under threat. Corruption can range from minor forms of gain (accepting a free cup of tea, taking some small item from a market seller, or asking for a small sum to take a report) to organized extortion from vulnerable targets (such as payoffs from reorganized crime engaged in drug trafficking, at the borders or in the interior). There is little agreement by outsiders and the police whether corruption at the lower is really corruption, and not the willing giving of small favors by the public, and whether small scale corruption (or gratuities as they are sometimes called) will lead police down the slippery slope into deeper waters. There is no question about large scale organized corruption. In the US, two common terms which cover the continuum of corruption have gained popularity: 'grass eaters' – police who take what is offered, and 'meat eaters' – police who aggressively search for material benefits.

Corruption at the lower end is probably the most common malfeasance by the police, and it has a serious de-legitimizing impact on the image and status of the police for two reasons: small scale corrupt acts are frequent and have been experienced by many member of the public, and the police tend not to take such acts seriously themselves, hence will make little internal efforts to control them, plus they are extremely difficult to prove. There are known positions within any police force where corruption (and abuses of power) is likely to be prevalent: traffic, border control, undercover and vice police. The opportunities for material gains are vast and detection is unlikely.

Abuse of power is the doing by the police which they should not do; most commonly in the USA that issue involves disrespectful treatment of the public by the police (mainly the language used), unjustified use of



force (e.g., tasers to subdue an 80 year old woman), beating a confession out of a suspect, or non-justified killing of a suspect.

The definition of abuse of power also includes not doing something the police are required to do, such as not protecting someone who is being assaulted in the presence of the police or refusing to accede to a legitimate request for service.

The fourth, and quite serious malfeasance by the police, is enforcing the law in a politically and socially discriminatory fashion. Rather than abiding by the law, the police respond and act on the basis of political commands from the people and government in power or illegitimate requests from the public (or groups within the public). In either case, the basic purpose of a police—to protect and service the common good and to enforce the law equitably—is abandoned.

The main point to be made here is that different forms of police malfeasance require different and multiple forms of accountability and control mechanisms.

## **Control Mechanisms**

Accountability and transparency are issues whether the police work in a federal or unitary system. The viability and effectiveness of different forms of external forms of control of the police will vary, in the sense that in a federal system a greater multiplicity of control mechanisms may be needed and, secondly, that the basic division of political labor between the federal and the subunits may lead to opportunities for forms of control which are not available, effective or necessary in unitary systems.

## **General Internal Mechanisms**

The basic internal mechanisms include routine supervision of performance; managerial policies on rewards and sanctions (up to dismissal) for good or for unprofessional performance; training, especially FTO training; internal affairs or internal investigation unit in a police agency; early intervention systems and retraining of detected 'problem' officers; and harnessing the informal peer group culture to formal organizational goals.

Effective and persistent routine supervision of performance by midlevel supervisors is probably the most effective way of ensuring accountability, if supported by upper level managerial policies which reward good performance and sanction bad performance. Accountability starts with proper training and supervision. Most officers are evaluated annually for their performance and that evaluation will have a significant impact on the chances for promotions, increased salaries, and deployment to preferred tasks within the Department, such as detective units. If managers and supervisors pay attention to what their officers are doing, and make it known by policy and cases that they will take violations seriously and not dismiss

them out of hand or defend their officers instinctively, the officers under their supervision will listen. Police want to be promoted and they want to keep their job, which in the USA pays quite well.

Internal Affairs (IA) units exist in many large departments. In smaller department the job of IA units is normally performed by the chief or an ad hoc committee of senior management. IA units can proactively, on their own initiative, investigate suspected violations of professional norms, legal obligations, or departmental regulations behavior; or they can investigate public complaints against officers. IA units are staffed by police. If their suspicions or complaints are found justified, the case will be turned over to the Department for administrative sanctions or, if serious, to the legal system. At the federal level, most agencies have an Inspector General's office who will function similar to IA units in local police agencies.

A recent development is early intervention policies. The number of complaints against an officer and her/his performance evaluations are tracked over time. Most officers do a decent job, but a few are likely to attract a lot of complaints or consistently bad performance evaluations. Once identified as potential problem officers, they will be brought in for counseling, retraining, reassignment to less publicly oriented jobs, and watched and evaluated more carefully to make sure they are changing their ways of doing the work. The idea is that since there is a lot of resource investment in hiring, training, and paying an officer, if their bad tendencies are caught early they can be changed and the investment can bear fruit.

Lastly, peer group pressure and informal advice is a powerful control mechanism in any police agency. The practice of pairing a new officer with experienced officers is a typical technique, as is assigning a mentor. The real issue though is training the experienced officers and mentors to give proper professional advice, not just street knowledge.

## **General External Mechanisms**

Generally, one can group these into these categories: legal sanctions against individuals or organizations; media and public scrutiny; political oversight by legislatures and local governments; ombudsman type or citizen based oversight offices; blue ribbon commission; community responsiveness policies; professional umbrella group; and state certification agencies.

Legal means are probably the most effective external control on American police in two ways. Serious misconduct, abuses of power and authority, and violations of civil rights can and will lead to criminal charges against an officer. As noted above, violations of civil rights are a fundamental offense to the Constitution and are taken seriously by the courts.

Another legal means are complaints filed by individuals against an officer or department for bad performance or failure to perform what should have been done. If the agency does not deal with the complaint to the satisfaction of the complainant, a lawsuit is likely to be instituted. Individuals can sue the police (the police do not enjoy sovereign immunity) for damages on the basis of violations of civil rights, suits which are authorized by federal law. If the police lose the case, financial compensation can run into millions of dollars, depending on the severity of the misconduct, which has a significant impact on police budgets, undermines the image of the police, and attracts political oversight. It also costs a lot to defend a civil liability suit. In most instances, the police try to negotiate a settlement, if they think there is a valid complaint, rather than take a chance on what happens in a trial. Local police Chiefs especially worry a lot about getting sued and what it will do to their budgets, if they lose or negotiate a settlement. It is far better to control the officers rather than hope for the best. The threat of suits reinforces managerial commitments to control an agency's officers.

Media attention and investigations have led to numerous scandals and bad behavior becoming public knowledge. For example, many famous 'blue ribbon' commissions investigating patterns of corruption and abuses of power started with media stories which caught the eye of or forced the police and local government to start their own investigations. Two of the most famous investigations of corruption in New York city, the Knapp and the Mollen Commissions finally were established when local newspaper detailed extensive corruption in the NY Police Department, which police supervisors had known but had failed to take seriously.

The ability of the media to investigate is strengthened by a federal law, the Freedom of Information Act, which mandates that any public agency has to provide the requested information, subject to some legal and security exemptions. Any information that is in the public sphere can be legally requested, and that includes all information that has been communicated within an agency or across agencies by official technology, such as emails on an office computer or text messages on cell phones. It has become quite difficult for the police to say to the media, individuals, interest groups, scholars, or policy think tanks that we cannot give you this information. The standard is that the police have to show why they cannot reveal the requested information; it is not the responsibility of the requesters to show why the police should.

Another technology which is having a more and more profound effect on police behavior in public spaces is cell phones. It used to be that the governing event description—this is what happened in an arrest or other encounter—was what the police wrote in their reports. Now the police know that anything they do can and probably will be recorded, and placed

on the internet for all to see. For example, after the infamous Rodney King beating by police from the Los Angeles police department, the initial report written by the police misstated what had happened and justified every action they took. Unfortunately for the police, someone had recorded the beating and it turned out that what the police said had happened was not what was shown on the tape. The police who wrote and approved the reports were later administratively disciplined. In short, the police are never sure now whether they are being recorded and have to be more careful on what they say and write down. If there is a civil case, the recording can raise serious doubts about the veracity of the police.

Political oversight of the police rests with local governments, state legislatures and committees in congress. They control the budget, can hold investigation and require testimony by the police, and suggest new policies. In general, there is very little control over operational performance of the police at any level, unlike legal and public scrutiny, and most budget decisions at all levels have only the most attenuated and indirect effect on what the police do.

Legislature can impose particular requirements on the police which will change the way they have to do their job. For example, racial profiling has become a major legal, political and inter-group relations issue. In Washington State, to ensure that the State Troopers did not engage in racial profiling when patrolling, the legislature required that for each encounter between a Trooper and motorist, Troopers would have to fill out a form which included the race and ethnicity of the motorist stopped. These forms are routinely analyzed, under contract by a research agency, to detect possible discrimination on who is stopped, issued a ticket or arrested. The question is whether minority drivers (African-American, Asian-American, and Hispanics) are more likely than white drivers to be dealt in a different manner by the Troopers. So far the results of the analysis of the data in the forms show little evidence of patterned racial profiling by Troopers in the state of Washington.

Citizen or professional oversight—through ombudsman type agencies or Public Oversight Boards—has a largely symbolic effect on police performance in the USA, at any level. Most lack the two basic prerequisites for effective oversight: the legal authority to require the handing over of information and the appearance of persons before them (the subpoena power), and independence from the police investigative staff. Without both, civil oversight has little power.

In serious cases of alleged police malfeasance, blue ribbon public Commissions have been authorized to investigate and report findings and recommendations. The Knapp and Mollen commissions mentioned earlier are examples. Another is the Christopher commission which was established to investigate the culture, regulations and practices of the Los An-

geles Police department following the Rodney King beating, the two trials of officers involved, and public riots. The commission found a pervasive pattern of racist language encouraged and condoned from the top management, and probably supported by the public, which had led to the King beating (King was Black; the officers were White).

At the local but not the federal level, public sentiments expressed directly to the local police, to city governments in testimonies during hearings, in letters to the media, or in local votes can have some impact on how the police structure their priorities and allocate their resources. This is especially the case when community policing is the professed ideology of the police. Under that policy, the police organize a lot of meetings between themselves and the public to exchange information and clarify mutual concerns.

As noted earlier, state certification agencies have the power to de-certify officers, remove their sworn status, which means they cannot work as police in that state (They could be hired in another state). De-certification is rare and would have to involve some serious misconduct or failure to meet certification requirements by an officer.

The last mechanism, which is both internal and external, are professional umbrella associations, such as the International Association of Chiefs of Police for the USA, or the Washington Association of Sheriffs and Chiefs of Police. Umbrella associations are the professional and progressive voice of police managers in the USA; they endorse basic professional standards, codes of conduct, effective and fair managerial procedures, sanctions and reward policies, and disseminate through professional publications, training courses and annual meetings the latest thinking on the use of technology, research, and solutions to the practical issues involved in police work. The umbrella associations seek to establish what forms of policing every agency should adopt and implement, and by what standards their performance should be judged.

### **Federal Mechanisms for Accountability of Local Police**

Federal mechanisms include legal prosecutions; the carrot and the stick approach; consent decrees; functional task forces; and informal networks.

The basic federal oversight of local police is accomplished through federal law and Constitutional provisions which mandate due process and equal protection of the law. The local police have no choice but to abide by legal rules and decisions. Due process notions are a fundamental constraint on police performance. If they do not abide by due process requirements they will be challenged in any actions they take. As noted above, the police can be sued by any individual for any real or imagined slight offense, misconduct, or abuse while they were engaged in official

business, or acted in the governing legal phrase 'under the color of law,' and they will have to respond, which takes time, effort and resources.

In practice, another approach is offering or withholding federal money. The federal government cannot force state or police to act in particular ways desired by the 'feds.' What the feds can do is this: They can say 'if you, voluntarily, comply with this demand, we can give you money to do so. You can have the money but there are conditions.' Or the feds can say, 'if you do not comply, we will not give you money that you thought you would get. It is up to you.' Let me give three examples.

To lower driving speeds on major roads and prevent traffic accidents, injuries and deaths, the federal government wanted to establish a uniform maximum speed limit on highways across the USA, which was lower than what most states allowed. Speed limits are set by state law. Some states in the western part of the USA had no legal speed limit at all, or if they had, it was not enforced by traffic police. Some states said no, we will not lower our speed limits. The federal government said "Ok, but we will not give you money that you should get from a special federal highway trust fund, unless you do. It is up to you." The states complied, and complained.

Another example was the Law Enforcement Assistance Administration (LEAA) established in 1969 by Congress, based on the recommendation of a major commission, which distributed billions of dollars to local and state criminal justice agencies between 1969 and 1982. States had to establish a general agency for the criminal justice system, establish a plan on how to use the money requested, and report annual results. All requests for federal money had to be funneled through that agency. Failure to write a plan or a report would lead to the loss of federal money (It never did but it was threatened).

One of the major components of LEAA funding was targeted at improving the educational levels of the police. Police officers were subsidized in order to improve their formal education. A sudden influx of students in community two year colleges and four year universities led to the creation of numerous criminal justice departments and courses and a significant improvement in the formal educational qualifications of police officers.

An additional change which ultimately had a profound impact was the requirement that states which received money to implement new policies had to set aside a small percentage of that money for policy evaluation. This money supported some of the best known evaluation studies of the police, and paved the way for the acceptance of evaluations generally.

A third example occurred during the Clinton administration. President Clinton, during the campaign, had proposed that the federal government fund money for the hiring of an additional 100,000 community police offi-

cers by local police agencies. After he won, the necessary money was allocated by Congress to be distributed by a new COPS agency. Local agencies had to apply and promise that when the federal money ran out they would take over the funding from local resources. Most agencies which received COPS funding did manage to comply with that condition.

Consent decrees have been used sparingly, but are a powerful tool to force local police to change their ways. Finding a systematic pattern of police abuses by a city agency will lead to the threat of a law suit by the federal Department of Justice (DOJ) against the city and its police. Before starting a suit, the DOJ will agree to not sue if the city agrees to sign a consent decree which spells out the changes in police policies and structures which will have to be implemented. The implementation of the decree will be supervised by an appointed external monitor, most often a judge. Once the changes have been achieved, the consent decree lapses. Some big cities, e.g., Pittsburgh, Los Angeles, Oakland, have accepted consent decrees and the changes they mandate, largely because they knew that they had a serious policing problem on their hand that seemed resistant to local solutions. Federal pressure and supervision might provide more effective change leverage. In late 2010, the city government of New Orleans, which has major police problems, is actively soliciting a consent decree with the federal government as that will put more pressure on the police to change than the city can apply.

There has been a veritable explosion of task forces in American policing. Since crimes and criminals almost always cross jurisdictional lines, local police have to resort to agreed compacts on how they will work together; the same situation applies to working relations among local, state and federal police. The common operational solution to the fractionalization of USA policing are functional task forces which bring together, by mutual agreement, officers from different agencies, to share information, knowledge, resources, skills and credit for good work done. The most widely known are drug task forces, but task forces also deal with human trafficking, gang violence, or any other criminal activity which is not localized in one jurisdiction. The federal DEA is normally part of drug task forces but exercises no institutional command within each task force. No participant in task forces is superior to others. Participation is based on the equality of police agents. Task forces are frequently subsidized by federal money.

Some task forces, such as human trafficking task forces, include participants from non-law enforcement agencies and public groups (e.g. hospital personnel or domestic violence victim support groups).

Task forces also exist transnationally. The USA and Canada participate in IBETs (Integrated Border Enforcement Teams) which bring together members from police agencies, the military, and intelligence agencies on

both sides of the border for better control of illegal border crossings through the harmonization of policies and efforts and the exchange of information. There is no similar task force at the Mexico-USA border, as the necessary trust to work together is lacking.

Lastly, there are informal networks among fellow professionals which enable police from different levels to work together. For example, FBI agents are stationed across the USA. In some cases, relations between local police and FBI are frosty and confrontational; in other cases skilled officers on both levels figure out how to work together well. Informal networks lead to common understanding on what needs to be done, or whether one or another agency is the lead agency in a situation. FBI, or any other federal officer, can influence local policing activities by their interpersonal skills even when they have no formal authority.

The four different types of police malfeasance discussed earlier are effectively addressed by different accountability mechanisms. The commission of normal crimes by an officer, while on or off duty, are best pursued through the normal processes of the criminal justice system, with the proviso that police from some other agency conduct the investigation.

The willingness of the police to be used for partisan political gains or their inability to resist such demands and pressures, can only be addressed through the political system and public support of reform policies. The law, in conditions where politics trumps the public good for the police, is not likely to be effective nor are the conventional internal and external control mechanisms.

Corruption and abuses of power have a different character. They frequently occur within the routine decisions taken by the police, are not always major in their corruption or malfeasance, and are widely experienced by the public at large. These are best addressed by the conventional internal and external mechanisms.

Large scale episodes of abuses and corruption, on the other hand, require major investigations by legislatures, media, commissions or law suits. These episodes cannot be exposed or eliminated by the normal conventional control mechanisms available to police managers and the public.

To be able to respond differentially, and effectively, to various forms of police malfeasance requires the creation of, and support for, multiple accountability mechanisms.

## **Transparency and Accountability**

Below are some lessons which can be taken from the American experience. These lessons are, of necessity, quite general.

First of all, the law and the Constitution matter in controlling the police. That requires a legitimate, independent and protected court system.



There are many countries in the world which have constitutions that read as well or better than the Constitution of the USA, in terms of defining and stating civil and human rights, but those are merely words on paper without impact on how the police or the criminal justice system perform and the quality of justice and protection enjoyed by all members of the public.

The reality is that courts depend on others to take their decisions to hear and enforce them. Courts and judges have no police (other than security officers protecting their courts). They can say, 'do this or you cannot do that to the police,' but someone else has to enforce that legal decision.

For example, one of the best known SC decisions is the case of *Miranda vs. Arizona* (1966) which requires that the police inform a suspect who is in their custody that they have a right to remain silent and a right to a lawyer of their own choosing or one provided by the state. The decision is based on the right against self-incrimination stated in the Fourth Amendment. Suspects in the custody of the police cannot be coerced into confessing to a crime. The SC had dealt with many cases before 1966 in which suspects said that they had been coerced into confessing while being interrogated. The police like confessions. It validates their arrest and saves them work; they had been quite creative in getting people to confess. Confessions, under law, have to be voluntary and based on informed consent (suspects have to understand the legal and punitive consequences of a confession). The SC finally became fed up with the many ingenious ways the police tried to undermine voluntariness and informed consent and decided that any confession in which suspects had not read the Miranda rights statement<sup>4</sup> was, by definition, coerced. Of course, the police did not like that. But the decision has been enforced and become part of the habitual practices of interrogations conducted by the police.

Who enforced that decision? Police chiefs, who saw nothing wrong with having their police read a short statement, when it turned out, based on research, that the Miranda warning had very little impact on the rate of

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<sup>4</sup> The Miranda decision reads as follows: "The person in custody must, prior to interrogation, be clearly informed that he or she has the right to remain silent, and that anything the person says will be used against that person in court; the person must be clearly informed that he or she has the right to consult with an attorney and to have that attorney present during questioning, and that, if he or she is indigent, an attorney will be provided at no cost to represent her or him."

The wording can change slightly when the warning is given, and the sequence in which the rights are read can change, as long as the overall meaning and specific rights are read prior to interrogation. Often there is a form the suspect signs that s/he has been given the warning. Not all the phrases and right are. In a 2010 decision, the Supreme Court held that the right to remain silent is invoked by the suspect only if s/he says 'I want to remain silent' or 'I don't want to talk'; merely not answering police questions is not enough to invoke the right.

confessions; and also taught the police to behave in more professional ways.

The second group who enforced the decision was made of prosecutors. In the USA system, the police investigate, build a case, arrest a suspect, and then turn the case over to the prosecutor. Prosecutors decide whether they want to take the case to trial or plead it out (plea bargain the case), largely based on what they think of their chances of winning the case and the seriousness of the offense. They want a strong case to go forward, a case which is supported by solid evidence. Only legally gathered evidence can be introduced in court during trial. If a case given to a prosecutor by the police includes, or is mainly based on, a signed confession, the first question the prosecutor will ask the police is 'did you Mirandize the suspect?' If the police did not, the prosecutor will reject the case and decide not to prosecute. Prosecutors are lawyers and they know that the defense will challenge the introduction of the confession in court, and the judge will not admit it into evidence (This is the exclusionary rule decided by the SC in 1914 which mandates that judges cannot allow tainted, or unconstitutionally derived evidence, into court proceedings). To the police, a confession is good police work and evidence of guilt; to the prosecutor a non-Mirandized, i.e. coerced confession is a worthless piece of paper since s/he cannot use it in court. Prosecutors will tell the police they work with, 'do not bring me a confession when it is clear that you failed to read the suspect the Miranda warning. Read the warning. It is not that long, and then interrogate the suspect if they are willing to talk.'

A corollary of the legitimacy of the court, and the law and due process enforced by courts is that the political leadership, the other agencies of the government, and the public accept decisions of the courts as binding, even when they disagree with a specific decision. In the USA there is much public, legal and political disagreement with specific decisions, but that does not lead to arguments that the courts should be stripped of their autonomy; rather, efforts are directed toward changing the language of laws that were interpreted by the courts, bringing another case which is slightly different to see how that will be decided, or appointing judges who one hopes will see things one's way. But no-one seriously questions that the SC has the Constitutional authority of judicial review, and has the last word on what is (temporarily) the legal status of a law, regulations or social conflicts.

Law resolves what should be purely political conflict. For example, in 2010 the state of Arizona passed a law, and required police to enforce that law or they could be sued if they did not, which was aimed at controlling illegal, or irregular immigration (that is without proper papers and credentials) into the USA. The law has created a massive political uproar by opponents who argue that enforcement will lead, inevitably, to the racial

profiling of illegal immigrants, most of whom are from Mexico and Central America, and of legal residents – about 40% of Arizona's population is Hispanic. Also, immigration control is a federal competency. Neither the state nor the federal governments are willing to compromise, and there may not be one that is politically acceptable. The upshot is that the federal government has threatened to sue the state to prevent it from enforcing that law, and the racial profiling it will lead to, despite all protest by the Arizona government and police that it will not. Rather than political compromise, the issue will end up in the courts which will have to make an unpopular decision no matter what the outcome.

A second basic lesson is that control of the police requires a free media. Misbehaviors, malfeasance, violations of laws and rights by the police will remain hidden until and unless they are brought into the light of public scrutiny. The most effective means to do so is a viable, vibrant and free press, whether printed media or other technological means. Many of the big exposures of police misbehavior leading to public scandal and inquiry, from extensive corruption to major crime rings, have been the work of the press. The police are good at hiding what they do. Someone has to pry open their reluctance, has to find out, investigate complaints which were not pursued, allegations which were denied, or rumors about police abuses which abound to find out what the truth really is. The public cannot do so and neither can the courts, nor legislative hearings. It takes good investigative reporting to reveal police abuses.

The third basic lesson is that control of the police, holding them accountable for good performance, is a basic managerial responsibility. External oversight can raise issues, mandate change, create different training procedures, or lead to cutbacks in the resources and powers of the police, but it is the managers of the police who will have to carry out reforms. Police training, hence, cannot be solely aimed at the lowest levels, but has to focus as much on middle and upper level managers. Managing is not a skill all police possess, even when they are promoted from within; they have to be educated to proper policies and administrative skills. In a sense, based on the basic division in many police agencies between lower ranks and officer ranks, external oversight can have an impact on management, but only when managers translate those external demands into enforced internal policies and regulations will lower ranks change their actions.

The last lesson is the most important. What one can learn from the study of other policing systems are not models, ideologies, institutions, polices, or practices done there. What can be extracted are the basic principles which underlie what is done elsewhere which then have to be adapted to local conditions. The diversity and multiplicity of accountability mechanisms briefly sketched above may not exist locally, or the authority

and power of various mechanisms will be different to that in the USA or the nature of federal division of power and labor will not allow certain means. Taken what works in some countries and using those same policies in another country has hardly ever been successful. It is up to local people—politicians, police, and public groups—to take the initiative in figuring out what might work. They know the local contexts in ways foreign advisors and scholars are not likely to; they know what resources exist and what make reforms difficult and problematic. The goal of this paper is not to say do accountability as it is done in the USA. That would be ill-advised.

## **A Note on Sources**

I have indicated a few websites since these are globally available. For most agencies in the USA, one can google their name, find their website and gather the specific information one needs.

I have not listed any printed or published materials since those may not be easily available in Nepal.

LEMAS (Law Enforcement Management and Administrative Statistics) data gathered by the federal government on all large police and a sample of smaller agencies can be found at [www.ICPSR.umich.edu/cocoon/ICPSR/SERIES/00092.xml](http://www.ICPSR.umich.edu/cocoon/ICPSR/SERIES/00092.xml). LEMAS data is the best source for practically all institutional information on American local police.

The most complete compilation of data and statistics on the USA's criminal justice system and the police is available in the Sourcebook, at [www.albany.edu/sourcebook/](http://www.albany.edu/sourcebook/).

Other data on the USA can be found at [www.ojp.usdoj.gov/bjs/](http://www.ojp.usdoj.gov/bjs/), the website of the Bureau of Justice Statistics in the Department of Justice.

IBETs are described at [www.rcmp.grc.gc.ca/ibet-eipf/index](http://www.rcmp.grc.gc.ca/ibet-eipf/index).

# Russian Police

Vladimir Ragozin

## Description of the Political Structure of the State

### Federal Units of the State

Russia is a democratic federative law-governed state with a republican form of government. The population of Russia is about 141 million people and the territory is 6.6 million square miles. The Russian Federation consists of 83 constituent units (subjects of the federations, or, colloquially, regions) (21 republics, one autonomous region, 4 autonomous areas, 9 territories, 46 regions and 2 federal cities: Moscow and St. Petersburg). In accordance with the Constitution, they are equal in their relations with the federal government and exercise a certain degree of political, legislative and administrative autonomy. All of these are formally equal in their sovereign rights. The authorities of the constituent units have the right to pass laws independently from the federal government. The Russian President has the right to suspend acts passed by local executive authorities in case these acts conflict with federal laws of Russia, its internal commitments, or if they violate the human and civil rights and freedoms until the issue is resolved by an appropriate court.

State power in Russia is carried out by dividing power into three independent branches: legislative, executive and judicial. Legislative power belongs to the Federal Assembly (the Parliament). Executive power belongs to the central and local governments. Judicial power is provided by an appropriate judicial system and by civil, administrative and criminal legislation.

The President is the head of the state and determines the basic objectives of the internal and external policy of the state. He is elected for a six year period on the basis of universal, equal and direct right to vote by secret ballot for all eligible citizens. The same person cannot serve as President for more than two terms in succession. The president stops performing his duties ahead of time only in the following situations: resignation, impeachment or poor health. Elections of a new President are to take place within three months and in the meantime his duties are acted upon by the Chairman of the Government of the Russian Federation.

The President appoints, with the consent of the State Duma (the lower chamber of the Federal Assembly), the Government of the Russian Federation, chairs the meetings of the government, and adopts the decisions of the resignation of the government. The president nominates to the State Duma a candidate for appointment to the post of the Chairman of the Central Bank, presents to the federation Council candidates for the posts of the Constitutional and Supreme Court justices, Supreme Arbitrage Court justices, and a candidate for the post of Prosecutor General. The President forms and heads the Security Council. He is the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation and appoints and dismisses the supreme commanders of the Armed Forces. He appoints diplomatic representatives for approval of the Parliament. He confers supreme military and supreme special titles and honorary titles of the state. He has the right to show mercy and to decide on issues of citizenship. He has the right to introduce the state of emergency throughout the country or in a particular territory within the Russian Federation. The president has the right to dissolve the state Duma, to announce elections ahead of time and to pass the decision to conduct a referendum on federal issues.

## **Judicial System**

The Russian judicial system consists of the Constitutional Court, courts of general jurisdiction, military courts, and arbitrage courts (which hear commercial disputes). The Constitutional Court of the Russian Federation is a court of limited subject matter jurisdiction. The 1993 Constitution empowers the Constitutional Court to arbitrate disputes between the executive and legislative branches and between federal and regional and local governments. Furthermore, the Court is authorized to rule on violations of constitutional rights, to examine appeals from various bodies, and to participate in impeachment proceedings against the President. The July 1994 Law on the Constitutional Court prohibits the Court from examining cases on its own initiative and limits the scope of issues the Court can hear. The system of general jurisdiction courts includes the Supreme Court of the Russian Federation, regional level courts, district level courts and justices of the peace.

The Duma passed a Criminal Procedure Code and other judicial reforms during its 2001 session. These reforms help make the Russian judicial system more compatible with its western counterparts and are seen by most as an accomplishment in human rights. The reforms have reintroduced jury trials in certain criminal cases and created a more adversarial system of criminal trials that protect the rights of defendants more adequately. Another significant advance in the new Code is the transfer

from the Procuracy to the courts of the authority to issue search and arrest warrants.

## **Overview of the Criminal Landscape and Its Consequences for the Police**

*A Brief Analysis of the Crime Situation in the Russian Federation in 2009*  
(taken from the website [www.mvd.ru/stats/](http://www.mvd.ru/stats/))

The crime rate in Russia sharply increased during the late 1980s. The fall of Marxist-Leninist governments in Eastern Europe had a tremendous influence on the political economy of organized crime. The collapse of the Soviet Union destroyed the majority of the systems and infrastructures that provided social security and a minimal standard of living for the population. Law and order across the country broke down resulting in an outbreak of crime. In the transition to a free market economy, production fell and there was a huge capital flight coupled with low foreign investment. Due to these factors, economic instability increased and a newly impoverished population emerged, accompanied by unemployment and unpaid wages. Extreme poverty as well as unpaid wages resulted in an increase in theft and counterfeiting.

Since the dissolution of the Soviet Union, organized criminal groups in Russia and other former Soviet republics have been involved in different illegal activities such as drug trafficking, arms trafficking, car theft, human trafficking and money laundering being the most common. The internationalization of the Russian Mafia along with the Sicilian Mafia, the Camorra, the Triads and the Yakuza played a vital role in the development of transnational crime involving Russia. From 1991 to 1992, the number of both officially reported crimes and the overall crime rate increased by 27%. By the early 1990s, theft, burglary, and other property crimes accounted for nearly two-thirds of all crime in the country. There was a rapid growth of violent crime, including homicides. However, since the beginning of the 2000s, crime in Russia has taken a sharp decline.

The analysis of the statistics of the Russian Federation Ministry of Internal Affairs shows that in 2009 the bodies of internal affairs of Russia considered 22.8 million statements, reports and other information about the incidents, which is 6.0% more compared with the previous year. For one in nine reports (10.7%) it was decided to initiate criminal proceedings. A total of 2,445.5 thousand reports started criminal proceedings, 7.1% more compared with the same period of the previous year. Over the period under review, 2,994.8 thousand crimes were registered, or 6.7% less than the same period of 2008. The increase of registered crimes was recorded in 15 subjects of the Russian Federation, the decline in 68 subjects.

The vast majority of crimes (93.1%) were detected by organs of internal affairs, 4.3% of them – on the stage of preparation and attempt. In total, 120.4 thousand crimes were revealed, which represents only 4.0%.

In the republican, provincial and regional centers 1,280.0 thousand crimes were registered (42.7%) out of the total registered ones. Almost one fifth (19.8%), or 591.8 thousand crimes were registered in rural areas – 4.6% less than in 2008.

More than half of all reported crimes (47.5%) were thefts of property, including those committed by: theft – 1,188.6 thousand (39.7%), robbery – 205.4 thousand (6.9%), loot – 30.1 thousand (1.0%). Almost every third theft (32.1%), every 23rd robbery (4.3%), and every 12th loot (8.4%) were associated with illegal entry into homes, premises or other location.

Out of the total number of reported thefts, every 20th registered crime (5.1%) was burglary. Between January–December 2009 their number decreased by 11.7% compared to the same period of the previous year.

On roads and highways outside settlements, 270 robberies (13.2%) were committed, 573 loots (5.1%), there were 136 identified cases of illegal acquisition, sale, storage, transportation or carrying of weapons, ammunition, explosives and explosive devices (44.3%).

The increased number by 7.2% of the reported crimes related to trafficking in weapons, as compared to January–December 2008, amounted to 34.2 thousand, while the number of findings of theft and extortion of weapons, ammunition, explosives and explosive devices has increased by 7.8% (1.8 thousand).

In January–December 2009, 8.7 thousand crimes were committed with the use of a weapon, representing 13.6% less than in 2008. The highest number of reported crimes in this category was stated in the following regions: St. Petersburg (541), Republic of Dagestan (513), Irkutsk Oblast (503), Republic of Ingushetia (377), Sverdlovsk Oblast (351).

The share of registered serious and very serious crimes has increased from 26.5% in January–December 2008 to 26.6% over this period.

In 2009, 605.4 thousand crimes committed in public places were recorded, which is 5% lower compared to 2008. On the streets, squares, parks and gardens 361.3 thousand crimes were registered, which is 6.4% less than in 2008, including 88.1 thousand robberies (lower by 18.4%) and 121.5 thousands of thefts (more against 2008 by 3.9%).

Over the period under review, 238.5 thousand crimes related to drug trafficking were disclosed, which is 2.5% more than in the same period in 2008. At the same time, officers of the drug agency found 90.7 thousand crimes, by members of the MoIA – 145,1 thousand crimes. In comparison with January–December 2008, there is a 1.6% increase in the number of crimes committed with the purpose of sale of narcotic drugs, psychotropic substances or their analogues, and in 2009 the proportion of the number



of crimes related to drug trafficking reduced in comparison with 2008 from 52.8% to 52.3%.

In January–December 2009, 654 terrorist offenses (1.9%) and 548 crimes of extremist orientation (19.1%) were registered.

As a result of criminal assault in 2009, 46.1 thousand people died, which is 8.9% less compared to 2008, 55.4 thousand people suffered from serious bodily injury (9.0%). In rural areas there are 40.8% criminal assaults (18.8 thousand), in cities and towns – 37.4% (17.2 thousand) died, and 20.7 thousand suffered from serious bodily injury, which represents 37.4%.

The amount of damage caused by crime totaled 1,147.2 billion rubles. Most of the damage (92.6%) included crimes recorded in the centers of the Russian Federation.

By comparison to 2008, there is a 4.5% decrease in the number of crimes with economic matters identified by law enforcement. In total there are 428.8 thousand crimes in this category, the proportion of these crimes in the total number registered was 14.3%. Property damage from these crimes (of the finished criminal cases) amounted to 1,075.7 billion rubles. 172.8 thousand serious and very serious crimes with economic matters were disclosed, which is 40.3% of the total number of crimes identified in the economic sphere.

In 2009, 46.6 thousand environmental crimes were registered, which is 3.8% more than during the same period last year.

During the analyzed period crime detection rate decreased. In January–December 2009, 1,651 thousand crimes were disclosed, which is 3.6% less compared to 2008. Officers of the MoIA previously investigated 1,355 thousand, representing 82.1% of the entire portion. In 2009, 61.9 thousand crimes of the past were disclosed, 6.1% more than during the same period last year. Almost half (46.6%) of the solved crimes of past years are thefts (28.8 thousand) and the 12th part (8.5%) – fraud (5.2 thousand).

For a long time, a breakthrough in crime detection was not achieved. More than 1 million 300 thousand crimes registered in the past year remain unsolved. 1,309.1 thousand undisclosed crimes, which is 11.5% less than in January–December 2008. Out of this, the serious and very serious crimes represent 26.0%. The trend is deterioration in the detection of particularly serious crimes. 2.2 thousand murders and attempted murders remain unsolved, 7.3 thousand intentional infliction of grievous bodily harm, 757.8 thousand thefts, 124.1 thousand loots, and 11.2 thousand robberies. In connection with the failure to find the person subject to prosecution as the accused 1,273.6 thousand crimes remained unsolved. The main reason is related to shortcomings in the organization of work units engaged in carrying out search operations.

The chronic problem is the failure to respect deadlines of the investigation of cases. Across the country, investigating authorities violated the constitutional rights of citizens. Among the most frequent violations committed by prosecutors are illegal prosecutions, infringement of the rights of criminal proceedings, and unfounded criminal prosecution. In 2009, investigators of the bodies of internal affairs in respect of more than 1,300 persons criminal cases were terminated for rehabilitative reasons (increase nearly doubled compared to 2008), while every fifth of them were in detention.

The activity of special forces to combat organized crime of the Russian Federation to detect and prevent crimes committed by organized groups and criminal networks significantly decreased. In 2009, 29.6 thousand serious and very serious crimes committed by organized groups and criminal networks were registered, which is 15.2% less than in 2008. The proportion of crimes in these categories in the total number of investigations of crimes decreased from 7.7% in January–December 2008 to 6.9% in 2009.

During the analyzed period, foreign nationals and stateless persons on the territory of the Russian Federation committed 58 thousand crimes, which is 7.6% more than in January–December 2008, including citizens of CIS member states committing 53.1 thousand crimes (8.8%), their share amounted to 91.6%.

In 2009, 283 thousand convicts (32%) were sentenced to imprisonment while in 2008 the number of convicts amounted to 306 thousand convicts (33%). The average term of imprisonment in 2009 was of 3.6 years, with crimes of little gravity representing an average of 1.7 years, moderate crimes – 2.2 years, serious crimes – 3.6 years, and very serious crimes – 7.6 years.

Global trends and patterns characterize Russia's crime, which in the process of a natural transition to a market economy and capitalist relations has acquired a number of features. There is a psychological process of adjusting the population to a growing crime, including its relatively new forms – organized, terrorist crime and corruption. Two decades ago, a series of organized terrorism, mass hostage-taking, slave trade, ongoing public assassinations, multimillion-dollar frauds, as well as unparalleled corruption of senior government officials, were all crimes which deeply shocked the Russians. Now they see it almost daily and take it for granted.

Over the past century, crime all over the world has increased tremendously. There was also a similar trend in Russia. Each year, there are approximately 450-500 millions crimes for a population of 6 billion. This means that there are about 8,000 acts per 100,000 people. Real crime however, is at least twice as high. In some European metropolitan areas,

there are now only up to 16,000 or more registered crimes per a 100 thousand population, whereas the scale of latent (unrecorded) criminality is comparable with the recorded rate of crime. And in Russia it is many times higher.

Current trends do not give grounds for an optimistic forecast of crime in the coming years. This is due to a series of factors such as pauperism, alcoholism, narcotics, prostitution, abandonment, neglect, homelessness, mental illness as well as the inefficiency of the criminal justice system to deal with crimes.

One of the main indicators of effectiveness in combating crime is a balance of forces and means of the criminal justice system with the actual results of its operations. According to the UN, in 1994 the number of police officers per 100,000 population in Russia was the largest in the world (1,224 – almost one person per reported crime), with an average world number of 371. After Russia comes Singapore (1,074), Uruguay (840), Bermuda (796), Kazakhstan (778). France ranks on the 26th place (349), England and Wales on the 27th (346), USA – 31st (300), Sweden – 34th (281), Japan – 44th (207), etc. Even though the UN gets information from the governments that may not always be completely accurate, these comparisons are indicative. In Sweden, for example, the number of police per a 100,000 population was 4.5 times lower than in Russia, but they “serve” 6.5 times more recorded crime than in Russia. In 1994, 12,000 crimes per a 100,000 population were registered, while in Russia – only 1.8 thousand. It is supposed that the delinquency in Russia is many times higher than in Sweden, but the police and other law enforcers do not seem to identify it.

In direct contact between the militia and gunmen effectiveness is also low. In 2002, as a result of using standard-issue weapons in Russia, 107 criminals were killed and 402 were wounded. 212 police officers were killed and 523 injured by criminals. Criminals operate more efficiently than law enforcement agencies.

The international community in general and Russia in particular face a twofold challenge in the fight against crime: to ensure both the effectiveness of law enforcement while respecting human rights. Efficient work of law enforcement agencies should be combined with strict observance of fundamental human rights based on the new balance between freedom and necessity, freedom and socio-legal control, freedom and security.

## **The National Police (Militsiya or Militia in Russia)**

*Militsiya* or *Militia* is used as a short official name of the civilian police in Russia, despite its original military connotation.

The term was used in the Soviet Union, the Eastern Bloc and the Warsaw Pact countries (for example *Milicja Obywatelska* in the PR Poland),

but also in the Socialist Federal Republic of Yugoslavia, a Non-Aligned country. It was inherited by some former Soviet states, such as Russia, Ukraine and Belarus.

The name originates from early Soviet history, when the Bolsheviks intended to associate their new law enforcement authority with the self-organization of the people and to distinguish it from the “bourgeois class protecting” police. Originally militsiya was created in 1917 under the official name: the Workers’ and Peasants’ Militsiya. Eventually, it was replaced by the Ministry of Internal Affairs (Russian: МВД, MVD), which is now the official full name for the militsiya forces in the respective countries. Its regional branches are officially called Departments of Internal Affairs – city department of internal affairs, raion department of internal affairs, oblast department of internal affairs, etc. The Russian term for a raion department is “ОВД” (“Отдел/Отделение внутренних дел”), for region department is “УВД” (“Управление внутренних дел”) or, sometimes, “ГУВД” (“Главное управление внутренних дел”), same for national republics is “МВД” (“Министерство внутренних дел”).

The main tasks of the Militsiya (Police) are:

- security of citizens;
- prevention and suppression of crimes and administrative offenses;
- identification and detection of crime;
- protection of public order and public security;
- protection of private, state, municipal and other forms of ownership;
- assistance to individuals and juridical persons to protect their rights and legitimate interests within the limits prescribed by this Law.

Additional tasks may be assigned to the police only through the Law “on Militia” (Police).

## General Overview

The organizational structure, methods and traditions of the militsiya differ significantly from those of western police. Militsiya as an organization consists of many functional departments, such as the GIBDD, a traffic police. Organized crime detectives form highly independent squads inside regional militsiya. Some units may have specific names (like OMON in Russia) which are more specific than *militsiya* or *militsioner*.

The internal structure of the Militsiya is similar to the one in the military, therefore Militsiya personnel ranks mostly follow those of the Army—from private (Rus: *ryadovoy*), which is the lowest rank, to colonel general—with only these exceptions: there are no ranks of Army General and Marshal.

Detectives (Russian: *operativnik*) hold a rank of lieutenant at least and could be promoted to major or lieutenant colonel. The militsiya of an oblast-region (or another equivalent subnational entity) is usually headed by a general. The rank name is suffixed with of *militsiya* (e.g. *major of militsiya* for a major).

Militsiya personnel carry firearms, but are not permitted to carry their weapons when they are off duty.

Unlike in some other countries' police agencies, militsioners (police officers) are not assigned permanent partners, but work alone or within larger groups. Neither street patrols nor detectives are allowed to drive police vehicles themselves, so a specialist driver (either a serviceman or a civil employee) is assigned to each car and is also in charge of its maintenance. GIBDD (the traffic militsiya-police) is the only exception: its members drive their own cars and are specially trained in risk-driving.

One unique feature of militsiya policing approach is the system of territorial patronage over citizens. The cities, as well as the rural settlements are divided into *uchastoks* (Russian: pl. участки, English: "quarters") with a special *uchastkovyi upolnomochenniy* militsioner ("quarter policeman"), assigned to each. The main duty of *uchastkovyi upolnomochenniy* is to maintain close relations with the residents of their quarter and gather information among them. In particular, *uchastkovyi upolnomochenniy* should personally know every single ex-convict, substance abuser, young hooligan, etc., in given *uchastok*, and visit them regularly for preemptive influence. *Uchastkovyi upolnomochenniy* is also responsible for tackling 'minor' offences like family violence, loud noise, residential area parking, etc. *Uchastkovyi upolnomochenniy* is also the main, and actually the real, militsiya force in remote areas and small settlements where permanent police departments do not exist. *Uchastkovyi upolnomochenniy* militsioners have separate small offices within their quarters which are open to citizens on predefined weekdays.

This system slightly resembles the U.S. system of sheriffs but shows some notable differences. *Uchastkovyi upolnomochenniy* is neither a chief police officer in a given community nor is he a universal one (not combining detective, incarceration or special tactics tasks).

The system of *uchastkovyi upolnomochenniys* dates back to imperial times when *uriadniks* were conducting lowest-level policing in rural areas. In the Soviet Union, *uchastkovyi upolnomochenniy* were also responsible for such tasks as maintaining registration limitations and overseeing former political prisoners, which were subject to daily registration at the local MVD office.

## Conscripted Police

Another unique militsiya feature is the use of conscripts for regular urban policing. There are special “militarized militsiya units” in large cities (like Moscow or Saint Petersburg), consisting of called-up soldiers. These soldiers carry out simple public security tasks like patrolling and cordoning, they possess no firearms and are usually accompanied by a professional militsioner. “Militarized militsioners” reside in barracks and maintain military order. The main reason for the existence of a conscript police is the severe lack of personnel in regular militsiya units. “Militarized militsiya” should not be confused with the Internal Troops – the gendarmerie-like military force within the Russian Ministry of Internal Affairs.

Although women constitute a significant proportion of militsiya staff, they are usually not permitted to fill positions that carry high risks (such as patrolman, guard, SWAT) but are allowed to carry firearms for self-defense. Instead, they are widely represented among investigators, juvenile crime inspectors, clerks, etc. However, limited attempts are being made to widen the range of opportunities available for women working in the police, resulting for example in a lack of female traffic officers and detectives.

There is no border police in the Russian Federation. Border troops are included in the Federal Border Service of the Russian Federation (FBS Russia), which is a component of the Federal Service of Security of the Russian Federation.

The Russian National Bureau for Interpol is a part of the Ministry of the Internal Affairs and has outperformed most others in terms of expertise and fulfillment of tasks. There are about 70 operational Interpol offices in the country. One of their key tasks today is to enhance their performance and thereby boost activities as a whole. Besides the new Interpol telecommunication system, 1-24/7 is tuned in the country. This means officers work 24 hours a day seven days a week receiving and immediately forwarding information to any place in the world. This system was put into place in just over half of the Interpol countries. Considering Russia was among the first countries to install the system, it has since been using the resource actively. Interpol Secretary General Ronald K. Noble has visited Moscow and met with the Minister of the Interior of Russia Rashid Nurgaliev. He said he was impressed by the efforts of the Russian National Central Bureau of Interpol.

The Russian Ministry of the Internal Affairs has been actively involved in peacekeeping operations since 1992. During this time, representatives of the Ministry served in UN and OSCE missions in Croatia, Bosnia and Herzegovina (BiH), East Timor, Kosovo, Macedonia, and Haiti.

The first group of internal affairs officials was sent, headed by Lieutenant Colonel V. Kostenko, in April 1992, to the UN mission in the former Yugoslavia, and was formed of only 8 people. Today, there are more than 50 police officers in missions all over the world. Currently, Russian police officers are participating in UN missions in the Democratic Republic of Congo, Sierra Leone, East Timor, Liberia, and Sudan. Some Russian police officers are working in OSCE missions in Kyrgyzstan, Kosovo and Macedonia.

While carrying out their tasks in conflict zones, Russian police have proven to be competent and professionally trained specialists, able to solve any problems and maintain a high level of prestige in the Russian Federation.

## **Federal Structures of the Russian Federation Police**

The Russian Ministry of the Internal Affairs (MoIA – MVD in Russian) was recreated as the MoIA of the Russian SFSR in 1990, following the restoration of the republican Council of Ministers and Supreme Soviet, and remained when Russia gained independence from the Soviet Union. It currently controls the Militsiya, the State Traffic Police (GIBDD), and the Internal Troops. Since the disbanding of the *Tax Police*, it also investigates economic crimes.

The long-time additional duties of the Imperial MVD and NKVD, such as the Firefighting Service and Prisons Service, were recently moved to the Ministry of Emergency Situations and the Ministry of Justice respectively. The last reorganization abolished Main Directorates inherited from the NKVD in favor of Departments. The current minister of Internal Affairs in Russia is Rashid Nurgaliyev.

The Russian Ministry of the Internal Affairs has a centralized structure. Functionally, the MoIA is mostly a police agency. Its functions and organization differ significantly from similarly named departments in Western countries, which are usually civil executive bodies headed by politicians and responsible for many other tasks as well as the supervision of law enforcement. The Soviet and successor MVDs have usually been headed by a militsiya general consisting of service personnel, with civil employees filling only auxiliary posts. Although such ministers are members of the respective country's cabinet, they usually do not report to the prime minister and parliament, but only to the president. Local militsiya departments are subordinated to their regional departments, having little accountability before local authorities.

Internal affairs units within the militsiya itself are usually called "internal security" departments.

The official names of particular militsiya bodies and services in Russia are usually very complicated, hence the use of the short term militsiya. Laws usually refer to the police just as militsiya.

## **Central Administration Structure of the MoIA**

### **1. Criminal Militia Service**

The Criminal Investigations Department

- Main Office for Criminal Investigation
- Main Office for Combating Economic and Tax Crimes
- Main Office for Combating Organized Crime
- Office for Operational Investigation Information
- Co-ordination Office of Criminal Militia Service

### **2. Public Security Service**

The Uniformed Militia

- Main Office for Public Order Maintenance
- Main Office of State Road Safety Inspection
  - the Highway patrol or GIBDD
- Main Office of the Interior for Restricted Facilities
- Main Office of Interdepartmental Security Guard Service
- Co-ordination Office of Public Security Service

### **3. Federal Migration service**

- Main Office of the Interior for Transport and Special Transportation
- Office for Passports and Visas
- Migration Control Office
- External Labour Migration Department
- Legal Office
- Office for Crisis Situations
- Office for Resource Provisions
- Finance and Economy Office

### **4. Logistical Service**

- Office for Material and Technical Support
- Finance and Economy Department
- Medical Office
- Office for Communication and Automation
- Office for Capital Construction
- Co-ordination Office of Logistical Service
- General Services Office



## 5. Independent Divisions

- Office of Affairs – the Secretariat
- Main Office for Internal Security – Internal affairs
- Control and Auditing Office
- Internal Troops General Headquarters
- MVD Inquiry Committee
- Forensic Expertise Center
- Main Office for Organization and Inspection

### The MVD Inspector General

- Main Office for Special Technical Actions

### Special operations

- ODON
- OMON
- SOBR/OMSN
- Main Office for (Special) Investigations

### Special branch

- National Central Bureau for Interpol
- Mobilization Training Office
- Main Center for Information
- Main Legal Office
- Office for International Co-operation
- Office for Information Regional Contacts

According to the Law “on Militia” in the Russian Federation, the police are divided into criminal police and public security police. The work of the police subordinates to the Ministry of Internal Affairs of the Russian Federation, and police public safety – to the relevant executive authorities of subjects of the Russian Federation.

The Minister of Internal Affairs of the Russian Federation supervises all police in the Russian Federation. Leadership of the police in the subjects of the Russian Federation is exercised by the Ministers of the Internal Affairs, Heads of Departments (general division) of the Internal Affairs of the subjects of the Russian Federation, who shall be appointed and dismissed by the President of the Russian Federation.

Leadership of the police in districts, cities and other municipalities is implemented by the departments of internal affairs of districts, cities and other municipalities.

Leadership of police at the railway, waterway and air transport, in closed administrative-territorial bodies, on particularly important and sensitive sites are carried out by the Chiefs of the bodies of internal affairs of the relevant bodies.

### **Criminal Police**

The main objectives of the criminal police are the detection, prevention, and suppression of crimes for which a preliminary investigation is required; the organization and implementation of the search for fugitives from bodies of inquiry; investigation or trial; and avoiding the execution of criminal penalties of missing persons and other persons in cases stipulated by legislation of the Russian Federation. Criminal police assists public security police in the discharge of its responsibilities. Criminal police is a body of inquiry. The composition and size of the criminal police, the establishment, reorganization and liquidation of its bodies are defined by the Government of the Russian Federation. The chiefs of the criminal police of the Russian Federation subjects are relevant to the post of deputy interior ministers or heads of departments (general division) of the Interior on the subjects of the Russian Federation. The chiefs of the criminal police of districts, cities and other municipalities are on the post of deputy chief of the bodies of internal affairs. Criminal Police is funded through the federal budget.

### **Public Security Police**

The main tasks of public security police include providing security, public order and safety, protection of property, the identification, prevention and suppression of crimes and administrative violations, the disclosure of crimes for which a preliminary investigation is not necessary, and searching for specific categories of persons in order to establish their location. Public Security Police assists the criminal police in the discharge of its responsibilities. Public Security Police is a body of inquiry. Its members, the establishment, reorganization and liquidation of its entities, as well as the number of public security police, funded by the federal budget, are determined by the Government of the Russian Federation. The number of public security police, funded by the budgets of the Russian Federation and local budgets, is established by relevant executive authorities of subjects of the Russian Federation and local self-government. At the same time, it should not be below the standard approved by the Minister of Internal Affairs of the Russian Federation.

## **The Powers of Police Authorities**

The powers of police officials – is a set of rights and duties conferred on the police in order to implement the tasks assigned to them. This issue is described in section III of the Law “On Militia.”

Police in accordance with its mandated tasks must:

1. Prevent and suppress crimes and misdemeanors, identify the circumstances conducive to their commission, and within its rights, take measures to address these circumstances;
2. Provide assistance to victims of crimes, administrative violations and accidents, as well as to people who are helpless or in any condition which is dangerous to their health and life;
3. Take and record statements, messages and other incoming information about crimes and administrative violations and events that threaten individual or public safety and take timely action under the law;
4. Identify and disclose crimes;
5. Initiate criminal prosecutions, make inquiry and carry out urgent investigative actions;
6. Search persons who have committed crimes, fugitives from bodies of inquiry, investigation or trial, avoid the execution of criminal penalties of missing persons and in other cases provided by law, and search for stolen property;
7. Carry on proceedings in the jurisdiction on administrative cases;
8. Maintain law and order on the streets, squares, parks, highways, train stations, airports and other public places;
9. Exercise state control and supervision of compliance with regulations, standards, technical standards and other regulatory documents in the field of road safety, with the exception of state supervision in the construction, reconstruction and major repairs of roads; take examinations and issue certificates of motor vehicles, register motor vehicles and trailers, designed for movement on public roads, regulate traffic; perform in the manner determined by the Government of the Russian Federation, the state accounting indicators of safety traffic; control the federal law duties of liability insurance as the implementation of the mandatory insurance;
10. Issue permits to keep and bear civil and service weapons, transportation, importation into the territory of the Russian Federation and export from the Russian Federation the said weapons and ammunition, as well as permission for the storage and use of certain types and models of combat hand-held firearms, obtained for temporary use in the internal affairs bodies, permits for storage and transportation by

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- road transport explosive materials for industrial applications, monitor compliance with the federal law and the rules of traffic of service and civilian weapons;
11. Protect on the basis of contracts with persons or bodies owned property, inspect in a manner determined by the Government of the Russian Federation, bodies of personal security in special assignments and units of departmental guard, give binding orders to correct deficiencies identified in the technical strength of the facilities and the preservation of state and municipal property;
  12. Conduct examination on criminal cases and administrative cases, as well as scientific and technical research on materials of operative-search activities;
  13. Take urgent measures to save lives and provide people with first aid in case of accidents, disasters, fires, natural disasters and other extraordinary events; similarly, take urgent measures to protect property left unattended; provide state of emergency or martial law if they are imposed on the territory of the Russian Federation or in particular areas, as well as in the quarantine measures during epidemics and epizootics;
  14. Perform, within their competences, instructions by certain courts, the judge's ruling, written assignments of a prosecutor, an investigator for the arrest of those in default of appearance, on call, on remand, of search, investigation or other action provided by law, assist in the production of certain procedural actions;
  15. Perform determination (decision) by the court (judge) on administrative detention;
  16. Guard, escort and keep detainees and persons in custody;
  17. Monitor compliance of the rules of registering citizens of the Russian Federation by citizens and officials, as well as compliance with foreign nationals and stateless persons rules assigned to them of entering the Russian Federation, leaving the Russian Federation, staying in the Russian Federation and the transit through the territory of the Russian Federation in cooperation with the federal executive body authorized to exercise functions of control and supervision in the field of migration and its territorial bodies;
  18. Control, within its competence, observance by the persons released from detention, rules assigned to them in accordance with statutory limits; participate in the cases stipulated by law to monitor the behavior of convicted prisoners who are assigned to the types of non-custodial sentence or a sentence imposed conditionally;

19. Certify private security guards and security guards cards, monitor compliance with the federal law of the rules of private detective and security activity;
20. Take urgent measures to secure unattached property and treasures in order to transfer them to the relevant state bodies and officials;
21. Ensure the safety of lost and found documents, belongings, valuables and other property; arrange their return to their rightful owners or implement the established order;
22. If authorized by the court (judge), assist medical institutions to transport summoned persons suffering from diseases and pose an immediate danger to themselves or others, as well as the persons who have committed socially dangerous acts to court, to ensure in conjunction with health authorities in cases and order established by legislation of the Russian Federation, the surveillance of persons with mental disorders, alcoholism or drug addiction, which constitute a danger to others, in order to prevent crime;
23. Provide assistance, within its powers, to the deputies of representative bodies of state authority, local authorities, candidates, registered candidates for deputies and for elective positions in government bodies, local authorities, officials of government bodies and local authorities, members of election commissions, the referendum commission, representatives of public associations in carrying out their legitimate activities, if they are faced by resistance or danger;
24. Apply the security measures required by federal law, to judges, people's assessors, jurors, prosecutors, investigators, bailiffs, officers of the controlling bodies, as well as their relatives, to protect victims, witnesses and other persons involved in criminal proceedings, their loved ones, life, health or property when in danger;
25. To enforce court decisions on the transfer of juvenile offenders to special educational institutions for children and adolescents with behavioral problems;
26. To assist the Electoral Commission (referendum commissions) in the realization of their powers, including the provision of election commissions on their request, information about the presence of criminal record of candidates, registered candidates or elected positions in state bodies, bodies of local self-government;
27. Take measures to eliminate, during election campaigns, the preparation and holding of a referendum law contrary to the campaigning, campaigning for a referendum (including measures to curb attempts to bribe voters); inform the relevant election or referendum commission on the facts of violations and on measures taken in connection with this action;

28. Perform fingerprint registration in accordance with the laws of the Russian Federation;
29. Perform the licensing of certain types of activities, as well as the acquisition of weapons and ammunition in accordance with the laws of the Russian Federation;
30. Participate, in the limits of their competence, in providing security in civil aviation;
31. Participate in countering terrorism and ensuring the legal regime of counter-terrorism operations;
32. Provide assistance, within its powers, to bailiffs in the discharge of their duties, maintain law and order in the place of execution, and the application of enforcement measures;
33. Send materials to the relevant tax authority to make decisions in the identification of circumstances requiring the commission of acts classified by the Tax Code of the Russian Federation to the powers of tax authorities, within ten days from the date of the detection of such circumstances;
34. Notify the tax authority for the notification in accordance with paragraph 3 of Article 32 of the Tax Code of the Russian Federation, on the materials to make a decision to institute criminal proceedings, the outcome of these materials no later than the day following the date of decision.

## **Principles of Cooperation of Police with Other Law Enforcement Agencies**

In practice, all police forces act in unity. All organizational and tactical forms of MoIA are interrelated and, therefore, complementary. The basic principles of their work are cooperation and coordination of the actions. Cooperation can be defined as a joint, systematic, coordinated activity. The Law "On Militia" enshrines the principle of cooperation with police authorities and other stakeholders. There are several types of cooperation in the Russian police:

- Internal cooperation within the units of police;
- Cooperation of the criminal police and public security police;
- Cooperation of the police with other law enforcement agencies and state security agencies;
- Cooperation of the police with state bodies, local authorities, associations, work collectives and citizens, as well as municipal public order bodies, citizens;
- Cooperation with international actors and foreign law enforcement agencies.

Only if all these different types of cooperation are achieved, can full, objective and comprehensive solutions be found for the police tasks.

The cooperation of the police with various agencies and officials is regulated by a whole range of legislative and subordinate legislation and departmental regulations.

## **Transparency and Accountability of the Police in Russia**

Essentially, the police in Russia are controlled by relevant state authorities and public institutions. Recently, the law on public monitoring commissions was adopted, according to which the commission may undertake unannounced visits to colonies, prisons, and police stations. Unfortunately, this law is not always respected. The activities of the public security police, judging from its tasks, are supposed to address the local level, in connection with which it is subject to and controlled by not only the parent unit of internal affairs, but also by the local administration, i.e. it has a dual reporting task. However, based on the requirements of the law, the local administration may not intervene in the ongoing proceedings in cases of administrative offences (Art. 9 and 25 of the Law "on Militia").

There is a special organ for the internal security and control in the MoIA, the Main Department for Internal Security – Internal affairs, included in the structure of the Ministry of Internal Affairs of the Russian Federation. The structure is as follows: The Department is on top, followed by the Office for internal security in Federal Regions, the Office for internal security in the subjects of the Russian Federation, and the Departments for internal security for city, county, district department of internal affairs, depending on the characteristics of the territorial divisions in various regions.

The officers of the internal security are subject to all obligations of the criminal police, listed in the Law of the Russian Federation on Militia. With regard to objectives, along with the overall tasks of the criminal police, there have been some specific tasks that define the two main areas of work. The first of these is concerned with ensuring security of the departments of internal affairs and family members of those units. The second area includes the prevention, detection, suppression and disclosure of all types of crimes committed by officers of law enforcement agencies.

In connection with today's domestic policy of Russia, aimed at combating corruption in the state, the second direction clearly takes priority.

The first direction is aimed at prevention efforts related to the security of personal data of the employees of the MoIA and ways in which to avoid the disclosure of this information, particularly relating to staff in operational units combating organized crime. The work is conducted in order to

avoid illegal attempts to influence staff members and their families. Also, any information on the availability of preparing and committing crimes and offenses against law employees and their families is checked.

The second direction is different from the ordinary activities of Criminal Militia only in that the object of detection is the law enforcement officers, both active and discharged from service for any reason. Also, new employees and candidates for various positions in internal affairs agencies are tested, in order to prevent the access to the power structure of persons associated with organized crime.

It is important that the activities of the police should be more transparent, in particular, that every citizen, if he/she has such a need, could visit the police station freely. After all, the police department is a public space which is dependent on taxpayer's money. Therefore, it is necessary to organize excursions to the police station. For example, it would be very useful to allow, and encourage, law students to visit the police in order to familiarize themselves with the ways in which detainees are interrogated.

## Challenges and Reform Projects

In 2008-2009, different activities were introduced aimed at limiting the overwhelming power of the police in the economic sector. Also, restrictions were introduced concerning taxes and fees. These measures will definitely reduce the arbitrary power of the police in the economic sector; however they do not constitute reforms *per se*.

The first steps towards a reform were made in late 2009, when after several high-profile crimes were committed by police officers much public attention was drawn to the necessity for change within the police. On December 24, 2009 the President of Russia signed a decree "On measures to improve work of bodies of internal affairs in the Russian Federation," which, provides for:

1. Reductions of the MoIA staff by 20% until 1 January 2012;
2. Directing the Russian Federation Government to consider reforming the system of cash payments and optimize the number of specialized educational institutions, etc.;
3. Prescribing the Minister of Internal Affairs to review the procedures for selection of candidates for service in accordance with their moral and ethical qualities and professionalism, avoid duplication of functions of organs of internal affairs, etc.

In order to address the various problems faced by the police, it is essential for the police departments to dispose over sufficient resources. It is important to increase MoIA funding, keep a strict control over the spending and find ways to redistribute resources within the system for more efficient use.



One of the main objectives of the police reform will be related to the personnel. This implies:

- Full staffing of internal affairs by ordinary staff, especially the precinct and technical staff in adequate numbers to perform their duties;
- A personnel policy, which includes screenings for those who by their moral, professional and psychological qualities do not meet the work requirements in the law enforcement system; and
- Revision of the training of the Ministry of Internal Affairs (both at the level of primary education and in terms of skills) with emphasis on the development of their sense of justice and social responsibility.

The key objective of reform should be to change the principle of setting targets and reporting systems in internal affairs.

Setting targets should be based on the harmonization of all-Russian needs and interests of regions and districts. In this process, the representatives of the regional executive and legislative branches will be integrated, as well as local governments.

The reporting system should at least include qualitative indicators (including periodic surveys of the population) and the assessment of the militia by independent observers (representatives of regional and local authorities, civil control). Accordingly, the principles must be changed to encourage police officers and the criteria for career promotion.

In addition, some level of accountability from the police to citizens at the local level will be provided. In this sense, the establishment of a system of civilian control—although formally separate from, and unrelated to, the reform of the police—will undoubtedly have a fundamental impact on the efficiency of internal affairs bodies and will facilitate the harmonization of relations between the police and the community.

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# Spanish Law Enforcement Structures and Organization

Manuel Marion

## Introduction

The Spanish political and social upheaval that followed the end of the dictatorship in 1975 led to a deep evolution of the public security system and the law enforcement agencies. This development was led by the implementation of the Spanish Constitution<sup>1</sup> (approved in 1978) and the consequent ratification of a number of international conventions involving some aspects of policing, particularly referred to the use of force. The public security reform was also inspired by the constitutional provision related to a new administrative State organization, leading to a de-centralization process in almost all the State institutions. In this respect, the current status cannot be considered a final result, as the de-centralization and evolution continues thirty years after.

This process has followed—and still depends—on the internal political developments in Spain, and external factors including Spain joining the EU (European Union) in 1986, the implementation of the police cooperation provisions defined in the Schengen Agreement, the participation of Spain in the EU structures of justice and home affairs and the demands of co-operation with foreign police agencies due to the increase of trans-national organized crime and the significant increment of foreigners and immigrants living in and transiting Spain.

Finally, the terrorism of ETA during the last 40 years has been also a factor that has colored the internal organization of police agencies, the division of tasks and therefore it has conditioned the evolution of the public security system.

## Description of the Political Structure of the State

The Kingdom of Spain is situated in the Iberian Peninsula. It has an area of 505,957 km<sup>2</sup> and around 46 million inhabitants. Castilian is the official language of the Spanish State and the capital is Madrid. Other important cities are Barcelona, Sevilla, Bilbao and Valencia.

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<sup>1</sup> [www.boe.es/aeboe/consultas/enlaces/documentos/ConstitucionINGLES.pdf](http://www.boe.es/aeboe/consultas/enlaces/documentos/ConstitucionINGLES.pdf).

The Constitution provides that Spain be established as a social and democratic State subject to the rule of law. National sovereignty belongs to the Spanish people, from whom all state powers emanate: legislative, executive and judiciary. The political form of the Spanish State is the Parliamentary Monarchy: The King is the Head of State, the symbol of its unity and permanence.

The Spanish Parliament, known as the *Cortes Generales*, represents the Spanish people and exercises the legislative power of the State. The *Cortes Generales* consist of two chambers: the Congress of Deputies, or lower chamber, and the Senate, or upper chamber.

The Government conducts domestic and foreign policy, civil and military administration and the defence of the State. It exercises executive authority in accordance with the Constitution and the laws. The Government is headed by a prime minister, known as the President of the Government, appointed by the King and invested by the Congress of Deputies.

The Constitution recognizes the right of the diverse Spanish regions to have autonomous status, and therefore Spain is divided in 17 *Autonomous regions*<sup>2</sup> and two autonomous cities. Each one has its own regional government and parliament, with self-government powers, according to the Constitution and the “Estatutos” (Constitution-type law for each autonomous region). Although they have the right to it, not all the Autonomous Regions have acquired the same level of self-government.

In addition to the regions, each city/village has its own administrative and government institutions or “municipalities.” In Spain there are 8,100 municipalities. Each municipality has a local council, presided by the Mayor. The competencies vary very much according to the size and the resources or the city/village.

Spain has also other administrative and territorial divisions (provinces, “cabildos,” “diputaciones,” etc.) that are not examined given the purposes of this article.

It is relevant though, for the purposes of this article, mentioning the following structures and institutions:

- Government Delegates: the central government has a “Government Delegate” in the Autonomous regions and a “Sub-Delegate” in each of the 52<sup>3</sup> provinces. Their importance lies in the fact that they have the (political) direction of the State police units (National Police and Guardia Civil) in the respective autonomous region or province.

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<sup>2</sup> The original Spanish term used in the law is “Comunidades Autonomas.”

<sup>3</sup> More accurately, 50 provinces and 2 autonomous cities (Ceuta and Melilla, in North Africa).

- The Directorate General of Civil Protection and Emergencies depends on the Ministry of the Interior and its functions are in the field of planning, training, research and coordinating resources in emergencies and catastrophes.
- The General Secretariat of Penitentiaries depends on the Ministry of the Interior. There are a total of 76,800 inmates distributed in a total of 82 prisons. The police are neither tasked with the internal administration nor with the internal security of prisons. Their responsibility is the external security and the transport of the inmates.
- Directorate General of Traffic depends also on the Ministry of the Interior. Its responsibility is the research, planning, direction and coordination of the security and safety on the roads.

The last three institutions have asymmetrically some correspondent institutions in some of the Autonomous Regions, depending on the assumed competences by the respective regional government.

## Spanish Judicial System

Since a thorough explanation of the judicial system is not the purpose of this article, we will simplify it and will focus mainly on the aspects that could be of interest in relation to the police role in the criminal procedure.

### General Remarks

According to the law (the Constitution and other laws), justice is administered only by judges and magistrates and the exercise of judicial authority in any kind of action is vested exclusively in the courts and tribunals laid down by the law.

Although Spain is divided into autonomous regions, the Judiciary is unitary. The autonomous regions do not have judicial power and their courts are courts of the State.

The provision referring to “unitary” also means that the existence of special courts, courts of exception and courts of honor are forbidden. Military jurisdiction is limited strictly within the military framework and in cases of a state of siege (martial law), alarm or exception and in accordance with the principles of the Constitution.

The Judiciary is general and is extended to all people, all matters and the entire territory.

Judges are independent. They are accountable only to the rule of law. Judges are not subjected to any orders or instructions by any other power of the State or other judges.

The Judiciary is controlled by the General Council of the Judiciary (*Consejo General del Poder Judicial*) composed of 20 members, appointed for a five-year period, and the President who will be also ap-

pointed as the President of the Supreme Court. The members are proposed by the Congress and the Senate. Twelve of its members shall be judges and magistrates of all judicial categories and eight members chosen amongst lawyers and other jurists of acknowledged competence with more than fifteen years of professional experience.

### **The Structure of the Judiciary**

The Spanish territory is divided for jurisdictional purposes in:

- Autonomous regions
- Provinces
- Judicial Districts
- Municipalities

This division coincides with the administrative division of the territory, explained above, with the only exception of the “Judicial districts,” created for functional purposes.

#### *Types of Courts:*

- Courts of Peace
- First Instance (Investigative Judges) and Examining Courts
- Penal Courts
- Administrative Courts
- Social Courts
- Juvenile Courts
- Penitentiary surveillance Courts
- Provincial Courts
- A High Court of Justice for each autonomous region.

The following courts have jurisdiction over the whole Spanish territory:

- Supreme Court
- National Court
- Constitutional Court.

Spanish courts are also organized hierarchically. There is a system of appeals against the decisions of lower courts to higher courts and to the Supreme Court, which is the highest judicial body in all branches of justice excepting provisions concerning constitutional guarantees.

According to the subject of the matter, Spanish courts are organized in four jurisdictions:

- Civil, for civil or commercial issues
- Criminal, for violations of the criminal code

- Social, for employment contracts issues
- Administrative, for claims based on acts performed by the public administration.

## The Criminal Procedure

### *The Ordinary Criminal Procedure*

Those persons charged with crimes punishable by a term of imprisonment that could exceed 9 years, are tried through the ordinary criminal proceeding. In other cases (9 years or less) the procedure is abbreviated and simplified. In case of misdemeanours there is also a quicker and simpler procedure.

We will describe the ordinary criminal procedure. It has three different stages:

- Pre-trial stage
- Oral stage
- Post-trial stage.

The *pre-trial stage* involves the preparation of the trial and further investigation to ascertain that an offence was committed, and determine the liability of the accused persons. This stage is carried out by the judicial police under the control of the investigative judge.

Any person can file either before a Spanish Judge, Prosecutor or the Police, an oral or written statement setting out the details of an offence.

If, as a result of crime prevention or information gathered, the Police know that a crime has been committed, they begin an investigation to ascertain whether or not the crime has been committed, in order to find and gather the evidences and the author(s) of the crime.

We have to highlight that in Spain, during the investigation process, the Prosecutor's Office has in practice a limited role of legal control, technical advice and collaboration, rather than functional direction of investigation proceedings. Although the Police are obliged to inform the Prosecutor when an investigation has started, in practice the Investigative Judge is directing the investigation and he orders or authorizes special investigative means. Some specialized Prosecutors coordinate police activities relevant to specific crimes, like for example drug trafficking, corruption, juveniles and environment crimes.

The preliminary findings, together with the evidences and—if applicable—the arrested people will be sent to the corresponding judge.

During this phase, additional proceedings will be carried out, to gather evidences in order to identify people involved in that crime as well as all the mitigating or aggravating circumstances in order to confirm the prosecution or to dismiss the case when it is considered that the offence has

not been committed, or that the accused person has not perpetrated such a crime.

Once this phase is over, the judge upon the request of the prosecutor will decide whether to open the criminal procedure or not. When neither the prosecutor nor the victim's lawyer decide to charge the defendant, the judge must dismiss the file. The Judge decision may be appealed, provided that he decides not to initiate the criminal proceeding. If the defendant is charged, the judge must send the file to the right court that could be the Penal Court (not serious crimes) or the Provincial Court (for serious crimes).

The *oral trial* will be held at the Penal Court (not serious crimes) or Provincial Court (in case of a serious crime, the parties may submit their written statements containing the offence, the liability of the accused persons, their evidences and the punishment which they consider that must be imposed). The Police officers who have participated in the investigation or those who have intervened in the evidences can be called to testify as witnesses.

Once the oral trial is finished and there is not any other appeal or cassation left, the court that has rendered the sentence must execute it. During this last phase, all the steps that are taken to fulfil the rule of the sentence must be previously informed by the prosecution office.

#### *Overview of Criminal Landscape and Its Consequences for the Police*

The data explained in the following lines is extracted from statistics and studies made by official institutions.<sup>4</sup> It provides a picture of the criminal panorama in Spain.

According to the latest report (2009) on the evolution of the criminality<sup>5</sup> prepared by the Ministry of the Interior, there have been 45.8 crimes / 1,000 inhabitants, while the average in the EU has been 69.1.

According to the surveys, an important factor taken into account by the Ministry of Interior and the Police when planning is the "public perception of insecurity as a main problem in Spain." In this respect, the trend is decreasing: in January 2010 only 8.1% of the answers perceived this as the main problem. Moreover, only 11% of the answers perceived criminality as a problem, while the EU average was 19%.

There is a concern in relation to the domestic violence, where the victims have been increasing during the last 10 years (except in 2009, when

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<sup>4</sup> "Evolution of Criminality in 2009," Gabinete de Estudios de Seguridad Interior (Ministerio del Interior). *Strategic Report on Drug Trafficking* (2009), and *Organized Crime in Spain Report* (2008) by the Centro de Inteligencia contra el Crimen Organizado (Ministry of the Interior).

<sup>5</sup> In the area of competences of the Guardia Civil and the National Police.

the final number decreased), while the rate of other violent deaths (except traffic and other accidents) remains stable.<sup>6</sup> For instance, in 2008 76 women died as a consequence of domestic violence, while in 2009 the figure decreased to 55. Since domestic violence has produced social discomfort and alarm, the police (and other institutions, public and private) had to integrate the existing resources<sup>7</sup> and continuously evaluate the risks, so the protection of the potential victim becomes more efficient.

Crimes related to child pornography and corruption of minors have alarmingly increased. In 2009, the police detected 1087 crimes of the former (increase of 1200% with respect of previous years), while 264 crimes of the latter were detected (an increase of 135%). We have to see these figures with precaution. They may also be the result of the increased attention given by the police, devoting more resources to the investigation of cyber-crimes and particularly to child sexual exploitation on the internet.

Crimes against property have, in general, decreased in the last 10 years, the current rate is of 15.7 crimes / 10,000 inhabitants. There is a significant drop of vehicle theft since 2001: almost 60%.

The armed (or violent) robberies in homes has noticeably declined (15.9 crimes / 100,000 inhabitants) and the robbery using the “snatching” method also diminished. However, the breaking-in-homes robberies have increased during the last three years.

The performance of the Police with reference to clearing up crimes has maintained an upward trend since 2001: in 2009, almost 41% of crimes were cleared up. A total of 307,730 people were arrested. This implied 173 people / 1,000 known crimes.

In relation to drugs, the police produced 357,000 reports related to consumption and/or possession of drugs in 2009. The operational plans to control drug distribution and consumption around schools, in bars and in leisure areas have influenced such an important increase in the total number of reports. Most of the drug seizures refer to hashish and cocaine<sup>8</sup>. Opiates demand is decreasing and also is decreasing the consumption of “speed” and LSD. Though the seizures of drugs—hashish and cocaine—have been high, the social concern about drugs abuse has been low and is even decreasing.

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<sup>6</sup> The rate of homicides and murders in 2009 has been 2.36 / 100,000 inhabitants.

<sup>7</sup> The integrated response against domestic violence includes police agencies (at national, regional and local levels), prisons, Prosecutor’s Office, and official and non-official institutions working in this area.

<sup>8</sup> During the last 10 years Spain has been the first EU country in the ranking of seizures of hashish, with an average each year of more than 600,000 kg. Although cocaine seizures are not so high (an average of more than 30,000 kg/year), it represents almost 50% of the total of cocaine seized in the EU.



The number of reports (67,000 cases) connected to possession of illegal weapons also increased in 2009. We have to take into account that Spain has very restrictive and thorough regulations concerning possession of firearms.<sup>9</sup>

The number of organized crime groups that have been operating in the Spanish territory has been stable for the last five years. A total of 538 OC groups have been investigated from 2004-2008, and 50% of them dismantled (with 5,200 people arrested), by the various police agencies.<sup>10</sup> 33% of the groups have employed violent methods in their criminal activity. 25% used money laundering and 15% used corruption. The field of criminality which has been most frequent is drug trafficking (mostly related to cocaine and hashish), followed from distance by property crimes and trafficking in human beings and illegal immigration. 82% of the groups originated from various nationalities, primarily from Morocco, Colombia and Romania, in addition to Spain. The groups have been operating mainly in Madrid, Barcelona and in the provinces of the Mediterranean coast and Galicia.

Combating illegal immigration represents an important element in the police planning and resources devoted to this phenomenon. During 2008, a total of more than 37,000 people tried to enter illegally the Spanish territory and out of them, 13,000<sup>11</sup> illegal immigrants<sup>12</sup> were intercepted trying to reach the Spanish coast from the African shoreline. The trend is decreasing mainly thanks to the measures established for the integrated surveillance of the sea, the increment of police officers devoted to borders and immigration issues and the increased police cooperation with countries of origin and transit and the cooperation among them.

This panorama of the criminality in Spain would not be complete without a mention of terrorism. The terrorism of ETA<sup>13</sup> seriously conditioned

<sup>9</sup> With the exception of hunting firearms, only a limited number of individuals—in addition to the Army, the Police and private security companies—hold a permit to possess a firearm (pistol or revolver).

<sup>10</sup> Centro de Inteligencia contra el Crimen Organizado, *Report on OC in Spain* (2008). A total of 538 OC groups were investigated – 235 by the National Police, 193 by the Guardia Civil, 12 by the Mossos d'Ésquadra, 10 by the Ertzaina, and 1 by the Policía Foral of Navarra. The Direction of Customs Surveillance participated in the investigation of 57 groups (related to drug trafficking).

<sup>11</sup> Ministry of the Interior, Spain, *Report on Fighting Illegal Immigration* (2008).

<sup>12</sup> Illegal immigrants are not treated as criminals. The police are engaged in the detection, prevention and assistance. There are several legal measures and procedures to repatriate the illegal immigrants, in some cases enabled by agreements with the countries of origin.

<sup>13</sup> ETA (meaning in the local language: “Basque Motherland and Freedom”) is a terrorist group that has operated in Spain since 1959 and still remains active in 2010. Its bloodiest period was from 1973-1992.

the police development and public security during the last 30 years. A considerable effort in human resources, equipment and funds are devoted to combating terrorism. It has been the most serious concern of Spaniards for many years and has considerably influenced the Spanish political agenda.

The budget for public security, at State level, for National Police and Guardia Civil, has been increased considerably in the last years. Now it represents a total of 0.63 of the GDP. Nevertheless, the total budget for security represents a bit more, if we add the budget of the regional and local police agencies.

This increase in the budget has allowed increasing the total figures of police officers (Guardia Civil plus National Police) assigned to some specific functions as follows:

- Domestic Violence (1,870 police officers)
- Terrorism (5,300 police officers)
- Organized Crime (6,700 police officers)
- Judicial Police—general investigations—(12,000 police officers)
- Borders/Immigration (16,000 police officers).

## **Structure of the Spanish Police Services**<sup>14</sup>

Although the Spanish Constitution reaffirms that the State has the exclusive competence in public security, it implicitly recognizes the rights of the autonomous regions to create their own police agencies: The autonomous regions and the local councils may participate in public security through their own police services.

According to the Constitution, the mission of all the Spanish police agencies (“Las Fuerzas y Cuerpos de seguridad”) is “to protect the citizen’s rights and liberties and to guarantee public security.”

The structure and functional aspects of the various police agencies in Spain are defined by the “Law on Police agencies”<sup>15</sup> approved in 1986. Since then, the practical implementation of this Law, the Spanish political evolution—and de-centralization process—and the operational needs of the police to face new challenges and to provide a better coordination

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<sup>14</sup> See map in the appendix with an approximate geographical division according to the police agencies that are competent in the respective territory of Spain.

<sup>15</sup> The Law 2/1986 is the actual “Law on Police Agencies.” A literal translation from the Spanish “Ley de Fuerzas y Cuerpos de Seguridad” would not be appropriately understood in many English speaking forums. This is why the author of this article prefers to use “Law on Police Agencies.” It can be downloaded only in Spanish at [www.boe.es/boe/dias/1986/03/14/pdfs/A09604-09616.pdf](http://www.boe.es/boe/dias/1986/03/14/pdfs/A09604-09616.pdf).

have led to a flexible interpretation of its provisions, aiming to better serve the citizen.

According to the political division of the State, the police agencies<sup>16</sup> are as follows.

### Police Agencies at National Level

They are part of the central Government structures, and therefore depend on the Ministry of the Interior.<sup>17</sup>

These agencies, under the command of the Director General (unique person) of the Police and Guardia Civil are:

- *The National Police (Cuerpo Nacional de Policia)*. This is a civilian<sup>18</sup> police service with around 65,000 officers, with police stations in all 52 capitals and cities of more than 20,000 inhabitants (this criterion is not rigid and depends on the decision of the Government).
- *The Civil Guard (Guardia Civil)*. This is a police service created in 1844 that has 82,000 officers deployed in more than 2,000 police stations throughout Spain, mainly in rural areas and in cities under 20,000 inhabitants. The Civil Guard has military status.<sup>19</sup>

### Police Agencies at Regional Level

They are institutions operating in the territory of the respective autonomous region and depend on the Counsellors of Interior of the autonomous Government.

For various reasons (usually political or financial) not all 17 autonomous regions have opted for their own regional police. They still keep the right to do it at any moment. Up to now four regions have decided to create a regional police agency:

<sup>16</sup> In Spain there are more than 50,000 private security officers. They are not considered for the purposes of this study since they do not have “public security,” “policing” or “crime investigation” functions. However, they may be required by the police agencies to collaborate in specific situations.

<sup>17</sup> A complete organizational chart of the Ministry of the Interior is included in the appendix.

<sup>18</sup> While the National Police personnel have the right to participate in the *Unions system*, the Guardia Civil may only create professional associations.

<sup>19</sup> It is not a military force but a police service. The Ministry of the Interior is responsible for all organizational and operational services of the Guardia Civil related to public service. The budget and the salaries come also from the Ministry of the Interior. The Ministry of Defence has only some competences concerning regulations for promotions and also in the case of Guardia Civil executing functions of military nature (for instance, when Guardia Civil Units are integrated within military units in peace missions abroad).

- *Mossos D'Esquadra*: This is the regional police agency operating in the territory of Catalonia.
- *Ertzaina*: operating in the territory of the Basque Country.
- *Policía Foral*: Operating in the territory of Navarra.
- *Policía de Canarias*: to operate in the territory of Canary Islands, it is still at an early stage of development.

Their spectrum of competencies varies, depending on the functions they have assumed, according to the agreements among the central and regional Governments.

In addition, some of the other autonomous regions that did not decide to have their own autonomous police have adopted a different approach, also included in the provisions of the Law on Police agencies: these other regions have agreed with the central Government on the “appointment” of complete Units of the National Police to the regional Government. These Units perform only some administrative duties and functions related to the protection of regional public buildings and the security of regional authorities.

### **Police Agencies in Municipalities**

Out of the more than 8,100 municipalities in Spain, more than 1,700 have their own local (municipal) Police Unit. In total, there are 67,000 municipal police officers. They are part of the hierarchical structures of the local councils and they are accountable to the Major. The staffs of each municipal police body ranges from just a few (2 or 3 officers) in small villages to more than 5,000 officers (in capitals like Madrid or Barcelona).

Since there are many local municipalities without their own municipal police, the law allows small municipalities to associate for the creation of inter-municipal local police agencies.

### **Task Assignment**

The police agencies in Spain have the following functions.

#### **Central Government (Ministry of Interior): Tasks of Guardia Civil and National Police**

Both institutions perform the following functions—in general—in the respective area of responsibility:

- Law enforcement
- Help and protection of people and their property
- Protection of public buildings (if needed)
- Security of public VIPs

- Public order management
- Crime prevention and investigation.

In addition to the above mentioned functions, there are some specific tasks assigned exclusively only to one of them. They perform the following tasks independently of the geographical jurisdiction:

*The National Police:*

- Issue of ID Documents and Passports and document control at borders
- Immigration related tasks (foreigners, refugees, asylum, extradition, and expulsion).
- Control of games of chance (casinos, etc.)
- Drug trafficking<sup>20</sup>
- Cooperation with foreign services
- Control of private security companies.<sup>21</sup>

*The Civil Guard:*

- Weapons and explosives control
- Smuggling and fiscal police<sup>22</sup>
- Traffic police<sup>23</sup>
- Surveillance and protection of borders, airports and ports
- Environment police<sup>24</sup>
- Inmates and detainees custody and transport while being transferred between cities.

*Border management* is an example of a shared task among the National Police and Guardia Civil. While the National Police is responsible for issuing and controlling travel documents, the Guardia Civil is in charge of the surveillance of the green and blue borders and performs the duties of customs<sup>25</sup> at international borders.

<sup>20</sup> See sections on “challenges.”

<sup>21</sup> De facto this is another example of a shared function between the National Police (control of companies in general) and the Guardia Civil (control of weapons and personnel qualifications).

<sup>22</sup> This function is shared with the Ministry of Finance’s Department called “*Dirección Adjunta de Vigilancia Aduanera*,” which is part of the State Tax Office (*Agencia Estatal de la Administración Tributaria*).

<sup>23</sup> When this competence has not been transferred to the Autonomous Regions.

<sup>24</sup> When this competence has not been transferred to the Autonomous Regions.

<sup>25</sup> The Spanish customs is a responsibility of the Ministry of Finance. The Guardia Civil, when performing duties of customs officers, are accountable to this Ministry.

*International police cooperation* is a task coordinated by the State Secretariat for Security (Ministry of the Interior). A Director General of International Cooperation coordinates the participation of the Guardia Civil and National Police in the structures of international and EU police cooperation. Both agencies participate in police missions set up by the UN, EU and OSCE.

Police cooperation under the Schengen Agreement (SIRENE) is also coordinated by the State Secretariat for Security. The National Bureau of Interpol and Europol are positioned within the organizational chart of the National Police. The other police agencies may have liaison officers in this bureau.

Spain currently has police liaison officers (from National Police and/or Guardia Civil) posted with diplomatic missions in Andorra, Algeria, Belgium, Bolivia, Bulgaria, Brazil, Colombia, Costa Rica, Cuba, China, Chile, Ecuador, El Salvador, Egypt, France, Germany, Hungary, India, Italy, Israel, Jordan, Mexico, Morocco, Netherlands, Nicaragua, Nigeria, Pakistan, Peru, Poland, Portugal, Romania, Russia, Senegal, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela and the Europol Headquarters in The Hague, Netherlands.

Countries which have liaison officers posted in Spain are Austria, Belgium, Bolivia, Canada, Chile, Colombia, France, Germany, Ireland, Italy, Japan, Mexico, Netherlands, the Nordic countries, Romania, Russia, United Kingdom and United States.

### *Structure of the Spanish Ministry of the Interior, Guardia Civil and National Police*

The structure of the Ministry of the Interior<sup>26</sup> is in the appendix. A unique civilian Director General leads both institutions, Guardia Civil and National Police. The Director General is a politician, accountable to the State Secretariat for Security (under the Minister of the Interior). He has two Deputy Directors:

- Deputy Director for National Police
- Deputy Director for Guardia Civil.

A simplified organizational chart of both agencies is given in the appendix.

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<sup>26</sup> The chart in the appendix shows a simplified organizational chart of the Ministry of the Interior, in order to facilitate the understanding for the purposes of this article. For more information visit [http://www.mir.es/SGACAVT/derecho/rd1181\\_2008.html](http://www.mir.es/SGACAVT/derecho/rd1181_2008.html).

### **Regional Governments (Counsellor of Interior): Regional Police Agencies (Currently Three: Mossos d'Esquadra, Ertzaina and Policia Foral)**

According to the Law on Police, the regional police have the following tasks:

- Law enforcement of regional provisions
- Security of regional institutions, its representatives and facilities.

Also, in cooperation with the police agencies of the central Government:

- Law enforcement of State provisions
- Prevention and investigation of crime
- Public order management
- Assistance to public calamity or catastrophe
- Environment police.

### **Local Councils (Major): 1,700 Municipal (local)<sup>27</sup> Police Agencies**

The law has assigned the following functions to the municipal police:

- Security of local institutions, facilities and their representatives
- Traffic police in the urban area of the municipality
- Law enforcement of local regulations
- Cooperation with the State police in crime prevention and investigation
- Assistance to public during calamity or catastrophe
- Cooperation with State and regional police in public security & safety management.

Although the law has set up the above tasks, there is no uniformity in the assumption of tasks by all the 1,700 local police agencies. Due to political or financial reasons, or just because there are other priorities, some local police agencies are mainly devoted to urban traffic and the enforcement of local regulations, while others tend to have an integral focus, implementing important responsibilities in public security & safety and judicial police.

According to latest developments, there is a Covenant<sup>28</sup> that allows the local—municipal—police to tackle the little problems that affect most di-

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<sup>27</sup> The terms “local police” and “municipal police” are used interchangeably in this article.

rectly the security and peaceful living in the cities. Thus, some municipal police have agreed with the Ministry of the Interior to increase their functions in relation to some aspects of prevention and investigation of crime (private conflicts, domestic violence and most petty crimes).

Since the municipal police are very close to the public, the law encourages the creation of Committees of Local Security to facilitate the participation of the civil society in the public security policy at the local level.

### *Coordination of Police Functions*

Keeping in mind the complexity of the system detailed before, we understand the need of a clear division of tasks and functions, the coordination mechanisms and the flexibility required for a successful cooperation (as it has been mandated by the law).

There is a thoroughly detailed set of regulations addressing coordination and imposing the obligation to police agencies to cooperate and collaborate among them, and to inform mutually. In addition, there are several mechanisms set up to ensure coordination and cooperation among police agencies in Spain:

#### a) At policy / strategic level

*The Security Policy Board:* This is the highest body to coordinate functions between the police agencies. It is composed by the Minister of the Interior, the Counsellors of the Interior of the autonomous regions and other State representatives. An expert committee advises technically and prepares the documents to be discussed in plenary.

*The Cabinet of Coordination:* It is a department within the State Secretariat for Security (Ministry of the Interior) tasked with the supervision and coordination of public safety & security joint plans.

*The Direction General of International Cooperation, International Relations and Immigration:* This department, located in the State Secretariat for Security (Ministry of the Interior), coordinates non-operative aspects of international police cooperation.

*The Cabinet of Studies of Internal Security (GESI)* is a body of the State Secretariat for Security that generically contributes to the coordination among police agencies, responsible for producing statistics and studies related to security and criminality. It aims at supporting policy planning and decision making. It also contributes to developing advanced training for senior police officers.

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<sup>28</sup> Signed by the Ministry of the Interior and the Spanish Association of Municipalities and Provinces.



*The National and Provincial's Coordination Commissions for the Judicial Police*<sup>29</sup> were established to harmonize the composition of the judicial police units and to have a common direction.

*The State Board of Local Security* is also a high body in charge of studying issues related to security and policing in municipalities.

*The Regional Security Board*: aimed at coordinating the State and region police agencies in the respective region.

*The Regional Governments* have a mandate to coordinate the municipal police services in their respective region (harmonization of regulations concerning human resources, equipment and training, creation of regional academies for local police).

*The National Association of Provinces and Municipalities* can represent all the municipalities in order to participate as a coordination mechanism (for instance, it has signed agreements, in the name of all municipalities, with the Ministry of the Interior, to increase competences and cooperation).

b) At operational level

*The Unified Command of National Police and Guardia Civil*: There is a unique Director General for both police agencies. In addition, the issues pertaining to both institutions may be brought to be studied at the CEMU or *Executive Commission for Unified Command*.

*Organized Crime Intelligence Center (CICO)*: This is a department of the State Secretariat for Security responsible for elaborating strategic intelligence to fight organized crime and set up operational criteria to coordinate investigations.

*National Antiterrorist Coordination Center (CNCA)*: This Center is directly accountable to the Minister of the Interior. It does not have operational capabilities, rather analytical ones. It was created to coordinate terrorist investigations. The Center is staffed with personnel from the Guardia Civil, National Police and State Intelligence Services (CNI).

*Local Security Board*: To coordinate policing and other security issues in the respective municipality. This is achieved through the production of joint plans of security and safety, planning joint actions/operations and crime prevention campaigns in general and on ad hoc basis; the board also discusses possible solutions to guarantee a fluent exchange of information relevant to each police agency.

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<sup>29</sup> The Judicial Police is not a police agency. It is an abstract name for concrete elements—or units—of the Spanish police agencies, which are assigned—functionally—to the Courts and Judges, who direct their investigative functions.

*Joint Call Centers:* integration of all police agencies in the “system 112,” created by the regional governments (not fully implemented yet). Sometimes, an ad-hoc punctual solution is adopted, sharing radio systems or temporarily—for some events—dispatching liaison officers to the other police agencies.

*Common Databases:* The National Police and the Guardia Civil share the following databases, which are being progressively extended to regional and municipal police agencies: criminal records, AFIS, ASIB, DNA, ID, Passports, Foreigners, APIs, Hotels registrations, domestic violence, chassis numbers, weapons, vessels, missing persons and THB. In addition, there is a possibility to have a restricted access to the databases on terrorism and organized crime.

## **Transparency and Accountability of the Police**<sup>30</sup>

Following the directions given by the Council of Europe (Declaration on the Police) and the UN General Assembly (Code on conduct for law enforcement officers), the Spanish Law on Police set up a code of ethics for all police agencies in Spain. Among its principles, it includes respect to the Constitution and human dignity, a permanent service to the citizen, a balanced use of force, discretion, and accountability. Its provisions also refer to the direct police-citizen relation and it particularly emphasises the equality and equity, to avoid discriminatory policing. It is important to mention that the law expressly prohibits policemen to be “on strike.”

The external oversight of police forces is done at the political level (Ombudsman and Parliament) and at the judicial level.

*Ombudsman:* The “Defensor del Pueblo” is an independent institution that oversees the respect of human rights and public freedoms. It handles the complaints made by citizens against any State institution, not only the police. A special branch is devoted to complaints that refer to public security. Nonetheless, the Ombudsman does not have investigative resources.

*Political Oversight:* The Minister of the Interior is accountable to the Parliament and has to inform the members of the Parliament or “Diputados” when some misbehaviour is reported and the complaint is taken to the Parliament by the “Commission of the Interior” – a small group of “Diputados” specially appointed to look into these matters. However, they do not have independent investigative powers; they have to rely on the reports prepared by the police investigative units.

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<sup>30</sup> The information provided in this section applies, generally speaking, to all police agencies, but mainly to the Guardia Civil and National Police.

**Judicial Oversight:** the crimes committed by police officers—whether or not committed when being on duty—are investigated by the judicial authorities.<sup>31</sup>

**Internal Affairs Units:** the police agencies have their own internal affairs units or offices of professional responsibility with investigative powers and special investigative equipment.

**Control of police efficiency:** The department called “Inspectorate General of Personnel and Security Services” within the Ministry of the Interior is mandated to verify and evaluate the services provided by the Units of the Guardia Civil, the National Police and their members. It focuses on the efficiency and effectiveness of the services provided.

**Control of the police budget:** The police logistic services prepare their financial needs for the incoming year in advance and the budget is presented to the Ministry of the Interior. The budget is approved annually by the Parliament and published in the State Official Bulletin<sup>32</sup> and the expenditures are monitored by the Ministry of Finances through complex control procedures and also reviewed by auditors.

## **Handling of Public Complaints**

When a citizen needs to make a complaint because of police misbehaviour, he may choose:

- To present a report in any police station, stating the reasons and bringing the evidences. This report may also be sent in the form of a letter. The police has to answer to this complain within 20 days.
- To report directly to the judicial administration. If the citizen believes that the behaviour of the police officer may be criminal, a report may be submitted directly to the judicial authority.
- To send a report to the Ombudsman (“Defensor del Pueblo”). If the citizen believes that their rights or freedoms have not been respected, s/he may present the complaint in the form of a report to the Ombudsman.

## **Challenges**

One of the main challenges faced by police everywhere is to combat criminality and to ensure public safety and security. Public security and safety is an indivisible function where the State, according to the law, is

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<sup>31</sup> In addition, when a police officer is subject to judicial investigation, his hierarchical structures may open an administrative inquiry to determine if a disciplinary action is going to be taken. However, the administrative sanction will not be effective if the judicial investigation ends with the acquittal of the police officer.

<sup>32</sup> See the budget for 2010 on [www.boe.es/boe/dias/2009/12/24/pdfs/BOE-A-2009-20765.pdf](http://www.boe.es/boe/dias/2009/12/24/pdfs/BOE-A-2009-20765.pdf).

the ultimate responsible unit. However, in practice public security and safety is a shared compromise by the civil society,<sup>33</sup> administrative and political bodies. In the light of the complex police system, it is understandable that coordination is a challenge and the implementation of the task division, set up by the law, faces many hardships.

There are difficulties in the coordination among central and regional police services, and among the services of the same level. Only the good will of the senior officers/heads of Units, or the decision or intervention of the judicial authority can facilitate the understanding and practice.

Drugs trafficking is a very complex crime. Some investigations may have started with complex money laundering tracking or a simple robbery investigation and then the police find out that there is a drug trafficking network. The National Police, Guardia Civil or Regional Police may find reasons to consider themselves competent to investigate it. To add more complexity, the department "*Dirección Adjunta de Vigilancia Aduanera*" or Customs Surveillance Service (in the Ministry of Finance) is also participating in the fight against drug trafficking, particularly in the sea, and in this framework they carry out some investigations.

International cooperation: The law on police (approved in 1986) attributed this competence to the National Police. During the last 30 years the "globalization" has also facilitated the spread of organized crime and it has become more complex and transnational, adding more difficulties to the investigation. Thus, all police agencies need to have access to information from foreign police services and to exchange information with them to carry out their investigations. In this respect, there are still some challenges that Spanish police services need to overcome in relation to having direct access to foreign services, sharing national criminal databases of each police agency and the direct access to information from Interpol, Europol and other international information and intelligence centers.

Different salaries: There is a comparative disadvantage in relation to the salaries paid to the different police officers, depending on whether they are paid by the Central, Regional or Local institutions. Police officers belonging to the Autonomous Regions and Municipalities are generally better paid than those belonging to the central State.

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<sup>33</sup> The concept of community policing according to the Anglo-Saxon philosophy and practice is not applied in Spain. Although the Spanish police can be considered close enough to the public and at the service of the people, the engagement of the civil society in policing has been difficult. The reason is that the culture of civil engagement in public life is not as widely spread as in the North of Europe.

## APPENDIX 1. Main Laws and Regulations Regarding Spanish Police Agencies and Services

There are a number of laws and regulations that affect different aspects of policing in Spain. The main ones are the following:

The Constitution: Relevant for the police, it sets up the rights, liberties and duties of citizens, the political and administrative organization of Spain and the Police mission. Its article 104 defines their mission as the “*protection of the free exercise of rights and liberties and the guaranteeing of the safety of citizens.*”

Law on Police: Organic Law<sup>34</sup> 2/1986. – *Ley Organica de Fuerzas y Cuerpos de Seguridad*. It defines the police agencies at the national, regional and local level and details their functions as well as the division of tasks among them. It also contains the police code of ethics and other provisions. Some of the articles have been modified later, but it continues being the main law for police agencies in Spain.

Law on Criminal Proceedings: (The original law was approved in 1882, but it was modified a number of times). It details the bodies considered as “judicial police” and regulates relevant aspects of police work in relation to investigation, arrest and detention.

The Organic Law 6/85. – *Ley Organica del Poder Judicial* or “*Law on Judiciary*” sets up the organization and functioning of the judges and courts; followed by the Decree on Judicial Police that defines and regulates the judicial police.

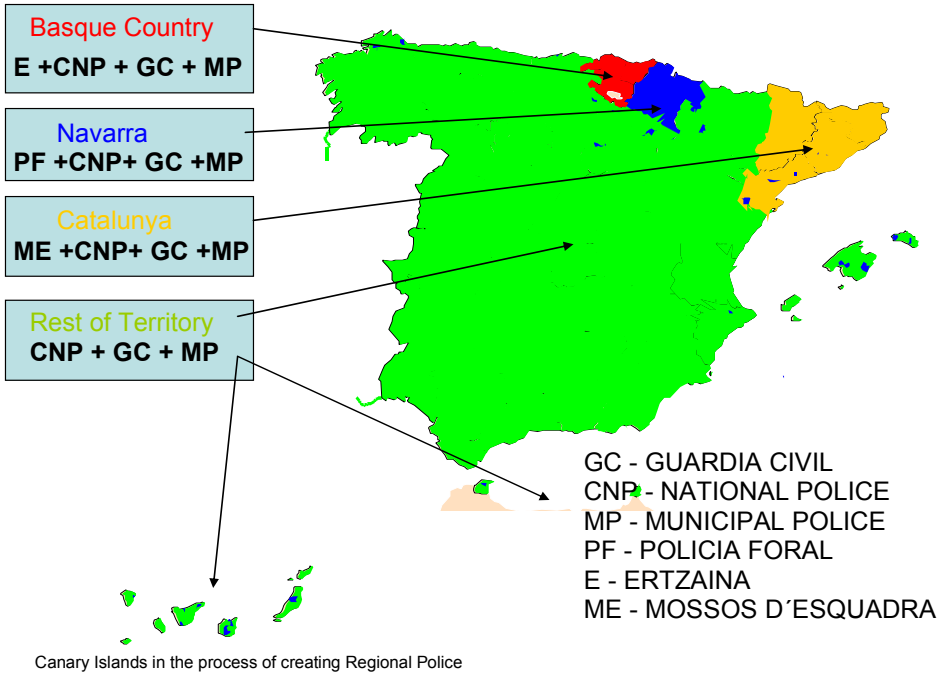
The Organic Law 1/92 on public security protection regulates some sensitive police activities in relation to the public security, human rights and fundamental freedoms.

Finally, there are a number of regional (Autonomous Governments) laws on the respective regional police.

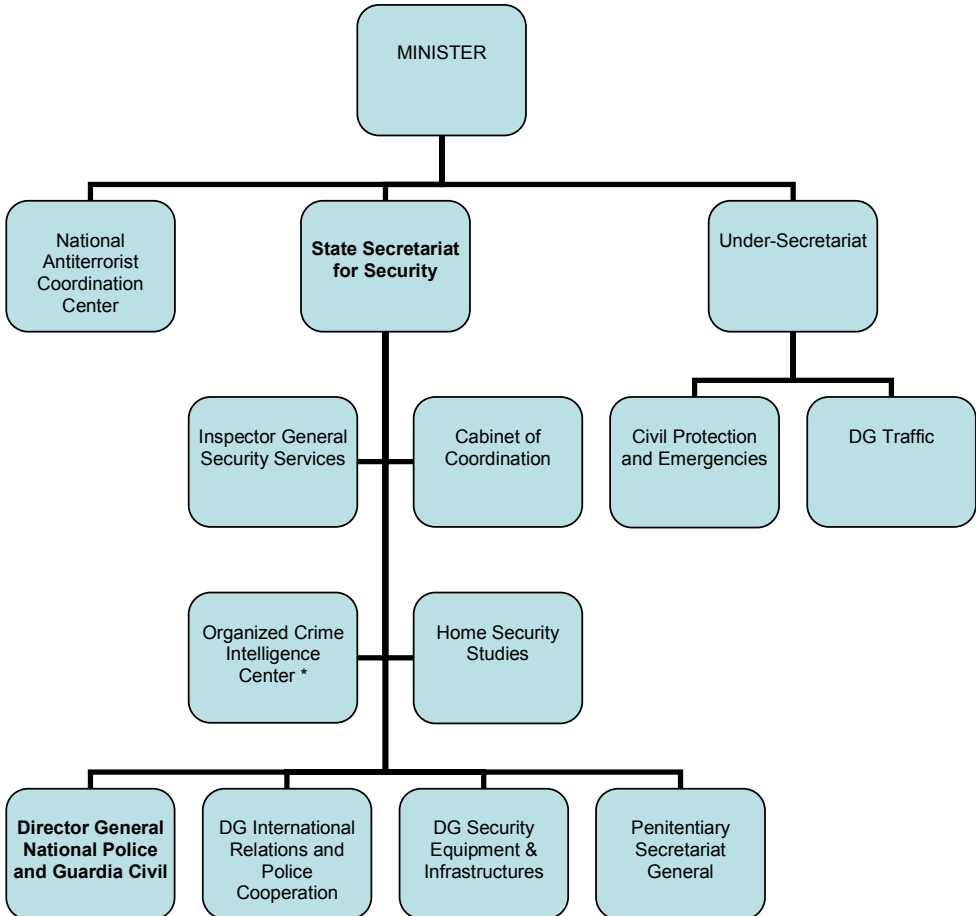
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<sup>34</sup> The “organic law” is in the highest position in the ranking of Spanish laws under the Constitution. The rank of laws in Spain is the following: Constitution, Organic Law, Ordinary Law, Legislative Decree, Decree-Law and Ministerial Order.

**TERRITORIAL RESPONSIBILITY**



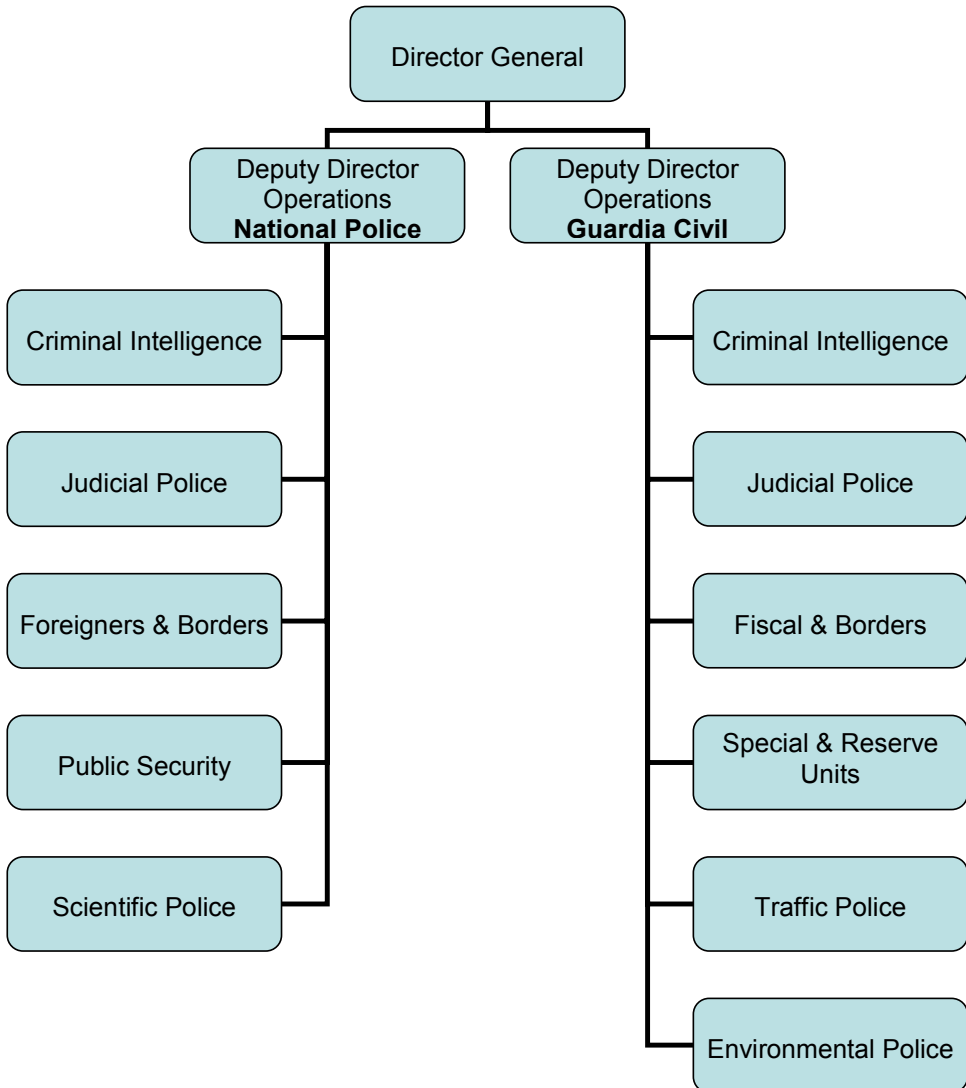
## Spanish Ministry of the Interior Organizational Chart



\* Do not confuse this Center with the State Intelligence Services (the latter is a different institution and is not a police agency).

NOTE: The original MoI chart has been simplified for the purposes of this article.

## Direction General National Police and Guardia Civil Organizational Chart



\* This is a simplified chart. These headquarter schemes are generally repeated in most of the operative Units in the rest of the Spanish territory where these agencies are competent. In addition, both agencies have their own Departments of Human Resources, Training, Logistics and Finances.



# Switzerland – Police Country Profile

**Sara Stocker and Lydia Amberg**

## Introduction

Switzerland is a unique country when it comes to analyzing how a political system is structured. Although the country is very small in terms of territory, its history has enabled the country to have a relatively large number of widely sovereign entities which are structured on three levels – municipal, cantonal and federal. The principle of sovereignty goes back to the foundation of Switzerland, when the cantons allied progressively in order to help each other from anyone trying to subject them. Today, 26 cantons constitute the confederation (see figure below) and they have a similar role to states, which means that they function autonomously in many areas. The cantonal sovereignty is laid down in Switzerland's Constitution and each canton is further divided into various communes. Compared to other countries, very few matters are regulated federally and the preservation of this federalism is fiercely defended by the Swiss people. This has become visible once again in the recent vote to regulate the tax system on a national level. Given that within Switzerland there are linguistic and cultural differences among the regions that could be ground for frustrations and tensions, this system of largely independent entities as well as the system of direct democracy guarantees political stability.

The decentralization of power is also reflected in the structure of the Swiss police. There is no national police force in uniform. The cantons have jurisdiction over police matters, which is why each canton has its own cantonal police force and within some cantons there are municipal police forces. Although there is a Federal Office of Police (fedpol) in Switzerland, it has limited functions. This system is based on the principle of "subsidiarity" – the transfer of decisions to the lowest practical levels.

The fragmentation of the Swiss police into 26 cantonal and around 100 municipal corps requires a certain amount of coordination in order to function efficiently. This is especially the case during large inter-cantonal operations which necessitate cooperation between cantons in order to function efficiently.



We will now look at how the police are structured in Switzerland in general, which functions are assigned to which level, how the cooperation between the entities is organized and how the training works. It is difficult to look at how the cantonal entities function precisely because we would have to look at each of the 26 forces separately. We will therefore take the case of the canton of Lucerne as an example.

## Structure of the Swiss Police

The distinction between the federal, the cantonal and the municipal polices is based on the assignment of their functions. While the Federal Office of Police (fedpol) is responsible for safeguarding national security, the cantonal and municipal forces are responsible for law and order.

Although cantons are given the freedom to structure their own police force, some tasks remain under federal jurisdiction for which the fedpol is in charge. They comprise administrative and security duties as well as criminal investigations.

The assignments of the different tasks between the federal and the cantonal level can be easily illustrated through the following table:<sup>1</sup>

<sup>1</sup> Fritz Lehmann, "Der Polizeikompass" (Swiss Police Institute, 2007), 25-26.

Area	Government only	Cantons only	Government and cantons jointly	Law: Government Enforcement: Canton
International Relations				
National defence				
Border and monetary issues				
Post, telecom, mass media				
Railways, air traffic				
Atomic energy				
Hydro-energy				
Traffic				
Trade, industry, labor law				
Agriculture				
Private and criminal law				
Police				
Church				
Schools, education				
Taxation				
Social security				
Environmental protection				

### Office of the Federal Police (fedpol)

A number of units with specialized responsibilities exist within fedpol, the main ones including:

- The Federal Criminal Police (FCP), which carries out criminal investigations,
- The Federal Security Service (FSS), which conducts fedpol's security duties,
- The Main Division International Police Cooperation (IPC).

FCP deals with the investigation and prosecution of crimes which are usually of greater complexity and of international nature such as organized crime, drug trafficking, internet crime, human trafficking, money laundering, etc. and are mandated by the Office of the Attorney General (OAG).

Security duties of the FSS include the protection of federal officials and buildings (including Swiss embassies and consulates abroad) as well as people and facilities that are ensured protection under international law. Since 2009, the Special Task Force is part of the FSS and is mobilized in case of hostage-taking and blackmailing of foreign and national officials.

Furthermore, the Swiss Coordination Unit for Cybercrime Control (CYCOS) was incorporated into fedpol in 2003. The office monitors the internet and is also engaged in prevention. If there is a suspicion for a crime, the file is transmitted to the cantons that will then decide about taking up a criminal procedure. Other offices under fedpol include the 2003 established Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants (KSMM) with the aim to protect the victims, prosecution of perpetrators and prevention. While the tasks lie with the federal government and the cantons, the KSMM is responsible for the coordination between the entities. KSMM's reports serve as a basis for political decision-making.

The Money Laundering Reporting Office Switzerland (MROS) has certainly an increased importance because of Switzerland's banking secrecy. The office has a function of filtering and relay between the financial intermediaries and the law enforcement authorities. They receive and analyze reports about suspicious activities on money laundering, terrorist financing, money that originates from criminal activities, etc. If necessary, the information is then transferred to the law enforcement agency.

Additionally, fedpol has an important role of coordination; on the one hand on the national level between the cantonal police forces, and on the other hand on the international level (IPC International Cooperation Division). An example of this coordination role is the exchange of information between different agencies involved in investigations or providing international and national partners access to central police databases.

## **Cantonal Police Forces**

Cantonal police departments are responsible for law and order and are not subordinated to federal authorities. The head of each cantonal police is part of the cantonal government and the cantonal parliament defines the legal and financial framework. Based on the principle that each canton organizes its police force independently, differences can also be found in the structure between the three linguistic regions. While the Swiss German cantons divide their police in 3 main sectors (criminal, security and

traffic police), the French-speaking part or “Romandie,” has 2 main sectors: the “Gendarmerie” (which is composed of the security and traffic police) and the “Sureté” (which is equivalent to the criminal police). Finally, the police in the Italian-speaking canton of Ticino are divided into geographical sectors.

### **Communal Police Corps**

Police agencies on the third level, communal police corps, have been established in cantons which are territorially divided (e.g. Valais) or whose communes traditionally have a lot of autonomy. They are in charge of general law and order, parking enforcement and sometimes traffic control. In some larger cities they are also in charge of criminal matters but in general their importance depends on the cantons. Most large cantons have larger communal polices with more significant roles which is for example the case in Berne and Zurich. In total, there are over 100 communal and city police forces. However, there is currently a move towards integrating some of these smaller units into the cantonal police forces.

### **Lucerne Cantonal Police**

Considering the absence of a single police structure throughout the 26 cantons, we will use the canton of Lucerne as a case study to illustrate a police structure in Switzerland.

From the organizational point of view, the policing work as such is carried out by four front-line departments: riot and traffic police; criminal police; ‘countryside’ security police and ‘city’ security police. A separate planning unit is tasked with the coordination of missions that involve more than one of these departments. The support department is responsible for logistics and IT. Other teams with specialized responsibilities within the police include: education management that coordinates training and formation; communications staff (internal as well as external communication but also consultancy in safety and security); human resources; and the psychological service for police staff. Besides the finance and controlling department, there are three further administrative offices under the Lucerne cantonal police: the commerce police that issues and conducts controls of licenses; the office for the implementation of the federal law on commercial measuring equipments (control and official certification) and finally, the passport office.

Primary police services are implemented by the security police, its main tasks are to guarantee law and order but also to execute criminal and traffic policing tasks. Through several agreements, the security police collaborate with other police units in Switzerland but also on an international level. The city of Lucerne, with 76,000 inhabitants has two police

stations while the canton, with further 300,000 inhabitants,<sup>2</sup> counts 30 police stations. Certainly, policing tasks are performed in the stations themselves but car and foot patrols are equally important since a close contact with the population is crucial for the identification of crime and disorder issues. An additional well-functioning cooperation with the different public authorities is important in the overall aim of preventing emerging problems and solving existing ones.

Special units are employed for special and more serious threats as well as for the fight of most serious crimes. Examples are large-scale protests or football events with the presence of hooligans. They have to be well-planned and usually function according to a 3-D or 2-D strategy: an initial search for Dialogue, rising conflicts will then be prevented through De-escalation. If it cannot be prevented, “drastic action” will be taken (“Durchgreifen”).

It is important that the policing work is not only responsive, put also preventive. Therefore, an important part of police officers’ work is prevention: Children and teenagers are taught about how to behave in traffic, the proper dealing with the internet and mobile phones with regards to criminal content and ethical use, but also how to deal with violence. This prevention can be in form of visits to school classes, organization of special events, the creation of teaching programs, etc. where teachers and parents are encouraged to be present as often as possible. Other preventive information for the general population is communicated in brochures and campaigns. Specialists within the police give advice on criminal issues: good-behavior of police officers, assistance on crime prevention, lectures on specific topics, etc.

## **Cooperation between the Federal Government and the Cantons**

In Switzerland, having a well-structured police with independent working forces, the question remains how the cooperation between the various entities works if there is no central body? Of course, criminals do not confine their activities to cantonal or national borders. Cooperation becomes more and more crucial with changing forms of crimes in an increasingly globalized world. Furthermore, the growing importance and influence of the European Union in Switzerland requires adaptation and standardization.

It is evident that a lack of strong cooperation will leave a lot of room for crimes in a country where each canton has its own regulations for penal

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<sup>2</sup> Statistik Luzern, *LUSTAT Jahrbuch* (2010). See [www.lustat.ch/kp\\_7003\\_e\\_gb2010.pdf](http://www.lustat.ch/kp_7003_e_gb2010.pdf) and [www.lustat.ch/gp\\_1061\\_e\\_gb2010.pdf](http://www.lustat.ch/gp_1061_e_gb2010.pdf).

procedures. Enhancement of technology might facilitate and speed up cooperation but it also means that crimes take on a different shape, especially in the time-space dimension. Switzerland's system of independent police forces has obvious weaknesses: a lack of central authority and non-uniformity. Therefore, the cantonal police units have been pressured to standardize many areas and increase cooperation.

In an effort to regulate activities and facilitate the cooperation, standardization and well-functioning of the police, the Swiss government has been working increasingly together with the different cantons and several reforms have taken place in order to improve the cooperation. Generally, the cantons and federal government deal jointly with the following police duties: Protection of people and objects, border control, safeguard of the air traffic and international conferences as well as public order services during large-scale events.

The cantons themselves cooperate with each other through regional agreements: each canton (apart from Zurich and Ticino) is part of one of the 4 police agreements of Central Switzerland, Eastern Switzerland, North Western Switzerland and Western Switzerland. There are differences in the form and scale of cooperation within the four agreements.

On the national level, a number of bodies have been put in place in order to facilitate and improve the cooperation between the different police units in Switzerland. The Conference of Swiss Cantonal Justice and Police Department Directors (CCDJP) and the Swiss Association of Municipal Police Constables were established and are designed to improve the coordination between the cantons, communes and the government. On the political level, the CCDJP assembles the cantonal representative for the police and justice sector twice a year. They meet to elaborate common strategies and find solutions to problems under cantonal responsibility. However, their decisions usually are not compulsory for the cantons but rather serve as recommendations. Under their auspices, several commissions are formed such as the criminal commission, traffic commission, strategic commission, commission for international affairs, etc. A number of other conferences exist on the regional level as well as associations of police officers and police chiefs amongst others.

In the last years, an increasing number of large-scale events took place in Switzerland, such as the annual World Economic Forum in Davos, the G8 conference in Evian, the European Football Cup, etc. These events require the deployment of several police units simultaneously and the coordination between these units has often proven insufficient. As a result, the pressure for increased cooperation has led to the establishment of additional bodies. For example, following the experience of the G8 conference in Evian in 2003, a cooperation committee was set up which was intended to coordinate future criminal, security and traffic

police operations between the cantons (this is especially important in large scale operations). In 2003, the CCDJP established the “GIP,” a working group for inter-cantonal cooperation for large-scale events. Later on, in 2006 the cantons signed an agreement on inter-cantonal police missions, establishing three organs that are responsible for coordination management, administration, decision-making, and deployment of support forces. These bodies as well as the supporting units are subordinated and put to the disposition of the canton where the event takes place.

It is also important to note that other organs such as the Swiss Army, the railway police and the Border Guard corps can be asked to support the police in certain situations which require additional forces (the G8 conference is a good example). Additionally, private security services also support the police in some of their activities.

Even though most police information systems are not centralized, there have been efforts to standardize the information systems: a committee was set up which created a crime statistics database and a police index.

## **Police Training**

In 2003, the profession of the police was recognized on a federal level. Training has been regulated and new inter-cantonal training centers have been set up in order to replace the old cantonal police schools. The IPH “Interkantonale Polizeischule” (inter-cantonal police school) also carries out basic and superior police trainings for 11 cantons forming the cantonal conventions of Central and Northwestern Switzerland. Over 300 people are trained yearly.

In 1946, the Swiss Police Institute was established in Neuchâtel as a private foundation. It provides courses for police officers and trainings for police recruits. In 2007, a new structure and role in police training was set up. It has different offices across the country. Its main areas include the management and leadership of the police. It also offers training skills and police tactics, and coordinates and supervises the federal professional and superior exams.

## **International Cooperation**

In recent years, the importance of the cooperation between Switzerland and its international partners has been increasingly important, especially with the appearance of new threats which transcend borders. International police cooperation of the Swiss police is managed by fedpol and divided into 3 levels:

- International, multilateral cooperation via Interpol
- Bilateral police cooperation agreements with individual states (for example the cooperation agreements with its neighboring states)



and Hungary and plans to conclude further bilateral agreements, in particular with Eastern and Southeastern European countries)

- European multilateral cooperation via Europol (strengthened by Switzerland joining the Schengen agreement in 2005).

## **Conclusion**

Switzerland's police system with its independent police units allows a very localised policing. Cantonal and communal police forces are better able to assess the requirements to ensure the safety of the local communities. It is important that police officers as well as police commanders know and understand their environment as well as their communities and are capable of interacting with them. Furthermore, the cantons can decide whether they will delegate some tasks to communal police units ensuring an even more efficient policing that comes close to community policing.

A federal policing system provides many advantages, but disadvantages cannot be overseen. Therefore, such a system needs to be looked at carefully and it is important to keep in mind that only an effective and strong police is capable of safeguarding the population in such a police system. Most importantly, a strong cooperation between the different units and levels is crucial and it becomes more and more so in light of the fast adaptation of society to globalization. If there is no cooperation between the units, crimes cannot be tackled efficiently and perpetrators will take advantage of such a system. Lack of cooperation between police forces can go to the extent that in some countries a traffic fine cannot be tracked from one state to another. Switzerland has made a great effort in enhancing the cooperation in the last years and is constantly working on improving it further.

## **Sources and Additional Information**

The information contained in this article has been produced from the following sources, which also provide further information on the Swiss police:

General information on the Swiss police structure

[www.fedpol.admin.ch/content/fedpol/en/home/themen/sicherheit/polizei\\_struktur.html](http://www.fedpol.admin.ch/content/fedpol/en/home/themen/sicherheit/polizei_struktur.html)

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The Swiss Police Institute

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**Lydia AMBERG** is a project assistant at the Deputy Director's office and operations NIS and has been editing, proof reading and translating texts related to the security sector reform in general and undertaking research on the structure of the Swiss police in particular. Due to frequent travelling (she has lived in Switzerland, Serbia, India, Scotland and Georgia), she is fluent in French, German and English. Lydia holds a degree in Politics and International Relations (M.A.) from the University of Aberdeen and wrote her dissertation on the role of the media in humanitarian interventions. After having obtained her degree, she served as an intern at the United Nations Development Programme (UNDP) in Tbilisi, Georgia and observed the functioning of the World Food Programme (WFP) in Abkhazia. She wrote a study on the confidence building and conflict prevention activities between Georgia and Abkhazia, which included interviews with various representatives of international and local non-governmental organisations. This enabled her to get a better understanding of the problems Internally Displaced Persons (IDPs) are confronted with, and it gave her a precious insight into two leading United Nations agencies. She then worked in different work sectors (insurances, real estate) where she translated texts from and into French, German and English before joining DCAF in December 2010.

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After retirement, he worked for nine years as a Programme Coordinator, Police Reforms Program of the Commonwealth Human Rights Initiative, an international NGO mandated to ensure the practical realisation of human rights in the Commonwealth countries. Advocated for police re-

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He wrote extensively on issues relating to police and linked subjects. He is maintaining a blog on police reform issues, relating mainly to Indian conditions ([gpjoshionpolice.blogspot.com](http://gpjoshionpolice.blogspot.com)) where he posted about 65 articles written on different occasions.

**Otwin MARENIN** is a professor in the Criminal Justice Program at Washington State University. He received his BS from Northern Arizona University and his MA and Ph.D. (in Comparative Politics) from UCLA. He has taught at Ahmadu Bello University and the University of Benin in Nigeria, and the Universities of Baltimore, California, Colorado, and Alaska-Fairbanks in the USA. His research and publications have focused on policing systems in Native American communities in the United States and in Africa, especially Nigeria. More recently, he has done research and written on developments in international policing, police in UN peacekeeping operations, transnational police assistance programs, and efforts to reform the policing systems in failed, transitional and developing states. Recent publications include *Policing Change, Changing Police: International Perspectives* (editor), *Challenges of Policing Democracies* (co-editor Dilip Das), *Transforming the Police in Central and Eastern Europe* (co-editor Marina Caparini), and *Borders and Security Governance. Managing Borders in a Globalized World* (with co-editor Marina Caparini).

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His assignments within the Guardia Civil included:

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*Nine* years experience in anti-terrorism police (San Sebastian and Pamplona, 1989-1998). Head of the anti-terrorism unit (planning and coordination of anti-terrorism services in prevention and investigation of ETA terrorism, including cross border counter-surveillance).

*Eight* years experience in European police cooperation (Madrid, 1998-2006). Head of Section in the International Police Cooperation Secretariat Guardia Civil Headquarters. Coordination of Guardia Civil involvement in

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