

# The Role of Parliament in Police Governance

Lessons Learned from Asia and Europe



MARIO J. AGUJA AND HANS BORN (EDS.)



**DCAF**

a centre for security,  
development and  
the rule of law

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The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. DCAF develops and promotes norms and standards, conducts tailored policy research, identifies good practices and recommendations to promote democratic security sector governance, and provides in-country advisory support and practical assistance programmes. Visit us at [www.dcaf.ch](http://www.dcaf.ch).

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# 1

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## Who is Policing the Police? Role of Parliament in Police Governance

MARIO J. AGUJA AND HANS BORN

### Introduction

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In a democratic society, the police plays an important role in ensuring public order and safety. Governed by the rule of law and guided by the principles of human rights, the police is mandated to abide by and implement the laws produced by the duly constituted authorities. On the other hand, an elected parliament is another important feature of a democratic polity. It has a mandate to represent the people and dutifully pursue matters of public interest. As democratically elected representatives of the people, among its many mandates, parliament is tasked with overseeing the state apparatuses authorized to bear weapons for the protection of the state and its people, more specifically the military, police, intelligence services, and militias. It is parliament's role to ensure that the security sector is effective and accountable.

As the primary agency for law enforcement, the police operates at close proximity to the public and exerts significant influence over



the security of individuals and communities through its behaviours and performance. Therefore, ensuring accountability of both the individuals and institutions of the police is a fundamental condition for good governance of the security sector in democratic societies.<sup>1</sup> The parliament, as the highest representative body in a democratic system, and its committees play a significant role in maintaining police accountability. This has been emphasised in international and regional conventions and code of conducts.<sup>2</sup> Indeed, in many countries, as this publication will demonstrate, parliaments apply their generic functions of law-making, oversight and budget control to the organisation and functioning of the police. While parliament is not the only external accountability mechanism, outside the executive and outside the police, it is one of the most important forum for public accountability of the police.

Despite this recognition of the importance of the role of parliament in police governance, the topic has received little attention in academic studies, and only a few scholarly articles briefly explore police accountability to parliament. This publication will contribute to fill the knowledge gap by exploring the role of parliament in police governance in Asia and Europe, which provide comparisons across a variety of cultural, political and legal systems for police governance as existing in Asia and Europe, as will be further detailed in the section on “Context Matters” below.

Furthermore a factor for deciding on comparing countries of these two continents, was provided by the specific request of the European Union (EU) to the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) to address police governance as part of a broader project of the EU to “Support to Reform of the Myanmar Police Force in the Areas of Community Policing and Crowd Management.” As part of its mandate, among other areas of work, DCAF assisted local authorities in Myanmar to ensure greater parliamentary accountability of the police in 2014-2015.

In this context, the objective of this publication is to collect, compare and analyse good practices, as well as legal and institutional frameworks, of parliamentary oversight of the police, including parliament-police liaison

mechanisms. To achieve this objective, the mapping study analysed the role of parliament in police governance in eight European and Asian states: Belgium, Germany, the Netherlands, the United Kingdom, India, Indonesia, the Philippines, and Thailand. For each country case study, a local expert conducted field research and analysis on the basis of a terms of reference, which was uniformly applied to all case studies. In order to capture the good practices, as well as existing institutional and legal frameworks, the authors examined the role of parliament in police governance (i.e. legislative, oversight and budget control functions of parliament), and how it is exercised through parliamentary committees. The case study authors also reviewed the wider framework of police governance, in which various actors play a role in addition to parliament (i.e. the executive, judiciary, independent oversight bodies, and internal police management). Note that the case studies were written in 2014.

This book presents the findings of the different case studies. It likewise compares and analyses their relevant findings as a thematic whole to gain deeper insights into the dynamics of police governance and parliament's role in police governance. Furthermore, it highlights best practices. To situate the case studies as a coherent whole, the concept of security sector governance (SSG) in general and the role of parliament in SSG, more particularly in police governance are discussed in the succeeding section.

## Security sector governance

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Security sector governance (SSG) is a relatively new paradigm and has made, since its inception in the 1990s, an extraordinary progression in both policy and academic discourses. It broadened the narrow spectrum of civil-military relations to cover the entire security sector, including the armed forces, police, intelligence services, border security, private security companies and militias. Along with the security sector, the need for democratic accountability and civilian control of the security sector has also widened and currently includes all management and oversight institutions, such as the executive, legislature, judiciary, independent oversight bodies and civil society.

While there is no 'one size fits all' approach, good SSG is based on the idea that the security sector should be held to the same high standards of public service delivery as any other public sector. If the security sector is well governed, it can be characterised as an effective and accountable sector capable of fulfilling its mandate to protect society against internal and external threats while respecting the rule of law and human rights. On the other hand, a poorly governed security sector is characterised by multiple security and accountability deficits, including: over-inflated security establishments that are difficult to support financially, but frequently constitute a major political and economic force; lack of transparency and accountability; inadequate defence planning, poor management and budgeting capacity in both civilian and military institutions; a long history of human-rights abuses by security forces and a tendency for security forces to act with impunity; corruption; an insufficient number of civilians capable of managing and providing oversight of security matters; and inadequate professional development. Furthermore, political interference by the security forces and politicisation of security forces by civilian actors are two sides of the same coin, reflecting major deficiencies in a security sector.<sup>3</sup>

Democratic accountability can be achieved through a plurality of methods. Mechanisms of democratic control vary according to a number of factors, such as the country's historical context, cultural traditions, form of government (i.e. monarchy, parliamentary republic or presidential system), constitutional-legislative framework, and socio-economic conditions. Across this diversity of political systems, it is possible to identify numerous actors performing similar types of oversight activities. They traditionally include various executive, legislative, judicial and independent state bodies, along with non-state actors from civil society. The table below provides an indicative overview of possible oversight actors and activities, which might take place in a given country.

Table 1: Indicative overview of the security sector oversight levels, actors and activities

Level of oversight	Oversight actors	Oversight activities
Executive	Head of state, ministers and their ministries, security-coordinating executive bodies, and specialized executive oversight bodies for the security sector	Ultimate command authority, setting policies and priorities, promulgating subsidiary legislation and regulation, budget management, investigation powers, appointment of main commanders, proposing laws and arms procurements, and international negotiation
Legislature	Parliament, parliamentary standing committees, ad hoc inquiry committees, parliamentary staff units, and research services	Law-making and amending, budget control, oversight and scrutiny, and confirmation and election of top security sector officials
Judiciary	Civil, criminal and military courts and tribunals	Adjudicating cases against security institutions/ staff, reviewing the constitutionality of laws, safeguarding the rule of law and human rights, monitoring special powers, and reviewing security policies in the context of prosecutions
Independent oversight bodies	Ombuds institutions, human rights committees, and audit offices	Receiving complaints and investigating abuses and failures, raising awareness on human rights, and verifying compliance with the law and correct use of public funds
Civil society	Advocacy organisations, research institutes and think tanks	Informing the public, investigative reporting, providing in-depth analysis and expertise, dissemination of alternative views, recommendations, lobbying, monitoring, and addressing issues through the judiciary and the media
Security sector	Internal management of security-providing institutions (such as armed forces, police, intelligence services, and border security)	Internal mechanisms of supervision, review, monitoring, complaints, discipline, codes of conduct, freedom of information, and human resources

## Role of parliament in security sector governance

Since effective governance and civilian oversight of the security sector are essential for peace, democracy and development, members of parliament, as representatives of the people, play an important role in the good governance of the security sector through its three generic functions: legislative, oversight and budgetary control.<sup>4</sup> Table 2 gives an indicative overview of the possible application of these functions to the security sector.

**Table 2: Indicative overview of the application of the three generic functions of parliament to the security sector**

Function	Application to the security sector
Legislative	Initiating new laws pertaining to the security sector, reviewing and amending laws proposed by the executive, existing laws and secondary legislation, and reviewing if international obligations related to the security sector are reflected in domestic law
Oversight	Conducting routine oversight activities of the security sector, including hearings, inspections and visits to headquarters, stations, exercises, deployments abroad, and ad hoc oversight activities, including inquiries
Budgetary control	Reviewing executive budgetary proposals pertaining to the security sector, scrutinising past expenditures of the security sector and costly security projects, and conducting security oversight related to procurement

The effective application of these functions to the security sector is hindered by various legislative challenges. Some of the most urgent issues are related to the secrecy of information in the security sector, including classified parts of the security sector budget and procurement details. While some parliaments have set up mechanisms for dealing with classified information, others are still determining how to deal with secrecy. A second challenge is the lack of expertise on SSG-related matters among members of parliament and parliamentary staff. Some parliaments have remedied this problem by exposing members of parliament and staff to capacity-building activities and specific training programmes, as well as international experience-sharing. A third challenge is party politics, which prohibits or complicates effective parliamentary oversight of the security sector. Other parliaments, in particular 'young' parliaments of countries in democratic transition, are

still in the process of establishing committees and accountability and liaison mechanisms for effectively dealing with the security sector. In these emerging democracies, parliaments are also facing the political prerogatives of the security sector that are often negotiated during the democratic transition, which excludes parliamentary and sometimes even executive civilian oversight of the security sector.

Therefore, the reality on the ground is that not all parliaments equally, if not effectively, perform all of the three generic functions in relation to SSG. The strength of democracy in a particular country appears to have an overall impact on the role of parliaments in the governance of the security sector. There is clearly no 'blueprint' for the role of parliament in SSG. Generally, it is the prerogative of each individual parliament to take up the challenge, with consideration of its own strengths and weaknesses, as well as the specific political environment in which it operates.

## Role of parliament in police governance

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Police governance involves actors across multiple layers of the democratic system, including first the police itself, as well as executive, judicial and legislative bodies and independent oversight bodies.<sup>5</sup> Only a few publications discuss parliamentary oversight and focus on its particular missions regarding the police. The IPU-DCAF Handbook on Parliamentary Oversight of the Security Sector (2003) offers practical guidelines for parliamentary oversight of the security sector, and allocates a few pages to further introduce practical instruments and tools for parliamentarians.<sup>6</sup> Gareth (2006) presents an overview of the parliamentary oversight committees and their roles, followed by a case study of Policy Integrity Commission and its role in police accountability in Australia.<sup>7</sup>

Some policing scholars study the role of the parliament within the framework of police accountability. Marina and Marenin (2004) introduce the role of parliament in police accountability as "passing laws that regulates the police and their power, as well as parliamentary ombudsmen or commissions who may launch investigations into complains by the public."<sup>8</sup> Boer and Fernhout (2004) present various

models of parliamentary police oversight in several European countries.<sup>9</sup> Punch (2010) discusses the police's use of fatal force and accountability issues, and argues for a more robust role of parliament in policing the police. In this context, Punch highlights the demarcation line between the professional autonomy of the police for operational decision-making and the rights and powers of the executive and legislature within a democracy. In the context of the police's use of force and firearms, he pleads for close parliamentary scrutiny, while not exposing operational policing to political interference.<sup>10</sup> The demarcation line between professional autonomy of the police and accountability to political institutions is also highlighted in the Patten Report on the role of policing in Northern Ireland, which states that:

In a democratic society, all public officials must be fully accountable to the institutions of that society for the due performance of their functions, and a chief of police cannot be an exception. No public official, including a chief of police, can be said to be 'independent.'<sup>11</sup>

The Commonwealth Human Rights Initiative (2005) and United Nations Office on Drugs and Crime Handbook on Police Accountability (2011) each allocate a short chapter for police accountability to parliament. They emphasise parliament's legislative, budgetary and oversight powers, as well as the importance of parliamentary committee for ensuring police accountability.<sup>12</sup>

Lastly, the journal *Police Practice and Research* published a special issue on the subject of civilian oversight of police. While the editors of this special issue acknowledge that oversight of the police, in terms of external scrutiny and judgement, can be conducted by various institutions, including the courts, parliaments, financial auditors, and human rights organisations, most of the attention in the volume is given to civilian oversight in the sense of citizen oversight or external oversight as carried out by oversight agencies such as an ombudsman, commission, office, authority or citizen review board. While no systematic attention was given to the role of parliament in police governance, it transpires that parliament plays an important role in legislating, supervising and evaluating these special police oversight and complaints bodies, as is the case in the United Kingdom (UK).<sup>13</sup> In

the case of Canada and South Africa, Parliament decides on the remit and powers of police complaints bodies through the enactment of legislation.<sup>14</sup> In New Zealand, the annual reports of the police oversight body are presented to Parliament.<sup>15</sup> Therefore, from this special issue, it can be concluded that in many countries parliament has defined the mandate, powers, functioning and accountability of police oversight and complaints bodies.

## Framework for understanding the role of parliament in police governance

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Based on the discussion on the role of parliament in SSG and the brief literature overview, we can distinguish that parliament can fulfil three generic functions in the governance of the police: legislative function, the oversight function and the budget control function. While not each parliament will fulfil these functions exactly the same, in the table below, an indicative overview is given of those functions in relation to police governance (Table 3), which will be addressed in the country case studies.



**Table 3: Indicative Overview of Parliament's functions in police governance**

Parliament's generic functions in police governance	Description of activities
Legislative function	<ul style="list-style-type: none"> <li>• Reviewing the comprehensiveness of the legal framework relevant to the police;</li> <li>• Enacting and amending laws relevant to the police, including police service laws, legislation on the authorization and use of special powers by the police, states of emergency laws, riot control and crowd management; and</li> <li>• Legislating the remit, powers and accountability of police oversight and complaints bodies.</li> </ul>
Oversight function	<ul style="list-style-type: none"> <li>• Conducting parliamentary oversight of the following aspects of the police: police vision, doctrine, government white paper on the police; organisation and size of the police; and the authorisation and use of special powers;</li> <li>• Scrutinising top appointments within the police service;</li> <li>• Scrutinising the rules of engagement of the police, especially the use of deadly force and fire arms; and</li> <li>• Conducting special parliamentary inquiries into policing and its oversight.</li> </ul>
Budget control function	<ul style="list-style-type: none"> <li>• Approving, rejecting or amending the budget of the police service;</li> <li>• Scrutinising the effects of changes of government funding for the police;</li> <li>• Scrutinising the effectiveness and efficiency of the police and if the police is properly funded; and</li> <li>• Receiving and reviewing audit reports on the expenditures of the police.</li> </ul>

In most countries, parliament has set up special committees or sub-committees to deal with police affairs and exercise the functions mentioned above. Apart from the plenary, the committee system, including staff support, is the most important institutional arrangement for parliament to perform these functions. Various types of committees that are relevant for police governance can be distinguished:

- Committees with a broad mandate, for example, bills, public accounts, foreign affairs, justice, and human rights;
- Committees broadly covering the security sector, for example, security policy, and defence and security; and
- Committees specifically covering the police.

Typically, the laws and/or rules of procedure of parliament or of these committees specifically would regulate the mandate, powers, chair, membership and functioning. They would answer the following questions: What is the mandate of the parliamentary committee/s mandated to deal with policing? Who and how are the chair and members appointed? Do committee members have access to classified information? How are visits to police stations organised? To what extent, and how, can the committee rely on committee and research staff? Is the committee entitled to receive complaints from the public? Are committee meetings open or closed?

In addition to the generic functions of parliament applied to police governance, as well as the committee as the primary institutional arrangement in parliament to carry out those functions, it is important to address the relationship between parliament and other overseers. As mentioned, in many countries, parliament plays an important role in legislating, supervising and evaluating other oversight bodies, including police oversight and complaints bodies, ombuds institutions and human rights committees.

## Context matters

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The countries included in the case studies come from different regions, with different legal and political backgrounds. Good practices of parliamentary oversight of the police do exist in all countries, but they need to be carefully assessed and adapted to local situations. Table 1 below gives an overview of the wide variety of states from Asia and Europe that are included in the study. Some notable contextual factors will be discussed that may impact upon the role of parliament in police governance. These contextual factors are: the centralised/decentralised structure of the state and the police; the nature of the political system; the structure of parliament; and the recent history of democratisation of the state.

**Table 4: Structural elements of the political system influencing the role of parliament in police governance**

Country	Continent	Centralised/ decentralised state structure	Political system	Parliamentary structure
Belgium	Europe	Federal	Parliamentary	Bi-cameral
Germany	Europe	Federal	Parliamentary	Bi-cameral
India	Asia	Federal	Parliamentary	Bi-cameral
Indonesia	Asia	Centralised	Presidential	Bi-cameral
Netherlands	Europe	Centralised	Parliamentary	Bi-cameral
Philippines	Asia	Centralised	Presidential	Bi-cameral
Thailand	Asia	Centralised	Parliamentary	Bi-cameral
United Kingdom	Europe	Mixed	Parliamentary	Bi-cameral

The **level of de-/centralisation** of the state impacts the role of parliament in police governance. Some of the countries in the sample have a federal state structure (see Table 1), in which the police is set up as a federal service with substantial autonomy for the police services of the regions and cities. Other countries have a centralised state structure, and the police is set up accordingly, i.e. with decision-making powers over the police centralised in the capital. It is expected that parliaments in a centralised state structure have a bigger role in police governance than in federal or decentralised states, where the role of parliament is limited because the power over the police rests with the local authorities.

The **type of political system** (presidential versus parliamentary systems) impacts the role of parliament. It is expected that parliaments in a parliamentary political system have a bigger role in police governance than parliaments in a presidential system. Most likely, *ceteris paribus*, in a parliamentary system, the continuity of government depends on a majority in parliament, and, therefore, the government will closely follow the politics in parliament. Furthermore, in a presidential system, the president has more leverage to govern by executive decree than in parliamentary system, which might decrease the role of parliament.

Furthermore, **the structure of parliament** itself influences the role of parliament in police governance. In parliaments with a bi-cameral

system, as is the case in all countries in this study, both houses of parliament have committees dealing with home affairs and police matters, leading to a complex political situation of parliamentary committees with overlapping mandates.

Lastly, **the recent history of democratisation** impacts the role of parliament in police governance. During periods of authoritarian regime, parliament was suspended or played only a rubber-stamp role, as it was only allowed to approve the policies and laws of the authoritarian rulers. In particular, in matters of internal security, parliament would have no power. After the transition to democracy, parliaments need to build up new structures, procedures and practices in order to fulfil their new constitutional duties in the area of SSG and security sector reform. This is time-consuming. In addition, e.g. in **Indonesia** and the **Philippines**, the police was subordinated to the military during the dictatorship, resulting in a military style of policing and with no role of civilian government in the governance of the police. After democratisation, the police needs to reform as well in order to become responsive and accountable to the public instead of only to the government. Therefore, with regards to strengthening the role of parliament in police governance, democratising states are faced with the double challenge of a) establishing a civilian government with an effective parliament, and b) demilitarising the police, including separating the police from the military.

## Chapter Overviews

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The contributions to the volume are organised in three parts: the introduction, which includes this chapter, with sections on the conceptual overview and important context on the role of parliament in police governance; part two, composed of eight chapters, presents the different country case studies; and the concluding chapter which thematically analyses the eight case studies, weaving together the lessons learned in improving police accountability to parliament.

Composed of eight chapters, this publication presents the case studies on the role parliament in police governance in Belgium (Marleen Easton, Jeffrey Vincent, and Arne Dormaels), Germany (Hartmut Aden),

the Netherlands (Peter Dillingh), the United Kingdom (Vic Hogg), India (Arvind Verma), Indonesia (Aditya Batara Gunawan), the Philippines (Mario “Mayong” J. Aguja), and Thailand (Srisombat Chokprajakchat). The country case studies highlight the good practices and the institutional and legal frameworks of the police. They use the following terms of reference as a basis:

- Role of parliament within the broader framework of police governance;
- Three generic functions of parliament applied to the police (i.e. legislative, oversight and budget control functions of parliament);
- Role of parliamentary committees, including their mandate, powers, procedures, functioning and committee support structures and staff;
- Independent police oversight bodies; and
- Parliamentary-police liaison mechanisms.

Each chapter concludes with good practices for accountability of the police to parliament.

The **concluding chapter** of the book, ‘Role of Parliament in Police Governance in Europe and Asia: Insights from Comparative Analysis,’ integrates the relevant findings of the case studies and brings together the lessons learned from Asia and Europe with regard to the above-mentioned terms of reference. For improving accountability of the police to parliament, the following seven lessons learned were drawn from the cases studies:

1. An effective system of police accountability includes at least one civilian body that is independent of both the police and executive.
2. Parliament involves the public in adopting and amending the legal framework of the police.
3. For parliament to be successful in its inquiries, it must be granted subpoena and contempt powers to compel witnesses to appear or submit documents needed to shed light onto the subject of inquiry.
4. It is common practice for parliament to provide members of parliament access to all information relevant to the police budget.
5. It is common practice for parliament to establish a parliamentary committee or a sub-committee dealing with the police.

6. For police to be accountable, it is subjected to independent oversight bodies, including independent police complaints bodies, and ombuds and national human rights institutions. as well as anti-corruption/financial audit bodies.
7. Parliament-police liaison takes place in order to assure that parliament receives all information needed to fulfil its constitutional duties, including data on policing, crime statistics (in particular crimes against women), government policies and priorities for the police and any other requests of parliament to the police.

The findings of the cases studies can be taken into account when considering options for improving the accountability of the police to parliament. However, it must be emphasised that these good practices always need to be adapted to the exigencies of the local context.

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# 2

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## India

ARVIND VERMA<sup>1</sup>

### Introduction

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India's parliamentary system of government is based on a constitution that empowers every citizen to vote irrespective of gender, ethnic or caste differences. There is no other example of enfranchising millions of illiterate, poor and exploited people in such a manner. "India's democratic experience has been a prodigious act of faith",<sup>2</sup> an unprecedented revolution that has set the country on an extraordinary adventure. While India's democratic institutions have performed reasonably well, the overall impact has been disappointing. There are major failures on human development and governance indicators such as human rights, child mortality, hunger, illiteracy and accountability on the part of public institutions. In particular, the functioning of the police has been an issue of significant public concern and condemnation. People have little faith in its organisation and ability to provide basic services and security. The police have also gained notoriety for not following due process, for the misuse of force and for indifference to citizen complaints. Such



indifference to citizen woes seems incompatible with the processes of accountability and checks and balances in a democracy.

In this chapter, the parliamentary system and its mechanisms to hold the police accountable are examined. The structure, powers and functions of standing committees and other functions of the Parliament are discussed, and it is sought to understand why elected representatives and democratic institutional provisions have failed to control police excesses and violative behaviour of police personnel. On a more positive note, the chapter analyses the role of Indian courts, which have begun since the 1970s, via the so-called Public Interest Litigation (PIL) system, to address human rights abuses and hold the police accountable. The PIL has developed into a powerful procedure to rectify administrative, economic and political problems concerning citizens and are not handled by public officials. The chapter concludes that the central problem of Parliamentary oversight of the Indian police does not originate in the methods and systems, but in the people who execute them.

## Police accountability framework

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Policing is a state subject under the constitution, and provincial governments administer the recruitment, training and functions of police officers. The Federal Ministry of Home Affairs (MHA) controls all central police forces and some special units, including the Indian Police Service (IPS). The IPS is an elite leadership cadre that holds all senior ranks in every police organisation, including those of the individual states. It is an “All India Service,” but its members are allotted to different states to manage the police. The Home Minister is responsible for all police functions and accountable for their actions to Parliament and, at the state level, to the Assembly. The police are beholden to the judiciary for their functions, while the media helps keep the police accountable to the people.

There is no Citizen Accountability Bureau, Ombudsman<sup>3</sup> or body that can directly hold the police accountable to the citizens. The system seeks accountability through the Home Minister and Standing Committees of the Parliament and State Assemblies. At the local level,

the Superintendent of the Police (SP) provides direct accountability. The SP has the power to initiate internal inquiry into any citizen complaint and to take action against any delinquent subordinate officer. However, such an internal inquiry by a police supervisor is inherently prejudicial and lacks objectivity.<sup>4</sup> The Police Act has further placed the district police under the “control and general guidance” of the District Magistrate (DM), who is a civilian bureaucrat belonging to another “All India Service” called the Indian Administrative Service (IAS). The IAS forms the backbone of Indian bureaucracy and also controls the Home Ministry. Such a system of dual control compounds the issue of accountability of the police and leads to management conflicts amongst the various stakeholders. The Comptroller and Auditor General (CAG) audits police accounts and checks against misuse of funds. Although it is an independent statutory body, it is unable to provide a robust accountability mechanism for the police.

Serious complaints against police officers are sometimes handled through judicial inquiry or by Commission of Inquiry. In both of these cases, the review is for some specific matter, and there is no institutional arrangement that automatically inquires into citizen complaints. The judiciary is trusted more in comparison; but the procedures of the bench are cumbersome and slow, and only government directives can initiate special commissions. Few Commissions of Inquiry have been able to prosecute guilty police successfully.

However, the Supreme Court of India has been extremely vigilant in addressing citizen complaints. Article 32(1) of the Constitution empowers a citizen to directly approach the Supreme Court for enforcement of the fundamental rights guaranteed under Part III Articles 14-32 of the document. The Supreme Court and State High Courts are authorised to take cognisance of any such a complaint and issue orders as a writ. This provision was creatively utilised for extended judicial action by Justices Krishna Iyer and Bhagwati and is now called the Public Interest Litigation (PIL) System. These judges even accepted a letter written by some aggrieved or concerned citizen to initiate judicial intervention in the case. Since the 1970s, Indian courts have begun this unique form of judicial activism that has addressed human rights abuses and held the

police accountable.<sup>5</sup> The PIL has developed into a powerful procedure to rectify administrative, economic and political problems that concern citizens and are not handled by public officials. Police officers who are abusing their power, violating citizen rights, and not following the due process have all been reprimanded and taken to task through simple letters written to the judges.

Nevertheless, the impact of the PIL on holding the police accountable has been limited. Despite a large number of judgments and even direct monitoring of specific cases, various governments have not faithfully implemented the court's directives. Epp (1998) labels this as the weakness of India's support structure for legal mobilisation.<sup>6</sup> Galanter (1989) points to the incapacity of the Indian legal system to pursue strategically planned litigation.<sup>7</sup> PIL has "largely been a matter of individual concern, conducted on an ad hoc basis with no broad policy oriented thrust."<sup>8</sup> The Central Information Commission (CIC) is another statutory body that ensures that the police function in a transparent manner. The CIC enforces the Right to Information Act and helps citizens seek information from police authorities about several functions related to licensing, inquiries and investigations. The National Human Rights Commission is another organisation with powers to inquire into any allegations of human rights violations by police personnel.

## Functions of parliament

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### Legislative function

The Police Act V (1861) is the basic framework that defines and establishes the police's organisation, responsibilities, functions and powers in the country. The Code of Criminal Procedure (1973) describes the various ways that a police officer can record crimes, investigate criminal cases and execute the powers of arrest, search and seizure. The Indian Penal Code (1860) is the basic law defining the nature of crime and its punishment. A plethora of other laws cover a variety of social deviance that has been criminalised. The legislatures have been concerned about public disturbances and mass protests that remain the hallmark of the Indian polity. As early as 1950, the first Preventive Detention Act was passed by Parliament.<sup>9</sup> As independent India faced

growing threats from organised violence, various laws governing the police's use of force to deal with riots and manage crowds were enacted. The Armed Forces Special Powers Act was enacted in 1958 to control the growing Naga unrest in the Northeast, which was followed by the Maintenance of Internal Security Act and other preventive detention acts such as the Disturbed Areas Act and the National Security Act. The infamous Terrorist and Disruptive Activities Act (TADA) was enacted to control violent militancy and insurgency in Punjab. The Essential Services Maintenance Act was passed in 1981 to deal with the threat of militant labour in the country. The democratic Government of India has retained not only a strong coercive police apparatus but has also strengthened its powers by special legislations.

Parliament periodically evaluates some central laws applicable nationwide (e.g. the Code of Criminal Procedure (CrPC), the Indian Penal Code, and the Evidence Act) for their effectiveness and impact. For instance, growing complaints against police officers for abusing their authority and power of detention recently led the Parliament to pass an amendment to Section 41 the Code of Criminal Procedure (1973). The Criminal Procedure Code (Amendment) Bill (2010) was introduced in the Parliament of India (*Lok Sabha*)<sup>10</sup> and restrains the police from arresting a person for criminal offences for which the maximum sentence is seven-year imprisonment and mandates the police officer to record in writing the necessary evidence and reasons when making an arrest. Further, as per Section 41A, instead of arresting the accused, the police is obliged to issue him/her a "notice of appearance" for any offence punishable with imprisonment of up to seven years. There was considerable opposition from the police leadership and apprehension that this may restrict police officers' ability to deal firmly with offenders, but the sentiments against the misuse of police force were high and the Parliament easily passed this amendment. Additionally, the Government has been sensitive to the abuse of executive authority that was the backbone of British colonial rule in the country. Judicial functions were separated from the executive by the passage of the new Code of Criminal Procedure in 1973 (Act Number 2 of 1974). By this amendment, the power was given exclusively to the judiciary to supervise the coercive powers of police.

The Parliament has constantly supported governmental action in order to deal with threats to national integrity and stability. When terrorism assumed dangerous proportions in the state of Punjab, the majority of Parliament voted to enhance police powers. Thus, Section 25 of the Evidence Act (1873), prohibiting admissibility of a confession made before a police officer, was diluted in the 1980s to enable the police to deal effectively with terrorists. The government added a clause in TADA that makes confession before a senior police officer admissible. Incidentally, even the Supreme Court upheld this provision in the *Kartar Singh versus State of Punjab 1994* judgment, perhaps an indication that in matters of internal security all branches of government tend to cooperate with each other.

The Central Vigilance Commission (CVC) functions as an independent apex vigilance institution. It has been further empowered by a new bill passed by both the Houses of Parliament in 2003 authorizing the Commission as the “designated agency” to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action. The CVC supersedes the functions of the Central Bureau of Investigation (CBI) when an issue relates to the investigation of offences under the Prevention of Corruption Act (1988). By exercising control over the CBI, the CVC now asserts vigilance over all the country’s top officials and has the power to inquire about any alleged malpractice in the public and police administration.

India is a member of INTERPOL, and the Director of the CBI is the nodal contact for international cooperation relating to matters of crimes, human trafficking, missing children and financial offences. India is a signatory, along with a number of countries, on matters of mutual assistance, and criminal investigations are handled through established laws. Section 166A of the CrPC authorises the outgoing requests for assistance, while Section 166B authorises the police to process incoming requests. Judicial magistrates have powers to issue letters rogatory (letters of request) to the competent authority in a foreign country to provide assistance to the Indian police for criminal investigation. The laws also provide for bringing accused offenders or fugitives to trial through the Indian Extradition Act of 1962, for which treaties have been signed with many countries.

### Oversight function

As mentioned above, the Home Minister, on behalf of Parliament, oversees the functions of the central police forces. Policy formulation, organisation, the strength of various police units, top appointments within the organisation, and their service rules are all within the purview of the Home Ministry. As mentioned above, Indian Police Service (IPS) officers lead all the country's police forces and administer all operational policies and supervision. The Federal Ministry of Home Affairs (MHA) controls the IPS cadre, in turn, and all the service conditions, assignments, evaluations and postings are in the hands of the Home Minister. There are a number of IPS officers posted within the Ministry who assist the IAS secretaries in developing the police policy vision, determining policing priorities, and strengthening the police apparatus through augmenting its personnel and material resources. Rules of engagements and stationing of additional forces for order maintenance are handled by the Ministry. The MHA is also responsible for improving police capabilities by establishing and developing training centres and supplementing operational capabilities through technology applications. For example, to properly equip police forces combating the left-wing Maoist threat in Central India, the Ministry opened a special training school to train the personnel in counter-insurgency operations. A women's battalion has also been established to engage the growing number of women participating in public protests.

The Central Government maintains a large number and variety of police forces. For example, the Border Security Force patrols the long borders, and the Central Industrial Security Force ensures security at public sector activities. The Central Reserve Police Force handles order maintenance in the country, and its special unit, the Rapid Action Force, deals with riotous situations. Almost a million personnel serve in these police forces. Since policing is a state subject, maintenance functions are handled by provincial police forces, with the central police providing assistance and back-up. While the Central Government has the power to deploy its forces in any *disturbed* area of the country, the major responsibility is with the State Government. This introduces problems of harmonious cooperation, particularly when different political parties rule at the centre and state levels. Article 263 of the Constitution of

India outlines the establishment of an institutional mechanism to coordinate centre-state relations, and the Inter-State Council has been set up by Presidential Order in 1990. This Council meets regularly and has evolved many policies governing preparedness of states in meeting natural disasters and preventing atrocities against the weaker sections of society.

In a similar arrangement, five zonal councils have been established, which are statutory bodies under the States Re-organisation Act (1956) that provide a mechanism for resolution of inter-state and zonal problems, foster balanced socio-economic regional development, and build harmonious centre-state relations. These councils have chief ministers and other ministers of the respective states as their members, with the Union Home Minister as the Chairman of each council. These councils have led to important initiatives in regard to “internal security, coastal security, mega city policing, sharing of information on crime and criminals by the concerned states, prison reforms, communal harmony, preparations for disaster management and implementation of the Right to Information Act.”<sup>11</sup>

The Home Ministry provides financial assistance to the states under police modernisation schemes to strengthen local police forces. Under these schemes, assistance is provided for procurement of modern equipment for surveillance, communications, forensic science laboratories, weaponry, vehicles, computerisation, training infrastructure and construction of police infrastructure (e.g. housing, police stations, outposts and barracks). The Internal Audit Unit of the Home Ministry undertakes “risk-based audits” of various modernisation schemes.<sup>12</sup> The Standing Committee on Home Affairs of the Parliament and the Comptroller and Auditor General also maintain oversight over such police reform projects.

### Budget control function

Preparation of the budget for the approval of the legislature is a constitutional obligation of the government, both at the centre and the state levels. Legislative prerogatives of taxation and control over expenditure and executive initiatives in financial matters are some of the fundamental principles of Parliamentary financial control. For

example, no expenditure can be incurred without the authorisation of the legislature (Article 266 of the Constitution). The annual financial statement, presented at both Houses, describes the estimated receipts and expenditure of the Government of India for the financial year. The Lok Sabha votes on the estimates of expenditure in the form of “demands for grants.” These demands are arranged by ministry and provide detailed estimates. The demands of grants of various ministries/ departments are also considered by concerned Standing Committees (Rule 331G).<sup>13</sup> After the reports of the Standing Committees are presented, the House proceeds to the discussion and voting on the demands for grants. Motions on the reduction of demands are made in the form of “cut motions.” After the general discussion, the Government introduces the Appropriation Bill, which grants the Government the authority to incur expenditures from the Consolidated Fund of India. Finally, the Council of Ministers, headed by the Prime Minister, is collectively responsible to Parliament. Each minister dealing with formulating departmental policies is individually responsible (as part of that collective responsibility) to oversee and ensure the implementation and efficient functioning of his or her respective administration. Moreover, individual ministers are responsible to the legislature for actions of their respective civil servants, and their accountability is ensured by a complex set of organisational and procedural mechanisms.

The Finance Division within each ministry is responsible for formulating, operating and controlling the budget of the ministry and other matters pertaining to expenditure control, monitoring and financial advice. In the government account system, there are two components of expenditure: plan and non-plan. Plan expenditures are estimated after discussions between each of the ministries concerned and the Planning Commission.

Non-plan revenue expenditure is accounted for by interest payments, subsidies (mainly on food and fertilisers), wage and salary payments to government employees, grants to states and union territory governments, pensions, police, economic services in various sectors, other general services (such as tax collection and social services), and grants to foreign governments. Since the police is placed under the



non-plan category, all of its functions and services are accounted for in ad hoc manner. Only a limited number of specific projects, largely covering buildings, modernisation and particular resources, are handled in a planned manner. For instance, the budget for the Delhi police for the 2012-13 period was ₹3665.33 crores,<sup>14</sup> of which ₹2740 crores (74 per cent) was spent on the salaries of personnel. Additionally, ₹210 crores were sanctioned for planned expenditures, largely to construct office and residential buildings for personnel.

The Ministry is silent on the topic of the budget as a tool of accountability. Thus, decisions to reject or amend the police budget and on if the police is properly funded are not mentioned in its annual reports, which the Standing Committee has pointed out in some of its reports. However, utilisation of funds is examined by the Comptroller and Auditor General's Office, and its various reports suggest mis-utilisation of sanctioned resources.

## Parliamentary committee/s

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### Ad hoc and standing committees

In India, there are two kinds of Parliamentary committees: Ad Hoc Committees and Standing Committees. Ad Hoc Committees are appointed for a specific purpose and a limited period until the report is submitted. The principal Ad Hoc Committees are the Select and Joint Committees on Bills. Other committees (e.g. the Railway Convention Committee, the Committees on the Draft Five Year Plans and the Hindi Language Equivalents Committee) were appointed for specific purposes. Apart from Ad Hoc Committees, each House of Parliament has Standing Committees, such as the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges, and the Rules Committee.

### Other committees

The committees that act as Parliamentary "watch dogs" over the executive are of special importance for oversight. They include the Committees on Subordinate Legislation, Committee on Government Assurances, Committee on Estimates, Committee on Public Accounts and Committee on Public Undertakings and Departmentally Related Standing

Committees (DRSCs). The Committee on Estimates, the Committee on Public Accounts, the Committee on Public Undertakings and DRSCs play an important role in controlling government expenditure and policy formulation.

## Composition and functions of the committees

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### Select and joint committees

When a bill comes up before a house for general discussion, it can be referred to a Select or a Joint Committee in the two Houses. Members of the Committee can move amendments to various clauses. The Committee can also examine evidence provided by associations, public bodies or experts who are interested in the bill. After the bill has thus been considered, the Committee submits its report to the House. Members who do not agree with the majority report may append their minutes of dissent to the report.

### Departmentally-related standing committees

Seventeen department-related Parliamentary Standing Committees were established in 1993<sup>15</sup>, each consisting of 15 members from Rajya Sabha and 30 from Lok Sabha to strengthen the Parliamentary accountability of the government. With the addition of seven more committees in July 2004, albeit with reduced membership of 10 from Rajya Sabha and 21 from Lok Sabha, the number of department-related Parliamentary Standing Committees was raised to 24. The membership includes eight within the jurisdiction of the Chairman of the Rajya Sabha and 16 within the jurisdiction of the Speaker of the Lok Sabha. Rules 268 to 277 of the Rules of Procedure and Conduct of Business in the Council of States (2010) govern the Constitution and functioning of these committees.

Each of the Standing Committees are related to ministries/departments, as specified in the Third Schedule of these Rules and provided that the Chairman and Speaker may occasionally alter the Schedule in consultation with each other. Each Standing Committee constituted under Rule 268 consist of not more than 31 members (10 members nominated by the chairman from members of the Council, and 21

members nominated by the speaker from members of the House). Parties are allocated seats based on their strength in Parliament. The final membership is decided based on each member's area of interest, as well as their party's decision on allocating the seats.

The Chairman of each of the Committees, specified in Part I of the Third Schedule of these Rules of Procedure (2010), is appointed by the Chairman of the Council from members of the respective Committees, and the Chairman of each of the Committees specified in Part II of the Schedule is correspondingly appointed by the Speaker. A member of a committee holds office for a term not exceeding one year. The Chair is from the respective House. Political parties are allocated chairs based on their strength in Parliament. A senior member of an opposition party customarily chairs some committees, such as home affairs, finance and external affairs. Committee reports are not decided by voting, but by trying to form a consensus while preparing the report. However, if some members do not agree on any point, they may add a dissent note.

Each of the Standing Committees has the following functions:

- To consider the demands for grants of the related ministries/ departments and report thereon;
- To examine bills pertaining to the related ministries/departments, referred to the committee by the chairman or the speaker;
- To consider the annual reports of the ministries/departments; and
- To consider national basic long-term policy documents presented to the Houses.

The Standing Committees do not consider matters of day-to-day administration of the related ministries/departments. The reports of a Standing Committee have persuasive value and are treated as considered advice given by the Committee. While their recommendations are not binding on the Ministry or the Government, the formation of the Committee was based on the recognition that Parliament lacks time for detailed examination of and public feedback for all bills. Parliament, therefore, delegates this task to the committee, which reports back with its recommendations. It is the role of all members of Parliament in each house to examine the recommendations and move suitable

amendments. Following this, Parliament can vote on these amendments and finalize the bill.

As the committee proceedings are recorded on video, there is an objective consideration of the subjects discussed, and the members perform their duties in a non-partisan way. The members get a lot of time to speak in committees. There is an opportunity to hear experts/witnesses in Parliamentary committees and get their expert advice, which is not available in Parliament. The committees adopt the procedure for seeking opinions on various bills, and large numbers of people submit their memoranda to the committees. Each committee has its own mini-secretariat drawn from the secretariat of the Parliament, which does a lot of research and provides vital input to the members. The Standing Committee for Home Affairs has six persons in its mini-secretariat. Another big advantage of Parliamentary committees is the high quality of debates, as discussions are on non-partisan. Following the deliberations, committees present their reports to both houses. In the Indian Parliament, 99.9 per cent of reports are unanimous, and dissent notes are appended very seldom. Parliament and the government generally accept most of the amendments suggested by Standing Committees. The government has “accepted about 57 [per cent] of the recommendations of the Departmentally Related Standing Committees so far.”<sup>16</sup>

The police are covered by the Committee on Home Affairs, which also combines supervision of the development of the troubled Northeastern region. This committee, housed in the Rajya Sabha, presently comprises nine members from the Rajya Sabha and 20 from the Lok Sabha. The Chairperson is from the main opposition party, and there are a ten from the ruling party. From 2011 to April 2014, this Standing Committee held 96 meetings, averaging roughly 2.5 meetings per month. The Committee covered subjects ranging from security of vital infrastructure to women’s rights, disaster management, functioning of the police and complaints against officers.

The effectiveness of this Committee in holding police accountable is questionable. According to the annual report,<sup>17</sup> there is little evidence of any thorough examination of various budgetary provisions. For instance,

despite finding that a large quantum of unspent balances are lying with State Governments under major schemes, such as Modernisation of State Police Forces, the Committee did nothing except for asking for utilisation certificates or surrendering the unspent amount. Such an approach is observed in all parts of the report. The vast proportion of the report consists of tables and figures submitted by the ministry with little evidence of in-depth scrutiny of the data. This is also seen in another report on the functioning of Delhi police that is directly under the control of the Ministry of Home Affairs. This is a significant first attempt by a Parliamentary committee to critically evaluate the performance of the largest metropolitan force in the country and provide evidence of some attempts to hold police accountable. As an unprecedented action, the Committee invited memoranda from the people of Delhi and called the Commissioner of the police to explain the deteriorating law and order situation in Delhi. Again, a significant proportion of the report is simply a summary of the basic information regarding the history, mission, organisation and crime statistics submitted by Delhi police. There seems little attempt to seek additional information even about unusual trends in reported crime<sup>18</sup> and complaints filed against police personnel.

### Observation on the evaluation by the standing committee

The report of the Committee suggests that the evaluation of the Delhi police touched upon every aspect of police functions and administration. While at places the Committee expressed criticism of police performance, little attempt was made to examine the larger problems affecting the country's police. Almost all political parties have demanded that control of the Delhi police be given to the State Government of Delhi, but the Ministry has resisted this, and the Delhi police bears no accountability to the elected representatives of Delhi. As mentioned before, the police continue to operate under the archaic colonial laws, and every recommendation and directives to free police from political interference has been ignored. It seems that the ruling as well as opposition parties are not interested in diluting the political control over the police apparatus. The Indian police continue to suffer from serious organisational and structural problems.<sup>19</sup> Yet,

the Committee did not examine any of these foundational problems. Nevertheless, the Standing Committee of the Parliament has started a process to hold the Delhi police accountable.

One needs to accept that there are many structural problems in the functions of the Standing Committee. First, committees are constrained to consider only those bills referred to them by the Parliament. The Government hence decides on the legislation that is reviewed by the Committee. Furthermore, the ministers cannot be questioned directly, limiting the ability of the Committee to scrutinise the proposed legislation. Committee meetings are not open to the public, and notes circulated during the meetings are deemed as “official secrets;”<sup>20</sup> Moreover, the Government has completely ignored many recommendations of these committees, and the bills have been carried through in their original form, completely disregarding the non-partisan recommendations on the bill.<sup>21</sup>

#### Parliament-police liaison mechanism

The formal mechanism for Parliament and police interaction is through the Minister for Home Affairs, which is one of the top four cabinet posts in the government. The annual report is placed before Parliament and the budget has to be voted on by a majority of the members. The departmentally-related Standing Committee for Home Affairs examines the annual report and other administrative matters. Through these mechanisms, Parliament asserts some supervision over the police forces to hold them accountable for their action. Yet, as the reports of the Standing Committee reveal, most of this supervision is superficial and done cursorily. There is little attempt to critically evaluate the functioning and ways policing of the country is conducted. It must be admitted that Parliament is limited in this role, as respective state governments control the police. However, through modernisation schemes, management of central forces and assistance to the states in maintaining order the Parliament has (limited) power to scrutinise police functions.

Question hour at Parliament is another path for members to hold the police accountable. Members have the right to ask any question and the respective minister must answer them in the House. Furthermore,

live telecasts and all proceedings being placed on the web provide an opportunity to demand accountability from the Government. Current practice suggests, however, that members rarely seek accountability and address citizen complaints against police officers.

## Relationship with other overseers

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The Indian Constitution has created various mechanisms to keep checks and balances on the functions of the government and to make it accountable to the citizens.

### Judiciary

The judiciary is an independent institution that conducts strong oversight of the police organisation. The Supreme Court, through its public interest litigation system, has reached out to the weaker sections of society and asserted its authority in creative ways to protect citizen rights. The attempts by the ruling party to amend the Constitution through its Parliamentary majority were successfully blocked by the Supreme Court. It held in the famous *Keshvanand Bharti*<sup>22</sup> case that the Parliament has no power to alter the basic structure of the Constitution. Furthermore, in the *Minerva Mills*<sup>23</sup> case, the power of judicial review was also made a part of this basic structure so that Parliament cannot amend the Constitution and deny judicial review of any act promulgated by it. This basic structural doctrine is a novel principle evolved by Indian courts that have shown independence and determination to check the executive.<sup>24</sup>

### Comptroller and Auditor-General

The Comptroller and Auditor-General (CAG) is another institution mandated by the Constitution of India to promote “accountability, transparency and good governance through high quality auditing and accounting and provide independent assurance to the Legislature, the Executive and the Public, that public funds are being used efficiently and for the intended purposes.”<sup>25</sup> Chapter V of the Constitution stipulates that the:

“Comptroller and Auditor-General of India shall be appointed by the President and [who] could only be removed from office on like

grounds as a Judge of the Supreme Court. The CAG performs such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament.”

The reports of the CAG relating to the accounts of the Union are submitted to the President, who presents them to each House. Similarly, the reports relating to the accounts of a state are submitted to the governor of the state, who presents them to the state legislature. In a country beset by corruption scandals of growing magnitude, the CAG has provided strong checks against blatant political misconduct.<sup>26</sup>

### National Human Rights Commission

The National Human Rights Commission (NHRC) was established on 12 October 1993. Its statute is contained in the Protection of Human Rights Act (PHRA) (1993), as amended in the Protection of Human Rights (Amendment) Act (2006). The Chair of the Commission has to have served as Chief Justice of the Supreme Court of India. The protection of civil liberties is the central preoccupation of the Commission, and it seeks to ensure the implementation of its statute in true spirit. The statute, in essence, requires the Commission to simultaneously function on two tracks: a fast track to protect and provide immediate relief to the victims or their kith and kin for wrongs committed against them; and a more measured track to strive for the development of a culture of human rights over the entirety of the country. The Commission has been actively involved in matters relating to civil and political rights, including the protection of human rights in areas affected by terrorism and militancy, and custodial violence and torture. The Investigation Division of the Commission carries out “on the spot” investigations all over the country on behalf of the NHRC. Furthermore, it facilitates the collection of facts from all areas of the country relating to varied complaints made to the Commission, scrutinises reports received from the police and other investigation agencies, and investigates reports of custodial violence or other misdemeanours. In addition, the Investigation Division analyses the intimations and reports from state authorities regarding deaths in police and judicial custody, as well as deaths in police encounters. While inquiring about complaints under the PHRA, the Commission has all the



powers of a civil court during a suit under the Code of Civil Procedure (1908).<sup>27</sup>

### Evaluation of NHRC in holding police accountable

The Commission has powers to receive complaints or investigate on its own about “violation of human rights or abetment thereof or negligence in the prevention of human rights violations by public servants.”<sup>28</sup> These powers have helped the NHRC to work in a preventive and penetrative way, particularly in situations involving individuals or groups belonging to the marginalized sections of society and who do not have the financial or social resources to lodge individual complaints. The NHRC has regularly made use of these *suo moto* powers to take cognisance of media reports and comments from foreign news agencies to focus on human rights issues (such as custodial deaths, fake encounters, and police atrocities, including torture, disappearances in insurgency-affected Kashmir valley, and violence against women). According to the last published annual report (2010), the total number of cases registered by the Commission from 01/04/2009 to 31/03/2010 was 82,021. Out of these cases, 25 were police-related alleged disappearances, 109 were false implications, 10 were custodial violence, 639 were illegal arrests, 1,012 were unlawful detention, 47 were alleged false encounters, and 1,374 were other alleged excesses.<sup>29</sup> In several instances, the Commission took it upon itself to conduct inquiries and recommended specific cases to be investigated by the CBI, as state police were seen to be ineffective and compromised.

However, the NHRC has limited mandatory powers, and it takes a very narrow view on human rights. The main defect in the complaints redressal mechanism appears to be the approach of dismissing cases without providing reasoning to complainants. Thus, out of 8,2021 complaints, the NHRC dismissed 60,041 cases *in limini*.<sup>30</sup> It seems to have become “the victim of its legal formalism.”<sup>31</sup> This is a serious concern, because an over-commitment to the legalism of human rights leads to passionless pedantry of the law and dilutes activism governed by ethics and morality.<sup>32</sup> Moreover, Indian armed forces are excluded from the jurisdiction of the NHRC, and it cannot inquire about complaints against

them. It has to seek a report from the Central Government and send its recommendations on such a report to the Government.

There are also a variety of organisational weaknesses, such as a lack of coordination between the NHRC and other national commissions to follow up on group complaints from minorities, scheduled castes and tribes, and women. This is a serious limitation because the NHRC Act does not clearly delineate jurisdiction between national and state commissions and no hierarchical relationship has been mandated. Thus, the Commission does not have the power to inquire into any matter pending before a state or any other commission. State governments are known to have appointed their own commissions to preclude an inquiry by the NHRC.<sup>35</sup> The NHRC lacks an efficient complaint mechanism, and, to file complaints, citizens incur costs and must pass through bureaucratic impediments. A victim's perspective of judging its effectiveness is singularly missing. Nevertheless, the real significance of the Commission is advocacy in order to build constant pressure and act as reminder of the state's obligations towards the rights of citizens. Economic, social and cultural rights have acquired constant public discourse in evaluating the effectiveness of the Indian state, and this is a significant contribution of the NHRC.

### Central Information Commission

The Right to Information Act (2005) grants every citizen the right to seek information, subject to provisions of this Act, from every public authority (including the police) about their tasks and activities. The Central Information Commission (CIC) is empowered to implement the provisions of this Act. The CIC prescribes two approaches to achieve these objectives: an appellate mechanism for adjudication and review of functioning of public authorities, and penal provisions to check and contain intentional and wilful non-disclosure of information. This also has an elaborate code of disclosure of information comprised of streamlining record maintenance (including in digital mode), proactive disclosure, and effective dissemination among the citizenry. The Act also empowers the CIC to obtain reports from every public authority on specific issues to enable it to analyse and discern the status and

emerging pattern of the Act's implementation. According to the CIC, in the year 2012, the Delhi police received 34,384 citizen requests for information. The Act stipulates that a specific officer within each public office, including the police department, should be designated as the Information Officer responsible for providing desired information to the citizen. The Right to Information Act has been an extraordinary success in the country. It has exposed corruption in public offices and provided relief to a large number of citizens. One unfortunate impact of the Act was that citizens who filed for information against malpractices in government offices were murdered for their pursuits.<sup>34</sup> As a result, the Public Interest Disclosure (Protection of Informers) Bill (2010) was introduced in the Lok Sabha on August 26 2010. The Bill is still pending for final vote.

## Conclusion

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The constitution and various mechanisms provide a strong framework to hold the police accountable to Parliament and citizens of the country. The constitutionally-guaranteed fundamental rights of the citizens, an independent judiciary, and the media ensure against the excesses of police authority. Several other institutions (e.g. the CAG, NHRC, CIC and various Parliamentary Standing Committees and State Assemblies) also provide accountability mechanisms. All these mechanisms generally work, though ineffectively. The problem is not in the methods, but in the people who execute them. The elected representatives do not act on behalf of the citizens and fail to pursue citizen complaints. Indeed, the elected representatives themselves have acquired notoriety for such behaviour. The term "criminalisation of politics" has taken roots in Indian discourse:

"This phenomenon involves not just charge-sheeted criminals entering legislative assemblies, but also the fact that a significant number of MPs are beholden to criminal elements. There is good reason to believe that criminals are entering politics in order to use political power to stymie investigations against them."<sup>35</sup>

Another example is the lack of seriousness exhibited by members in the proceedings of the House. Discussions on substantial issues, and even deliberations about the bills introduced in the House, are not taking place. At times, the Government has simply pushed four to five bills and had them voted on amidst the “din and furor” of the House. Parliament is becoming ineffective in holding the executive responsible for the administration of the country. Most members of Parliament seem to look upon their responsibilities primarily as distributors of patronage rather than as policy-makers. This may explain the apparent contradiction that members of Parliament spend a lot of time in their constituency and on their constituents, but not nearly enough time on policies.

The Home Affairs Ministry is heavily burdened and covers far too many subjects. There is little time for strategic policy formulation and the Ministry has also shown complete indifference to external expert opinion. Despite appointing a large number of commissions, the Ministry has rarely followed their recommendations. Police managers posted within the Ministry are also side-lined and never given major policy-making responsibilities.

While the effectiveness of the Parliament is declining, other institutions have seen resurgence and acted to repose the faith of people in Indian democracy. The courts, through the PIL system, have provided immense and immediate relief to a large number of citizens. The PIL provision certainly provides an effective instrument for citizens seeking justice for their grievances. The Right to Information Act is another mechanism that has been widely used to expose corruption and poor performance. While it has not been very effective in seeking police accountability, it has played a major role in curbing corrupt practices amongst public officials. As citizens learn to wield this instrument, there is the strong possibility of checking police abuse of power and lack of accountability in their functions. The NHRC is another institution that has highlighted human rights issues and pursued the misuse of force by police personnel, even in terrorist affected regions. It has the power to investigate complaints against the police, and, to a certain extent, this has helped in curbing police misbehaviour. However, the NHRC has not pursued issues related to police culture, supervision and management

that lead to abuse of authority. It has also had a limited impact due to the indifference of governments towards its recommendations.

There are two other subjects that have not been discussed above, but help keep police accountable to the people in India. The first is the independent media, which has played a major role in drawing attention to the mischief of police agencies. Determined journalists have brought the dubious role of the police in killing suspects in staged “encounters” in communal riots and even blinding them to terrorise the law-breakers to national attention. India today has the largest print-media and TV channels operating 24/7 at a number of more than 300. The news and information is transmitted in regional languages in order to help reach the millions of citizens across the country. This independent and vociferous media plays an important role in forcing police accountability and transparency.

The other group is composed of non-governmental organisations (NGOs) and citizen activists that have mushroomed everywhere and cover every conceivable public interest subject. According to an estimate, there is one NGO per 600 people.<sup>36</sup> Many of these NGOs are working on police-related issues, particularly human rights, and have been active in highlighting abuse of authority by police personnel. This has enlarged democratic participation by citizens and empowered them to protect their rights and seek accountability from the police.

## NOTES

1. The chapter was written and updated in 2014.
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4. Arvind Verma, "Police Accountability: Beyond the Question of Control," *Indian Police Journal*, vol. XLII, no. 1, 1995, pp. 28-40.
5. PN Bhagwati, "Social Action Litigation," in *The Role of the Judiciary in Plural Societies*, (eds.) Neelan Tiruchelvam and Radhika Coomaraswamy (London: Frances Printer, 1987).
6. Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago, 1998).
7. Marc Galanter, *Law and Society in Modern India* (Oxford: Oxford University Press, 1989).
8. Arvind Verma, "Taking Justice Outside The Courts: Judicial Activism In India," *The Howard Journal of Criminal Justice*, vol. 40, no. 2, 2001, p. 162.
9. David H Bayley, *Preventive Detention in India: A Case Study in Democratic Social Control* (Calcutta: Eastend Printers, 1962).
10. The Parliament consists of two Houses. Lok Sabha is the Lower House whose members are directly elected in general elections and Rajya Sabha is the Upper House whose members are nominated. The Lok Sabha is larger with greater powers, but all bills must be passed by both Houses.
11. Ministry of Home Affairs, *Annual Report 2012-13* (Delhi: Government of India, 2013), p. 50.
12. Ministry of Home Affairs, *Annual Report 2012-13*, p. 203.
13. Rules of Procedure and Conduct of Business in Lok Sabha. Chapter XXVI: Parliamentary Committees- General Rules. See: <http://parliamentofindia.nic.in/lr/rules/rulep26.html>
14. ₹ is symbol for Rupee- the Indian currency. On 30 April 2015, 1 \$ [USD] = ₹ 60.30. Crore is Indian numerical term for 10 million.
15. Devesh Kapur and Pratap Bhanu Mehta, "The Indian Parliament as an Institution of Accountability."
16. Commonwealth Parliamentary Association, *Parliamentary Committees and the Committee System* (New Delhi: 22nd Commonwealth Parliamentary Seminar, Nov 24-29, 2011), 2.
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21. NK Singh, "Improving Parliamentary Oversight," *ASCI Journal of Management*, vol. 39, no. 2, 2010, pp. 95-103.
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# 3

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## Indonesia

ADITYA BATARA GUNAWAN

This study<sup>1</sup> explores the dynamics of establishing and maintaining effective parliamentary oversight of the police in Indonesia after the collapse of 32 years of a military-supported authoritarian regime. While the military reform agenda has increasingly gained attention in scholarly articles, there is little work on police reform issues in Indonesia. More importantly, the impact of the newly-institutionalised accountability of the Indonesian National Police/ Polri (*Kepolisian Negara Republik Indonesia*) to the Indonesian House of Representatives/ DPR (*Dewan Perwakilan Rakyat Republik Indonesia*) is yet to be thoroughly explored. Therefore, the central inquiry of this study is on how the DPR has performed its constitutional and political role for the advancement of Polri accountability in post-authoritarian Indonesia. Furthermore, this study draws on examples of good practices in parliamentary oversight of the police as references for other new democracies.

The study is structured in several sections. The first section discusses the police accountability framework in Indonesia, and briefly explains



the manner and form in which various institutions are directly or indirectly responsible for holding the Polri accountable. From this point, the analysis turns to the role of the DPR as part of the state mechanism for Polri accountability by first identifying the core functions of the DPR. Subsequently, the analysis moves into the dynamics within Commission III (Law and Legislation, Human Rights, and Security Affairs) of the DPR that deals with policing issues on a daily basis. Finally, the chapter concludes with an analysis and offers recommendations for Parliament's general role in police accountability based on the Indonesian experience. The main conclusion is that, while Parliament played a crucial role in establishing a civilian police independent from the military in the early 2000s, the current role of Parliament in police accountability in Indonesia is still limited.

## Police accountability framework

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During the military-supported authoritarian regime, the Polri was part of the Indonesian Armed Forces, the so-called ABRI (*Angkatan Bersenjata Republik Indonesia*), together with the military. Although it was highly militarised, law enforcement remained the main responsibility of the police.<sup>2</sup> After the authoritarian regime collapsed, the DPR passed Law No. 2/2002 on the Indonesian National Police as the new legal framework for police institutions. Within the new law, the Polri was asserted as a state instrument responsible for maintaining security, order and law enforcement, as well as for providing protection services to uphold domestic state security. Unfortunately, in relation to accountability, the law did not further identify the institutions responsible for police accountability, except for the mandate of the President to directly supervise the Polri. Nevertheless, the following discussion attempts to explore the Polri accountability framework from three perspectives: internal, external, and state mechanisms.

Based on its current structure, internal accountability within the Polri is a shared responsibility between the General Oversight Inspectorate/ *Itwasum (Inspektorat Pengawasan umum)*, and the Internal Division of Profession and Security, so-called *Propam (Divisi Profesi dan Pengamanan)*. In practice, the mandates of these two bodies are

different. The Irwasum is tasked with oversight and implementation of policy, as well as budget review, while the Propam deals with public complaints on police misconduct and maladministration.

In terms of external control, there are several independent state institutions that do not exclusively deal with Polri accountability, but their legal mandates also incorporate the Polri as part of wider governance institutions. Among the most influential institutions are the National Human Rights Commission/ *Komnas HAM (Komisi Nasional Hak Asasi Manusia)*, the National Ombudsman, and the Corruption Eradication Commission/ *KPK (Komisi Pemberantasan Korupsi)*. Even though mandated by law as independent bodies, the substantial power of Komnas HAM and the National Ombudsman to deal with Polri misconduct is limited. Both institutions are only able to submit public complaints on human rights and public service issues to the Itwasum or Propam without legal mandate to follow up or push the complaints handling.<sup>3</sup> In contrary, KPK, as an anti-graft body, has substantial power to prosecute public corruption cases and monitor the state administration, including the Polri.<sup>4</sup> Indeed, KPK is also authorised to wiretap communications, impose overseas travel restrictions and request financial transaction reports from all state officials.<sup>5</sup>

Another external monitoring institution is the National Police Commission/ *Kompolnas (Komisi Kepolisian Nasional)*, which is specifically mandated to monitor Polri policy performance. Polri law mandated the establishment of Kompolnas to support the president in formulation of general policies for Polri and providing inputs on the nomination of police chief candidates. The Commission was granted the authority to investigate public complaints and participate in the disciplinary court and ethic court procedures.<sup>6</sup> It also has the authority to request additional investigations or re-investigations of Itwasum or Propam investigations. Although its oversight tools appear to be influential, Kompolnas is far from being an entirely independent oversight body, since it is still under the direct supervision of the President, to whom it reports.<sup>7</sup> Furthermore, the current membership composition of Kompolnas is also dominated by government authorities and former high-level police officials.

At the state level, the police accountability framework is exercised by the President and the DPR. The President directly supervises the Polri, and the Polri Chief (similar to the Indonesian Military Commander-in-Chief) is equal to a ministerial position.<sup>8</sup> However, the appointment of the Polri Chief is not formally a prerogative of the President. According to Polri law, the President must obtain written consent from the DPR to appoint a new Polri Chief.<sup>9</sup> In the process, the responsible commission in the DPR would evaluate the candidate(s) nominated by the President. In addition to the nomination of the Polri Chief, the President also directs police policy, as stated in Polri law.<sup>10</sup> Finally, the subsequent state level mechanism for police accountability is the DPR. The legislative institution plays an important role in approving or rejecting the presidential nomination for Polri chief, as well as possessing the legal mandate to legislate, oversee and approve the Polri budget. Further dynamics of this parliamentary body on police accountability are specifically analysed below.

## The core functions of the Indonesian Parliament

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In order to provide general descriptions of DPR measures to hold the Polri accountable, this section explains several vital institutional arrangements and functions of the DPR. The National Constitution structures the current Indonesian legislative body as a presidential system.<sup>11</sup> The detailed functions of the legislative body are further regulated by Law No.27/2009, which divides Indonesian legislative institutions into two chambers: the Indonesian Regional Council (*DPD/Dewan Perwakilan Daerah*) and the Indonesian House of Representatives (*DPR/Dewan Perwakilan Rakyat*). The DPD is a legislative chamber that consists of provincial representatives akin to the Senate in United States Assemblies. Each province is equally represented by four members in the DPD. Members of this institution are non-partisan and elected through a national election every five years. DPR members are also elected nationally every five years, but, unlike their peers, are partisan. The joint session of the two Chambers is called the People Consultative Assembly (*MPR/Majelis Pemusyawaratan Rakyat*), which is responsible for amending the Constitution and appointing or impeaching the President and Vice President.<sup>12</sup>

Although the Indonesian Parliament is divided into two Chambers, in practice, the DPR holds substantially more power in legislation, oversight and budget control than the DPD.<sup>13</sup> The DPD can propose legislation, joint oversight and budget control sessions limited to decentralisation issues; yet, these all need to gain DPR approval.<sup>14</sup> In addition, there is no obligation for the DPR to accommodate DPD's input according to existing law. Under such conditions, the DPR plays a more significant role as a legislative body in the daily politics at the national level.

### Legislation function

The DPR has the capacity to pass bills into laws after reaching consensus with the president.<sup>15</sup> The legislative process starts with the submission of proposed bills by DPR members or the President. To create an efficient process, a national legislation programme is agreed upon by the DPR and the government on an annual basis; the programme or *prolegnas* (*Program Legislasi Nasional*) lists a number of priority bills. Every bill must be approved at a DPR plenary session in order to enter a subsequent legislation process, or rejected.<sup>16</sup> If the bill is approved, it must enter two legislative stages. In the first stage, the designated commission (or Joint Commission) discusses the bill with government representatives (ministers). At this stage, the commission may use some of its legislative instruments (see Box I) to reach a consensus, after which the agreed draft is brought into the plenary for approval.<sup>17</sup> It should be noted that securing plenary approval is largely ceremonial, as the institutional design of the DPR grants more legislative power to the commission.<sup>18</sup>

#### Box. I. Commission Legislation Tools

To support its legislation task, a commission is equipped with several instruments.

- A commission can invite other government bodies, state-auxiliary bodies, academia or NGOs to provide inputs on the bill through the mechanism of public hearings (*rapat dengar pendapat umum*).
- It is also able to perform an on-site visit (*kunjungan kerja*) at the local level to gather more inputs.
- If necessary, a commission may also propose an overseas study (*studi banding luar negeri*) to the DPR leadership in order to compare similar legislation products.

## Oversight function

The DPR has the authority to summon any person and official, in the form and manner of a hearing, when relevant to its oversight functions. Hearings within the commission are divided into two categories: government hearings (*rapat dengar pendapat*) and public hearings (*rapat dengar pendapat umum*). There are also inter-commission hearings (*rapat gabungan komisi*) intended for issues that involve different government branches or areas. Government hearings can be called for with the initiative of the commission or at the request of respective ministries. In these hearings, the government is represented by high-level public officials. Meanwhile, in a public hearing, the commission can invite academia, think tank or non-governmental organisation (NGO) representatives to share and gather information related to legislation and oversight. Another important instrument for oversight is the working meeting (*rapat kerja*), usually attended by the minister since more strategic issues such as the budget or general policy are discussed at the forum. To increase transparency, every hearing or meeting in the DPR is basically open unless commission members decide otherwise.<sup>19</sup> The schedule for upcoming DPR hearings and meetings, together with the some agenda reports, is accessible through the institution's website.

### Box. II. Summary of DPR Oversight Tools

Commission Level:

- Regular hearings (government or public)
- Working meeting (government on budget or general policy direction)
- Working Committee (special inquiry or follow-up from hearings)

Inter-Commission Level:

- Inter-commissions hearing
- Special committee

As a follow-up to hearings or public complaints, Articles 54 and 55 of DPR Standing Orders authorise the commission to establish a team or working committee (*panitia kerja*). The objective is to explore emerging problems in depth and provide solutions for the respective commission.<sup>20</sup> Subsequently, the result of the team and working committee investigation is reported to the government. There are

unclear differences between the team and the Working Committee in the DPR Standing Orders. Yet, in some cases, the DPR team is mostly established as a quick response to a demanding situation. In addition, when the issues involve other state agencies (thus demanding the involvement of other commissions), the DPR leadership can create a special committee (*panitia khusus*) for a specific duration, consisting of inter-commission parliamentarians and mandated with a specific task.<sup>21</sup>

### Budget function

In the budget function, the DPR has substantial power to scrutinise detailed state budget proposals from the government. Article 15(3) in Law No.17/2003 on state finance mandates that the DPR may propose amendments to state budget revenues and spending proposed by the government. Furthermore, it also stipulates that the DPR approves the state budget, which is classified according to organisational units, functions, programmes, activities, and types of expenditure.<sup>22</sup> Since the budget is drafted by the government and then reviewed by the DPR, the DPR's deliberations on the bill are simultaneously of a legislative and an oversight nature.<sup>23</sup>

The budget process starts with a pre-deliberation stage (*pembicaraan pendahuluan*).<sup>24</sup> In this stage, the government submits budget proposals for the next fiscal year to the DPR plenary session by the end of May. This proposal consists of a macroeconomic framework, fiscal assumptions, budget priorities, and detailed descriptions of programmes, activities and budget units. Each party caucus responds to the government proposal, followed by subsequent government responses in a plenary session. The budget proposal is then distributed amongst respective commissions, which arrange meetings with respective ministries to discuss the proposal. The results of the commission budget meetings are then brought into the budget committee meeting for discussion with the government representative, after which the budget committee delivers the meeting result to the plenary session. This pre-deliberation stage should be completed by the end of July. In August, the President submits the State Budget Bill (*RUU APBN/Rancangan Undang-Undang Pendapatan dan Belanja Negara*) to the DPR plenary sessions, and the next stage of budget legislation process begins. The commissions and

Budget Committee of the DPR play influential roles in this budget legislation stage. First, the budget request from the ministries will be discussed with their respective commissions in hearings. During the commission budget hearings, government agencies usually report on the progress of current budget use (*penyerapan anggaran*), followed by the detailed budget proposal for next year. If the commissions and the ministries reach an agreement on the budget proposal, the proposal will be discussed within the Budget Committee meeting with government representatives (Ministry of Finance).<sup>25</sup> Finally, the agreed budget proposal in the Budget Committee meeting is passed into law in the plenary session. In spite of the Budget Committee's position in the final agreement of the budget, it should be noted that the Commission plays a more significant role in influencing the budget since each commission appoints their members as representatives to the Budget Committee.<sup>26</sup>

In response to the complexity of its function, the DPR has been supported by expert staff (*tenaga ahli*) at commission, committee and individual levels since 2009. At the commission and committee levels, there are seven and two expert staff respectively for each individual parliamentarian.<sup>27</sup> All expert staff must have at least a master or bachelor degree and a minimum of two-year work experience in a relevant field.<sup>28</sup> In addition, each parliamentarian is supported by one administrative assistant/secretary. The expert and administrative staff, which currently stand at approximately 1,680 in total, are not public servants but contract workers paid from the parliamentary operational budget. It should be noted, however, that current support of parliamentary staff has created a paradoxical problem. Members of Parliament keep demanding a higher number of expert staff. Some argue that each commission and committee should be ideally supported by 20 expert staff, while individual parliamentarians should be supported by five expert staff.<sup>29</sup> Apart from the demand, professionalism issues have been raised on recruitment of staff for individual parliamentarians.<sup>30</sup> Recently, the current vice chairman of the DPR admitted that some of the expert staff for the individual parliamentarians include their friends, relatives, and even children.<sup>31</sup> In addition, some of the expert staff have been investigated or even convicted in corruption cases involving their

bosses.<sup>32</sup> Thus, these cases highlight that there is still a substantial problem with the function of parliamentary staff.

In essence, the commission is the main working body of the DPR. Every bill or oversight tool must be deliberated and approved in the respective commission before being presented in a plenary session. The subsequent sections evaluate several key achievements and constraints that support or hinder the ability of specific commissions to perform their role in police accountability.

### Commission III of DPR and Polri accountability

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Commission III (*komisi III*) of the DPR is the principal organ tasked with the oversight of the Polri. There are currently 49 parliamentarians within Commission III, which deals with the government institutions responsible for law, human rights and security issues. Commission III on Law and Legislation, Human Rights, and Security Affairs is considered as one of the most strategic commissions for the executive, and the ruling party usually selects one of its members as its chair. The Commission's dynamics in holding the Polri accountable are explained below.

#### Commission III and the legislation function

Though the Commission plays a more central role in legislation compared to the plenary session, this does not automatically translate into a more efficient legislation process at the commission level. This situation is evident in terms of policing issues. Commission III has only passed a number of police-related laws since the Polri law in 2002 (e.g. Law No. 15/2003 on Anti-Terrorism and Law No. 9/2013 on the Prevention and Eradication of Terrorism Financing). In February 2012, the DPR plenary session established a Joint Commission (*pansus*) consisting of members from Commissions I, II and III to work on a controversial national security bill; nonetheless, there are still deficiencies in terms of progress.<sup>33</sup>

Recently, the revision of *Polri* Law No. 2/2002 is scheduled in the National Legislation Program 2014, and Commission III initiated several public hearings, for which a Polri law revision is expected to be accomplished before the current DPR term 2009-2014 ends in 20



September 2014. The revision is critical, because existing law did not offer any clarity on aspects such as police use of force, off-budget sources or the legislative role in policy implementation. However, the revision process is potentially hampered by the reluctance of the Polri Chief to agree to the proposal to submit the police to the supervision of the Ministry of Domestic Affairs.<sup>34</sup> Such resistance impacts the future of a bill, which is highly significant since the executive's informal veto is pervasive in DPR legislation sessions. As previously mentioned, the Constitution states that every law must be agreed upon by both the DPR and the President.<sup>35</sup> In practice, the executive frequently exercises its "informal veto" by delaying the legislation process, especially on DPR-initiated bills. The President may delay the naming of a minister to act as government representative in the deliberation process, or officials delay their official response to the DPR's revised draft, resulting in a legislation stalemate.<sup>36</sup> Furthermore, the legislative election in April 2014 and the presidential election in July 2014 have also diverted attention away from the Polri law revision debate to a focus on elections. Unless the stake is high enough to revise the Polri Law like the Military Law in 2004, there is still weak incentive for the DPR to accelerate the revision.

### Commission III and the oversight function

Commission III has conducted various hearings with the Polri. Regularly, hearings were used to facilitate an inquiry into progress of the Polri's Grand Strategy 2005-2025.<sup>37</sup> The Grand Strategy document divides the improvement process of the Polri's public service into three phases: Phase I Trust Building (2005-2010); Phase II Partnership Building (2011-2015); and Phase III Service for Excellence (2016-2025). These are pursued through structural, instrumental and cultural reform policies.<sup>38</sup> Apart from regular policy review, hearings were also conducted to respond to extraordinary issues, such as the handling of protests, terrorism investigations or corruption allegations.

Unfortunately, in practice, government officials have been regularly "refused" to attend commission hearings. Similar to the expansion of the "informal veto," government officials undermine legislative oversight through absenteeism. As a consequence, the effectiveness of

parliamentary oversight of the Polri is unsurprisingly low, especially in recent times. Commission III, for example, had planned to summon the Polri Chief to clarify a controversial report published by TEMPO magazine on several generals' suspicious bank accounts on July 26 2010.<sup>39</sup> The Polri Chief cancelled his attendance only a few hours before the hearing, which raised concerns among the parliamentarians.<sup>40</sup> Legally, there is a formal tool for parliamentarians to forcefully summon (*panggilan paksa*) public officials.<sup>41</sup> Yet, it has never been applied in practice since there is no clear legal mandate on which state apparatus may be asked to assist the DPR to perform such a tool.<sup>42</sup> Another problem that creates frustration is the effectiveness of the delivery of material to hearings. Since there is no legal obligation for government officials to submit written answers or hearing materials to the Commission maximum two days before the schedule, hearings are mostly focused on government material presentations rather than on substantial debate.<sup>43</sup>

In terms of establishing working committees, Commission III is adequately responsive. For example, a land dispute between a palm oil plantation and residents in Mesuji, Lampung Province, erupted in 2011 into a deadly riot that involved police officers.<sup>44</sup> A few days after the incident, Commission III sent a fact-finding-mission team to Mesuji to gather more evidence as references to summon the Polri chief.<sup>45</sup> In May 2010, Commission III created the Law Enforcement Working Committee (*Panja Penegakkan Hukum*) in response to the controversial detention of the former Polri Chief of Criminal Investigation for alleged corruption.<sup>46</sup> The detention case triggered vast public suspicion, because he was detained after the existence of case mafia (*mafia kasus*) within the Polri, involving several high-ranking Polri officials, was publicly revealed. Many regarded the detainee as a whistle-blower in need of protection. The Working Committee was mandated to investigate the detention procedures and explore more information on the alleged case mafia within the Polri. Regardless of the fact that these working committees sent their reports with police recommendations to the President and Kapolri, there is no obligation for the Polri to follow up on their work. It appears that, unless the issues of police accountability provide strong electoral incentives from the public, there is no interest on behalf of the DPR or the President to oversee the direction of Polri policy.

### Commission III and the budget function

Commission III has been supportive of the Polri's budget requests by gradually increasing the allocation of its budget from 10.9 to 45.9 trillion IDR (Indonesian rupiah) from 2004 to 2013. However, the Commission's budgetary oversight remains weak, especially with regard to the police's non-tax revenue allocation (*Penerimaan Negara Bukan Pajak*). According to Government Decree No. 31/2004, the Polri may support up to 90 per cent of its operations with certain non-tax revenue from retributions, such as driver's license registrations, car license registrations, driving courses, criminal record letters and arms ownership licenses. The amount of non-tax revenue is significant. In 2013, an NGO revealed that the Polri failed to report 97.8 billion IDR worth of the non-tax revenue allocation derived from parking retribution, security training, the police hospital and protection of vital objects to the Ministry of Finance.<sup>47</sup> Based on the audit report by the National Audit Board (*Badan Pemeriksa Keuangan*), the money was used for various purposes such as police chief activities, incentives for police chief expert staff, and ceremonial activities not included in the annual budget programme.<sup>48</sup> The problem of non-tax revenue transparency culminated in 2012 after the KPK arrested the former Police Chief of Traffic Coordination. The active two-star Police General was arrested as the main suspect in the controversial driving simulator procurement graft case that amounted to losses of 10.4 million USD.<sup>49</sup> An investigation on the case revealed that non-tax revenue was the funding source for the driving simulator project, and Commission III admitted that it rarely controls this type of budget use.<sup>50</sup>

Generally, the budget function of the DPR is still limited in enhancing police accountability. In terms of the official formulation of the state budget, DPR commissions are influential. Yet, in specific context of non-tax budget funds, the Commission provides ineffective accountability. This problem results from loopholes in state financial regulations that fail to specify a mandate for the DPR to oversee allocations of non-tax revenue. Despite this limitation, members of the DPR can still use reports from the National Audit Board to investigate budget allocation misconduct and leverage their position vis-à-vis the Polri. However, in practice, this alternative has never been performed, which could be

explained by a recent revelation of the driving simulator procurement graft case that non-tax revenue was distributed to several members of Commission III.<sup>51</sup>

### The DPR-Polri headquarter liaison mechanism.<sup>52</sup>

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On a daily basis, the interaction between the DPR and Polri headquarters is significantly supported by the Polri Liaison Office (LO). Polri headquarters mandates the LO to maintain communications with Commission III. It currently consists of one high-ranking officer (Brigadier General) and two middle-ranking officers (Senior Superintendent and Superintendent of the police). They were assigned by and are responsible directly to the Polri Chief with a one-year term subject to extension. As an informal body, it is not included in the current formal structure of the Polri headquarters. The LO's duties include coordinating visits of Commission III activities relating to police issues (e.g. visiting a police station, exchanging information, preparing a hearing and monitoring police issues in the DPR's debate). Significantly, its informality allows members of Commission III to face less bureaucratic mechanisms in obtaining information and data related to Polri policies and its budget. Although the Polri LOs are crucial for the information exchange mechanism between the Polri and the DPR, their function remains limited as administrative support.

### The relationship between DPR with local assemblies, independent oversight institutions and civil society

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The DPR is the main legislative body responsible for police accountability and rarely involves local assemblies in oversight since security and law enforcement matters are legally mandated to the central government.<sup>53</sup> In addition, the Polri is, more importantly, organised into a centralised structure according to Presidential Rule No. 52/2010 on the Organisational Structure and Working Mechanism of the Polri.

Commission III has established a mutual relationship with independent oversight institutions, especially on information for public complaints

and corruption investigations. Since Komnas HAM, KPK and PPATK are counterparts of Commission III, it is relatively easy for the Commission to invite these independent oversight institutions to hearings. Commission III regularly requests updates on investigations of several human rights violation cases involving *Polri* personnel from the Komnas HAM.<sup>54</sup> Indeed, Komnas HAM has also regularly reported public complaints on police violence to the Commission.<sup>55</sup> Meanwhile, Commission III regularly demands updates on the general progress of several cases that involve *Polri* personnel from the KPK. Commission III also maintains relations with *PPATK/ Pusat Pelaporan dan Analisis Transaksi Keuangan* (Indonesian Financial Transaction Reports and Analysis Center/INTRAC), though limited in scope.<sup>56</sup> For example, as a reference for the “fit-and-proper” test of the new *Polri* Chief candidate in 2013, the Commission held a preliminary hearing with PPATK to discuss the candidate’s financial transactions.<sup>57</sup> While they are not government counterparts, Commission III also occasionally counts on *Kompolnas* and the National Ombudsman to provide information on police performance.

Finally, current relations between Commission III and civil society communities have deteriorated on police oversight issues. The corrupt public image of parliamentarians hampers the mutual relationship between Commission III and the majority of civil society organisations.<sup>58</sup> Furthermore, after the protracted *Polri*-KPK conflict in 2009, Commission III has been increasingly regarded by the public as a *Polri* supporter.<sup>59</sup>

## Conclusion

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Overall, the post-authoritarian Indonesian DPR has become increasingly stronger in performing its legislative, oversight and budget functions due to several reasons. The foremost reason is the removal of parliamentary seats reserved for the military and police (*fraksi TNI/Polri*) in 2004 through constitutional amendments. This transformed the Parliament into a fully civilian institution, with every seat won in an open and fair election process. Following this re-institutionalisation, the DPR is now legally equipped with substantial tools, such as hearings, working meetings, working committees and special committees, to perform its core functions. In addition, the DPR has also been supported by expert

staff at the commission, committee and individual levels. Outside of the DPR, the existence of several state-auxiliary institutions and a vibrant civil society has since complemented the DPR's functions, especially on alternative sources of information.

Although the DPR has been institutionally improved, there are several important considerations on its ability to provide effective oversight of the police. With regard to its legislative functions, the DPR's mandate to pass laws is frequently undermined by its own decision-making style and the government's "informal veto." Thus, it takes more time for the DPR to pass laws or responsively tackle regulation loopholes. In its oversight function, the DPR has exercised its oversight tools. Yet, these tools have been exclusively effective in raising public awareness on Polri accountability, rather than in dictating direction and providing alternative policies for the Polri. In addition, the tendency of executive absenteeism also significantly contributes to a less effective and efficient oversight mechanism. Meanwhile, the state budget process has made the DPR's commission as one of the core actors in budget approval. Nonetheless, its effectiveness in controlling expenditure remains weak, as illustrated by the case of non-tax revenue accountability in the Polri. With regard to parliamentary support units, the DPR still needs to improve its expert staff recruitment process in order to enhance the quality of parliamentary expertise support, especially for individual parliamentarians. Furthermore, the DPR must also provide stronger regulation on the functions of parliamentary staff to avoid misconduct. Meanwhile, the current liaison mechanism between the DPR and Polri still needs to be formalised and possibly improved on the strategic level by, for example, involving the expert staff of Commission III and Polri chief expert staff. The DPR has had only partial success with other independent oversight institutions since its current fragile relationship with civil society communities has significantly deteriorated public trust of the legislative body in dealing with police issues.

In conclusion, the above analysis shows that the role of Parliament in increasing police accountability in Indonesia is still limited. Yet, there are lessons learned from the Indonesian DPR that can be used as references for other countries' effort to improve their parliamentary oversight

of the police. Above all, the Indonesian experiences emphasizes that parliamentary functions must be regulated by clear legal mandates. In order to be effectively performed, these mandates should be supported by significant parliamentary instruments and supporting structures, such as parliamentary staff and the liaison mechanism. Developing networks and good relationships with other oversight institutions and civil society communities is vital to aid parliamentarians in performing their duties, especially to gather alternative sources of information on police performance. Finally, as a representative body, parliament needs to gain popular legitimacy. A parliament with a corrupt image and biased behaviour towards specific agencies decreases public trust and inhibits its oversight ability.

## NOTES

1. This Chapter has been written and completed in 2014.
2. Adrianus Meliala, "Police as military: Indonesia's experience," *Policing: An International Journal of Police Strategies and Management*, vol. 24, no.3, (2001), p. 425.
3. Amnesty International, *Unfinished Business: Police Accountability in Indonesia* (London: Amnesty International Publications, 2009), p. 57.
4. Articles 3 and 6, Law No. 30/2002.
5. Articles 12, Law No. 30/2002.
6. Article 9, Presidential Decree No. 17/ 2011.
7. Article 2, Presidential Decree No.17/2011.
8. Article 8, Law No. 2/2002.
9. Article 11, Law No. 2/2002.
10. Articles 7 and 38, Law No.2/2002.
11. Article 7C of the 1945 Constitution of the Republic of Indonesia (fourth Amendment) stated that President cannot dismiss the legislature.
12. Article 4, Law No.27/2009.
13. Article 69(1), Law No.27/ 2009.
14. Article 22 D, the 1945 Constitution of the Republic of Indonesia (fourth Amendment); see also Article 224, Law No.27/ 2009.
15. Article 20, 20A, 21 and 22 of The 1945 Constitution of the Republic of Indonesia (fourth Amendment); Article 71(a), Law No.27/ 2009.
16. See Article 122 of the DPR Standing Orders.
17. *Ibid.*, Article 150.
18. Stephen Sherlock, *The Indonesian Parliament after Two Elections: What has Really Changed?*, CDI Policy Paper on Political Governance (Canberra: CDI, 2007), p. 13.
19. See Articles 240-241 of the DPR Standing Orders.
20. *Ibid.*, Article 55.
21. *Ibid.*, Articles 89 and 92,.
22. See Article 15(4), Law No. 17, 2003.
23. Sherlock, pp. 43-44.
24. See Article 152 of the DPR Standing Orders.
25. Vishnu Juwono and Sebastian Eckardt, "Budget Accountability and Legislative Oversight in Transition: The Case of Post-Suharto Indonesia" in *Legislative Oversight and Budgeting: A World Perspective*, Rick Stapenhurst, Riccardo Pelizzo, David Olson, and Lisa von Trapp (eds.), (Washington: The World Bank, 2008), p. 304.
26. See Article 63 of the DPR Standing Orders.
27. "Staf Ahli DPR direkrut sejak 1999" ["DPR Expert staff has been recruited since 2009"], *Tempo*, 5 April 2011.
28. Keputusan Pimpinan DPR RI No.81/PIMP/1/2009-2010 tentang Pedoman Umum Rekrutmen Tenaga Ahli DPR RI [DPR Chairman Decision No.81/PIMP/12009-2010 on the General Principle of DPR Expert Staff], p. 7.
29. "Tenaga ahli DPR: Bagaimana idealnya?" ["DPR expert staff: How ideal?"], *Jurnal Parlemen*, 13 February 2013.
30. The expert staff for commissions and committees is recruited by the secretary general of the DPR through an open recruitment process. Meanwhile, expert staff for individual members is recruited directly by the members and recommended to the DPR secretary general for administrative approval. See *Keputusan Pimpinan DPR RI No.81/PIMP/1/2009-2010 tentang Pedoman Umum Rekrutmen Tenaga Ahli DPR RI* [DPR Chairman Decision No.81/PIMP/12009-2010 on the General Principle of DPR Expert Staff], p. 9.
31. "Staf ahli DPR mulai dari teman, kerabat sampai anak" ["DPR expert staff, from friends, relatives even own children"], *Vivanews*, 18 December 2013.
32. For example, DPR expert staff from the Democrat Party was banned to travel overseas by the KPK due to their alleged involvement in the gratification case of government oil and gas working unit, which involved several members of the DPR. See "Kasus SKK Migas, KPK cegah pendiri democrat" ["SKK Migas case, KPK bans the founder of Democrat Party"], *Kompas*, 29 November 2013.
33. "Pansus RUU Kamnas Disahkan" ["The National Security Bill Working Committee established"], *Kompas*, 28 February 2012.



34. "Lawmakers seek better monitoring of Indonesia's Police," *The Jakarta Globe*, 26 February 2014.
35. See Article 20(2) of the 1945 Constitution of the Republic of Indonesia (Fourth Amendment).
36. Sherlock, p. 8.
37. See, for example, "Laporan Singkat Raker Komisi III DPR RI dengan Kapolri" ["Meeting report Commission III and Polri Chief"], *DPR RI*, 29 January 2014.
38. *Grand Strategi Polri, 2005-2025: Surat keputusan Kepala Kepolisian Negara Republik Indonesia no. Pol. SKEP/360/VI/2005 tanggal 10 Juni 2005*, ["The Indonesian National Police Grand Strategy, 2005-2025: Chief of National Police Decree No. Pol. SKEP/360/VI/2005, 10 June 2005"] (Jakarta: Markas Besar Kepolisian Negara Republik Indonesia, 2005).
39. TEMPO magazine, an investigative journalism magazine in Indonesia, revealed huge amount of funds in several bank accounts owned by Polri generals with its unusual financial transactions in June 2010. See its online report, "Inilah Polisi yang disebut memiliki rekening gendut" ["these are list of police officials that allegedly have fat bank accounts"], *Tempo*, June 29, 2010.
40. Parliamentarians from Commission III said that Polri's cancellation to attend hearings has occurred several times and caused suspicion among commission members. ("Batal Rapat Kerja Komisi III dengan Kapolri" ["Cancelled, Commission III Meeting with Kapolri"], *Kompas*, 28 May 2012.)
41. Article 72, Law No.27/2009 stated that every public official is obliged to be summoned by the DPR. If the official fail to do so, then the DPR may perform so-called "forced summon".
42. The current revised Law No. 27/2009 tries to clarify this problem by stating that Polri and Military officials will be authorized to execute the forced summons from the DPR of public officials. Yet, during a hearing in May 2014, the chief of the Polri stated in his report that such authorization for forceful summon is against Criminal Code Law No. 8/198. See, "Naskah Kapolri pada RDP Pansus RUU Perubahan MD3," ["Chief National Police Report presented during DPR hearing on MD3 Law revision], *Parlemen*, 19 May 2014.
43. See Article 250 of the DPR Standing Orders.
44. "Mass killing in Lampung," *The Jakarta Post*, 15 December 2011.
45. "Tim DPR cari fakta kasus Mesuji ke Lampung" ["DPR Team gathering facts on Mesuji case in Lampung"], *Tempo*, 17 December 2012.
46. "Komisi III bentuk panja kasus Susno" ["Commission III establish working committee for Susno's case"], *Kompas*, 11 May 2011.
47. "Polri Tak Laporkan PNPB Rp. 97.8 Milliar ke Kemenkeu" ["Polri did not report Rp.97.8 billion of non-tax-revenue allocation to the ministry of finance"], *Kompas*, 31 March 2013.
48. "Dana Non-APBN Polri: Dana bagi-bagi jatah petinggi Polri" ["Polri's Non-tax revenue fund: Money for Polri's officials"], *Seknas FITRA*, March 2013.
49. "KPK locks Police General," *The Jakarta Post*, 12 April 2012.
50. Members of Commission III admitted that the commission did not put detailed supervision on the use of non-tax revenue within the Polri. In contrary, the commission only focused on the funds from state official budget (APBN). See: "*DPR minta BPK audit khusus PNPB Polri*" ["DPR ask Supreme Audit Body to audit Polri's non-tax revenue"], *Kompas*, 5 October 2012.
51. Several Commission III members were questioned by the KPK regarding the driving simulator case and the role of DPR authorisation in non-tax revenue usage for the project. ("Proyek simulator SIM: KPK dalami aliran dana ke komisi III DPR" ["Driving simulator project: KPK investigate alleged transfer to Commission III"], *Kompas*, 7 March 2013.)
52. This section is based on an interview with one of the current Polri's LO on 10 July 2014.
53. See Article 10 in Law No. 32/2004 on the Regional Government.
54. Among such alleged violations are the case of demonstration in Bima, Mesuji,

- over a land dispute, the Sampang riots and several small cases in Aceh. (DPR RI, "Laporan Singkat RDP Komisi III DPR RI dengan Komnas HAM" [DPR RI, "Meeting Report Commission III and Komnas HAM"], DPR RI, 16 January 2012.)
55. For example, during a hearing in September 2012, the National Human Rights Commission reported to Commission III that they received 976 public complaints about the Polri regarding arrest and detention, investigation procedures, torture, shootings, and other forms of violence. See: DPR RI, "Laporan Singkat RDP Komisi III DPR Ri dengan Komnas HAM" [DPR RI, "Meeting report Commission III and Komnas HAM"], DPR RI, 12 September 2012.
  56. PPAK was mandated to access and analyse any suspicious financial transactions regarding money laundering and corruption. See Law No. 15/2002 and Law No. 8/2010 on the Prevention and Eradication of Money Laundering.
  57. "House invites PPAK to discuss Sutarmans Wealth," *Tempo English*, 16 October 2013.
  58. A majority of civil society organisations have commented that it is difficult to rely on members of Commission III to be responsive for public expectations on anti-corruption agenda within the police when the overall DPR itself is considered to be a corrupt institution. ("DPR sulit diharapkan" ["it is difficult to rely on DPR"], *Kompas*, 8 November 2011); In addition, Transparency International's Global Corruption Barometer 2013 survey placed the Indonesian parliament in second place as the most corrupt institution after the police. (Transparency International, *Global Corruption Barometer 2013*, (Berlin, Transparency International, 2013), p. 37.)
  59. Effendie Choirie, Senior Member of Parliament, felt ashamed by the behaviour of Commission III members towards the Polri during a hearing in 2009. He noticed that comments and questions from members of Commission III during the hearing tended to show that the DPR supports the Polri in the Polri-KPK conflict. ("Effendy Choirie menyesalkan perilaku komisi III DPR" ["Effendy Choirie feels sorry for the behavior of Commission III"], *Kompas*, 9 November 2011.)



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## The Philippines

MARIO J. AGUJA

The present Philippine National Police (PNP) emerged from the dark shadows of the Marcos dictatorship. It was indistinguishable from the military, as it was under the Philippine Constabulary (PC), one of the major commands of the Armed Forces of the Philippines (AFP). It was more feared than respected and perceived as militaristic, abusive, corrupt, and a violator of human rights.

The adoption of the 1987 Constitution after the people's power revolution paved the way for the passage of laws aimed at reforming the police. For many critical observers, the police continues to be a poor model of integrity, competence and discipline. While far from ideal, the PNP is considerably better than its predecessor, as there are now varying police oversight roles for the branches of government, especially Congress.

This study<sup>1</sup> aims to provide an understanding of congressional oversight power on the police, its extent and the mechanisms by which it is exercised. It focuses on the role of Congress within wider police

accountability and specifically examines the roles and workings of congressional committees, and its relations with other oversight bodies.

Section 1 presents the framework of accountability of the PNP. Section 2 discusses the roles of Congress in exacting accountability from the police. Section 3 focuses on the congressional oversight function and examines congressional committees. Section 4 delves into the nature of the congress-police liaison mechanism. Finally, section 5 details the relationship between Congress and other independent oversight bodies such as the Commission on Audit (COA), the Office of the Ombudsman, the Commission on Human Rights (CHR) and local government units. This paper concludes with a discussion of practices, procedures, and institutional frameworks that contribute to the strengthening of police accountability by Congress. The key conclusion is that the legal mandate for police oversight and the laws aimed at professionalizing the police are in place. However, challenges continue to tarnish the image of the PNP, including corruption, abuse of power and unprofessionalism. Nevertheless, the situation would have been worse without the important reforms undertaken.

## Police accountability framework

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The Philippines is a democratic and republican state, with a presidential system of government. There are three co-equal branches of government: the executive, the legislature, and the judiciary. Executive power is vested in the president<sup>2</sup>, who exercises control over all executive departments, bureaus, and offices tasked to implement laws. Legislative power is vested in the Congress of the Philippines, consisting of the Senate and the House of Representatives.<sup>3</sup> Judicial power is vested in one Supreme Court and in lower courts established by law.<sup>4</sup> There is a system of checks and balances among the various branches, which is reinforced by independent constitutional bodies.

### The role of the executive

The National Police Commission (NAPOLCOM), an attached agency to the Department of Interior and Local Government (DILG),<sup>5</sup> is mandated to provide “administrative control and operational supervision”<sup>6</sup> over the PNP. NAPOLCOM is composed of the secretary of the DILG as ex-

officio chairperson,<sup>7</sup> four regular commissioners and the chief of the PNP as ex-officio member, all of whom are appointed by the President of the Philippines.

NAPOLCOM is empowered by law to provide and prescribe policies, rules, regulations, guidelines and standards for the efficient organisation, administration and operation of the PNP. It is also monitors and investigates police anomalies and practices.<sup>8</sup> The Disciplinary Appellate Boards, which are organized at national and regional levels, serve as the formal administrative disciplinary mechanism within the PNP. The National Board has jurisdiction to decide appeals from decisions of the PNP chief, imposing penalties of demotion or dismissal from the service. The Regional Appellate Boards have jurisdiction to decide on appeals from decisions of the mayors and the People's Law Enforcement Boards (PLEB).<sup>9</sup>

Disciplinary powers over minor offenses are lodged with duly designated supervisors and equivalent officers of the PNP.<sup>10</sup> The Internal Affairs Service also has disciplinary powers over PNP personnel and units and is mandated to "investigate complaints and gather evidence in support of an open investigation"<sup>11</sup> and "conduct summary proceedings on PNP members facing administrative charges."<sup>12</sup>

The local chief executives of municipalities and cities also have "operational supervision and control"<sup>13</sup> over the police. They have the power to deploy, appoint eligible candidates and discipline erring police<sup>14</sup> within their jurisdiction. The law automatically deputises them as representatives of NAPOLCOM.<sup>15</sup>

PLEB serves as an independent central receiving entity of citizens' complaints against the police. It is duly organised in all cities and municipalities<sup>16</sup>, and participatory in its membership.<sup>17</sup> Subject to the provisions of Section 41<sup>18</sup> of RA 6975, PLEB shall be cognisant of or refer the complaint to the proper disciplinary or adjudicatory authority within three days upon the filing of the complaint.<sup>19</sup>

### The role of the judiciary and other independent bodies

The Office of the Ombudsman<sup>20</sup> is tasked with prosecuting graft and corruption cases committed by civil servants, including the police,

before the Special Appellate Court (*Sandiganbayan*)<sup>21</sup> or any court of law.

To ensure speedy disposition of administrative cases against police officers and avoid overlapping jurisdictions, the NAPOLCOM, the PNP and the Ombudsman executed a memorandum of agreement (MOA) outlining their specific jurisdictions. The September 25, 2012 tri-partite MOA manifests the high level of cooperation among the three agencies in effectively holding erring police accountable.

The Commission on Audit (COA) is mandated to check that all government revenues and expenditures are duly accounted for and public funds are used in accordance with appropriations.<sup>22</sup> It is empowered to disapprove expenditures of public funds on post-audit. Auditors are assigned to all government departments and subdivisions, including the PNP.

### The role of Congress

The Philippine Congress exercises power over the police through enactment of laws governing the police in particular, and civil servants in general. It scrutinizes and approves the annual budget<sup>23</sup> of the NAPOLCOM and the PNP. Congress confirms appointments of top police officials through the Commission of Appointments (CA). Congress likewise receives COA's annual audit report on the PNP and NAPOLCOM's annual report on the state of the police, with proposals for remedial legislation. Congress also has the power to conduct inquiries in aid of legislation, with full subpoena and contempt powers.

## Functions of Congress

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Legislative power is vested in the bicameral Congress - the Senate and the House of Representatives - except for the power reserved to the people by the Constitution for initiative and referendum. The Senate is composed of 24 members elected nationally, while the House of Representatives is composed of 289<sup>24</sup> members elected through congressional districts (81 per cent) and the party list system (19 per cent). Congress has the power to pass laws, subject to the veto power of the president; confirm top level appointments through the powerful joint Commission on Appointments<sup>25</sup>; conduct inquiries in aid of legislation<sup>26</sup>; declare the existence of war<sup>27</sup> and grant powers

to the president in times of war or other national emergency<sup>28</sup>; pass appropriations bill<sup>29</sup>; and the exclusive power to impeach the president, members of constitutional commissions, and the justices of the Supreme Court.<sup>30</sup> Given its vast powers as a “representative of the people”, it oversees the police through legislative, oversight and budget control functions.

### Legislative function

The Constitution provides for a police force, national in scope and civilian in character,<sup>31</sup> and that Congress shall promulgate a comprehensive policy governing the police. On December 13, 1990, President Corazon Aquino signed into law Republic Act (RA) 6975, establishing the PNP under the reorganized DILG. It was later amended with RA 8551 on February 25, 1998 and RA 9708 on August 12, 2009. These laws serve as the foundations of police governance in the Philippines. Congress has likewise passed general laws prescribing rules of conduct for civil servants, which also affect the police. These laws are listed and explained below:

RA 6975, or the “Department of Interior and Local Government Act of 1990,” provides the general policy on the nature of the police, its governance structure, professionalism, welfare and benefits, administrative disciplinary machinery and participation of local executives. It is a landmark legislation that defines the new civilian character and national administration of the police after the fall of the Marcos dictatorship.

The law created the PNP by bringing together police forces formerly with the Integrated National Police, officers and enlisted personnel of the former Philippine Constabulary, technical personnel of the armed forces assigned in the PC, and the civilian operatives of the Criminal Investigation Service. The police, formerly under the AFP, is now consolidated in one national police command under NAPOLCOM.

NAPOLCOM exercises administrative control over and operational supervision<sup>32</sup> of the police. It is mandated to develop policies for the efficient organisation, administration and operation of the police; develop performance standards; evaluate the efficacy and efficiency



of the police; investigate police anomalies; and serve as an appellate tribunal for administrative cases against police officers. It prescribes the minimum standards for arms, equipment and uniforms, including insignia of ranks, awards and medals of honour, which is “clearly distinct from the military and reflective of the civilian character of the police.” It assesses compliance of the PNP with manpower allocation, distribution and deployment, and monitors the performance of the local chief executives as deputies of the commission. Most importantly, NAPOLCOM advises the president on all matters involving police functions and administrations.

The law also created PLEB, a quasi-judicial body for administrative cases filed by citizens against police personnel. A decision of PLEB is final and executory, except when the penalty imposed is demotion or dismissal from the service. These decisions are appealable to the Regional Appellate Board; failure of the RAB to act on the appeal within 60 days of receipt of the appeal notice renders PLEB’s decision final and executory. However, this is, without prejudice, to the filing of an appeal by either party to the DILG Secretary.

With the constitutional policy on local autonomy,<sup>33</sup> the law granted local government executives (provincial governors, city and municipal mayors) the power of “operational supervision and control”<sup>34</sup> over the police, including the power to direct the employment<sup>35</sup> and deployment<sup>36</sup> of units or elements of the PNP, and discipline the police.<sup>37</sup> Local government executives also have the power to choose the head of police in their jurisdiction from a list prepared by the PNP. They are likewise representatives of NAPOLCOM in their respective territorial jurisdictions, with authority to inspect police forces and units, conduct audits, and exercise other functions as authorized by NAPOLCOM.<sup>38</sup>

RA 8551, or the “Philippine National Police Reform and Reorganization Act of 1998” amended important provisions of RA 6975, such as those defining the relationship of the DILG and the Department of National Defence (DND) on the suppression of insurgency; matters relating to the structure, powers, and organization of NAPOLCOM; reorganisation of the PNP and general qualifications for appointment and promotions in the PNP; upgrading of salaries and benefits; creation of the Internal

Affairs Service; disciplinary mechanisms; creation of women's desks in all police stations and the formulation of a gender sensitive program; and the enhancement of the participation of the local government executives in the administration of the PNP. The amended law also strengthened PLEB.

RA 8551 mandates NAPOLCOM to reorganise the PNP based on clearly defined criteria;<sup>39</sup> Congress will approve this reorganisation in a joint resolution. The law also delegates the powers to develop policies and promulgate a police manual that prescribes the rules and regulations for the efficient organisation, administration and operation of the PNP to NAPOLCOM. This includes rules of engagement relating to riot control and crowd management and standards for arms and equipment of the police.<sup>40</sup>

Finally, RA 9708 amends provisions of RA 6975 and RA 8551 by expanding the five-year compliance period for the minimum educational qualifications for appointment to the PNP (a baccalaureate degree) and adjusting the promotion system. It further states that a criminal action or complaint against a police officer shall not hinder promotion unless it involves human rights violations and crimes punishable by *reclusion perpetua* or life imprisonment. It also provides for the continuing education of police officers in coordination with the Civil Service Commission, Commission on Human Rights, and Commission on Higher Education (CHED).

Congress also enacted other laws which contributes in the professionalization of the police: RA No. 1379 (An Act Declaring Forfeiture in Favour of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing the Proceedings Thereof); RA 3019 (Anti-Graft and Corrupt Practices Act); RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees); RA 7080 (An Act Defining and Penalizing the Crime of Plunder); RA 9184 (Government Procurement Reform Act); and RA 9485 (Anti-Red Tape Act of 2007).

The Senate has the exclusive power to ratify international treaties and instruments. It has ratified numerous international human rights and

international humanitarian law instruments, which have an impact on the rules of engagement of the police. Recently, the Senate ratified extradition treaties with the United Kingdom and Northern Ireland (UK), Spain and India to help the government's war against transnational crimes. Existing extradition treaties are in place with Australia, Canada, China, Hong Kong, Indonesia, Korea, Micronesia, Switzerland, Thailand, and the United States.

### Oversight function

Congress possesses significant investigative powers to conduct inquiries in aid of legislation in accordance with its duly published Rules of Procedure.<sup>41</sup> The rules in both chambers<sup>42</sup> provide detailed procedures for the professional conduct of congressional inquiries. Congress is granted subpoena powers for witnesses and documents, and contempt powers against those who disobey their orders. Except on matters of national security or for public interests, congressional inquiries are open to the public.

Concomitant with the power of congress to conduct inquiries in aid of legislation is the granting of parliamentary immunity<sup>43</sup> to protect members of congress from possible prosecution for words spoken during debates, committee hearings and privilege speeches. Parliamentary immunity enables members of congress, in the exercise of their privilege of speech and debate, to speak freely on and evaluate the issues at hand. This may lead to inquiries in aid of legislation; laws, both novel and remedial, may then be enacted to provide for necessary reforms.

The Constitution likewise grants congress the power to confirm top-level appointments of the president through the bicameral Commission on Appointments.<sup>44</sup> Congress confirms the Secretary of the DILG, who also serves as the *ex-officio* chairperson of NAPOLCOM. The appointment of the director general and deputy director generals of the PNP by the president is taken upon the recommendation of NAPOLCOM.

### Budget control function

Congress exercises the "power of the purse." Every year during the month of September, government departments venture to congress to present their plans and programs, and defend their budget, as endorsed

by the president. The budget deliberations take place in the Committee on Appropriations in the House of Representatives, followed by the Committee on Finance in the Senate. Aside from annually appraising the performance of the police, congress meticulously reviews its plans and programs, scrutinises its budget and checks its financial performance through the submitted COA audit report. While congress cannot increase the agency's proposed budget, it can decrease it. This serves as leverage over the police.

## Parliamentary committees

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House and Senate committees perform congressional oversight. Their powers range from legislation, inquiries in aid of legislation, budget allocation, to appointments. The number of congressional committees demonstrates that oversight is expansive. The House of Representatives has 58 standing committees and 11 special committees, while the Senate has 39 standing committees and thirty 31 ad hoc and oversight committees. Each chamber has its own house rules and rules of procedure governing inquiries in aid of legislation.

### House of Representatives

House committees study, deliberate and act on all measures referred to them, including bills, resolutions and petitions.<sup>45</sup> Committees also have oversight responsibilities to determine if laws and programmes are implemented in accordance with the legislature's intent and if they should be continued, curtailed or eliminated.<sup>46</sup>

In the exercise of their oversight functions, committees review and study on a continuing basis: a) the application, administration, execution, and effectiveness of laws and programs; b) the organisation and operation of national agencies and entities responsible for the administration and execution of laws and programmes; and, c) conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation. Committees are mandated to "pursue dialogues and consultation with affected sectors and constituencies, conduct researches, and engage the services and assistance of experts and professionals."<sup>47</sup>

Committees have subpoena and contempt powers. They can access classified information, provided confidentiality is maintained in the name of state security. Generally, committee deliberations are public, except when, upon evaluation of the committee, state security matters are to be discussed; in this case, an executive session may be held. Members of the public and the media can observe committee proceedings, subject only to the limitation of space. However, only those persons officially invited as resource persons can speak before the committee.

Membership in the committees is composed of the majority and the minority. Membership is affirmed during the plenary session, upon motion of the majority and minority leaders, and not subject to the division of the House. Committee leadership - the chair and vice chair - always comes from the majority party and is often the subject of intense lobbying to the speaker of the House.

There are many committees that directly or indirectly oversee the police. The Committee on Public Order and Safety primarily exercises police oversight in the House of Representatives. With respect to the police, it has jurisdiction on all matters directly and principally relating to the suppression of criminality,<sup>48</sup> civil defence, private security agencies, and the PNP.<sup>49</sup> The Committee has an authorised membership of 55 legislators. As of April 2014, it has only 49 members, of which eight per cent are from the minority, seven or 14 per cent are women (including one of the five vice chairs). The background of members - 37 per cent are former local chief executives (municipal/city mayors or provincial governors); three are retired generals of the PNP; and one is from the military - is interesting to note. It gives a glimpse into the capacity of the committee members to oversee the police.

The committee has four permanent career staff, headed by the committee secretary. The staff provides legislative research and technical support and serves as the institutional memory. The committee itself has no consultants, but the committee chair is allowed to have three consultants. Other committee members can also hire consultants, which is chargeable to the budget of their respective offices. The committee has no specific budget. The entire legislative secretariat (of all the

congressional committees) has a centralised budget that committees may access/request to fund meetings (food), public hearings (food and transportation) and other operating expenses (supplies, etc.). For out of town hearings or ocular inspections, the Committee on Rules, upon recommendation of the committee chair, makes the necessary determination on the number of committee and secretariat members who can participate.

Relevant laws relating to the police were passed through the Committee on Public Order and Safety. In the 16th Congress (2013-2016), a total of 74 bills, including seven joint referrals, 20 resolutions and four privilege speeches, are pending before the committee. A review of the pending bills pending reveals the dominance of PNP-related proposals on the amendment of its existing charter<sup>50</sup> and increase in benefits<sup>51</sup>. Security related proposals<sup>52</sup> are also abound. These proposals are reflective of the needs of the time, such as the call for more CCTVs in the spate of recent crimes against property and persons. Since the start of the 16<sup>th</sup> Congress, the committee has conducted a total of seven meetings, including one public hearing, or an average of two meetings per month.

There are other House committees with jurisdiction over the police. The Committee on Human Rights<sup>53</sup>, which is composed of 35 members, generally accounts the police on its adherence to human rights instruments. The Committee on Good Governance and Public Accountability<sup>54</sup> has jurisdiction on matters pertaining to *malfeasance* (wilful and intentional action that injures a party), *misfeasance* (wilful inappropriate action or intentional incorrect action) and *nonfeasance* (failure to act where action is required) committed by officers and employees of the government, including the police, in office.

The powerful Committee on Appropriations deliberates on the annual budget of the government, including the PNP. It has 125 members and jurisdictions over “all matters directly and principally relating to the expenditures of the national government [...] and the determination of salaries, allowances and benefits of government personnel.”<sup>55</sup> Under this committee is a sub-committee that hears and deliberates on the police budget and defends it in the plenary.

## Senate

In the Senate, the Committee on Public Order and Dangerous Drugs is primarily responsible for police oversight. It is mandated to act on, among other things, all matters relating to peace and order and the PNP.<sup>56</sup> It has nine members: three women (including the committee chair), two with a police/military background and one former local chief executive. The two with a police/military background are the former Defence Secretary of Mr. Marcos, who is also considered as one of the main architects of martial law, and a former military colonel and a graduate of the Philippine Military Academy. Both of them defected from Mr. Marcos during the 1986 People's Power Revolution. The former army colonel is infamously remembered for his numerous failed *coup d'états* against President Corazon Aquino. The former local chief executive is the son of Mr. Marcos.<sup>57</sup>

Similar to the HOR, committee membership is composed of the majority and the minority. Committee leadership is affirmed through a motion by the majority and minority leaders before the plenary. The committee secretariat is headed by a committee secretary with five staff from the Committee Services of the Senate. This does not include the support staff from the Office of the Committee Chair. The committee, as well as its individual members, is entitled to consultants. Unlike the HOR, where the budget is centralised, the committee budget is included in the office budget of the committee chair. Upon inquiry, the amount of the budget is claimed to be confidential. In the past, however, a senator publicly revealed that the budget of Senate committees was P1 million per month. Since the start of the 16<sup>th</sup> Congress, the committee has conducted only three hearings, though various briefing meetings were held. The limited number of meetings is understandable in light of the pre-occupation of the Senate with the inquiry on the pork barrel scam, which involved some of its members. Just like its counterpart, Senate committees have full subpoena and contempt powers.

As of writing, there are 72 legislative measures pending before the committee; most are drug and PNP-related measures (i.e. reorganisation, modernisation, magna carta, pay, health, and insurance benefits). There are also legislative proposals relating to the private security industry,

regulation of firecrackers/fireworks, jail integration, fire arm regulations, fire protection and modernization, and jail management.

Other Senate committees also have jurisdiction over police matters. The Committee on Finance,<sup>58</sup> with its 17 members, is the counterpart of the Committee on Appropriations of the House of Representatives. The Committee on Accountability of Public Officers and Investigations,<sup>59</sup> often referred to as the Blue Ribbon Committee, is the equivalent of the Committee on Good Government and Public Accountability of the House. It deals with concerns relating to malfeasance, misfeasance and nonfeasance in office by officers and employees of the government. Finally, the Committee on Justice and Human Rights, with its nine members, deals with matters relating to the administration of justice; the implementation of human rights provisions of the Constitution; and all matters pertaining to the efficiency and reforms in the prosecution service.<sup>60</sup> It has a broader mandate than its counterpart in the House of Representatives.

### Parliament-police liaison mechanism

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Regular interaction among congress, the executive department, the PNP and stakeholders is necessary to effectively carry out legislation, congressional oversight, and needed reforms.

With respect to the police budget, liaising occurs both at the top and secretariat levels. The DILG leadership appears before congress during budget deliberations. At the same time, the committee secretariat coordinates directly with the PNP liaison for staff work and necessary information on the proposed budget. For legislative proposals, committees in charge request opinions and conduct dialogues/consultations with PNP and other stakeholders. For inquiries in aid of legislation, the committee secretariat liaises directly with the PNP or concerned officials. With the frequency of interaction between congress and the police institutions, NAPOLCOM and the PNP designated a regular liaison to congress from its ranks. This ensures cooperation and effective coordination.



For executive-legislative concerns, the Presidential Legislative Liaison Office (PLLO) under the Office of the President orchestrates the formulation of the executive-legislative agenda, through information dissemination and sustained day-to-day collaboration with congress. The Office of the Presidential Adviser for Political Affairs (OPA) also deals with the relationship among the legislators, the executive and the PNP.

## Relationship with other overseers

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Both houses of congress have varying levels of relationships with other police oversight bodies. Congress, in the exercise of its “power of the purse,” has all the opportunity to interact with not only the NAPOLCOM, PNP, and DILG but also other oversight bodies such as the CHR, COA, and the Office of the Ombudsman.

NAPOLCOM is mandated by law to submit to congress an annual report of its activities and accomplishments, an appraisal of the police organization and recommendations for remedial legislation.<sup>61</sup> NAPOLCOM and/or the PNP are also regularly invited to appear before congress on matters relating to public order and security for purposes of legislation or congressional inquiries.

There is little direct interaction between congress and local representative assemblies on police accountability. In matters relating to security and peace and order, however, representatives of national leagues of local government units and officials are always invited before congress. The local chief executives chair the local peace and order councils in their respective jurisdictions. The councils, organised from the national to municipal levels, are mandated to create a venue for dialogues and convergence of activities to enhance peace, order and public safety in their respective areas of responsibility.<sup>62</sup>

The Commission on Audit is constitutionally mandated to submit to the president and congress an annual financial report, including recommendatory measures necessary to improve the effectiveness and efficiency of government spending.<sup>63</sup> It seeks to prevent “irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.”<sup>64</sup> Its annual report is utilised

by congress during budget deliberations. When congress investigates financial anomalies in the police, it regularly calls on it to testify.

The Commission on Human Rights (CHR) has the power to “recommend to congress effective measures to promote human rights.”<sup>65</sup> It is a regular fixture in congress as a resource institution for legislative proposals relating to human rights, and investigations of human rights violations committed by the police.

The Office of the Ombudsman, is an independent constitutional body, which receives complaints and prosecutes graft and corruption cases against government officials. The Deputy Ombudsman for Military and Police is the unit that handles complaints against the military and police. Except for budget deliberations, it is seldom summoned to appear before congress. This is to ensure its independence in prosecuting corrupt officials, which may include members of congress and the police.

Civil society organisations actively participate in the congressional oversight process by bringing issues to members of congress as complainants, providing technical support to the legislators and/or appearing as resource persons during committee hearings. The media, on the other hand, reports police anomalies and engages legislators on their comments, thereby making the issue a potential subject of congressional inquiry.

## Conclusions and recommendations

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Years after the Philippines re-built democracy from the rubbles of the Marcos dictatorship, a new constitution was promulgated by the people for reforms and the democratisation of institutions. The legal mandate for police oversight, as well as the laws aimed at professionalising the police, is in place. However, challenges still abound. Corruption, abuse of power and unprofessionalism continue to tarnish the image of the PNP. Nevertheless, the situation would have been worse without the important reforms undertaken.

Based on the case study, the following institutional arrangements, procedures and practices help improve effectiveness, independence and transparency of police accountability to congress:

1. The clear constitutional distinction between the military and police and the national scope of the police help define the nature of parliamentary oversight of the police. The civilianisation of the police under one national command contributes to clarifying its mandates, nature and rules of engagement.
2. The existence of specific congressional committees that deal with the police improves oversight. The proportional representation of the majority and minorities in the committees and the participation of women ensure transparency and gender sensitivity in oversight work.
3. The shared jurisdiction of other congressional committees (appropriations/finance, human rights, accountability of public officers, etc.) ensures that the police is held accountable and much needed reforms are passed.
4. The presence of qualified, permanent committee staff and consultants, who provide congressional committees with technical support, and institutional memory, and the availability of committee budgets contribute to the overall effectiveness of the committees.
5. The powers of congressional committees to issue subpoenas and cite in contempt those who disobey their orders make oversight work effective.
6. Parliamentary immunity enables members of congress to speak freely without fear of prosecution and thresh out issues during deliberations and inquiries in aid of legislation.
7. The existence of a regular police liaison to congress, as well as cabinet-level offices (PLLO and OPA) increases cooperation and effective coordination among congress, the executive and the police.
8. The power to confirm appointments of key officials enables congress to screen only the most qualified leaders for the police institution, thereby ensuring professionalism in the police force.
9. The “power of the purse” enables congress to check the performance of the police from time to time, and redirect its plans and programs, under budget cuts.
10. Accountability of the police increases with the presence of other

oversight bodies such as the Commission on Audit, Office of the Ombudsman, and the Commission on Human Rights. The reports/inputs of these institutions enhance oversight ability of congress.

11. The existence of a comprehensive policy governing the police provides a road map for congressional oversight. Such a policy includes provisions for an independent complaint body (PLEB) and an internal police mechanism (Internal Affairs Office) that deal with police infraction and ensure professionalism of the police force. The disciplinary power of NAPOLCOM tempers the police from excesses and arrogance as “men in uniform.”
12. The participation of local government units in the governance of the police has positive contributions, especially since the responsibility for peace and order in local communities lies with them.
13. The presence of an open and free media that reports abuses, human rights violation and other unwarranted police acts helps congress take appropriate actions.

The constitutional provision on the nature of the police, the power of Congress to pass laws and oversee the police and the existence of other oversight bodies are oversight mechanisms in place and continue to contribute to reforming the police. However, there are many forces inside and outside the police that hinder the envisioned reforms (i.e. patronage politics, military culture, low pay, and a slow justice system). This calls for reforms in the police force in the overall context of security sector reform. Only an overarching security sector reform policy can make the reforms of the police coherent and reinforcing.

## NOTES

1. This chapter has been written and completed in 2014.
2. Republic of the Philippines, "Article VII, Section 1", in *Philippine Constitution* (Manila: Republic of the Philippines, 1987).
3. *Ibid.*, "Article VI, Section 1".
4. *Ibid.*, "Article VIII, Section 1".
5. Congress of the Republic of the Philippines, "Section 13", in *Republic Act 6975* (Manila: Congress of the Republic of the Philippines, 1990), as amended by Republic Act 8551, accessible at: [http://www.lawphil.net/statutes/repacts/ra1990/ra\\_6975\\_1990.html#s13](http://www.lawphil.net/statutes/repacts/ra1990/ra_6975_1990.html#s13).
6. *Ibid.* "Section 14".
7. *Ibid.*
8. Congress of the Republic of the Philippines, "Section 14(12)", in *Republic Act 6975*.
9. *Ibid.*, "Section 20".
10. This includes chief of police or equivalent, provincial directors or equivalent, police regional directors or equivalent, and chief of the PNP.
11. *Ibid.*, "Section 39(b)".
12. Congress of the Republic of the Philippines, "Section 39(c)", in *Republic Act 8551* (Manila: Congress of the Republic of the Philippines, 1998), accessible at: [http://www.lawphil.net/statutes/repacts/ra1998/ra\\_8551\\_1998.html](http://www.lawphil.net/statutes/repacts/ra1998/ra_8551_1998.html).
13. Section 62 of Republic Act 8551 provides that: "The term 'operational supervision and control' shall mean the power to direct, superintend, and oversee the day-to-day functions of police investigation of crime, crime prevention activities, and traffic control in accordance with the rules and regulations promulgated by the Commission."
14. This is for offences with a penalty not less than 16 days but not more than 30 days.
15. Congress of the Republic of the Philippines, "Section 64", in *Republic Act 8551*.
16. The law mandates that PLEB be organized in every municipality/city and for each legislative district in a city. The law provides that "...at least one PLEB for every five hundred city or municipal police personnel" be organized. (Congress of the Republic of the Philippines, "Section 43(a)", in *Republic Act 6957*.)
17. Section 43(b) of *Republic Act 6975* provides that the PLEB should be composed of: (1) any member of the city/municipal councils chosen by the respective councils; (2) any barangay captain of the city/municipality concerned chosen by the Association of Barangay Captains (ABC); and (3) three other members who are removable only for cause to be chosen by the local peace and order council from among the respected members of the community known for their probity and integrity, one of whom must be a woman and another a member of the Bar, or, in the absence thereof, a college graduate, or the principal of the central elementary school in the locality.
18. Under Section 41 of *Republic Act 6957*, citizen's complaints shall be brought before the different officials of the PNP depending on the length of the imposable penalty (consisting of withholding of privileges, restriction to specified limits, suspension or forfeiture of policy, or any combination thereof) for the offence charged. If punishable by a period not exceeding 15 days, the complaint is brought to the chief of police; if not less than 16 days, but not more than 30 days, it is brought to the mayors; if exceeding 30 days, or involving dismissal, it is brought to the PLEB. For internal discipline dealing with minor offences, the chief of police has jurisdiction if the imposable penalty (consisting of withholding of privileges, restriction to specified limits, suspension or forfeiture of policy, or any combination thereof) is admonition, reprimand or a period of not exceeding 15 days; provincial directors or equivalent supervisors if period does not exceed 30 days; police regional directors, if dismissal or a period not exceeding 60 days; and chief of PNP, if dismissal or a period not exceeding 180 days.
19. Congress of the Republic of the Philippines, "Section 43(a)", in *Republic Act 6975*.
20. Republic of the Philippines, "Article XI, Section 5", in the *Philippine Constitution*.
21. *Ibid.*, "Article XIII, Section 5". The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall

- have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law. ("Art. XI, Section 4") The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law. ("Article XI")
22. Republic of the Philippines, "Article IX, D, Section 2 (1))" in *Philippine Constitution*.
  23. Ibid., "Article VI, Section 29".
  24. This is the number of representatives of the House during the Sixteenth Congress of the Philippines.
  25. Republic of the Philippines, "Article VI, Section 18" in *Philippine Constitution*.
  26. Ibid., "Article VI, Section 21".
  27. Ibid., "Article VI, Section 23 (1)".
  28. Ibid., "Article. VI, Section 23 (2)".
  29. Ibid., "Article VI, Section 24".
  30. Ibid., "Article XI, Sections. 2 and 3(1)".
  31. Ibid., "Article XVI, Section 6".
  32. See Section 5 of Republic Act 8551 enumerating all the powers of the NAPOLCOM.
  33. Republic of the Philippines, "Article X, Sections 2 and 5", in *Philippine Constitution*.
  34. Congress of the Philippines, "Section 51", in *Republic Act 6975*; Congress of the Philippines, "Section 28", in *Republic Act 7160* (Manila: Congress of the Philippines, 1991).
  35. "'Employment' refers to the utilisation of units or elements of the PNP for purposes of protection of lives and properties, enforcement of laws, maintenance of peace and order, prevention of crimes, arrest of criminal offenders and bringing the offenders to justice, and ensuring public safety, particularly in the suppression of disorders, riots, lawlessness, violence, rebellious and seditious conspiracy, insurgency, subversion or other related activities." (Congress of the Philippines, "Section 62", in *Republic Act 8551*)
  36. "'Deployment' shall mean the orderly and organized physical movement of elements or units of the PNP within the province, city or municipality for purposes of employment as herein defined." (Congress of the Philippines, "Section 62", in *Republic Act 8551*).
  37. "Section 52" in *Republic Act 8551* provides that complaints could be brought before the "mayors of cities and municipalities, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period or not less than sixteen days but not exceeding thirty days."
  38. Ibid., "Section 64".
  39. "Section 13" in *Republic Act 8551* provides that the reorganization plan shall be based on the following criteria: a) increased police visibility through dispersal of personnel from the headquarters to the field offices and by the appointment and assignment of non-uniformed personnel to positions which are purely administrative, technical, clerical or menial in nature and other positions which are not actually and directly related to police operation; and b) efficient and optimized delivery of police services to the communities.
  40. Congress of the Republic of the Philippines, "Section 14", in *Republic Act 6957*.
  41. Republic of the Philippines, "Article. VI, Section 21", in *Philippine Constitution*.
  42. Congress of the Republic of the Philippines, *Rules of Procedure Governing Inquiries in Aid of Legislation of the House of Representatives* (Manila: Congress of the Republic of the Philippines, 24 July 2013); Congress of the Republic of the Philippines, *Senate Rules of Procedure Governing Inquiries in Aid of Legislation* (Manila: Congress of the Republic of the Philippines, 21 August 1995).
  43. A Senator or Member of the House of Representatives shall, in all offenses be punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No Member shall be questioned nor be held liable in any other place for any speech or debate in Congress or in any committee thereof. (Republic of the Philippines, "Article VI, Section 11", in *Philippine Constitution*.)

44. Republic of the Philippines, "Article VI, Section 18", in *Philippine Constitution*.
45. Congress of the Republic of the Philippines, "Section 26, Rule IX", in *Rules of the House of Representatives* (Manila: 16th Congress of the Republic of the Philippines, 2013-2016).
46. *Ibid.*
47. *Ibid.*
48. This includes illegal gambling, private armies, terrorism, organised crime and illegal drugs.
49. Congress of the Republic of the Philippines, "Section 28 (pp), Rule IX", in *Rules of the House of Representatives*.
50. These are related to: composition of NAPOLCOM; modernization; height and educational requirements; strengthening of PLEBs; transfer of police academy to the PNP; removal of maritime function from the PNP; and reorganization.
51. Benefits include allowances, scholarships, and insurance benefits.
52. These pertain to compulsory installations of close circuit TVs in business establishments; matters on firearms and firecrackers, private security industry and security services, dismantling of private armies, fire safety, and reward programs relating to anti-terrorism and political killings.
53. "Section 28(x), Rule IX", in *Rules of the House of Representatives* states that: "All matters directly and principally relating to the protection and enhancement of human rights, assistance to victims of human rights violations and their families, the prevention of violation of human rights and the punishment of perpetrators of such violations."
54. *Ibid.*, "Section 28(r), Rule IX".
55. Congress of the Republic of the Philippines, "Section 28 (d), Rule IX", in *Rules of the House of Representatives*.
56. It deals with all matters relating to peace and order; the Philippine National Police; the Bureau of Jail Management and Penology; the Bureau of Fire Protection; private security agencies; the use, sale, acquisition, possession, cultivation, manufacture and distribution of prohibited and regulated drugs and other similar substances as provided for under pertinent laws, and the prosecution of offenders, rehabilitation of drug users and dependents, including the formulation of drug-related policies. (Congress of the Republic of the Philippines, "Rule X, Section 13(32)" in *Senate Rules of Procedure Governing Inquiries in Aid of Legislation*.)
57. This is the composition of the Committee on Public Order and Dangerous Drugs under the 16th Congress (2013-2016).
58. It is responsible for "All matters relating to funds for the expenditures of the National Government and for payment of public indebtedness; auditing of accounts and expenditures of the national government; inter-governmental revenue sharing; and, in general, all matters relating to public expenditures." (Congress of the Republic of the Philippines, "Rule X, Sec. 13 (4)", in *Senate Rules of Procedure Governing Inquiries in Aid of Legislation*.)
59. It is responsible for all matters relating to, including investigation of, malfeasance, misfeasance and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions and instrumentalities; implementation of the provision of the Constitution on nepotism; and investigation of any matter of public interest on its own initiative or brought to its attention by any member of the Senate. (Congress of the Republic of the Philippines, "Rule X, Sec. 13 (36)", in *Senate Rules of Procedure Governing Inquiries in Aid of Legislation*.)
60. Congress of the Republic of the Philippines, "Rule X, Section 13(15)", in *Senate Rules of Procedure Governing Inquiries in Aid of Legislation*.
61. Congress of the Republic of the Philippines, "Section 5(c)", in *Republic Act 8551*.
62. EO 739 Series of 2008 and RA 7160.
63. Republic of the Philippines, "Article IX, D, Section 4", in *Philippine Constitution*.
64. *Ibid.*, "Article IX, Section 2 (2)".
65. *Ibid.*, "Art. XIII, Section 18(6)".

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## Thailand

SRISOMBAT CHOKPRAJAKCHAT

In Thailand, the Royal Thai Police (RTP) has duties and powers as prescribed in the Royal Thai Police Act of 2004.<sup>1</sup> The RTP functions at the forefront of the criminal justice system, which provides the foundation for justice and protects people's liberties under the principles of good governance. The 1997 Constitution stipulates numerous provisions and the principle of good governance relating to police conduct in the criminal process. Furthermore, Articles 26 to 69 of the 2007 Constitution (in force until May 22, 2014) set out a range of specific constitutional rights of the peoples.

The RTP has an internal affairs audit agency (called in Thai JA-RAY Police, RTP) and adopted a code of ethics and codes of police conducts for the purpose of controlling the behaviour of police officers. In accordance with the 2007 Constitution, violation of the codes is deemed as a violation of disciplinary measures. Particularly, the judicial police ethics and license system strictly controls police officers functioning as "judicial police" or "criminal investigators." In case of violation, the



police officer's license is suspended, and disciplinary action is ensued. In addition, the 2007 Constitution establishes several constitutional agencies to control police performance. This chapter, however, aims to merely examine parliamentary oversight of the police, parliament-police liaison mechanisms, and the role of parliament within the broader framework of police accountability.

## Police accountability framework

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This section describes police accountability as described by law in Thailand. The duties and powers of the RTP are prescribed in Section 6 of the Royal Thai Police Act of 2004.<sup>2</sup> Police officers are burdened with duties and powers in relation to many criminal laws,<sup>3</sup> such as the Commodities Control Act,<sup>4</sup> the Motor Vehicle Act,<sup>5</sup> and the Probation Act.<sup>6</sup> The core mission of the police is law enforcement.

Section 237 of the 1997 Constitution stipulates that an arrest shall be made only with an arrest warrant or a court order. Thus, the Amended Criminal Procedure Code of 2004<sup>7</sup> was enacted to implement the 1997 Constitution. The most recent amendment to the Criminal Procedure Code of 2007<sup>8</sup> specifically stipulates the police's duties in law enforcement, covering search, arrest, detention, control and temporary release. According to the 1997 and 2007 Constitutions, several detailed provisions guarantee the constitutional rights of the people and demand that the government amends the Criminal Procedure Code under the principles of due process of law and good governance. As a result, many provisions have been enacted to prevent abuse of the police's stop and search powers. In case there is any impediment in the process of search, arrest, detention, control or temporary release, the Chief Justice may issue guidelines for the RTP.<sup>9</sup>

For the internal control of police performance, the RTP addresses the police disciplinary offenses in line with Article 279 of 2007 Constitution, which demands that all official agencies must adopt the code of ethics and any violation of the code is subject to disciplinary action. Furthermore, the law normally classifies any violation of behaviour as a minor disciplinary offence under Section 78 and serious disciplinary offences under Section 79 of the Royal Thai Police Act.

Before 2004, the personnel management of the RTP was administered by the Minister of Interior and regulated by the Police Regulation Act of 1978. Since 2004, the RTP has had a legal mechanism as the basis for appointing and transferring officers, according to the Royal Thai Police Act. The Royal Thai Police Policy Making Board (National Police Policy Commission hereafter) and the Board of Police Personnel (Royal Thai Police Commission hereafter) govern the RTP. The Prime Minister is the Chairman of these two Commissions. The former decides on policies of the RTP and has the power to endorse appointees for the position of Police Commissioner General, nominated by the Prime Minister. The latter Commission has the power to endorse appointees from the ranks of Inspector up to the ranks of Inspector-General and Deputy Commissioner-General, endorsed by the Commissioner-General.<sup>10</sup>

For external control of police performance, the House of Representatives and the Senate have committees with the power to examine police performance. Specifically, the Committee on Police in the House of Representatives and the Committee on Justice System and Police in the Senate have the mandate to consider and inquire about any matter relating to the police.

Moreover, the RTP has to coordinate with several other agencies related to the justice process, such as courts, the Office of the Attorney General and the Corrections Department. Some of these actors exercise power that controls police performance. For example, the public attorney can deny a case from the police when the suspect has been released on bail and even if the court has already issued an arrest warrant. In addition, the Royal Thai Police Act prescribes that the RTP has the duty to maintain public order, while respecting the right of assembly or demonstration. The right to public gatherings and demonstrations is protected under Article 63 of the 2007 Constitution. In the context of law enforcement, court decisions and independent agencies limit the power of the police to control demonstrations.

## Functions of parliament

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The 2007 Constitution prescribes the powers and duties of the House of Representatives and Senate, such as legislation, the approval of

the annual budget, and the sanction and scrutiny of the government administration. Particularly, the latter power involves raising an ordinary or verbal interpellation, initiating a general debate for the purpose of passing a vote of no-confidence related to the Prime Minister or an individual minister, setting up a commission, and considering an annual appropriations bill.<sup>11</sup> The RTP, which is an agency under the Prime Minister, may be required to provide information for the Prime Minister to answer an ordinary, verbal or urgent interpellation, consultation or general debate from members of parliament required to explain some specific information to a commission.

There are two significant committees concerning police performance. First, the Committee on Police in the House of Representatives reviews any act, and inquires about or studies any matter relating to police affairs, compliance with laws, and protection of domestic peace and order. Second, the Committee on Justice System and Police in the Senate considers draft bills, reviews any act, and inquires about or studies matters relating to the justice administration, justice system, police affairs, prosecutor and corrections, compliance with laws, protection of domestic peace and order and other relevant matters.

Importantly, these committees play important roles under Section 5 of the Request Order of the Committees of the House of Representatives and Senate Act of 2011.<sup>12</sup> They have the power to issue subpoenas of any document from a person or summon a person to give a statement of facts or opinions on the matter under its duties, investigation or study. If the summoned person is an officer, official or employee of a government or state agency, a state enterprise or a local administrative organization, the chairperson of the committee shall request the minister controlling or supervising that particular agency to enforce compliance with the summons. In case of compliance failure, the particular person is considered as guilty under the first paragraph of Section 13. The offender shall also be subject to disciplinary proceedings, in accordance with the second paragraph of Section 13. Thus, this Act is considered as a significant law supporting the operation of the committee in relation to fact-finding and controlling the operation of the executive.

However, committees only have the power to issue a report with non-binding recommendations to the minister. They must report to the Prime Minister, who controls and commands the RTP and might or might not follow up on recommendations. For example, a committee might accept a complaint about illegal or unfair appointments of police personnel, police corruption or other administrative actions in the internal affairs of the police. When the parliamentary committee completes the investigation, the report is submitted to the minister in charge of the RTP or the minister concerned must answer questions in Parliament, which are revealed to the public. Alternatively, the committees might submit the report and its legally non-binding recommendations to the RTP. As a result, the RTP and the Prime Minister may ignore all suggestions.

The budget of the RTP might be considered by a special Budget Committee, which is appointed after the annual plan and budget have been considered and is accepted by the Ministry of Finance and approved by the Cabinet. The annual Budget Bill is submitted to both Houses, which each form a committee to consider the funding for all bureaucratic offices, including the RTP. For the RTP, the Prime Minister or the respective minister is responsible for defending the police budget if committees disagree with the Bill. However, the amount of police funding is not so much negotiated during this process, with discussions instead focused on if the budget should be decreased or increased. As per usual, the majority of members of Parliament will vote in favour of the proposed budget. In fact, the police budget will be increased or decreased during the deliberation process between the Ministry of Finance and Police Commissioners. Public resources are mostly limited, and the RTP never receives a sufficient budget to implement its mission. Exceptionally, if expenditures are altered during a committee consideration, they are subject to compensating changes in the funding of other public agencies.

### Parliament Coordination Group of the Royal Thai Police

According to the Request Order of the Committee of the House of Representatives and Senate Act of 2011,<sup>13</sup> if anyone receives the request of committee, the person is compelled to deliver the document or give

a statement of facts or opinions. In case anyone fails to comply with the order of the committee, the person shall be subject to a criminal punishment and disciplinary measure, as prescribed in Section 13 of the Request Order Act (2011).

In order to handle these matters, the RTP has established the Parliament Coordination Group, which is a sub-division reporting to the Legal Affairs Division at the Office of Legal Affairs and Litigation (RTP). It is responsible for coordinating operations between the RTP and its own police branches and parliament in order to answer interpellations, consultations, motions and affairs of commissions concerning RTP-matters, and coordinate information from various agencies of the RTP for the Prime Minister or the minister in charge to be used as information to answer or explain in Parliament.

For example, in case a summoned person is an officer, official or employee of a government agency, a state agency, state enterprise, or local administrative organisation, the chairperson of the commission must notify the minister who controls or supervises the agency to which the person is attached to order that person to comply with the written request. If the person who receives the written request of the committee fails to deliver the document or appear to give a statement of facts or opinions, the committee shall issue an “order requiring the document from the person or requiring the person to appear in person and give a statement of facts or opinion to the committee.” In that case, this person shall be subject to criminal punishment and disciplinary measure, as prescribed in Section 13 of the Request Order Act.

For the delivery method of the summons, a written invitation and a request order of a committee shall be served to a person via reply-registered mail, a courier, facsimile, and any other method as the committee finds appropriate on a case-by-case basis. When the committee issues a written request to a police officer to deliver a document or invites a police officer to give a statement of facts or opinions,<sup>14</sup> the committee shall submit three letters with its invitation.<sup>15</sup> The first letter would be addressing the Prime Minister (as the minister who controls the RTP) for acknowledging and ordering the police officer, who is requested by

the committee, to deliver the document or give a statement of facts or opinions.

The second letter would be addressing the Police Commissioner-General for acknowledging and ordering the police officer to comply with the written request of the committee. This process would involve the Parliament Coordination Group. Once the commanding officer issues an order, the Parliament Coordination Group forwards the written order to the agency, to which the police officer is attached (such as the Metropolitan Police Bureau, Provincial Police Region 1-9, Central Investigation Bureau, etc.), to subsequently notify the police officer.

The third letter would be directly addressing the police officer under the resolution for being preparation in advance of the hearing.

The commission initiates cases involving human rights violations<sup>16</sup> when it deems that it is appropriate to examine any case with a human rights violation, has received a petition about a human rights violation<sup>17</sup> or has received a petition from a private organisation in the field of human rights.<sup>18</sup> If the commission is of the opinion that the case falls within its powers and duties, it shall notify the person or agency alleged to be a human rights violator, or a person or agency it considers being involved in a human rights violation, to respond to a statements of facts within a specified period.<sup>19</sup>

In case the committee deems the matter is not within its powers and duties, it may refer the matter to a person or agency involved with the issue concerned.<sup>20</sup> This person or agency shall, upon receiving the examination report, implement the remedial measures for solving the problem within the period specified and notify the results of the implementation to the committee.<sup>21</sup> When this period is lapsed and the person or agency has not implemented the remedial measures, the committee shall report to the prime minister to order their implementation (except in the case that is not within the power of the prime minister.<sup>22</sup> If there is no proceeding or order for the implementation, the committee shall report to the parliament and inform the public of the matter.<sup>23</sup>

Thus, the committees of the House of Representatives and the Senate

issue many letters to the Police Commissioner-General ordering police officers to deliver documents or give statements of facts or opinions on the matters under investigation within a limited period. To ensure that the performance of these duties is expeditious and efficient, the RTP has provided guidelines<sup>24</sup> to the police for when a committee issues a written notification requiring any document from the police or inviting an individual police officer to give a statement of facts or opinions. In that case, the Legal Affairs Division (RTP) shall expeditiously forward the matter to the Commissioner-General, a commissioner in the Office of the Commissioner-General, or an equivalent authority.

## Parliamentary committee

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Thailand adopted the idea of the committee system from Western countries. All 17 constitutions adopted and revoked in Thailand have set up “committees” since the Great Revolution on the 24 June 1932. Thenceforth, the idea of the committee has been established from the Temporary Charter for the Administration of Siam Act B.E. 2475, or 1932, until the present. The 1932 Charter was the first time that the concept of the committee system from the Western countries was introduced to Thailand’s legislative branch. Section 26 of this Charter prescribes that:

“The House shall be empowered to set up a subcommittee to carry out any act or investigate into any matter and submit an opinion thereon to the plenary session for further consideration. The chairperson of a subcommittee shall, if not appointed by the House, be elected by the members of such subcommittee. A subcommittee shall have the power to require any person to make a personal appearance and give any explanation or opinion.”

All provisions of constitutions from the past until the present have described the roles of the committees as performing functions of the National Assembly, covering all categories of affairs, as well as possessing operational independence and powers and duties to investigate or study any matter entrusted by the House.

The 2007 Constitution (Section 135) prescribes that: “The House of Representatives and the Senate have the power to select and appoint

members of each house to constitute a standing committee and have the power to select and appoint persons, being or not being its members, to constitute an ad hoc committee in order to perform any act, investigate into or study any matter within the powers and duties of the House and report its findings to the House. The resolution appointing such ad hoc committee must specify the activity or the matter concerned clearly and without repetition or duplication.”<sup>25</sup>

Therefore, the House of Representatives and the Senate have the powers to establish committees, which are categorised into two types. First, Standing Committees consist of selected members of each House. Article 28 of the Rules of Procedure of the House of Representatives of 2008 stipulates that there are 35 Standing Committees in the House of Representatives. Article 77 of the Rules of Procedure of the Senate stipulates that there are 22 committees in the Senate. Second, Ad Hoc Committees select persons, who are either members of each House or not, in order to consider carrying out any act or investigating or studying any matter, and report the findings to the House, whereby the scope of affairs or matters must be definitely specified and not redundant.<sup>26</sup> For police oversight, thus, the Standing Committees of both Houses have been established to monitor the performing of duties of justice process officials and police officers. The House of Representatives appointed a “Committee on Police” and the Senate appointed a “Committee on Justice System and Police.”

### Committee mandate and power

A committee has the power to issue a subpoena or an order requiring a document from any person, or to summon any person to give a statement of facts or opinions on the act undertaken or the matter under its inquiry or study, based on the powers in the Constitution<sup>27</sup> and Request Order of the Committee of the House of Representatives and Senate Act.<sup>28</sup>

As the Request Order of the Committee of the House of Representatives and Senate Act of 2011 has some particular provisions that restrict the rights and liberties of a person, the 2007 Constitution prescribes that such restrictions shall be imposed on a person only by virtue of provisions of the law.<sup>29</sup>



In Section 5 of the Request Order of the Committee of the House of Representatives and Senate Act of 2011, it is stated that, “the Committee shall have the power to make an order requesting any person to deliver any document or to give a statement of facts or opinions on the matter under its duties, investigation or study.”

However, the request order or subpoena shall not be made to the judge who will preside over the case of, and to personnel management of, each court, and shall not be made to the Ombudsman or to a commissioner in any independent organisation established by the Constitution, who performs the powers and duties in each independent organisation established by the Constitution in accordance with the provisions of the Constitution or the Organic Act, as the case may be.

If the summoned person is a government official, officer or employee of any government agency, state agency enterprise, or local administration, the chairperson of the committee shall request the minister, who controls or supervises the agency to which the person is attached, to order that person to comply with the provisions. The only exceptions are matters relating to national security or gross benefit of the state.

In addition, Section 6 describes that:

“in the performance of any duty or in the conduct of any investigation or study, if the Committee passes a resolution requiring any document from any person or summon any person to give a statement of facts or opinions for its consideration, the Committee shall have a written notification or invitation requiring that person to submit such document or to give such statement of facts or opinion to the Committee within the period as determined by the Committee. The written notification or invitation under the first paragraph shall provide sufficient cause of such requirement or invitation as well as the matter under question to be answered. In this case, the required or invited person may present related document or object for consideration.”<sup>30</sup>

The person, who receives the written notification or invitation shall submit the requested document or give the statement of facts or opinions to the Committee within the period determined by the Committee. As an

exception, if such a person receives a request for a period of less than three days after receiving the written notification or invitation, such a person may choose not to comply with it; however, the person must inform the Committee of such a reason within three days of receiving the written notification or invitation.

Additionally, according to Article 96 of the Rules of Procedure of the House of Representatives, after a committee has finished consideration of scrutiny or study of any matter in accordance with its power and duties or as entrusted by the House, the committee shall report to the House. Moreover, while attending the meeting session of the House, the committee is entitled to give further explanation of such act. Moreover, the committee may entrust any person to give the statement or explanation on its behalf, upon permission from the President of the House. And under Article 97 of the Rules, it is prescribed that, in a committee's consideration, if the committee finds an observation, which is suitable for being acknowledged or adopted by the Council of Ministers, the Court or a Constitutional Organization, the observation shall be recorded in the committee's report for consideration of the House. And in consideration of the committee's observation, the House shall pass a resolution whether to agree or disagree without any debate. In a case where the House agrees with the committee's observation, the President of the House shall forward the report with the observation to the relevant Council of Ministers, Court or Constitutional Organization.

These rules are consistent Article 91 of the Rules of Procedures of the Senate, which prescribed: "In the consideration of the committee, if the committee is of the opinion that there is an observation which the Council of Ministers, the Constitutional Court, the Courts of Justice, the Administrative Courts or constitutional organs concerned should be informed of or should act upon, such observation shall be recorded in the report of the committee for consideration of the Senate."<sup>31</sup> Furthermore, the 2009 Rules of Procedures of the Senate prescribe that the president of the Senate, after having received the report from the Committee, shall place it on the agenda as an urgent matter, and the secretary general of the Senate shall send only the agenda and relevant documents without the secret report of the Committee to the Senator.

For an example case of Parliament oversight the police performance, as to powers to initiate an examination into any case of a human rights violation are exercised<sup>32</sup> when the Committee deems it appropriate to examine any case of a human rights violation or where the Commission has received a petition of human rights violation<sup>33</sup> or has received a petition from a private organization in the field of human rights.<sup>34</sup> If the Commission is of the opinion that it is a prima facie case which is under its powers and duties, the Commission shall notify a person or agency alleged to be a human rights violator or a person or agency whom the Commission considers to be involved in human rights violation to give a responded statements of facts within the period specified by the Commission.<sup>35</sup>

In the case the Committee deems the received matter not within its powers and duties, it may refer the matter to a person or agency involved with the matter, as it deems appropriate.<sup>36</sup> The person or agency shall, upon receiving the examination report, implement the remedial measures for solving the problem within the period specified and shall notify the results of the implementation to the Committee.<sup>37</sup> When the period is lapsed and if the person or agency has not implemented the remedial measures, the Committee shall report to the prime minister to order an implementation, except when it is not within the power of the prime minister.<sup>38</sup> If there are no proceedings or orders for implementation, the Committee shall report to Parliament and disseminate the information to the public.<sup>39</sup>

It can be concluded that a committee's report is likely an important suggestion in supporting and promoting the performance of executive agencies under the parliamentary system. As a report of a committee in the House deals with an investigation or study into a matter, of which the House of Representatives, Senate or National Assembly must be informed, the report on the committee's consideration and observation is beneficial to the operation of the government's policy implementation. All recommendations of the committees essentially detail the required measures to satisfy the need of the people and ensure that the National Assembly's administration fulfils the determined missions for the Thais as a whole. In practice, some committees might use parliamentary

budgets to merely officially and unofficially travel domestically and abroad.

## Parliament-police liaison mechanism

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### Formal mechanisms for parliament oversight police

The standing committees of both Houses have been established to monitor the performance of duties of justice process officials and police officers. The House of Representatives appointed a committee on police and the Senate appointed a committee on the justice system and police. The 2007 Constitution prescribes that the House of Representatives and Senate have numerous powers and duties, such as legislative power and the power to sanction and scrutinise the government's administration of state affairs. Particularly, the power to sanction and scrutinise the government's administration of state affairs is exercised by raising an ordinary or instant interpellation, initiating a general debate for the purpose of passing a vote of no-confidence in the Prime Minister or an individual minister, setting up a commission, and considering an annual appropriations bill.

### Information exchange between parliament and the police

There is no law definitely prescribing how to proceed with interpellations. The only exception is Section 134 of the 2007 Constitution, which empowers the House of Representatives and Senate to stipulate their own rules of procedure. Whereas Chapter 8 of the Rules of Procedure of the House of Representatives<sup>40</sup> and the Rules of Procedure of the Senate of 2008 provide guidelines related to interpellations, the Rules exclusively apply to procedures of the House. In addition to the establishment of the Parliament Coordination Group for coordinating between the RTP and Parliament, the RTP issued the guideline for answering the interpellations and consultations of the members of the House of Representatives and Senate.<sup>41</sup>

## Relationship with other overseers

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There is no research revealing the efficiency between civilian oversight and the degree of police accountability. However, the RTP issued Order

No. 1309 (dated 25 September 1998) to set up steering and capacity-building project management committees for ensuring the efficient and effective development of police officers and their performance. However, it failed to fulfil all its purposes, because police officers still consider the committee as an obstruction to their exercise of power and never let the committee participate in the police administration.

In addition, several parties outside the police service have played an important role in examining the RTP's performance. The 2007 Constitution provides for the Ombudsmen to consider and inquire about the complaint for fact-findings in cases of failure to comply with the law or performance beyond legal powers and duties by a government official, an official or employee of a government agency, state agency or enterprise, or local government organisation.<sup>42</sup> The Office of the Ombudsmen has issued standards for all public agencies in a code of ethics, which has nine core values.

For the Thai justice system, the search and arrest procedures are established by virtue of the Criminal Procedure Code. In case of unlawful arrest, the Supreme Court has established a precedent that an arrest and inquiry are separately conducted. If the inquiry was conducted lawfully, the unlawful arrest shall not jeopardise the criminal proceedings.<sup>43</sup> Hence, the public prosecutor shall have the power to file a criminal case.<sup>44</sup>

Additionally, the 1997 Constitution establishes the National Human Rights Commission as an independent body entitled to promote and protect human rights in Thailand. The 2007 Constitution enhances its power to file a lawsuit with the administrative courts when the Commission agrees with the complainant that any rule, order or administrative act is detrimental to human rights and pertains to constitutionality and legality.

Moreover, the Asian Human Right Committee has urged the Thai government to pay attention to the recommendations from the Human Rights Commission of the United Nations in 2005. It also advised the government to sign the Convention against Torture as the foundation for a society premised on non-violence, and the ability to live safely,

free from life and bodily threatening, providing an avenue for making complaints dealing with police misconduct.<sup>45</sup>

Finally, the media (especially popular television programmes) has become active in revealing issues in a public forum. All levels of command pay attention to the media, and cases televised to the public by the media are instantly resolved by the police. The police officers in charge with the reported case, if unsuccessful in solving the issue, might be subjected to administrative sanctions, including disciplinary actions by their commander.

## Conclusion

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To ensure that police governance, deemed as a very important policy, is conducted prudently, accurately and clearly, and can be translated into practice, internal and external control mechanisms should scrutinise the RTP. Although the law prescribes procedural regulation on examining police performance, there are some practical drawbacks in both internal and external control. Thailand's lessons learned on parliamentary oversight of the police can be summarised as follows:

First, consideration on some matter by a committee requires inviting a senior executive of a particular agency (such as the RTP Commissioner General) to attend a meeting in order to acknowledge opinions and apply them to the policy level instead of only inviting police service staff (who is powerless to implement policies). However, some agencies only arrange for an operative official to attend the sitting. This person would not be able to provide the committee with the required information and apply the findings of the consideration to practically solve an internal problem of the agency.

Second, some agencies receive a written invitation from a committee, but fail to assign any delegate to attend the sitting without an explanation or by claiming that the delegate is pre-occupied with another motion. As a result, the committee is required to re-issue the written invitation several times.

Third, some agencies receive a written invitation, but avoid attending the sitting with the committee by continuously postponing it.

Fourth, the majority of the officials assigned to attend the sittings with the committee are not directly knowledgeable about the matter concerned and have not prepared supporting information for the explanations requested by the committee.

Fifth, the persons invited by the committee to attend the sittings for the purpose of giving statements of facts or opinions usually refrain from providing facts, resulting in the committee receiving incomplete facts.

Sixth, on some occasions, the persons invited by the committee to attend the sittings for the purpose of giving statements of facts or opinions are members of personnel in remote provincial agencies. It is therefore inconvenient for them to travel to the sittings of the committee on the scheduled dates and times. Thus, some agencies request to submit the information in written form, and the committee is unable to inquire about any circumstantial issue not described in the documents.

## NOTES

1. This chapter was written in 2014, prior to the Thai coup d'état in May 2014.
2. Kingdom of Thailand, "Book 121, Chapter 18 A", *Royal Thai Police Act B.E. 2547* (Bangkok: Royal Thai Government Gazette, 2004), p. 1.
3. Srisombat Chokprajakchat, Wiraphong Boonyobhas, Suree Kanjanawong, Ratchada Thanadirek, and Parpon Sahapattana, *Police Reform of the Criminal Justice Process and Regulations* (Bangkok: Faculty of Social Sciences and Humanities, Mahidol University, and Investigation and Legal Affairs Bureau, Royal Thai Police, 2008).
4. Kingdom of Thailand, *Commodities Control Act (B.E.2495)* (Bangkok: Kingdom of Thailand, 1952)
5. Kingdom of Thailand, *Motor Vehicle Act (B.E. 2473)* (Bangkok: Kingdom of Thailand, 1930).
6. Kingdom of Thailand, *Crown Property Tax (B.E. 2479)* (Bangkok: Kingdom of Thailand, 1936).
7. Kingdom of Thailand, *Criminal Procedure Code No. 22* (Bangkok: Kingdom of Thailand, 2004).
8. Kingdom of Thailand, *Criminal Procedure Code No. 27* (Bangkok: Kingdom of Thailand, 2007).
9. Chokprajakchat et al., *Police Reform of the Criminal Justice Process and Regulations*.
10. Srisombat Chokprajakchat, *The Guidelines of the Royal Thai Police's Human Resources Management* (Bangkok: The Secretariat of the Senate, 2011), accessible at: [http://library.senate.go.th/document/Ext4246/4246816\\_0002.PDF](http://library.senate.go.th/document/Ext4246/4246816_0002.PDF).
11. Kingdom of Thailand, *Constitution of the Kingdom of Thailand* (Bangkok: Kingdom of Thailand, 2007), B.E.2550.
12. Kingdom of Thailand, *Request Order of the Committee of the House of Representatives and Senate Act (B.E.2554)* (Bangkok: Kingdom of Thailand, 2011).
13. Kingdom of Thailand, *Request Order of the Committee of the House of Representatives and Senate Act* (Bangkok: Kingdom of Thailand, 2011).
14. There is no record that a committee has issued such a request order to the police.
15. Chaisan Jongmangkang, "Guidelines for the Police Officers to Prepare Themselves to Answer Interpellation, Motion or Consultation to the Commission", Unpublished paper, 2014.
16. Kingdom of Thailand, "Section 25", *National Human Rights Act (B.E.2542)* (Bangkok: Kingdom of Thailand, 1999).
17. Ibid., "Section 23."
18. Ibid., "Section 24."
19. Ibid., "Section 25."
20. Ibid.
21. Ibid., "Section 29."
22. Kingdom of Thailand, "Section 30", *National Human Rights Act (B.E.2542)* (Bangkok: Kingdom of Thailand, 1999).
23. Ibid., "Section 31."
24. These guidelines were issues in a memorandum of the Royal Thai Police dated 22 March 2014, attached to Letter No. 0011.17/Wor103 dated 18 September 2012. The subject of the letter was "Procedures for Answering Interpellations and Consultations of Members of the House of Representatives and Members of the Senate".
25. Kingdom of Thailand, *Constitution of the Kingdom of Thailand*, 2007.
26. Kingdom of Cambodia, *Rules of Procedure of the House of Representatives (B.E. 2551)* (Bangkok: Kingdom of Thailand, 2008).
27. Cf. the second paragraph in Section 135 of the Constitution of the Kingdom of Thailand.
28. Kingdom of Thailand, *Request Order of the Committee of the House of Representatives and Senate Act (B.E.2554)* (Bangkok: Kingdom of Thailand, 2011).
29. Kingdom of Thailand, "Sections 29, 31, 35, 41 and 45", *Constitution of the Kingdom of Thailand* (Bangkok: Kingdom of Thailand, 2007).
30. Kingdom of Thailand, *Request Order of the Committee of the House of Representatives and Senate Act* (Bangkok: Kingdom of Thailand, 2011).
31. Kingdom of Thailand, "Article 91" *Rules of*



- Procedure of the Senate* (Bangkok, Kingdom of Thailand, 2001)
32. Kingdom of Thailand, "Section 25", *National Human Rights Act (B.E.2542)*. (Bangkok: Kingdom of Thailand, 1999)
  33. *Ibid.*, "Section 23".
  34. *Ibid.*, "Section 24".
  35. *Ibid.*, "Section 25".
  36. *Ibid.*, "Section 25".
  37. *Ibid.*, "Section 29".
  38. Kingdom of Thailand, "Section 30", *National Human Rights Act (B.E.2542)*. (Bangkok: Kingdom of Thailand, 1999).
  39. *Ibid.*, "Section 31".
  40. Kingdom of Thailand, *Rules of Procedure of the House of Representatives (B.E. 2551)* (Bangkok: Kingdom of Thailand, 2008).
  41. See previous section.
  42. Kingdom of Thailand, *Constitution of the Kingdom of Thailand*, 2007.
  43. Supreme Court of the Kingdom of Thailand, *Verdict No. 2699/2516*.
  44. Supreme Court of the Kingdom of Thailand, *Verdict No. 495/2500*.
  45. Asian Human Rights Commission. (2005). Thailand: Growing repugnance of barbaric torture in Thailand. Retrieved 25 April, 2014 from <http://www.humanrights.asia/news/ahrc-news/AS-71-2005/?searchterm=>

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## Belgium

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In this chapter<sup>2</sup>, crucial elements of Belgium as a case study are described in order to better understand its parliamentary oversight of the police.

The Federal Parliament of the Kingdom of Belgium is a bicameral system, consisting of the House of Representatives and Senate. The Belgian Parliament exercises democratic supervision of the Belgian government, which has an army and a police service at its disposal.

In 2001, the Belgian police underwent a fundamental structural reform that created a genuine integrated police service on a federal (1 federal police) and local level (195 local police services). The three former police services (the municipal police, the gendarmerie and the judicial police assigned to the offices of the public prosecutors) gave way to an integrated police service. The main structural change is that the basis for police work is locally embedded and the power of the mayors, who are locally elected representatives, has been strengthened on that level. At the same time, the philosophy of “community policing” has

been introduced. It is an attempt to change the overall functioning of the police in relation to the public according to democratic principles, such as service orientation, problem-solving, partnership, accountability and empowerment. Previous research has shown that the articulation of community policing differs depending on the implicit relationship between the state and the citizen that goes along with these systems.<sup>3</sup> In some way, Belgium has tried to take the best of both worlds, as it has gradually integrated Anglo-Saxon elements into its French heritage.<sup>4</sup>

It is important to note that the Belgian police policy cycle is anchored in the law of 1998 on the Integrated Police, which is structured on federal and local levels. This cycle takes four years and is mainly steered by one national and 195 zonal security plans.<sup>5</sup> The policy cycle is directed by an inter-ministerial cabinet<sup>6</sup> and guidelines to prepare security plans.<sup>7</sup>

Furthermore, since 2007, the federal government has been concluding four yearly strategic security and prevention plans with the Belgian municipalities, which are required to take a leading role in the process. The policy choices and priorities are motivated by a local security diagnostic tool.<sup>8</sup> This tool aims to methodologically support cities and towns in offering them a picture of local crime and insecurity. In preparing these plans and policies, a lot of effort is focused on understanding what civilians expect from the government and police and how they feel about their security and quality of life. This is part of how community-oriented policing is being translated into practice.<sup>9</sup>

The Belgian police services are a key component of the government's security policy, which, pursuant to the law, aims at providing a proper service to the population. The organisation is driven by the aforementioned concept of an "integrated police." The legal basis for police work is defined in the law of 5 August 1992 on the General Police Regulations.

From an organisational point of view, the police operate on different levels. Their various components are based on two levels of responsibility and power: the federal and local levels. Whereas the federal police is responsible for law enforcement on the federal level, local law enforcement falls within the competencies of local police corps, which are each in charge of a district named "police zone". Both

levels are autonomous without any hierarchical connections. The size of the Belgian police should be about 42.000 full time equivalents, but, in reality, it is less than 40.000 full time equivalents.

From a functional point of view, the integrated police service is made up of different components that complement each other. This complementary nature with respect for autonomy is what makes the Belgian police unique. The local police is in charge of all basic police missions, such as administrative or judicial police missions, guaranteeing a minimum service to the population. The federal police carries out missions that, on the one hand, stem from their sphere of activity covering the whole territory, and, on the other hand, derive from specializations that are to be developed within the federal police to the benefit of the entire Belgian police. Consequently, the federal police fulfils judicial and administrative missions in specialized areas or in areas that exceed the jurisdiction of the local police corps. To this end, the federal police are composed of a variety of directorates, units and services, which are in charge of providing a range of operational and other support to the local police corps. Finally, the federal police have the authority to represent all the Belgian police services within the framework of international police cooperation.

This paper starts with an executive summary of parliamentary oversight of the police in Belgium, followed by sections on the functions of the Belgian parliament, the parliamentary committee(s), the parliament-police liaison mechanism and the relationship with other overseers. In the conclusion, an interpretation on using a police accountability framework is presented.

## Police accountability framework in Belgium

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The Belgian Federal Parliament is a bicameral system, consisting of the House of Representatives and Senate.<sup>10</sup> Since 2001, Belgium has an integrated police service structured on two levels: 195 local police services and 1 federal police service.<sup>11</sup> The mayors and the public prosecutor are responsible for the local police, and the minister of interior and justice are responsible for the federal police. Each member of the federal parliament has the right to submit parliamentary

questions on the functioning of the local and federal police. To answer these questions, the minister of interior and/or justice is advised by a technical-administrative secretariat. These secretariats are composed of federal and local police employees, providing a liaison mechanism between the police and the cabinets of interior and justice. Within the House of Representatives, there are two committees that handle police matters: the Standing Committee of Home Affairs and a special committee especially charged with police oversight. Furthermore, the federal parliament is authorised to set up committees of inquiry that can address specific issues related to policing.

The Standing Committee of Home Affairs is not limited to police matters, but deals with all matters on the subject of home affairs (e.g. also civil protection matters). Within this standing committee, the proceedings of the plenary sessions of parliament are being prepared. In practice, this implies that all proposals (when introduced by a member of parliament) and bills (when introduced by a member of government) are being introduced, discussed, possibly amended and eventually voted on by the members of this committee. The report of the discussions and the text adopted by the committee are then presented to the plenary. Like the other standing committees, the Standing Committee of Home Affairs has the competence to organise an overview/oversight of the ministers (Article 101 of the Constitution), as they are responsible for their respective administrations. It can do this by organising hearings and asking (written or oral) questions. It can invite members of the police to elucidate certain matters, though it does not exercise direct police oversight. This standing committee consists of 17 members and is composed on the basis of the ratio between the political parties in the plenary of the House of Representatives. This implies that the biggest political party in the plenary will have the biggest representation within these kinds of standing committees. Committee presidencies are allocated to different parties following the same principle of proportional representation. As a result, some standing committees are chaired by members of the opposition. Within the Senate, a similar committee with similar competences exists, consisting of 15 members.

Within the House of Representatives, there is a special committee charged with the oversight of the police services.<sup>12</sup> The independent

oversight body, the Standing Police Monitoring Committee (Committee P), is accountable to this special parliamentary committee. It was created by the law of 18 July 1991 on monitoring police forces and intelligence services.<sup>13</sup> Committee P is the principal parliamentary oversight body for the police. It is an independent and neutral body that assists the legislature in overseeing the activities of the executive. Committee P acts as an external body, with respect to both the executive (ministers, mayors, police boards, etc.) and the police (federal and local police, special inspection services, etc.), and is responsible for monitoring the overall working of the police and policing by all officials involved in police, inspection and monitoring activities. Therefore, Committee P will send its reports related to its monitoring inquiries, as well as its annual activity report containing its general conclusions and recommendations, to the members of parliament. Staff members of Committee P indicate that their reports, conclusions and recommendations (depending on the nature of the problem, its societal relevance and the media attention it generates) are not always receiving the necessary attention in the special committee.<sup>14</sup>

Furthermore, the House of Representatives and Senate are both authorized to set up committees of inquiry (Article 56 of the Constitution), which can address specific issues that can be related to policing. These committees inquire about issues that appear in society.<sup>15</sup> The House of Representatives exercises control over the government and the policy followed by previous governments. Such inquiries also allow collecting a large amount of information, which can lead to improvements in existing legislation. The mandate of the inquiry committee is always limited in time, which is set by the plenary session on the proposal of the conference of presidents. The inquiry committee has the same powers as an investigating magistrate in an ordinary inquiry. The committee may thus summon witnesses and hear them under oath, confront witnesses, request or seize documents, order searches, and organise visits on location. To carry out acts of investigation, the committee sends a request to the first president of the Court of Appeal, who then designates the competent magistrates. They are placed under the authority of the chairman of the committee.

In conclusion, it is fair to state that the Belgian Federal Parliament exercises democratic supervision over the Belgian government and its police. Since 1991, Committee P has been an essential part of that democratic supervision. Members of parliament submit many interpellations and questions regarding the functioning of both the local and federal police. However, this does not result in profound debates on the functioning and organisation of the federal and local police.<sup>16</sup> The National Security Plan, which must be notified under law to parliament, receives limited room for debate. Also, the debate on the budget of the federal police gets lost in the discussion of the general expenditure budget of the federal state.

Furthermore, Belgium is suffering from a proliferation of its global mechanisms of control on the police, which hampers its efficiency and effectiveness.<sup>17</sup> In a recently developed “Belgian vision on the police 2025,” the need for greater balance between external (executive and legislative power and the population) and internal accountability (organisation-specific) mechanisms is highlighted, which can lead to a more transparent and democratic police service. In doing so, it relied on the recommendations of the Patten Commission (1999) on accountability, in which parliamentary oversight is only one of the essential mechanisms to create a democratic police service.

## Functions of the Belgian parliament

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In the following sections, we focus on the legislative, oversight and control functions of the Belgian parliament.

### Legislative function

Between 2010 and 2014 (Belgian legislature No. 53), 75 bills were submitted in the federal parliament, which affect the functioning of the police.<sup>18</sup> The two most important bills are related to the Act of 7 December 1998 organising an integrated police service. The first bill pertains to the public nature of the crime data and the second bill concerns the national security plan.

The first bill takes the text of bill No. 52 1316/001 submitted during the previous legislature by Mr. Vandenhove, Member of Parliament. He

believes that open communication to citizens about crime rates can contribute to increasing their feelings of security. He therefore proposes to require an annual report from every local police chief that describes the functioning of his/her police service, including evolutions in crime rates recorded by the police. This proposal demands national rules on the registration of crime and reporting of crime rates.<sup>19</sup>

The second bill is related to the national security plan. Every four years, the federal police formulates a Police National Safety Plan (PNSP), which is communicated to the House of Representatives. As members of parliament cannot approve or disapprove this plan or be involved in monitoring or evaluating this plan<sup>20</sup>; the bill suggests asking parliament for advice on the content of the PNSP.

### Oversight function

In 1991, as part of the Pentecost Plan,<sup>21</sup> the government submitted a proposal to regulate the monitoring of police services, which became the law of 18 July 1991 on monitoring police and intelligence services.<sup>22</sup> It was this law that created Committee P. Committee P is the principal parliamentary oversight body for the police. The programme law of 27 December 2004 conferred a range of additional monitoring responsibilities relating to the surveillance of security services and officers working for state-run public transport companies on Committee P.

The monitoring was designed to meet three important goals relating to policing: respect for the constitutional rights and fundamental freedoms of citizens and ensuring efficient policing and coordination of police services. From the outset, these goals also formed the cornerstone of Committee P's work. Its mission statement is paying "continuous attention to how the police respect fundamental rights and freedoms."

Committee P is an independent and neutral body that assists the legislature in overseeing the activities of the executive. It consists of three components: Standing Committee P (in the strict sense of the word), administration, and Investigation Service. The Standing Committee P is composed of five members, including a president (a judge) and vice president. The House of Representatives appoints



members for a renewable term of six years. The Standing Committee is a collegial body: all final decisions are made by the five members during a plenary session of the Standing Committee. The preparation and implementation of these decisions take place in terms of dividing tasks among the five members. This Standing Committee P is assisted by an administration containing 35 administrative staff. The Investigation Service is composed of 48 members appointed by the Standing Committee for a renewable term of five years. Some members of the Investigation Service are on secondment from a federal or local police force. The Investigation Service conducts criminal investigations under the authority of the judicial authorities and monitoring studies at the request of the Standing Committee. A section is responsible for receiving, analysing and dealing with complaints and the processing of information from various authorities and the police in connection with the actions of the members of the police.

Committee P acts as an external body, with respect to both the executive (ministers, mayors, police boards, etc.) and the police (federal and local police, special inspection services, etc.), and is responsible for monitoring the overall work of the police and policing by all officials involved in police, inspection and monitoring activities. This means that Committee P is the only external and general monitoring body overseeing the work of the police and special inspection services, which is also an independent body. Nonetheless, Committee P is accountable to the special committee charged with providing parliamentary support for it. To this end, its tasks include sending reports on its inspection inquiries to the Chamber of Representatives, as well as its annual activity report containing general conclusions and recommendations.

Any citizen coming into contact with the police can file a complaint, make a declaration or provide other information to Committee P. At the same time, any police officer is free to file a complaint or declaration without the consent or approval of his or her superiors and sanctions. In some cases, if the complainant or the declarant expressly requests it, the Committee P may guarantee anonymity. The complaint handling procedure is detailed in writing. Committee P transfers the treatment of numerous complaints to the relevant departments of internal oversight,

which ensure a uniform and fair treatment. Committee P informs the judicial authorities of facts falling within its competence. In accordance with the law, all complaints received directly by the police authorities concerning police malpractice should be notified to Committee P for it to fulfil its supervisory function. It can be asked, through a motivated letter, for a second reading of a file in case of a dispute on the findings of an investigation. A complaint with Committee P does not suspend the pending administrative or judicial proceedings. Committee P cannot intervene on its own initiative in a pending judicial proceeding and has no authority to appeal against judgments of decisions and direct disciplinary powers in relation to police officers.<sup>23</sup>

In certain circumstances, it may therefore more appropriate to make a complaint or declaration to another department or institution. This applies in three cases. If a complaint has already been recorded by another organisation and the person involved wants to add new elements to the file, s/he should contact the institution or person s/he initially contacted.<sup>24</sup> Second, if it concerns a criminal offence (assault and battery, theft, etc.), the parties are urged to contact either the internal supervision of the police department of the place where the events occurred (or any other police force), the head of the department concerned with police powers or the public prosecutor of the prosecution. Third, if it concerns a problem of a different nature (functioning of the police organisation, problem related to ethics, etc.), the department of internal supervision of the local police involved or the federal police (Railway Police, FGP, contact DirCo, DirJud, etc.) or the head of the department concerned with police powers should be contacted.

### Budget control function

The relevant control function of the Belgian Parliament in relation to oversight of the police is related to police policy and budget control.

In relation to the police policy, only the content of the National Security Plan<sup>25</sup> is reported to the Legislative House of Representatives. Members of parliament, however, cannot approve or disapprove this strategic policy plan of the police.<sup>26</sup> It is a major shortcoming that the parliament cannot rely on a legislative framework to discuss the merits of the

National Security Plan and formulate proposals to this policy note. Members of parliament lack a clear picture of the security plan and resources necessary to meet the formulated priorities and actions.<sup>27</sup> Parliament cannot fully exercise its right of control over such an important document that sets out the priorities for the national security policy of the police for a period of four years. It is limited to a general discussion of the plan and cannot evaluate or formulate general advice.

In relation to budget control, the government and the Minister for the Budget have little decision power. The budget is subject to several external monitoring bodies, such as the (Federal) Parliament and the Court of Audit. A principle of the budget is “annuality,” which means that the budget always covers a full calendar year. The budget is voted on at the beginning of the new calendar year (late December/ early January) in the Federal Parliament through the Finance Act.<sup>28</sup>

The budget control of the integrated police is part of the general budget of the federal government. Every year in October, the Belgian House of Representatives discusses the budget control of the federal government.<sup>29</sup> A detailed clarification of the general expenditure budget is presented in the Federal Parliament and is publicly accessible on the website of the House of Representatives.<sup>30</sup> For the integrated police, the commissioner-general of the Federal Police<sup>31</sup> is in charge of drafting the budget and monitoring its implementation.<sup>32</sup> This means that members of parliament approve the budget for the integrated police. They have the right to submit amendments to the Finance Act, and, consequently, change the provisional budget of the integrated police. However, the debate on the budget of the integrated police gets lost in the discussion of the general expenditure budget of the federal state.

## Parliamentary committee/s

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The Belgian Federal Parliament is a bicameral system and consists of a House of Representatives and a Senate. Within the House of Representatives, there are two committees that handle police matters: the Standing Committee of Home Affairs and a special committee charged with police oversight. Furthermore, the House of Representatives and

the Senate are both authorized to set up committees of enquiry<sup>33</sup> addressing specific issues that can be related to policing.

### Standing committee

The Standing Committee of Home Affairs has a more general approach, because its mandate is not limited to police matters. It deals with all matters on the subject of home affairs (e.g. also matters with regard to civil protection). Within this Standing Committee, the proceedings of the plenary are prepared, allowing the plenary to work more efficiently and effectively. In practice, this implies that all proposals (when introduced by a member of parliament) and bills (when introduced by a member of the government) are introduced, discussed, possibly amended and eventually voted on by the members of the Standing Committee. The report of the discussions and the text adopted by the committee are then presented to the plenary. The Standing Committee has, inter alia, the competence similar to other standing committees to organise an overview/oversight of the ministers (Article 101 of the Constitution), as it is responsible for their respective administrations. It can do this by organising hearings and ask (written or oral) questions. Members of the committee can invite police officials to elucidate certain matters. However, this Standing Committee does not exercise direct police oversight.

In general, the functioning of standing committees is limited to their legislative work by discussing, amending, voting on bills and asking parliamentary questions.<sup>34</sup> After each renewal (after elections), the House of Representatives appoints members of the standing committees. A standing committee has 17 members. They are composed on the basis of the ratio between the political parties in the plenary of the House of Representatives. This implies that the biggest political party in the plenary will have the biggest representation within standing committees. Committee presidencies are allocated to different parties following the same principle of proportional representation. As a result, some standing committees are chaired by members of the opposition. Within the Senate, similar committees with similar competences exist. The standing committees of the senate each contain 15 members.

### Special committee

Aside from standing committees, there are also special committees. Within the House of Representatives, a special committee charged with the oversight of the police services exists. The independent oversight body, Committee P, is accountable to this special parliamentary committee. Therefore, Committee P will send its reports related to its monitoring inquiries, as well as its annual activity report containing its general conclusions and recommendations, to the members of parliament.

Staff members of Committee P indicate that their reports, conclusions and recommendations are not always receiving the necessary attention in this special committee, which generates frustrations for staff members of Committee P. The degree of attention depends on the nature of the problem, its societal relevance and the generated media attention.

### Inquiry committees

Inquiry committees inquire about issues that appear within society.<sup>35</sup> The House of Representatives exercises control over the government and the policy followed by previous governments. Such inquiries also allow for collecting a large amount of information, which can lead to improvements in existing legislation. The House of Representatives and Senate have had the right to conduct inquiries since 1830. It is regulated by a law of 3 May 1880, (amended by the law of 30 June 1996) and, as far as the House of Representatives is concerned, the Standing Orders adopted by the Assembly on 23 October 1997.

The mandate of inquiry committee is always limited in time. The time limit is set by the plenary session on the proposal of the conference of presidents. The inquiry committee has the same powers as an investigating magistrate in an ordinary inquiry. The committee may thus summon witnesses and hear them under oath, confront one witness with another, request or seize documents, order searches, and organise visits on location. To carry out acts of investigation, the committee sends a request to the first president of the Court of Appeal, who then designates the competent magistrates. They are placed under the authority of the chairman of the committee.

## Parliament-police liaison mechanism

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The permanent control of the police is the responsibility of the ministers of interior and justice for the Federal Police. The mayors and the public prosecutor are responsible for the local police. There is no direct formal mechanism between parliament and the police. However, members of parliament have the right to submit parliamentary questions on the functioning of the local and federal police to the ministers of interior and justice. These ministers rely on the advice rendered by members of staff from their cabinets, the public or the Federal Public Services Interior and Justices that fall under their competence.

In addition to the cabinets and the Federal Public Services, there is a body that creates a direct link between the ministers of justice and interior (whose policies are overseen by parliament) and the integrated police. It is called the Technical-Administrative Secretariats (SAT), composed of the "SAT Home Affairs" and "SAT Justice." These secretariats advise the ministers on technical, administrative and logistical matters regarding daily police organisation and operations. They are composed of federal and local police employees and responsible for the connection between the police and the cabinets of interior and justice. Their task is to advise the ministers of justice and interior on all matters falling within their competences regarding the police. They ensure that the files submitted in these areas to the ministers contain all necessary information to make a decision. This also includes the formulation of responses to parliamentary questions.

The SAT Home Affairs consists of five officers of the Federal Police seconded from the directorates-general of the Federal Police and at least two officers seconded from the local police. The administrative support of the Secretariat is provided by administrative staff seconded from the integrated police. The SAT Home Affairs is responsible for the connection between the General Directorate of the Administrative Police, the Crisis and Coordination Centre of the Federal Government, the Anti-Terrorist Joint Group and the Cabinet of Ministers with regard to public safety and law enforcement. This Secretariat ensures a 24-hour permanence in relation to issues of public order and national security,

and any assignment of administrative police where the Minister could assert his or her injunction.

The SAT Justice consists of two federal police officers, two local police officers and two administrative members of the integrated police. These members are appointed by the Minister of Justice for a renewable term of five years. It advises the Minister of Justice in the preparation, monitoring and evaluation of national security. For this purpose, SAT Justice receives the necessary information from the Federal Police. It can require information from the police and any other service or department under the authority of the Minister of Justice. The SAT Justice ensures follow-up to the decisions taken by the Minister of Justice in the context of his or her powers over the police and the security of the courts, the transfer of prisoners and security in prison. It ensures a 24-hour permanence.

## Relationship with other overseers

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To describe the relationship between parliament and other independent oversight institutions, as well as civil society, in the area of police oversight, attention needs to be paid to the Federal Ombudsman, the Standing Police Monitoring Committee (Committee P), the General Inspectorate of the federal and local police, the Internal Supervision Services at each local police department and the Court of Audit.

At the federal level the parliament installed the office of the Federal Ombudsman in 1995<sup>36</sup>. This is an independent and neutral institution that examines complaints (from citizens) about the way federal administrative authorities act or function. Additionally, it investigates, at the request of the House of Representatives, the functioning of the federal administrative services. It reports on a yearly basis to parliament; they may also issue quarterly interim reports, if they consider it useful. The service of the Ombudsman is restricted to complaints regarding the functioning of the federal administrations. Victims of police services are advised to redirect their complaints to Committee P, the General Inspectorate of the federal and local police and the Internal Supervision Services at each local police department.

As mentioned before Committee P was established in 1991<sup>37</sup> as an independent body that reports directly to parliament.

After the police reform in 1998, the General Inspectorate of the Federal Police and the Local Police (AIG, *Algemene Inspectie/Inspection Generale*) was established by integrating the inspection of the Gendarmerie and the Judicial Police.<sup>38</sup> This General Inspectorate is working independently of the Belgian integrated police and falls under the authority of the ministers of interior and justice. It acts on its own initiative based on a demand from one of their authoritative ministers, at the request of the judicial or administrative authorities, the commissioner-general or chief of police. In addition, any citizen may apply to the General Inspectorate via a complaint. The parliament did not receive any prerogative powers in relation to the General Inspectorate. It is important that some of the competences of the General Inspectorate coincide with those of other bodies. For example, this is the case with regard to the audit function of the General Inspectorate as well as Committee P. To avoid any overlaps, both bodies signed a protocol agreeing to mutual coordination and exchange of information.

At the local level, each police department created its own Internal Supervision Service. Within each local police zone there is an 'Internal Oversight Service' available. This service is charged with the quality and the management of complaints. It falls under the authority of the mayor and the public prosecutor, and the direct supervision of the chief of police.

Finally, the Court of Audit should be mentioned, as it is a collateral body of parliament established by Article 180 of the Constitution. It exercises external review of the budgetary, accounting and financial operations of the Federal State, with communities, regions, public service institutions depending upon them, and the provinces. The Court of Audit has a large degree of independence and autonomy in the performance of its duties. Each member of parliament has the right to consult or obtain copies of each file that the Court has opened, the minutes of the general meeting and of the House of Representatives of the Court, its correspondence and financial and budgetary data<sup>39</sup>. The Court regularly



reports to parliament on the consulted records and the questions asked by ministers of parliament.

Even though allowing citizens to submit complaints about the police to Committee P, the General Inspectorate and the Internal Supervision Service in each local police zone, the Belgian Federal Parliament only has limited control over and overview of the functioning of the police.<sup>40</sup>

## Conclusion

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As described, the Belgian parliament exercises democratic supervision of the Belgian government. Many interpellations and questions are submitted by members of the parliament in the House of Representatives and Senate regarding the functioning of both the local and federal police. However, this does not result in profound debates on the functioning and organisation of the federal and local police.<sup>41</sup> The National Security Plan, which must be notified under the law to parliament, receives limited room for debate in parliament. Furthermore the debate on the budget of the Federal Police gets lost in the discussion of the general expenditure budget of the federal state.

It is clear that Belgium suffers from a proliferation of mechanisms for police oversight.<sup>42</sup> This was also a point of attention in the development of a new Belgian Police Vision 2025, which has been presented on the 1 June 2014.<sup>43</sup> The vision includes the advice, described below, to move towards a better balance between five forms of accountability inspired by the work of the Patten Commission.<sup>44</sup>

First, the accountability of elected representatives of the community must be either locally or federally monitored, as contained in the Law on the Integrated Police. This concerns both the management of the local police by the mayor or the police college and the management of the federal police by the Minister of Interior and the Minister of Justice. An optimization of the control, the functional link between the local and the federal component benefit which immediately symbolizes the uniqueness of the Belgian integrated police, now and in the future.

Second, the police organisation is accountable for the way public funds are spent. An annual budget control of the integrated police is part

of the overall resource budget of the federal government. The budget is subject to public debate in the Belgian House of Representatives. A second control power is vested in the Court of Audit to oversee the proper use of public funds. The Court carried out an audit of the coherence and monitoring of federal standards regarding the minimum basic police functioning and the minimum capacity of the police (2004), the National Security Plan (2005), the impact of police reform on social security (2007) and on the financing and evaluation of the action plans of the traffic police (2007). A well-functioning financial watchdog is necessary, especially in times of economic crisis.

Third, the community should be informed about what the police are doing and how police policy is established. This transparency is essential to give rise to the choice made for a community-oriented police organisation. The media and civil society have a significant role to play in this regard.

Fourth, the police is permanently accountable for the way its statutory powers are enforced. Committee P, the magistracy and the Privacy Commission are critical watchdogs and have to collaborate in an efficient manner. More attention should be paid to accountability regarding the partners of police and citizens as the ultimate touchstone of a democratic police.

Fifth, it is crucial that individual police officers can be held accountable for their actions in society. This form of accountability goes beyond the traditional form of internal control, which focuses on compliance with internal rules and procedures, status and discipline. There is a need for greater internal accountability in the spirit of community policing but also in relation to policy processes. It should be considered, to that end, if the required and crucial networks are established sufficiently. In this way, the functioning of the police is being evaluated in interaction with the wider society and other security actors.

This advice implies a balance between the internal (organisation-specific) and external (executive and legislative power, and the population) accountability mechanisms that can lead to a more transparent police service. It is an advice to look at parliamentary oversight as just one

of the important accountability mechanisms to move towards a more democratic concept of policing.

## NOTES

1. Members of the research group 'Governing and Policing Security' located in the Faculty of Economics and Business Administration, Ghent University, Belgium. For more information, see: [www.gaps-ugent.be](http://www.gaps-ugent.be).
2. This study has been written in 2014.
3. Michael Brogden and Preeti Nijhar, *Community policing: national and international models and approaches* (Cullompton: Willan Publishing, 2005).
4. W. Bruggeman, E. Devroe, and M. Easton, "Editoriaal: evaluatie 10 jaar politiehervorming," (Editorial: Evaluation of 10 Years of Police Reform) *Panopticon Libri* n°4 (2010).
5. Articles 4 and 7 of the Law on the Integrated Police foresees the preparation of a National Security Plan and Articles 35, 36 and 37 provide the formulation of zonal security plans.
6. Document signed by the minister to give guidance how to interpret legislation such as laws, royal decrees, etc.
7. Inter-ministerial Directive PLP 44, 16/07/2008 (PLP 44) and Guidelines to prepare the zonal security plan 2009-2012 (Directie van de relaties met de lokale politie, CGL, 2007).
8. P. Willekens, "Methodologische handleiding voor een Lokale Veiligheidsdiagnostiek," (Methodological Guide for Local Security Assessment) VSP, *Algemene Directie Veiligheid- en preventiebeleid* (2005).
9. M. Easton and D. Van Ryckeghem, "Reflections on Community Policing and citizen participation", in *Social conflicts, citizens and policing*, vol. 6, ed. M. Cools et al. (Antwerpen-Apeldoorn: Maklu, 2012), pp. 15-30.
10. From the 25th of May 2014, as a result of the 6th Belgian State Reform, most senators are appointed by parliaments of the communities and regions. They participate in the federal decision-making and promote the interests of the states. This lead to a new interpretation of the Belgian principle of bicameralism.
11. Federal Parliament of Belgium, *Law on the Integrated Police* (Brussels: Federal Parliament of Belgium, 1998).
12. This special committee consists of 9 members (7 from majority political parties and 2 from opposition).
13. In 1991, as part of the Pentecost Plan (development of a Belgian policy on policing and security), the government submitted a proposal to regulate the monitoring of police forces, which became the law of 18 July 1991 on monitoring police forces and intelligence services. It was this law that led to the creation of the Standing Police Monitoring Committee (Committee P).
14. K. Beyens, P. Ponsaers and A. Verhage ed., *Themanummer Orde van de Dag 'Justitie en Politie: Under Control?'* (Special Issue Orde van de Dag: "Justice and Police: Under Control") (Mechelen: Kluwer, 2011).
15. For example, the Committee of Inquiry on Sects, Organised Crime and Terrorism, and Committee of Inquiry on Child Disappearances.
16. W. Bruggeman, *10 jaar na de politiehervorming* (10 Years after Police Reform) (Federale Politieraad, 2009).
17. Beyens, Ponsaers and Verhage ed., *Themanummer Orde van de Dag 'Justitie en Politie: Under Control?'* (Special Issue Orde van de Dag: "Justice and Police: Under Control?")
18. For a more detailed overview, please consult: <http://www.dekamer.be/kvvcr/showpage.cfm?section=/flwb&language=nl&cfm=ListOneKeyword.cfm?key=0002451&legislat=53&word=POLITIE>.
19. Wetsvoorstel tot wijziging van de wet van 7 december 1998 tot organisatie van een geïntegreerde politiedienst, gestructureerd op twee niveaus, wat de openbaarheid van de criminaliteitsgegevens betreft, Parl.St. Kamer, (Proposal to Amend the Act of 7 December 1998 pertinent to the Organisation of an Integrated Police Service, Structured on 2 Levels, concerning Access to Information to Crime Data, Parliamentary Documents, Chamber of Representatives) 2012, no. 53 0794/001.
20. Wetsvoorstel tot wijziging van de wet van 7 december 1998 tot organisatie van een geïntegreerde politiedienst, gestructureerd

- op twee niveaus, wat het nationaal veiligheidsplan betreft, Parl.St. Kamer, (Proposal to Amend the Act of 7 December 1998 pertinent to the Organisation of an Integrated Police Service, Structured on 2 Levels, concerning National Security Plan, Parliamentary Documents, Chamber of Representatives) 2010, no. 53 0171/001.
21. The Pentecost Plan is a government programme aimed at developing an integrated policy on policing and security.
  22. Wet van 18 juli 1991 tot regeling van het toezicht op politie- en inlichtingendiensten en op het coördinatieorgaan voor de dreigingsanalyse, (Act of 18 July 1991 regulating the supervision of police and intelligence services and the coordination body for the threat analysis) Belgian Statute Book.
  23. For more information on Committee P, see the Committee's website: [www.comitep.be](http://www.comitep.be).
  24. For example, this could be General Inspectorate of the Federal Police and the local police, chief of the local police, Minister of Interior, Minister of Justice, or mayor.
  25. The National Security Plan (NVP) consists of two parts. In the first part, the Ministers of Interior and Justice coordinate the general Police policies for the integrated police. They ensure a global and integrated approach to the (real or perceived) insecurity and thus ensure the coherence of actions by the integrated police. The second part of the NVP describes the contribution of the federal police to a safe and livable society. This concerns the tasks and priority objectives of the federal police as determined by the Ministers of Interior and Justice. Source: <http://www.polfed-fedpol.be/pub/pdf/NVP2012-2015.pdf>.
  26. Gedachtewisseling over het Nationaal Veiligheidsplan 2012-2015, Parl.St. Kamer, (Parliamentary debate of 25 July 2012 on the National Security Plan 2012-2015, Parliamentary Documents, Chamber of Representatives), 2012, nr. 53 2393/001.
  27. Ibid.
  28. J. Vande Lanotte, S. Bracke and G. Goedertier, België voor beginners: wegwijs in het Belgisch labrynt (Belgium for Starters: Guide to the Belgian Labyrinth) (6th ed.) (Brugge: Die Keure, 2003).
  29. Belgische Kamer van Volksvertegenwoordigers, Wetsontwerp houdende de Middelenbegroting voor het begrotingsjaar 2014 [Belgian House of Representatives, Bill on the general Budget for the financial year 2014], DOC 53 3070/001.
  30. Belgische Kamer van Volksvertegenwoordigers, Federale Politie en Geïntegreerde Werking [Belgian House of Representatives, Federal Police and its integrated functioning], DOC 53 3072/011.
  31. The Commissioner-general is appointed by the Minister of Interior and the Minister of Justice. The King ratifies this by a royal decree.
  32. Article 7 of the Royal Decree of 14 November 2006 concerning the organisation and powers of the Federal Police, B.S. 23 November 2006.
  33. Article 56 of the Constitution states: "Each chamber has a right to hold an enquiry."
  34. Nevertheless, most legislative work is introduced by the government by drafting new laws, which are voted in parliament.
  35. Examples include the Committee of Inquiry on Sects, Organised Crime and Terrorism and the Committee of Inquiry on Child Disappearances.
  36. Law of 22 March 1995 establishing the Federal Ombudsman (Amended by Act of February 5, 2001, March 23, 2001 BS; Act of February 11, 2004, BS March 29, 2004 and by the Law of May 23, 2007, June 20, 2007 BS)
  37. Law of 19 July 1991 regulating the supervision of police and intelligence services and the coordination body for threat assessments, BS 26 July 1991
  38. Coolman Marc, "Plaats en meerwaarde van de Algemene Inspectie van de federale politie en van de lokale politie (AIG) in het controle-universum op de politie," in Themamanier Orde van de Dag 'Justitie en Politie: Under Control?', (Position and Added Value of the General Inspection of the Federal Police and the Local Police (AIG) in the Framework for Police Accountability) ed. K. Beyens, P. Ponsaers and A. Verhage (Mechelen: Kluwer, 2011), pp. 25-31 ; A. Verhage, "Toezicht en Controle Op Politie," Update in De Criminologie

- VI : Actuele Ontwikkelingen Inzake EU-strafrecht, Veiligheid & Preventie, Politie, Strafprocedure, Prostitutie en Mensenhandel, Drugsbeleid en Penologie, ((Oversight and Control of the Police, Update on the Criminology VI : Current Developments related to EU Criminal Law, Security, Prevention, Penal Procedure, Prostitution and Human Trafficking, Drugs Policy and Penology ) ed. Gert Vermeulen and Lieven Pauwels, 6 (2012), pp. 130–142.
39. Rules of procedure, passed by parliament on 5 February 1998 and published in the Belgian Official Gazette on 4 September 1998.
  40. Beyens, Ponsaers and Verhage ed., Themanummer Orde van de Dag 'Justitie en Politie: Under Control?' (Special Issue Orde van de Dag "Justice and Police: Under Control?").
  41. Bruggeman, 10 jaar na de politiehervorming (10 Years after the Police Reform).
  42. Beyens, Ponsaers and Verhage ed., Themanummer Orde van de Dag 'Justitie en Politie: Under Control?' (Special Issue Orde van de Dag "Justice and Police: Under Control?").
  43. Dirk Allaerts, Alain Barbier, Willy Bruggeman (president), Mark Crispel, Lode De Witte, Marleen Easton, André Lemaître, Kim Loyens, Jeroen Maesschalck, Ann Massei, Thierry Maurer, Paul Ponsaers, Marcel Simonis, Marc Van Den Broeck, Dominique Van Ryckeghem and Hans Wanderstein contributed to this document which was presented to the press on 1 June 2014.
  44. Chris Patten, *A New Beginning: Policing in Northern Ireland* (Independent Commission on Policing for Northern Ireland, 1999).



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## Germany

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In the framework of the comparative study that focuses on the role of parliament within the context of wider police accountability, this chapter analyses the case of Germany.<sup>2</sup> The central research questions underlying this paper directly derive from this research framework: What are the characteristics of police accountability in Germany in comparison to other democratic countries? And what is the specific role of parliaments for police accountability in the centralised and decentralised polities of the German Federation? For policing and police oversight, the federal structure of the country is a predominant pattern, as policing is among the most prominent responsibilities of the 16 German States (*Länder*). Therefore the German police system can be characterised as semi-(de-)centralised.<sup>3</sup> Each State has its own police agency or agencies. Police officers are employed and paid by the States. The Federal State (*Bund*) has its own police forces. They include (1) the Federal Police (*Bundespolizei*) for the protection of the external borders, the railway system and the airports and (2) the Federal Criminal Police



Office (*Bundeskriminalamt*), mainly for the federal coordination of criminal investigation. Both are under the supervision of the Federal Ministry of the Interior (*Bundesinnenministerium*). Secret services are separated from the police in the German system. The Federal Customs Administrations (*Bundeszollverwaltung*), under the supervision of the Federal Ministry of Finance (*Bundesfinanzministerium*), also have a number of security-related tasks.

**Table 1: Police agencies in the German federal system<sup>4</sup>**

Police Agency	Functions	Number of Police Officers and Police Employees <sup>5</sup>
Bundespolizei (Federal Police)	Border, airport and railway police; formed units	38.000
Bundeskriminalamt (Federal Criminal Police Office)	Coordination of criminal investigation; international cooperation; prevention of dangers in cases of international terrorism;	5.000
Zoll (Federal Customs Administrations)	Tasks related to customs; criminal investigation in specific cases (illegal drugs; protected species; illegal labour et al.)	(34.000) <sup>6</sup>
Polizei Baden-Württemberg (Police Baden-Württemberg)	Prevention of dangers and criminal investigation	30.000
Bayerische Staatliche Polizei (Police Bavaria)	Prevention of dangers and criminal investigation	29.800
Der Polizeipräsident in Berlin (Police Chief Berlin)	Prevention of dangers and criminal investigation	22.000
Polizei Brandenburg (Police Brandenburg)	Prevention of dangers and criminal investigation	8.000
Polizei Bremen (Police Bremen)	Prevention of dangers and criminal investigation	2.500
Polizei Hamburg (Police Hamburg)	Prevention of dangers and criminal investigation	9.800
Hessische Polizei (Police Hesse)	Prevention of dangers and criminal investigation	18.000
Polizei Mecklenburg-Vorpommern	Prevention of dangers and criminal investigation	6.000
Polizei Niedersachsen (Lower Saxony)	Prevention of dangers and criminal investigation	24.000

Police Agency	Functions	Number of Police Officers and Police Employees <sup>5</sup>
Polizei Nordrhein-Westfalen (Police North Rhine-Westphalia)	Prevention of dangers and criminal investigation	50.000
Polizei Rheinland-Pfalz (Police Rhineland-Palatinate)	Prevention of dangers and criminal investigation	7.200
Polizei im Saarland (Police Saarland)	Prevention of dangers and criminal investigation	3.000
Polizei Sachsen (Police Saxony)	Prevention of dangers and criminal investigation	13.000
Polizei Sachsen-Anhalt (Police Saxony-Anhalt)	Prevention of dangers and criminal investigation	8.000
Polizei Schleswig-Holstein (Police Schleswig-Holstein)	Prevention of dangers and criminal investigation	6.500
Thüringer Polizei (Police Thuringia)	Prevention of dangers and criminal investigation	7.000
Total number of Police Officers and Employees (without customs)		287.800

Citizens, civil liberties advocacy groups, political decision-makers, police agencies, police unions and individual police officers have numerous different expectations about what should be the outcome of police oversight. Victims of police misconduct may expect sanctions for the police officers behaving badly or simply feel the need that a complaint should be taken seriously. Non-governmental organisations (NGOs) defending civil liberties often focus on the correct investigation into cases of police misconduct. Some NGOs also lobby for drawing policy consequences from typical complaints in order to improve police work in the sense of enhancing respect, especially with regard to human rights. Police agencies oriented towards a good relationship with the public may also be interested in drawing consequences from misconduct. Some police officers and their unions may rather be interested in preventing the sanctioning of police officers.<sup>7</sup> Members of Parliament and governmental representatives may sustain these expectations, which only partly overlap. Independent police oversight by parliaments, courts and civilian oversight bodies is therefore highly contested in Germany, as in other countries. Thus, police oversight institutions have been frequently reshaped and are a matter of trial and error.<sup>8</sup>

Most police agencies have internal affairs units investigating cases of police misconduct that come to the attention of an agency either by its own observations or outside complaints. However, in practice, such internal affairs units mostly show a number of shortcomings.<sup>9</sup> Police officers investigating cases of misconduct from their own colleagues may succumb to internal pressure. Police leaders might hesitate to communicate openly in the public about cases of misconduct, potentially affecting the agency's public reputation. Human rights groups have consequently criticised that internal investigations tend to be incomplete, slow and not sufficiently neutral.<sup>10</sup> When police officers are concerned by a complaint from outside of the police, police agencies sometimes tend to open criminal investigations against the complainant as a defence mechanism,<sup>11</sup> especially in cases where an encounter between police officers and the complainant verbally or physically escalated. In such a case, complainants have even more reasons to doubt the neutrality of internal investigations.

The paper analyses the specific role that the German parliaments play in this multi-actor system of police accountability from a trans-disciplinary legal, political and administrative science perspective.

## Police accountability framework

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Police accountability in Germany is closely linked to central characteristics of the country's political system. Germany, as it exists since 1949 (Federal Republic of Germany) and 1990 (reunification with the Democratic Republic of Germany), has a federal structure, relatively strong parliaments and a specific rule of law tradition. Public administrations, including the police, mostly have internal units dealing with cases of police corruption or misconduct.<sup>12</sup>

By contrast, Germany has a weak tradition of independent oversight institutions for public administrations as they are established in many other countries with ombudspersons or oversight commissions involving citizens.<sup>13</sup> In recent years three states have established independent ombudspersons with specific police oversight authority: Rhineland-Palatinate (2014), Schleswig-Holstein (2016) and Baden-Württemberg

(2016). In the past decades, independent data protection commissioners have been established in Germany. They also cover data collection and processing by police agencies.

NGOs that exert police control functions are independent from the police. They play an important role for independent reporting on cases of police misconduct.<sup>14</sup> Numerous German lawyers are engaged in civil liberty NGOs or networks (e.g. *Republikanscher Anwältinnen- und Anwaltsverien*; *Strafverteidigervereinigungen*; and *Vereinigung Demokratischer JuristInnen*).<sup>15</sup> They often support the non-state police oversight. Additionally, networks have been established to aid people in trouble with the police, mostly in connection with political demonstrations.<sup>16</sup> These NGOs do not have any formal authority to investigate cases of police misconduct. However, they can collect information (e.g. from victims or witnesses) and publish it. This puts the police agencies under pressure to prevent problems in the future and to change behaviour, especially if cases find an echo in the media. Other NGOs focus their activities on specific issues, such as police racism.<sup>17</sup>

According to the specific German rule of law tradition, as established in the 19th century, any state activity that restricts the citizen's fundamental rights is only allowed if parliament has given the administration, such as the police, a specific legal base for this restriction. This constitutional requirement has characterised German police law since the late 19th century.<sup>18</sup> In the 20th century, this tradition was further strengthened in two respects: The West German Constitution, the Basic Law (*Grundgesetz*) drafted under Western allied forces' supervision after World War II and in force since 1949, specifically underlines the legal value of the individuals' fundamental rights, more than any previous German constitution. Based on these two influences, the Federal Constitutional Court (*Bundesverfassungsgericht*) then further strengthened the legal value attributed to fundamental rights. The numerous cases that individuals bring before the Court open path-dependencies<sup>19</sup> in the sense that the Court establishes new doctrines, often extending the legal value of fundamental rights that become the starting point for further development in administrative practice, case law before lower courts and its own future case-law.

The strong position of fundamental rights became possible because of the individuals' right to bring cases directly before the Constitutional Court if legal remedies before the general courts are unsuccessful or a new legal provision directly endangers fundamental rights. Similarly to the European Court of Human Rights (ECHR), individual access to the German Federal Constitutional Court enables the Court to react to new developments that may endanger fundamental rights.

This has been particularly relevant for policing. The *Bundesverfassungsgericht* has further developed and often strengthened the fundamental rights relevant for policing, especially the right to life and physical integrity and the freedom of the person (both Article 2(2) of the *Grundgesetz*), the freedom of expression and of the press (Article 5(1)), the freedom of assembly (Article 8), the freedom of correspondence and telecommunication (Article 10) and the inviolability of the home (Article 13).

Due to the specific German rule of law requirements and the Constitutional Courts' fundamental rights case law, the laws governing police activity in the country tend to be detailed. Police tactics that restrict fundamental rights require an explicit legal base. In the early 1990s, this legal requirement was adopted and underlined by the ECHR in French cases concerning telephone tapping.<sup>20</sup> It is, therefore, now a European standard, but German laws in this field still tend to be more concrete and explicit than those of other European countries. This means that parliaments have to revise the laws relevant for policing on a regular basis, taking into account new developments of threats and dangers, police tactics and technology in the use for policing. For the Federal Parliament (*Deutscher Bundestag*), the Federal Council (*Bundesrat*) and the 16 State Parliaments (named *Landtag* or – in the three City States – *Bürgerschaft* (Bremen and Hamburg) or *Abgeordnetenhaus* (Berlin)), police oversight is primarily exerted by the legislative function.

Police accountability also includes internal control mechanisms with hierarchical supervision and disciplinary procedures for cases of police misconduct. These procedures may lead to sanctions up to dismissals. Most German police agencies have procedures for the handling of

citizens' complaints. However, these internal mechanisms have often been criticised as insufficient and not impartial.<sup>21</sup>

Cases of contested police tactics can be brought before administrative courts if a citizen feels that his or her fundamental rights have been inadequately restricted. Cases of police misconduct that infringe on criminal laws lead to criminal investigations against the police officers involved and proceedings before criminal courts. However, as the police, public prosecutors and criminal courts have to cooperate closely in criminal investigations, cases against police officers are often conceived as insufficiently neutral. The number of police officers convicted in criminal proceedings is low in relation to the cases of alleged police misconduct.<sup>22</sup>

Audit institutions at the Federal and State levels also play a role in police oversight, but they usually restrict their audits to the effectiveness and efficiency of policing.

In Germany, there is no specific legislation on the implementation of anti-corruption laws in the police. Police officers are under the same legal regime as officers in other public administrations. Criminal investigation into cases of police corruption is mostly the task of specific police units that are usually strictly separated from the units with the officers suspected of corruption.

The functions of independent “watch-dogs” for the police are mostly exerted by NGOs. Compared to other citizens, these NGOs do not have any specific rights in relation to the police according to German law so far.

## Police oversight functions of the German parliaments

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The following section explores the core functions that the Bundestag, Bundesrat and the 16 State Parliaments apply to police oversight.

### Legislative functions

The distribution of tasks between the Federal and State Parliaments is closely linked to the constitutional distribution of legislative powers.

Due to the specific German rule of law tradition and the Constitutional Court's case law, the legal framework for policing is dense and, compared to other countries, detailed.<sup>23</sup>

The German legal system strictly distinguishes between criminal procedure, which is only applicable when a criminal offense occurs, and the prevention of dangers (*Gefahrenabwehr*). Criminal law (*materielles Strafrecht*) and criminal procedure (*Strafprozessordnung*) are under federal legislation, as well as the law regulating the Federal Criminal Police Agency (*Bundeskriminalamt*) and the Federal Police (*Bundespolizeigesetz*). By contrast, the prevention of dangers is under State legislation. Each of the 16 German States therefore has its own *police law* regulating the organisation of the police and the prevention of dangers by the State police agency (*Landespolizei*). Federal legislation regulates the prevention of dangers by the Federal Police with limited authority, only including railway stations, railway lines and airports. The Federal Police also exerts auxiliary functions for State police agencies with its formed units ("anti-riot units").

The German style of federalism is usually labelled "cooperative" in comparison to states such as Belgium where federalism is the result of major conflicts among regions and citizens.<sup>24</sup> In practice, this means that the German federal government and the State governments have established permanent working structures that assure coordination and a minimum of uniformity, even in cases where the regulation of policing is under state legislation. The 17 ministries and police agencies coordinate their activities very closely in the administrative structures established by the conference of the federal and state ministers of the interior (*Innenministerkonferenz*). Cooperative federalism assures mutual assistance: For example, if a State police lacks enough officers for policing a major event (e.g. a political demonstration with many participants or a major sports event), other State police forces and the federal police will send officers in order to ensure adequate policing.

Legislation restricting fundamental rights can normally not be delegated to the government. Therefore, amendments to State police laws and federal laws that authorise and regulate the use of special powers (e.g. criminal procedure) have to be approved by the parliaments.

Parliament or the government can initiate the law-making process at the federal level the Federal Parliament, the Federal Council or the Federal Government (*Bundesregierung*).<sup>25</sup>

In recent years, law-making in the field of policing has been particularly relevant for the legal framing of technologies, such as the collection and use of personal data and their retention in databases, information-sharing or the collection and use of DNA data for policing. In 1983, the Constitutional Court proclaimed the right to *informational self-determination* as a fundamental right derived from human dignity (Article 1(1) *Grundgesetz*) and the right to free development of the personality (Article 2(1)). This is a specific variation of data protection or privacy underlining that individuals have the right to decide themselves what public administrations should know about them. Therefore, any kind of data collection or data processing by the police requires a legal base in a parliamentary law.<sup>26</sup>

In view of the shared competence and relevance of decentralised State authority for policing, these requirements lead to a quasi-permanent need to adapt the relevant laws. Political pressure to increase police authority tends to occur after major incidents, such as the September 11, 2001 terrorist attacks.<sup>27</sup> Since the late 1960s, the Constitution also gives emergency competences to the federal government,<sup>28</sup> but these powers have not yet become practically relevant.

The freedom of assembly (mainly relevant for political demonstrations; *Versammlungsfreiheit*, Article 8 *Grundgesetz*) has a high value according to the Constitutional Court's case law. The German political system is mainly based on representation by parliaments. This limits citizen participation to elections every four or five years. Referenda only play a minor role. In this perspective, the freedom of assembly is a compensation that ensures a pathway for citizens' political protest and participation in between elections. This has become particularly important since the 1970s, when NGOs organised protests against the use of nuclear power. At that time, some State governments massively restricted the citizens' right to political protest through police measures. In 1985, the Federal Constitutional Court declared such restrictions as unconstitutional.<sup>29</sup> Today, restrictions to the freedom of assembly have to be strictly



limited and necessary for the protection of other citizens' freedoms. Assemblies are therefore regulated under specific laws. The right to legislate was transferred from the federal state to the individual States in the 2006 constitutional reform of German federalism. Nevertheless, police conduct in connection with assemblies tends to be contested and is therefore regularly on the agenda of the relevant parliamentary committees.

For other forms of crowd management, such as in connection with football matches or concerts, not covered by the freedom of assembly, policing is currently less legally restricted. This will probably continue to be a field of parliamentary debate and possibly of more detailed legislation (e.g. on the organisation of the cooperation between the police and private security companies and the question of who has to pay for policing in connection with such kinds of events).<sup>30</sup>

### Internationalisation and Europeanization

International and European police cooperation has so far been less of a focus in German parliaments, compared to issues related to national or regional policing. As transnational policing was predominantly informal and therefore not subject to federal or State legislation until the 1980s, parliaments could only exert their legislative functions in connection with the ratification of "classical" international law instruments on issues such as mutual legal aid or extradition. This has partly changed with the trend towards extended and more official cooperation among police agencies in the European Union (EU).<sup>31</sup> Trans-border information sharing and cooperation have increasingly become issues for German parliaments, even at the State level.<sup>32</sup> However, these issues are still much less relevant and not everyday business, compared to the core questions of everyday policing.

### Police oversight functions

Parliamentary police oversight is, in the German case, concentrated on policy-making, legislation, and general oversight of the Federal and State government ministries of the interior. As policing is one of the core issues in their responsibilities, policing plays a central role in parliamentary oversight of these ministries. However, in the German political system, the extent and the impact of parliamentary

oversight are limited by the fact that federal and State governments are elected by the majority of the members of parliament. Therefore, critical oversight is mostly limited to opposition party groups, while party groups represented in the government mostly tend not to criticise “their” government in the public.

In German law, there is no legal obligation to produce programmatic documents for policing and security issues, in contrast to the Treaty of Lisbon (Article 68 TFEU). Periodically, such kinds of documents have been produced by governments with the conference of federal and State ministers of interior.<sup>33</sup> Parliaments are not directly involved in the preparation of these documents.

The organisation of the police, top appointments, as well as setting and implementing policing priorities, are among the governments’ responsibilities in the German political and administrative system. Parliaments have the right to be informed about governmental decisions and administrative practice and to discuss them, which usually takes place in the standing parliamentary committees for the interior. Parliaments can also conduct special inquiries if they believe that police practice goes wrong. Parliament has direct oversight only of the government and governmental decisions. According to Article 43 of the *Grundgesetz*, the federal parliament has the right to summon members of the federal government. As this constitutional right requires a majority vote in parliament, it is not very relevant in practice. Only parliamentary inquiry committees have the right to summon other government representatives as witnesses.<sup>34</sup> The hearing of government representatives under oath by the standing parliamentary committees is not foreseen by German law. In practice, parliamentary committees regularly ask the government to send top officials from the police to respond to Members of Parliaments’ questions, such as after a major political demonstration or if something has gone wrong in policing. Governments mostly give a positive response in such cases, but the Members of Parliaments’ right to force police officers to respond to their questions is limited to parliamentary inquiries.

In most cases, Members of Parliament have not been directly involved in police reform projects. Usually, governmental coalitions decide how

and by whom reform projects will be prepared, such as by a group of experts.<sup>35</sup>

### Budget control functions

Budget control functions are among the core functions of parliaments in the German political system. The annual budget has to be approved by parliaments. Amendments of the budget in the course of the parliamentary discussion are frequent. However, in practice, parliaments' influence is limited by the fact that governments are elected by the majority of Members of Parliament in the German democracy, making it not probable that parliaments use their budgetary power to force governments to change policies.

The general police budget has been rarely contested in German federal and State parliaments. The parliaments' budgetary decisions are rather relevant for major investments (e.g. for extending or reducing the number of police officers or for innovations in police technology). Both issues are often relevant after major incidents such as terrorist attacks or natural disasters. Electoral campaigns sometimes include promises to increase the number of police officers. The budget then has to be approved by the government's majority after the elections in order to transform such promises into reality.

German parliaments do not have the explicit task to scrutinise the effectiveness and efficiency of policing. However, if they wish, they can do so. This would be typically carried out in the framework of the parliamentary committee that covers policing and other policies under the authority of the ministry of the interior. Parliamentary committees also have a budget that enables them to hire external expertise (e.g. studies by university researchers).

As most other political systems, Germany has audit institutions that carry out audits not only on the legal conformity of the expenditure with the relevant legal rules, but also on the effectiveness of public administrations. The audit institutions are constitutionally independent.<sup>36</sup> Reports published by the audit institutions are primarily addressed to the audited administration. In major cases, or if a dissent remains, the Courts of Auditors will report to the parliaments' budgetary

control committees, which then decide on involving the committee for the specific policy in the further discussion.

## Parliamentary committees with police oversight functions

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Parliamentary committees are the core actors for the German parliaments' oversight role of public administrations. Members of Parliament specialised in a policy, often with a relevant professional background, meet in specialised parliamentary committees, overlapping the logics of party politics with specific policy-related expertise. German parliaments generally attempt to keep parliamentary committees free of party politics and "window dressing". This is the main reason for why committee meetings are generally not public – with possible exceptions, especially for hearings with invited external experts.<sup>37</sup>

The Federal and State constitutions do not define the composition and the role of parliamentary committees in detail. The Federal Constitution only includes the obligation to establish a committee on the European Union (Article 45 *Grundgesetz*), a Committee on Foreign Affairs and Defence (Article 45a), a Petitions Committee (Article 45c) and a Parliamentary Control Panel for the federal secret services (Article 45d). For the other policies, parliaments mostly establish committees corresponding to the portfolio of each government department. Generally, a minister and his or her administrative staff have to respond to one committee. In the 16 states, parliamentary committees are also mostly organised according to this principle. After a reorganisation of the government departments, parliaments will mostly adapt the structure of their committees to the new structure of governmental portfolios, which often happens after general elections. The number of seats that the party groups (*Fraktionen*) have in the committees is proportional to the composition of the plenary. The members of the committees are selected by the party groups. The party groups will have a number of committee chairs corresponding to their size in the plenary (cf. Table 2).

Policing is a core task of the committees specialised in interior policy and is sometimes combined with other responsibilities of the relevant government department (e.g. sports or immigration). German

parliamentary committees frequently organise public hearings, especially when new pieces of legislation are under discussion. As normally the party groups select the experts to be heard, the input depends on the kind of invited experts. Hearings may therefore be dominated by lobbyists, but are often used to integrating external experts, such as university professors, into the law-making process.

**Table 2: Standing parliamentary committees for police oversight (2014)**

Police Agency	Standing Parliamentary Committee exerting the oversight function	MPs as Members of the Committee
Bundespolizei (Federal Police)	Innenausschuss des Deutschen Bundestages	37
Bundeskriminalamt (Federal Criminal Police Office)	Innenausschuss des Deutschen Bundestages	37
Zoll (Federal Customs Administrations)	Finanzausschuss des Deutschen Bundestages	37
Polizei Baden-Württemberg (Police Baden-Württemberg)	Innenausschuss des Landtags	19
Bayerische Staatliche Polizei (Police Bavaria)	Ausschuss für kommunale Fragen, innere Sicherheit und Sport des Bayerischen Landtags	18
Der Polizeipräsident in Berlin (Police Chief Berlin)	Ausschuss für Inneres, Sicherheit und Ordnung des Berliner Abgeordnetenhauses	19
Polizei Brandenburg (Police Brandenburg)	Ausschuss für Inneres des Landtags Brandenburg	10
Polizei Bremen (Police Bremen)	Staatliche Deputation für Inneres und Sport	13
Polizei Hamburg (Police Hamburg)	Innenausschuss der Hamburgischen Bürgerschaft	13
Hessische Polizei (Police Hesse)	Innenausschuss des Hessischen Landtags	19
Polizei Mecklenburg-Vorpommern (Police Mecklenburg-Vorpommern)	Innenausschuss des Landtags Mecklenburg-Vorpommern	11
Polizei Niedersachsen (Police Lower Saxony)	Ausschuss für Inneres und Sport des Niedersächsischen Landtags	15
Nordrhein-Westfalen (Police North Rhine-Westphalia)	Innenausschuss des Landtags Nordrhein-Westfalen	27

Police Agency	Standing Parliamentary Committee exerting the oversight function	MPs as Members of the Committee
Polizei Rheinland-Pfalz (Police Rhineland-Palatinate)	Ausschuss für Inneres, Sport und Infrastruktur des Landtags Rheinland-Pfalz	16
Polizei im Saarland (Police Saarland)	Ausschuss für Inneres und Sport des Landtags des Saarlands	12
Polizei Sachsen (Police Saxony)	Innenausschuss des Sächsischen Landtags	19
Polizei Sachsen-Anhalt (Police Saxony-Anhalt)	Ausschuss für Inneres und Sport des Landtags Sachsen-Anhalt	13
Polizei Schleswig-Holstein (Police Schleswig-Holstein)	Innen- und Rechtsausschuss des Landtags Schleswig-Holstein	11
Thüringer Polizei (Police Thuringia)	Innenausschuss des Thüringer Landtags	13

The extent to which government departments have to answer to Members of Parliaments' questions has often been contested. This is particularly relevant for security-related issues, such as the work of police agencies or secret services that is usually characterised by a high degree of secrecy. Cases in Federal or State Constitutional Courts have mostly strengthened the parliamentarians' right to be informed.<sup>38</sup> However, for policing and security issues, conflicts remain concerning the extent of executive autonomy in relation to parliamentary control. Members of Parliament also have access to police premises in their respective jurisdiction. However, in practice, on-the-spot visits for oversight purposes are rare and very much depend on the individual Member of Parliament's engagement in this field.

Parliamentary committees of inquiry, foreseen for the Federal State in Article 44 of the Constitution, are important instruments for in-depth investigations into security-related issues by Members of Parliament. The establishment of a committee of inquiry is the right of the parliamentary opposition, requiring the support of a quarter of Members of Parliaments. In 2001, procedural issues of inquiry committees at the federal level were regulated by federal law.<sup>39</sup> The committees have the power to summon witnesses and have access to

all administrative documents. For secret documents, access is mostly restricted to Members of Parliament personally. They do not have the right to take away copies in this case.

The inquiry committees can also hear experts. Typically, inquiry committees are established after major scandals that have been broadly discussed in the public, but where the attribution of political and administrative responsibility remains at least partly unclear or contested. Inquiry committees have to publish a report on the results of their work. Dissenting votes are permitted and frequently used. These reports are usually interesting material for further policy-making and for scholarly research. Federal or State parliamentary committees of inquiry have regularly covered issues related to policing. In recent years, the Federal Parliament and several State Parliaments established inquiries into a major scandal caused by a series of murders and bank robberies committed by a group of far right terrorists. The police and secret services were unable to detect and stop these terrorists who lived in an East German city. Nine of the ten victims killed by the group were immigrants. Even if it was soon clear that it was a series of murders, police and secret services ignored the extremist background and even suspected the victims to have been involved in organised crime. The Federal Parliament and State parliaments published major reports on the case, requiring reforms in the police and secret services.<sup>40</sup> In the 1990s, a parliamentary inquiry committee of the State parliament in the city-state of Hamburg investigated cases in which the Hamburg State Police had mistreated immigrants and political protesters. The recommendations issued by the State Parliament in 1996, including improved police accountability mechanisms, have still not been fully implemented today.<sup>41</sup>

The budget committees (*Haushaltsausschuss*) and the budgetary control committees (*Rechnungsprüfungsausschuss*) may also play a role in the parliamentary oversight of police agencies. In practice, this is mainly relevant for major investments for policing, such as new computer systems.

The standing parliamentary committees, the inquiry committees and the single Members of Parliaments have staff in order to prepare their

tasks. However, it has always been contested if the number of staff is sufficient in order ensure an effective parliamentary control.

Citizens may send a complaint related to policing to the Petitions Committees that exist in the Federal and in all State parliaments. If citizens convince the members of the Petitions Committee that their request is justified, this kind of parliamentary intervention can be a relevant case by case contribution to police oversight.

In view of the size of the police and the numerous other tasks that Members of Parliaments have, police oversight by parliamentary committees is necessarily selective and punctual. Opposition party Members of Parliament tend to select issues interesting for the media that they can use to demonstrate shortcomings of governmental politics. Government party Members of Parliament tend to use more informal ways of influence if they wish to be informed about issues related to policing or criticize governmental activities in this field.

## Parliament-police liaison mechanisms

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German parliaments do not have institutionalised liaison mechanisms for the police. Information exchange is mainly organised via the ministries of the interior. This does not exclude informal contacts (e.g. between Members of Parliaments and police officers or police union representatives).

Typical forms of parliament-police interactions are therefore:

- senior police officers accompanying politicians appearing before parliamentary committees for police-related issues;
- police officers preparing answers for police-related issues that the interior ministry gives to Members of Parliament;
- representatives from the ministry of the interior presenting answers to questions raised by members of parliament at parliamentary committee meetings;
- in certain cases, information on statistics on policing is given to parliament on a regular basis, e.g. on police surveillance in private homes (Article 13 (6) *Grundgesetz*);



- police officers, mostly police leaders or representatives of police unions, invited as experts to hearings before parliamentary committees;
- police officers summoned to witness before parliamentary committees of inquiry; and
- informal contacts between Members of Parliament and police officers.

## Relationship with other overseers

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As there is only a weak tradition of independent civilian police oversight in Germany so far, there is no formalised relationship between independent civilian police oversight and parliaments. In the past, only NGOs completely independent from the police and public administrations were engaged in external police oversight. NGO representatives (e.g. from Amnesty International) communicate with Members of Parliament on a regular basis.

Independent civilian police oversight may be strengthened in the future if several States governed by coalitions in which the Green Party participates implement their plans to establish independent police complaint mechanisms. In 2014, the additional function of a commissioner for the State Police was attributed to the *Bürgerbeauftragter* (Ombudsman) of *Rhineland-Palatinate* (Rheinland-Pfalz). The Ombudsman is elected by and reports to the State Parliament (*Landtag*).<sup>42</sup> Similar institutions have recently been established in Schleswig-Holstein and Baden-Württemberg.

The Federal and State Data Protection Commissioners exert oversight functions for police data processing.<sup>43</sup> In this function, they are independent. Data protection is closely linked to parliaments in Germany, as the commissioners are elected by the federal or state parliament. They also regularly report to the parliamentarians. In 2015, the Federal Data Protection Commissioner's office was detached from the federal ministry of interior and became independent, reporting directly to the Federal Parliament.

In the German rule of law system, courts are important overseers of police activities. They have judicial independence (Article 97(1) of the

*Grundgesetz*) also in relation to parliament. Certain police measures and investigation tactics, such as telephone tapping, other forms of surveillance, arrests and police custody, require an authorisation by a court. Citizens may also bring cases before administrative or criminal courts in order to have them determine the legality of police measures in view of police law, respectively criminal procedure. There is no direct link between courts dealing with individual cases and parliaments. Parliamentary committees of inquiry may use court cases for their purposes. Judges may also be heard as experts in parliamentary hearings. Some laws allowing specific police measures (e.g. acoustical surveillance in private homes) require a statistical reporting to parliament on a regular basis.

Audit institutions are independent, but reporting to parliaments. German Federal and State parliaments regularly use reports by the external audit institutions. Committees may also hear representatives from the audit institutions as experts.

In conclusion, German parliaments are key players, bundling and evaluating the different elements of police oversight.

## Conclusions and recommendations

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In a comparative perspective, German parliaments have the power to make a strong contribution to the oversight of the police and other public administrations. Over time, Federal and State Constitutional Courts strengthened the right of parliaments to be informed by governments and have access to information. In this respect, the German legal and institutional framework may serve as an example for other countries.

However, German parliaments do not have the capacity to exert oversight of the everyday work of police agencies. This would require important administrative capacities specifically devoted to this issue, which German parliaments do not have in view of the broad range of their other tasks. Police oversight by courts and data protection commissioners is mostly limited to single cases brought to the attention of these institutions.

Even in countries, such as Germany, with a long tradition of a democratic polity, policing often leads to conflicts between police agencies or police officers, on the one hand, and individuals or groups of citizens, on the other. Policing political protests and socially disadvantaged urban areas are classic situations that have repeatedly escalated in the past. Therefore, police organisations in democratic countries are under pressure to solve problems in a more decent and de-escalating way and prevent conflicts. Most German police agencies have developed the ambition to become a “normal” modern, service-oriented public administration and to get away from the old image of maintaining public order with the help of (sometimes disproportionate) violence. Accountability of policing, including lawful police behaviour and high professional standards, has become an important issue over the past decades.<sup>44</sup>

Oversight by the ministries of the interior and internal police hierarchies is not always impartial in cases of wrongdoing.<sup>45</sup> Therefore the establishment of independent civilian police oversight bodies, as they exist in many other countries, would clearly contribute to improved police oversight. The political and scholarly debate on the establishment of such institutions has already been led for several decades.<sup>46</sup> An independent complaint and oversight institution, as it was recently established in the states of Rhineland-Palatinate, Schleswig-Holstein and Baden-Württemberg, may also strengthen parliaments, as reports and policy recommendations published by independent oversight institutions can be the base for parliamentary initiatives directed towards higher standards of professionalism and protection of human rights in policing.<sup>47</sup> Effective oversight institutions will be independent from the police agency for monitoring, but have the authority to request the information needed for an investigation. Effectiveness also requires intensive communication with police agencies. Independent police oversight will be effective only if oversight institutions are able to convince police officers, police leaders political decision-makers that it is necessary to learn from cases that went wrong. The trend that many police agencies wish to become a “normal” public administration may also lead to a convergence of external and internal accountability.<sup>48</sup>

Oversight institutions that are designed by and reporting to parliaments seem to be best placed to be independent and have sufficient influence upon administrative practice and political decision-making. Their attachment to parliaments also ensures democratic legitimacy.

## NOTES

1. Hartmut Aden is Professor of European and German Public Law, Public Policy and Public Administration at the Berlin School of Economics and Law, Department of Police and Security Management, and Deputy Director of the Berlin Institut for Security and Safety Research (FÖPS Berlin).
2. This study has been written and finalized in early 2015
3. Cf. Hartmut Aden, *Polizeipolitik in Europa. Eine interdisziplinäre Studie über die Polizeiarbeit in Europa am Beispiel Deutschlands, Frankreichs und der Niederlande* (Opladen/Wiesbaden: Westdeutscher Verlag, 1998); Hartmut Aden, "Fédéralisme et sécurité publique: Spécificité des politiques de sécurité en Allemagne," in Sebastian Roché (Hg.), *Réformer la police et la sécurité: Les nouvelles tendances en Europe et aux États-Unis* (Paris: Odile Jakob, 2004), pp. 169-187; and Hartmut Aden and Evelien De Pauw, "Policing Berlin: from separation by the "iron curtain" to the new German capital and a globalised city," *European Journal of Policing Studies*, vol. 2, no. 1, 2014, pp. 355-371.
4. The data is mostly from the period of 2013-14 (approximation).
5. Customs officers are usually not part of the category "police officers."
6. Cf. Hans-Jürgen Lange, *Innere Sicherheit im Politischen System der Bundesrepublik Deutschland* (Opladen: Leske+Budrich, 1999), pp. 75-118 on the development since the 1950s.
7. Cf. Hartmut Aden, "Polizeikennzeichnung – Konfliktlinien und Akteurskoalitionen in einer jahrzehntelangen Debatte," in Werner Jochen-Thomas and Thomas Ohlemacher (Hg.), *Empirische Polizeiforschung XIII: Polizei und Gewalt* (Frankfurt am Main: Verlag für Polizeiwissenschaft, 2012), pp. 143-157; and Hartmut Aden, "Wer soll das bezahlen? - Grundrechte begrenzen die Heranziehung von Verursachern für den Ausgleich von Polizeikosten," in Fredrik Roggan and Dörte Busch (eds.), *Das Recht in guter Verfassung? Festschrift für Martin Kutscha* (Baden-Baden: Nomos Verlag, 2013), pp. 245-256.
8. Cf. for the United States: Samuel Walker, *Police Accountability. The Role of Citizen Oversight* (Belmont, CA: Wadsworth/Thomson Learning, 2001), pp. 43-44; and for Hamburg: Werner Lehne, "Aus Fehlern lernen oder Fehlverhalten kontrollieren und sanktionieren? – Die Erfahrungen der Hamburger Polizeikommission," in Karlhans Liebl, *Fehler und Lernkultur in der Polizei, Schriften zur Empirischen Polizeiforschung Band 1* (Frankfurt (M.): Verlag für Polizeiwissenschaften, 2004).
9. Cf. for Germany: Amnesty International, *Täter unbekannt. Mangelnde Aufklärung von mutmaßlichen Misshandlungen durch die Polizei in Deutschland* (Bonn/ Berlin, 2010); for the United States: Samuel Walker, *The New World of Police Accountability* (London, Thousand Oaks and New Delhi: Sage, 2005), pp. 72-73; and for a number of other countries: Andrew J. Goldsmith, and Colleen Lewis (eds.), 2000: *Civilian Oversight over Policing. Governance, Democracy and Human Rights* (Oxford and Portland, Oregon: Hart Publishing, 2000).
10. Cf. for Germany Amnesty International (2010), pp. 78-105 with a number of cases documented.
11. Cf. on recent developments of the relevant criminal law in Germany: Tobias Singelstein, Tobias and Jens Puschke, „Polizei, Gewalt und das Strafrecht – Zu den Änderungen beim Widerstand gegen Vollstreckungsbeamte," in *Neue Juristische Wochenschrift (NJW)*, 2011, pp. 3473-3477.
12. Cf. for example on the Berlin Police: Klaus Hoffmann-Holland, Detlev Liepmann, Ines Müller, Tobias Lubitz, Kristina Kühl, and Inger-Maria Mahlke, *Beschwerdemanagement der Polizei. Eine empirische und rechtliche Analyse am Beispiel der Berliner Polizei* (Frankfurt/Main: Verlag für Polizeiwissenschaft, 2008).
13. Cf. Monica Den Boer and Roel Fernhout, *Policing the Police – Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies* (2008), available online at: [http://www.asef.org/images/docs/1270-Police\\_Oversight\\_Mechanisms\\_in\\_Europe.pdf](http://www.asef.org/images/docs/1270-Police_Oversight_Mechanisms_in_Europe.pdf) (accessed 30.1.2015); Walker (2001 and 2005); Samuel Walker, "The History

- of the Citizen Oversight (Chapter 1),” and “Alternative Models of Citizen Oversight,” in Justina Cintrón Perino (ed.), *Citizen Oversight of Law Enforcement* (Chicago: American Bar Association, Section of State and Local Government Law, 2006), pp. 1-20; Aden (2013); and Hartmut Aden, “Polizeibeschwerdestellen – von den USA lernen?,” in Rafael Behr and Bernhard Frevel (Hg.) *Die kritisierte Polizei, Empirische Polizeiforschung XVII* (Frankfurt/Main: Verlag für Polizeiwissenschaft (2015).
14. E.g. Amnesty International (2010).
  15. Cf. Hartmut Aden, “Einflussnahme oder Entpolitisierung? Menschen- und Bürgerrechtsorganisationen als Akteure der Sicherheitskultur,” in Hans-Jürgen Lange, Michaela Wendekamm and Christian Endreß (eds.) *Dimensionen der Sicherheitskultur* (Wiesbaden: Springer VS, 2014), pp. 238-239.
  16. Ermittlungsausschüsse, cf. for example “Homepage”, EA Berlin, accessed 17 December 2016, <http://ea-berlin.net/>.
  17. E.g. Kampagne für Opfer rassistischer Polizeigewalt: “Homepage”, KOP, accessed 17 December 2016, <https://www.kop-berlin.de/>.
  18. Cf. Hans Boldt and Michael Stolleis, “Geschichte der Polizei in Deutschland,” in Hans Lisken (co-founder), Erhard Denninger and Frederik Rachor (eds.), *Handbuch des Polizeirechts*, 5th edition (Munich: C.H. Beck Verlag, 2012), pp. 20-22.
  19. Cf. on the transfer of the neo-institutionalist theory of path-dependencies to court case law: Susanne K. Schmidt, „Gefangen im „lock in“? Zur Pfadabhängigkeit der Rechtsprechung des Europäischen Gerichtshofs;“ *der moderne staats*, vol. 3, no. 2, 2010, pp. 455-473.
  20. European Court of Human Rights, cases 11801/85 and 11105/84, *Kruslin and Huvig v. France*, judgments of 24.4.1990, cf. Aden (1998), p. 381.
  21. Cf. Amnesty International (2010); Tobias Singelnstein, „Institutionalisierte Handlungsnormen bei den Staatsanwaltschaften im Umgang mit Ermittlungsverfahren wegen Körperverletzung im Amt gegen Polizeibeamte“, *Monatsschrift für Kriminologie und Strafrechtsreform* (MschrKrim), 2003, pp. 1-26; and Tobias Singelnstein, „Misshandlungen in polizeilichem Gewahrsam. Empirische Erkenntnisse zu Umfang und Struktur sowie zur Wirksamkeit von Kontrollmechanismen“, in Deutsches Institut für Menschenrechte (Hg.), *Prävention von Folter und Misshandlung in Deutschland* (Baden-Baden: Nomos-Verlag, 2007), pp. 213-236.
  22. Cf. Manfred Brusten, “Strafverfahren gegen Polizeibeamte in der BRD. Empirische Anmerkungen zur Theorie der “schwarzen Schafe”, in ders. (Hg.), *Polizei-Politik, Kriminologisches Journal (Krim)*, Beiheft 4, 1992, pp. 84-115; Singelnstein (2003 and 2007); and Amnesty International (2010).
  23. Cf. Aden (1998).
  24. Cf. Fritz Scharpf, Bernd Reissert, and Fritz Schnabel, *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik* (Kronberg: Scriptor Verlag, 1976).
  25. Cf. for more empirical data: Wolfgang Ismayr, “Gesetzgebung im politischen System Deutschland,” in *Gesetzgebung in Westeuropa*. EU-Staaten und Europäische Union (Wiesbaden: Springer VS, 2008), pp. 383-429.
  26. On the consequences for German police law, see: Thomas Petri, „Informationsverarbeitung im Polizei- und Strafvahrensrecht“, in Hans Lisken (co-founder), Erhard Denninger, and Frederik Rachor (eds.), *Handbuch des Polizeirechts*, 5th Edition (Munich: C.H. Beck Verlag, 2012), pp. 717-913 (Section G).
  27. Cf. Hartmut Aden, “Der Zufall und andere „Themenmacher“ - Problemdefinition und Agendagestaltung in der Kriminalpolitik,” *Monatsschrift für Kriminologie und Strafrechtsreform*, vol. 86, no. 2, 2003, pp. 105-116.
  28. For a critique, see: Jürgen Seifert, *Grundgesetz und Restauration* (Darmstadt/Neuwied: Luchterhand, 1974), pp. 35-39.
  29. Bundesverfassungsgericht, Judgment of 14 May 1985, BVerfGE 69, 315.
  30. On the constitutional and legal framework, see: Aden (2013), “Wer soll das bezahlen? - Grundrechte begrenzen die Heranziehung von Verursachern für den Ausgleich von Polizeikosten.”

31. Cf. Adden (1998); and Cyrille Fijnaut, "Revolution or evolution through the Treaty of Lisbon: police cooperation in Europe in a broader historical context," in Hartmut Aden (ed.), *Police Cooperation in the European Union after the Treaty of Lisbon – Opportunities and Limitations* (Baden-Baden: Nomos, 2015), pp. 25-48.
32. For example, when it comes to regulate the authority of foreign police officers present in Germany in the framework of staff exchange or project based cooperation (e.g. in connection with international sports events).
33. For a critical assessment, see: Heiner Busch, Albrecht Funk, Udo Kauß, Wolf-Dieter Narr, and Falco Werkentin, *Die Polizei in der Bundesrepublik* (Frankfurt/Main: Campus, 1985), pp. 227-235.
34. Untersuchungsausschussgesetz of 19. June 2001 (BGBl. I S. 1142), amended on 5. Mai 2004 (BGBl. I S. 718).
35. E.g. Kommission zur Untersuchung des Reformbedarf in der niedersächsischen Polizei, 1993.
36. Cf. Article 114(2) Grundgesetz for the Federal Court of Auditors – Bundesrechnungshof.
37. Cf. on the committees: the German Federal Parliament's Standing Orders (§§ 54-74 on the committees); and for empirical data on the German Federal Parliament: Klaus von Beyme, *Der Gesetzgeber. Der Bundestag als Entscheidungszentrum* (Wiesbaden: Westdeutscher Verlag, 1997), pp. 188-206.
38. E.g. Bundesverfassungsgericht, Judgment of 1 July 2009, BVerfGE 124, 161 (government's duty to answer to Members of Parliaments' questions related to secret service issues).
39. The law is named in German *Gesetz zur Regelung des Rechts der Untersuchungsausschüsse des Deutschen Bundestages, Untersuchungsausschussgesetz*
40. Deutscher Bundestag, Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes, Bundestags-Drucksache 17/14600, 2013; Thüringer Landtag, Bericht des Untersuchungsausschusses 5/1 "Rechtsterrorismus und Behördenhandeln, Landtags-Drucksache 5/8080, 2014.
41. Bürgerschaft der Freien und Hansestadt Hamburg, Bericht des Parlamentarischen Untersuchungsausschusses „Hamburger Polizei“, Bürgerschafts-Drucksache 15/6200, 13.11.1996; Lehne (2004).
42. Cf. Aden (2014).
43. Cf. on the role of Commissions in the German political and administrative system: Markus Franke, *Ein Ombudsmann für Deutschland?* (Frankfurt (M.): Verlag Peter Lang, 1999); and Julia Kruse, *Der öffentlich-rechtliche Beauftragte - Ein Beitrag zur Systematisierung der deutschen Variante des Ombudsmannes* (Berlin: Duncker & Humblot, 2007).
44. Cf. for an overview: Den Boer and Fernhout (2008); Walker (2001, 2005 and 2006); Goldsmith and Lewis (eds.) (2000); Norbert Pütter, „Kontrolle der Polizei - Demokratische Selbstverständlichkeit oder starker Staat: Eine Einleitung,“ in *Bürgerrechte und Polizei/CILIP*, vol. 99, 2011, pp. 3-14; and Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police* (Straßburg: Council of Europe, 2009).
45. Cf. the examples from German police agencies reported by Amnesty International 2010.
46. Cf. Manfred Brusten, "Neue Wege zur demokratischen Kontrolle der Polizei," in Günther Kaiser, Helmut Kury, and Hans-Jürgen Albrecht (eds.), *Kriminologische Forschung in den 80er Jahren – Projektberichte aus der Bundesrepublik Deutschland* (Freiburg: 1988), pp. 157-182; Brusten (1992); Manfred Mahr, "Kontrolle der Polizei muss sein!," in Manfred Brusten (Hg.), *Polizei-Politik, Kriminologisches Journal (KrimJ)*, Beiheft 4, 1992, pp. 116-129; Hermann Borgs-Maciejewski, "Vertrauensbildung durch Kontrolle der Polizei und der Geheimdienste," in *Zeitschrift für Rechtspolitik (ZRP)*, 2006, pp. 41-44; Norbert Pütter, Norbert, „Polizeiübergrieffe – Polizeigewalt als Ausnahme und Regel,“ in: *Bürgerrechte und Polizei/CILIP*, no. 67, 2000, pp. 6-19; Norbert Pütter, „Kontrolle der Polizei - Demokratische Selbstverständlichkeit oder starker Staat: Eine Einleitung,“

- in *Bürgerrechte und Polizei/CILIP*, no. 99, 2011, pp. 3-14; Hartmut Aden, "Die Kennzeichnung von Polizeibediensteten," in *Die Polizei*, 2010, pp. 347-352; Hartmut Aden, "Polizeibeauftragte und Beschwerdestellen in Deutschland. Erfolgsbedingungen und neue Trends in den Ländern," in *Vorgänge 2013*, vol. 52, no. 4, 2013, pp. 10-20. Amnesty International (2010).
47. Cf. Rafael Behr, *Cop Culture - Der Alltag des Gewaltmonopols: Männlichkeit, Handlungsmuster und Kultur in der Polizei*, 2nd Edition (Wiesbaden: VS Verlag für Sozialwissenschaften, 2008); Martin Herrnkind, "Übergriffe und „Whistleblowers“ – Betriebsunfälle in der Cop Culture?," in Karlhans Liebl (Hg.), *Fehler und Lernkultur in der Polizei, Schriften zur Empirischen Polizeiforschung*, 1st Edition (Frankfurt (M.): Verlag für Polizeiwissenschaften, 2004); Aden (2013), ""Polizeibeauftragte und Beschwerdestellen in Deutschland. Erfolgsbedingungen und neue Trends in den Ländern"; Aden (2015).
48. Cf. Udo Behrendes, "Wechselwirkungen zwischen externer Kontrolle und interner Fehlerkultur der Polizei. Die Bürger(rechts)polizei als Exponentin des staatlichen Gewaltmonopols," in *Vorgänge*, vol. 52, no. 4, 2013, pp. 41-50; Walker (2005), p. 16, for the United States.





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## The Netherlands

PETER DILLINGH<sup>1</sup>

The police service has far reaching powers. In a democratic system under the rule of law, the state has the monopoly to use violence, which is exercised by the military and the police services under full political responsibility. A system of checks and balances has to be created to control the use of coercion and violence. The people's representatives exercise the tasks of controlling government policy and criticizing government legislation proposals. Parliament plays an important role in the system, because trust in the state, its institutions and its actions is at stake.

The Dutch police is in a phase of transitioning from 25 regional police services to one National Police Service. Therefore, a lot of rules and procedures have been scrutinized in the last few years in a legislative process. Some procedures are still being developed.

In this case study, the Dutch parliamentary system is explained on the basis of policy issues related to security and justice, with a focus on policing. It contains a description of formal procedures and formal and

informal ways in which Parliament as a whole, as well as individual Members of Parliament, are being informed about police matters. It deals with questions about parliamentary practices and procedures: What is important? What is advisable? What and what not works?

## Police accountability framework

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The Dutch police is organised as a National Police Service, consisting of ten regional units. There are a number of national units, such as a national criminal investigation unit, and the Police Service Centre (*Politiedienstencentrum*). The Police Service Centre is responsible for national operational management: human resources management, facility management, finance, information management, information and communication technology (ICT) and communication. The head of the National Police Service is the national police commissioner (*Korpschef*), who is responsible for all ten regional police units. Each regional unit is headed by its own chief.

### Police Act 2012

The legal framework for the National Police Service is enshrined in the Police Act of 2012.<sup>2</sup> The Minister of Security and Justice has full ministerial responsibility for the National Police Service. The Minister determines the budget and sets the framework within which the National Police Service has to work. The Minister determines national priorities for the police, in agreement with the National Police Service and the Public Prosecution Service.

Before 2013, the Dutch police was organised in 25 regional police services and the Dutch Police Services Agency (*Korps Landelijke Politiediensten*), each with their own police commissioner. It is one of the purposes of the National Police Service for regional units to work together more promptly and effectively, subordinated to a single national police commissioner. Furthermore, ICT, accommodation, purchasing and human resources management are centralised. As a result, operational management overhead will be smaller.

The reorganisation has no effect on the duties and powers of the police. Authority over the police is still with the mayor (who is responsible

for maintaining public order) and the chief public prosecutor (who is responsible for criminal investigation). They make local agreements about police deployment. Each municipality is responsible for a public safety and security plan, which serves as a basis for the mayor's management of the police.

### Judiciary

Police work as a part of criminal investigation is always subjected to the verdict of the judge. Judges are independent: they are appointed for life and cannot be dismissed by the Minister of Security and Justice. The judiciary, which consists of judges and public prosecutors, is not a department of the Ministry of Security and Justice. However its organisations are directly linked to the Ministry.

### Internal investigations

Every case of the use of firearms by police officers, causing serious injury or death, is to be investigated by the National Police Internal Investigations Department (*Rijksrecherche*). Impartial investigation is not only important to the victims and their relatives, but also to the police officers involved. Therefore, the National Police Internal Investigations Department is the only division of the Dutch police that is governed by the exclusive responsibility and authority of the Board of Procurators General (*College van procureurs-generaal*) of the Public Prosecutions Department (*Openbaar Ministerie*).<sup>3</sup> No other European country has a similar independent investigations organisation.

### Inspectorate of Security and Justice

On behalf of the Ministry of Security and Justice, the Inspectorate of Security and Justice (*Inspectie Veiligheid en Justitie*) monitors organisations, inter alia the National Police Service. Monitoring means collecting information about the quality of organisations with an executive task, analysing this information and formulating a judgement based on this analysis. The Inspectorate does not have the authority to intervene in organisations. However, it can make recommendations or give advice about adjustment of policy or rules to the Minister, or make practice-oriented recommendations to the executive organisations.

The Inspectorate does not evaluate laws or government policy. However, research of the Inspectorate can be used for policy evaluation. The Inspectorate of Security and Justice works on the basis of core values: transparency, independence, professionalism, efficiency, selection and cooperation. Its reports are publicly accessible.<sup>4</sup> As a rule, the Minister of Security and Justice presents Inspectorate reports to Parliament. Parliament discusses Inspectorate reports with the Minister, in conjunction with the government position paper.

### Supervisory Committee

Recently, the Cabinet established the Supervisory Committee on National Police Service Management (*Commissie van toezicht beheer nationale politie*).<sup>5</sup> The committee members are independent experts. The committee will periodically report to the Minister of Security and Justice, providing solicited and unsolicited advice.

The committee assesses the implementation of the management of the National Police Service. The supervision of the committee is complementary to the supervision of the Inspectorate of Security and Justice. Management includes, for example, the organisation structure, working procedures, the care of the staff, police resources and financial management. The committee assesses if objectives are implemented within the agreed framework and if they are implemented effectively and efficiently.

### Court of Audit<sup>6</sup>

The Court of Audit (*Algemene Rekenkamer*) audits if central government revenue and expenditure are received and spent correctly and if central government policy is implemented as intended. As a High Council of State,<sup>7</sup> the Court of Audit is a central government body created to ensure that the democratic system functions properly.

The Court of Audit expresses an opinion on government policy that has already been adopted; it does not express political opinions. It can come to the conclusion that a law is not working as intended. The government and/or the House of Representatives decide on giving a political opinion.

It is important that the Court of Audit provides Parliament with useful and relevant information for deciding if the government's policies are effective. For example, in 2012, the Court of Audit concluded in its report *Performance of the Criminal Justice System*<sup>8</sup> that an unknown and undesirable number of cases were leaving the criminal justice system<sup>9</sup>. In a comment on the 2014 budget, the Court of Audit notes that the Minister has taken many measures for improvement and has set ambitions and goals. The National Police Service is playing an important part in improving the performance of the criminal justice system, but the Ministry's budget does not disclose the resources it is using to do so.<sup>10</sup>

### Police complaint bodies

Every citizen is entitled to file an official complaint about the actual behaviour of a police officer that s/he is dissatisfied about. The police is obliged to properly handle complaints. This is an internal complaints procedure.

A police complaints officer is assigned to the complainant as an independent contact within the police organization. This person cannot be the officer in question or his or her superior. The first step is always for the complaints officer or someone else to try to mediate between the complainant and the officer in question and/or his or her superior. If the complainant is satisfied with the outcome of the mediation or the consultations, the complaints procedure is concluded. Otherwise, a formal complaint procedure is instated.

There is a police complaints committee for the national unit and for every regional unit of the National Police Service.<sup>11</sup> The members of the committee are appointed by the national police commissioner after an open application process, on the basis of legal expertise, skills in the field of dispute resolution or mediation and knowledge of police work. The complaints committee looks into the complaint and advises the competent authority (i.e. a police chief, the Police Commissioner, the Board of Procurators General or the Minister of Security and Justice) on how to deal with a complaint.

The competent authority is obliged to supply the committee with all the information that the committee deems as necessary. The national police commissioner is responsible for an annual publication of the registered complaints and decisions, indicating the extent to which certain symptoms point to structural weaknesses in the functioning of the police service. If appropriate, attention is paid to the means to eliminate these shortcomings.

In addition to the committee, the mayor and/or the chief public prosecutor may advise on how to proceed. The competent authority will base its decision on these recommendations. The decision will also state whether or not, and if so why, the decision differs from the recommendations.

Sometimes a complaint may lead to a criminal investigation or an internal investigation within the police organization.

If the complainant disagrees with the decision of the complaints committee, s/he may address his or her complaint to the National Ombudsman, who is also competent for the National Police Service. The National Ombudsman provides an external complaints procedure.

The issue of the independence of police complaint committees is still being discussed. At request of the House of Representatives, the Minister of Security and Justice will appoint the chair.<sup>12</sup> The ten regional mayors (*Regioburgemeesters*)<sup>13</sup> argued that police complaint committees should be more independent.<sup>14</sup> In the past the regional mayor had an official role in the process of handling complaints as the force manager of the regional police service. Following the argument of the regional mayors, the Minister decided to appoint the chair as well as the members of the Police Complaints Committees, on the basis of a joint recommendation by the regional mayor and the chief public prosecutor.<sup>15</sup>

### National Ombudsman

The National Ombudsman was instituted in 1982 as a High Council of State.<sup>16</sup> The National Ombudsman is appointed by the House of Representatives. The National Ombudsman is an independent, impartial intermediary between the citizen and the public administration and has

to defend the citizen's interests and keep a critical eye on government operations.

In 2013, the National Ombudsman received 2792 complaints about the behaviour of police officers. The National Ombudsman not only deals with individual complaints. His or her annual report is accompanied by a series of advisory letters to government agencies. For example, in the annual report of 2013<sup>17</sup>, the National Ombudsman expresses his concern about the tendency of the government to push the limits of its powers. For example, he notes that there was improper use of stop and search powers in large-scale police checks. According to the National Ombudsman, a government that pushes the limits of the law should not be surprised that people do the same.

The National Ombudsman can conduct investigations on the basis of a complaint or on his or her own initiative. In 2014, the National Ombudsman published a report on the actions of police officers in a multicultural quarter of The Hague.<sup>18</sup> The report focuses on different topics, namely treatment of citizens, ID-checks, use of force, ethnic discrimination, and recording of complaints filed against police officers. The National Ombudsman found no evidence of structural defects in the actions of the police officers. However, he concluded that both police and citizens should make efforts to prevent escalation.

## Functions of Parliament

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### Legislative function

The creation of a legal framework for the reorganisation of the Dutch police into a National Police Service was a major legislative project. The proposal of a National Police Service was sent to the House of Representatives in July 2011, after a long period of public debate about the organisational structure of the police service. The lack of adequate cooperation between the 25 regional police services, especially in the field of ICT, was predominant in the appreciation of the organisation of the police service.

The local anchoring of the police service was an important issue in the parliamentary debate about the National Police Service. The government



expects scale benefits from centralisation. However, it is clear that centralisation carries the risk that the central level where decisions are made is too removed from local security issues. Some political groups were afraid that centralisation of the police service would inevitably lead to an undesirable distance between the police service and the public. Therefore, the House has adopted an amendment stating that there shall be at least one police officer (*Wijkagent*) per 5.000 citizens.<sup>19</sup>

### *Statistics*

Every year since 2008, the Central Bureau of Statistics (CBS) carries out a survey of the population on the subjects of safety, quality of life and victimization. This survey, the Security Monitor (*Veiligheidsmonitor*), is commissioned by the Ministry of Security and Justice and presented to parliament. The CBS publishes statistics about developments in criminality and in criminal investigation. These statistics are important for parliamentary debates on the effectiveness and efficiency of the police service as a part of the system of criminal justice with the Minister and the Secretary of State of Security and Justice.<sup>20</sup>

### *Legislation Office*

The House of Representatives has an internal parliamentary Legislation Office (*Bureau Wetgeving*), which has an important role in the preparation of amendments. It translates political intentions into adequate legal texts. Of course, the Member of Parliament is responsible for the formulation of his or her motivation for any amendments. It is possible and common practice that the Legislation Office consults with lawyers in government ministries. However, it is important that Parliament has its own legislative support, which can have a critical judgment on government proposals.

### *Parliamentary initiative*

The Government introduces most bills in Parliament. The House of Representatives can adopt, reject or amend a bill. A Member of Parliament can also put forward a proposal for a new law, a so-called “initiative bill.” In the field of security and justice, there are a few examples of legislation initiated by Members of Parliament.

In 1999, Wim van de Camp, Member of Parliament, proposed legislation

to enable the police to carry out preventive searches for weapons. In this proposal, the mayor is entitled to assign the status of a “safety risk area,” which includes the possibility of preventive searches. The proposal was adopted by the House in 2001 and the Senate in 2002.<sup>21</sup>

Another initiative bill is the proposal to sharpen the “measures to combat football hooliganism and serious nuisance.”<sup>22</sup>

### Oversight function

As a rule, Parliament can discuss all aspects of police work with the Minister of Security and Justice in the annual debate on the budget. In a separate committee meeting on the budget bill, the Standing Committee on Security and Justice discusses the budget of the National Police Service. For Parliament, it is important to use the right to amend the budget to set policing priorities. However, it is an unwritten rule that there should be financial coverage for every amendment of the budget.

When Parliament approved of the reorganisation of the police into a National Police Service, the Minister promised to inform Parliament on a regular basis about the progress of the reorganisation. On 11 June 2014, Parliament received the sixth biannual progress report.<sup>23</sup> The headline of the press release was: “National Police on track.”<sup>24</sup> However, headlines in the newspapers said: “Reporting to the police is still a drama;”<sup>25</sup> and “Internet declarations are lost, it takes forever to make a declaration in a different place and some police officers lie about the handling of declarations of burglary.”

It is important for a Member of Parliament to be adequately informed. Therefore, s/he should read external comments before any letter or press statement from the Minister. Whereas the Minister might focus on positive developments, external comments may point out setbacks or weaknesses.

Parliament itself has neither the manpower nor the resources to scrutinise all government information. The right of the Parliament, in fact of any Member of Parliament, to be informed by the government is not only important for Parliament itself but even more for society as a whole. Citizens and institutions, all with their own interests and

expertise, can take note of the government's information and comment on the government's allegations and policy. Therefore, Parliament's power to make government information publicly available is a very important democratic tool of oversight.

### *Judicial*

For the use of special powers (such as a house search, interception of telephone lines or arrest), magistrate has to authorise the police to use these powers, usually at the request of the public prosecutor. In any judicial investigation, the magistrate is a judge appointed by the President of the Court to decide on matters that the prosecutor has no jurisdiction over. In case of a house search, the magistrate has to be present. S/he leads the investigations and decides on what should be seized.

### *Court of Audit*

In 2011, the Court of Audit published a report on "ICT in the Police Service 2010". The audit was carried out at the request of the Minister of Security and Justice. However, the request was made at the insistence of the House of Representatives in mid-November 2010. The report includes a reconstruction of developments in ICT in the police service and an analysis of the problems and risks in the steering and management of ICT. One of the main developments in recent years was the establishment of the Dutch Police Cooperation Facility (*Voorziening tot samenwerking Politie Nederland*) in July 2006. The audit paid special attention to the information systems in place for police officers and detectives, such as the standard facilities for enforcement (*Basisvoorziening Handhaving, BVH*), investigation (*Basisvoorziening Opsporing, BVO*) and capacity management (*Basisvoorziening Capaciteitsmanagement*).

The audit found that the police service had made little progress in finding permanent solutions to ICT problems in the past ten years. Information systems such as the BVH and BVO provide inadequate support for police work. The BVH and BVO are not future evidence, have poor user interfaces and were not introduced uniformly. Regional police service managers lack understanding of ICT. The heads of the police services upheld their own regional procedures, and the minister's

supervision was inadequate. The distance between ICT decision-makers and the shop floor was too great. In consequence, police officers were overlooked and lost confidence in ICT.

The case of the National Police Service was very much supported by the conclusions of the Court of Audit in this report.

### *Temporary committee on ICT*

In 2009, the House of Representatives decided to formulate its own future and investigation agenda. Every year, the House decides on investigations to be carried out, either into the implementation of policy or future developments and with a maximum of three investigations per year. These investigations provide Members of Parliament with a more thorough understanding and knowledge of the subject in question, which makes it easier for them to form opinions and proper decisions.

Special temporary committees, often supported by external experts, carry out investigations. These temporary committees do not have special rights compared with the standing committees. They can organise public hearings and round table conferences, but they do not have the authority to question people under oath. People are not obliged to participate in their investigations or to accept an invitation for a hearing.

In 2012, the Temporary Committee on ICT Projects was commissioned to carry out a parliamentary investigation into government ICT projects. The government often fails fix its ICT projects. The committee's aim was to identify what went wrong and well, and why. The committee was expected to present its final report to the House in autumn 2014. One of the seven case studies the temporary committee was supposed to conduct is the C2000<sup>26</sup> digital communications system for emergency services of the police, fire department, and ambulance services.

### **Budget control function**

The budget of the National Police Service<sup>27</sup> is part of the budget of the Ministry of Security and Justice<sup>28</sup>. The draft budget is presented to the House of Representatives on the third Tuesday in September.

### *Prince's Day*

The third Tuesday in September is “Prince’s Day.” In a joint meeting of the House of Representatives and the Senate, the King delivers the so-called “King’s Speech,” explicating the government’s policy for the next year. Subsequently, the Minister of Finance presents his or her famous “Third-Tuesday-in-September”-briefcase to the speaker of the House of Representatives. This briefcase contains the Budget Memorandum and the National Budget. The National Budget consists of a number of proposals of law (bills), one for each ministry, with regard to national expenditure, obligations and national revenue for the coming year. Prince’s Day marks the start of the parliamentary debate on the policy intentions of the Cabinet.

The Budget Memorandum is a policy document in which the government looks ten years back and four years ahead. It is the financial translation of the King’s Speech. It describes the current economic and financial situation of the Netherlands and the prospective developments in the Netherlands, in Europe and abroad. It also describes the State’s financial situation, the “public treasury.”

### *Council of State*

Every bill presented by the government to the House of Representatives is accompanied by an advice of the Council of State (*Raad van State*). As a High Council of State, it is an independent advisor of the government on legislation and administration and the highest administrative court in the Netherlands. The advice of the Council of State on the Budget Memorandum contains important information for the parliamentary debate. The government is not obliged to observe the recommendations of the Council of State, but has to answer critical remarks.

### *Budget bills*

The budgets of the respective government departments are presented in the form of budget bills. In autumn, both the House of Representatives and the Senate discuss the budget bills, which require Parliament’s approval. The House of Representatives only has the right of amendment to budget bills. The Senate can only adopt or reject the budget.

Parliament authorizes the Cabinet to spend money, assume obligations

and raise revenues. The National Budget, as well as specific budgets for each field of policy (such as security and justice), are laid down by Act of Parliament. A minister may spend less than the budget, but is not allowed to exceed the budget. If necessary, an additional bill has to be passed by Parliament to increase the budget.

#### *Bureau for Research and Public Expenditure*

Before the parliamentary debate, Members of Parliament can ask factual questions about the budget bills in a written procedure. In this process, the parliamentary Bureau for Research and Public Expenditure (*Bureau Onderzoek en Rijksuitgaven*) plays an important role. It produces an internal memorandum on each of the budget bills for the use of Members of Parliament. The Bureau makes connections between serial budget bills and proposes questions for explication and clarification. The Bureau, however limited in staff, is qualified and its contributions are appreciated by Members of Parliament.

#### *Spring and Fall Memorandums*

The Minister of Finance reports the progress in government expenditure and revenue in the so-called Spring Memorandum (June) and Fall Memorandum (December). Windfalls, shortfalls and changes in policy over the running year can lead to adjustments in the estimates of the current budget. These are incorporated in the Spring and Fall Memorandums and the accompanying supplementary budget bills.

Supplementary budget bills are updated estimates, and need to be considered and adopted by both the House of Representatives and the Senate. However, major changes in policy are seldom suggested. The House and Senate process supplementary budget bills the same as any other bill. Only the House has the right to propose amendments.

#### *Accountability Day*

Prince's Day marks the start of the parliamentary debate on the budget, Accountability Day (*Verantwoordingsdag*), the third Wednesday in May, marks the end of the budget cycle. On Accountability Day, the government presents its annual report to the House of Representatives. At the same time, the President of the Court of Audit presents a report to the House of Representatives, scrutinising the government's policy

over the past year: Did the government achieve its desired policy goals? Did the Cabinet observe the law? The Court of Audit also comments on the annual reports of each ministry.

The reports of the Court of Audit are important, because they contain recommendations for the government, which are points of attention for Parliament. Usually, Parliament is more occupied with policy intentions than it is interested in policy achievements. Prince's Day is more of a highlight in the parliamentary year than Accountability Day, even though the Minister of Finance carries an equally stylish "Third-Wednesday-in-May"-briefcase. Nevertheless, the Court of Audit is an important advisor for both the government and Parliament.

### *Draft Budget for the National Police*

The draft budget of the National Police Service is presented to the House of Representatives as an appendix to the Budget Bill of the Ministry of Security and Justice. The Minister of Security and Justice has agreed not to determine the budget of the National Police Service before the plenary debate in the House about the budget of the Ministry of Security and Justice.

The House has a right of amendment on the total amount of money to be spent on the National Police Service, because this is part of the budget of the Ministry of Security and Justice. However, the House lacks the right of amendment on the distribution of resources within the budget of the National Police Service.

Therefore, the Court of Audit sent the House of Representatives a critical letter on the 2014 budget of the National Police Service.<sup>29</sup> In the letter, the Court of Audit comments on the following aspects of the budget:

- The budget does not clarify what ambitions the Minister of Security and Justice have for the formation of the National Police Service. The minister only mentions three conditions for the budget: budgetary framework, operational strength and agreed performances.
- The minister states in the budget what the National Police Service is expected to do, but does not state how much money is needed. No connection can be made between policy goals, performance and resources.

- The Minister of Security and Justice does not explain his or her responsibilities and powers regarding the management of the National Police Service.

The Minister of Security and Justice replied that it is impossible to make a connection between the budget for national policy priorities and police performance because of the way the police was financed until the Police Act of 2012. The Minister sees a “growing path” to make that connection in the future.

## Parliamentary committee

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Policing is mandated to the Standing Committee on Security and Justice. The members are appointed after general elections. It has each 26 regular and alternate members. Half of the members belong to coalition parties and the other half to opposition parties. A member of one of the government parties occupies the committee chair.<sup>30</sup>

The committee discusses the policy areas for which they are responsible with the Minister and the State Secretary of Security and Justice. The topics range from law enforcement to justice, corporate law to copyright and youth protection to prisons. The committee meets regularly with the Minister and the State Secretary of Security and Justice to discuss European policy in preparation for the Council of Ministers of Justice and Home Affairs of the European Union (the JHA Council).

Most committee meetings (*Algemeen overleg*) are held to discuss general policy issues with the Minister or State Secretary. Members of Parliament ask questions, and the member of the Cabinet replies. Committee meetings about policing matters involve many different subjects that are discussed with the Minister of Security and Justice. For example, the agenda for the committee meeting on 30 January 2014 numbered 21 government papers on different subjects.<sup>31</sup> However, there is no focus in a four hour meeting with 21 different subjects to discuss. Thus, a lot of issues do not receive the appropriate attention of members of parliament.

Committee meetings on policy documents (*Notaoverleg*) and on bills (*Wetgevingsoverleg*) “unburden” the plenary meetings. In a committee



meeting, different specialist and technical aspects can be dealt with in detail, so that only the headlines have to be discussed in the plenary meeting.

### *Working visits*

Standing committees frequently conduct working visits to gain information on a certain situation or learn how specific problems are dealt with abroad. In recent times, the Standing Committee on Security and Justice has conducted working visits to the police service, as well as to the Police Academy. It is important that Members of Parliament not only discuss policy with police authorities. They should also be informed by police officers at the shop floor level.

### *MP-civil servants contacts*

It is government policy that civil servants are not allowed to contact Members of Parliament.<sup>32</sup> Every contact between a civil servant and a Member of Parliament is to be reported to the Minister for approval. Even when invited for a parliamentary committee hearing, a civil servant has to ask permission from the minister.

The reason for this policy is the ministerial responsibility for the civil service. The minister is accountable for the behaviour of civil servants. Civil servants should not express themselves about policy issues. Moreover, civil servants should not be seen as influencing Members of Parliament to disapprove of government policy.

However, a distinction is made between policy and technical information. In most cases, ministerial permission is given to civil servants to inform Members of Parliament, especially in private technical briefings. Recently, the Minister of the Interior and Kingdom Relations refused permission to the head of the General Intelligence and Security Service to be heard by the standing committee, similar to the Minister of Defence denying permission to the head of the Military Intelligence Service.

Formal contacts between Members of Parliament and civil servants are strictly regulated. However, in an open information society, formal contacts are not as important as they used to be.

### *Petitions*

The House of Representatives has a Standing Committee on Petitions and Citizens' Initiatives. It is charged with reporting on all petitions and citizens' initiatives passed to it by the House or a committee of the House. It is also tasked with matters relating to the National Ombudsman, if necessary.

To be admissible, a petition must be about an issue which (a) concerns an individual or a small group of people, (b) concerns a responsibility of the government, and (c) cannot be submitted to court.<sup>33</sup>

If the committee decides to take a petition into consideration, it submits the petition to the responsible minister or the Secretary of State, asking for a response. Subsequently the petitioner is asked to comment on the minister's response. The adversarial principle is applied in a written procedure. On the basis of the file, the committee will draft a report.

Each report on a petition, which is anonymised before publication, contains a clear conclusion or proposal to deal with the petition. The plenary meeting of the House forms a conclusion on every petition, usually in accordance with the proposal of the committee.

The Senate has a Standing Committee on Petitions as well. The citizen can choose to submit a petition to the House of Representatives, Senate or to National Ombudsman. Once one of these three actors has formed a conclusion on the petition, it will not be admissible again.

Until 2012, the Joint Committees on Petitions published an annual report.<sup>34</sup> However, the number of petitions submitted to Parliament is relatively limited. For example, in 2006-2007, 367 petitions were submitted to both Committees and in 2010-2011 216 petitions were submitted. Most petitions concern tax matters.

In their last annual report, the Joint Committees on Petitions cast some doubt on the competency of the committees to take petitions on police matters into consideration. The committees state that they lack this competency, while petitioners believe they are competent or do not accept it. However limited the facilities of the Standing Committees on Petitions may be in practice, in principle the right to petition has to be understood as an external complaints procedure, also on police matters.

### *Transparency of parliamentary proceedings*

The standing committee deals with legislative proposals in the field of security and justice. In procedure meetings the committee decides on the proceeding of a bill. The procedure meetings are public. As a rule, parliamentary documents are available online. The agenda of the procedure meetings is now being published. All public plenary and committee meetings of the House are being recorded and are now available online.

### *Preparatory examination*

The Standing Committee first examines every bill and the accompanying advice from the Council of State. All political groups can make remarks, pose questions to the government, and propose changes to the bill. The Standing Committee may ask experts and stakeholders from society to comment on controversial plans in a public or private hearing or a round table debate. Of course, experts and stakeholders can always notify the Committee of their opinions, regardless whether or not they were asked.

The House of Representative draws up a report on the examination of the bill by the Standing Committee. The minister replies to this report by means of a memorandum of reply. Both documents are public. The Standing Committee can decide that a further report is necessary if questions are not adequately answered or more information is needed. Finally, it decides when a bill is ready to be discussed in a plenary debate.

These decisions may seem routine, but there is often a political aspect to the procedures. If necessary, the Standing Committee makes decisions by majority vote of the members present. However, the House can always overrule a procedural decision in a plenary meeting.

## **Parliament-police liaison mechanism**

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Parliament is informed about police priorities and performances on a regular basis in the budget of the National Police Service and the Explanatory Memorandum. The Minister of Security and Justice presents the annual report of the National Police Service to parliament. The Court

of Audit comments on the annual report of the Ministry of Security and Justice.

In the Netherlands, there are four national police unions.<sup>35</sup> These unions negotiate with the Minister about working conditions and other aspects of police work. They also turn to Parliament or individual Members of Parliament to express their views on policy matters.

Police officers may be active members of political parties. Therefore, political parties or groups in Parliament are able to establish their own police network groups, sounding boards or advisory groups. For Members of Parliament, it is important to be informed by police officers from the board to shop floor level. Policy decisions can affect the executive level, which is not where these decisions are made. Members of Parliament might defend certain group interests, but, more importantly, they balance interests. Therefore, they have to be informed as broadly as possible.

## Relationship with other overseers

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Independent oversight institutions such as the Court of Audit and the National Ombudsman are advisory institutions to both government and parliament. They inform parliament about their recommendations and explain their findings. Moreover, these institutions are prepared to conduct investigations upon request. Parliament can ask them to take on certain subjects.

Independent police complaint bodies publish an annual report on their activities. While Parliament can take note of the annual reports, they are not officially presented to parliament.

There are no official relations between parliament and local councils. Of course, Members of Parliament have contact with local councillors via political party channels. However, municipalities usually negotiate with Cabinet Ministers via the Association of Dutch Municipalities (*Vereniging van Nederlandse Gemeenten*).

Most police work is carried out on the local level, under the authority of the mayor and in agreement with the police commissioner and the public prosecutor. The local council is responsible for a public safety

and security plan, which serves as a basis for the mayor's management of the police. Questions of distribution of police capacity within a regional unit cannot be dealt with by parliament. Parliament can only discuss the framework with the responsible minister.

Parliament is usually informed about the views of police authorities or board members on policy matters via the Minister of Security and Justice, accompanying the cabinet view. The minister channels these letters with advice, opinions and recommendations to parliament. There is no direct relation between parliament and police authorities. However, on an individual basis, Members of Parliament are welcome to pay working visits to police meetings.

## Conclusions

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Ministerial responsibility is a pivotal concept in Dutch constitutional law. The minister is responsible for any act of the civil servants of his or her department. The Minister of Security and Justice is responsible for the National Police Service. Parliament can address the Minister on all matters of policing and a majority of Parliament can force him or her to change policy. This starting point of police accountability to Parliament is essential.

When it comes to police accountability to Parliament in practice, its effectiveness could be improved by enabling Parliament to cope with large amounts of information. Information overload is a serious problem for a Member of Parliament with relatively limited staff. The amount of information available causes an urgent need for information analysis tools. The Government is obligated to inform parliament; however, Parliament itself is not able to process all government information. Therefore, third parties should be involved to adapt information for the political process of decision-making.

To improve independence in the area of accountability of the police to Parliament, it is important that there are a number of independent institutions focused on different aspects of policing. For example, the Court of Audit is concerned with the legality, effectiveness and efficiency of policy. The National Ombudsman, on the other hand, deals with

standards for proper behaviour of officials. Parliament has to create a network of independent institutions to control government policy.

Transparency in accountability of the policy should not be mistaken for measurability. Performance agreements can be useful to measure the effectiveness of police work. However, performance agreements focus on figures and might result in wrong incentives.

## NOTES

1. This chapter was written and completed in 2014.
2. Politiewet 2012, Staatsblad [Bulletin of Acts and Decrees] 2012, Nr. 315.
- 3.
4. To view these reports, see the Inspectorate Security and Justice website.
5. Kamerstukken [Parliamentary Papers] II 2013-2014, 29.628 Nr. 456.
- 6.
7. A High Council of State is an institution entrusted with a specific task, independent from the government, which is guaranteed in the Constitution. There are five High Councils of State in the Netherlands: the Senate and House of Representatives, the Council of State, the Court of Audit and the National Ombudsman.
8. Algemene Rekenkamer [Court of Audit], Prestaties in de strafrechtketen [Performance of the Criminal Justice System], Kamerstukken [Parliamentary Papers] II 2011-2012, 33.173, Nr. 1.
9. The criminal justice system is the chain of police/public prosecution service/courts and the enforcement of sentences and performance of probation services.
10. Kamerstukken [Parliamentary Papers] II 2013-2014, 33.750 VI, Nr. 11.
11. The handling of complaints is regulated in Politiewet [Police Act] 2012, Chapter 7. Regeling klachtbehandeling politie [Police Complaints Regulation], Staatscourant [Government Gazette] 2012, Nr. 26850. Uitvoeringsregeling klachtbehandeling politie 2013 [Police Complaints Implementation Regulation], accessible at: [www.politie.nl/binaries/content/assets/politie/documenten-algemeen/mandaten-en-regelingen/uitvoeringsregeling-klachtbehandeling-politie-2013.pdf](http://www.politie.nl/binaries/content/assets/politie/documenten-algemeen/mandaten-en-regelingen/uitvoeringsregeling-klachtbehandeling-politie-2013.pdf)
12. Kamerstukken [Parliamentary Papers] II 2012-2013, 29.628, Nr. 374.
13. In every regional police unit, one of the mayors is the designated regional mayor. The regional mayor represents public administration within the National Police Service. At the national level, the collective of regional mayors consults with the Minister of Security and Justice, the Board of Procurators General and the leadership of the National Police Service.
14. Handelingen [Acts of Parliament] II 2013-2014, 10 June 2014, Question Time. 'Afhandeling politieklacht niet onafhankelijk meer' [Handling police complaints no longer independently], de Volkskrant, 6 June 2014. See also: <http://www.regioburgemeesters.nl/vaste-onderdelen/zoeken/@485/regioburgemeesters/>.
15. Staatscourant [Government Gazette] 2014, Nr. 32511.
16. Wet Nationale ombudsman, Staatsblad [Bulletin of Acts and Decrees] 1981, 35.
17. Verslag van de Nationale ombudsman over 2013 [Annual Report of the National Ombudsman 2013], Kamerstukken [Parliamentary Papers] II 2013-2014, 33.876 Nr. 2.
18. National Ombudsman, Contrasterende beelden: Onderzoek naar het optreden van politieambtenaren van Bureau De Heemstraat in de Schilderswijk in Den Haag, [Contrasting Images: Investigation into the actions of police officers of the Bureau Heemstraat in Schilderswijk The Hague], Report 2014/078, 29 July 2014, accessible at: <https://www.nationaleombudsman.nl/onderzoeken/2014/078>.
19. Amendment-Van der Staaij c.s. (Kamerstukken [Parliamentary Papers] II 2011-2012, 30.880 Nr. 49).
20. For recent key figures published about criminal law over the period 1995-2015, see: <http://statline.cbs.nl/Statweb/publication/?VW=T&DM=SLEN&PA=37340eng&D1=0-23&D2=1,9-21&HD=161207-1140&LA=EN&HDR=G1&STB=T>.
21. Wet van 13 juli 2002 tot wijziging van de Gemeentewet en de Wet wapens en munitie in verband met de bestrijding van wapengeweld [Law of 13 July 2002 amending the Municipalities Act and the Arms and Ammunition Act in connection with the fight against gun violence], Staatsblad [Bulletin of Acts and Decrees] 2002, Nr. 420.
22. Maatregelen bestrijding voetbalvandalisme

- en ernstige overlast (Voetbalwet) [Football Law], Staatsblad [Bulletin of Acts and Decrees] 2010, Nr. 325. Aanscherping maatregelen ter bestrijding van voetbalvandalisme en ernstige overlast [Tightening Measures to combat football hooliganism and serious nuisance], Kamerstukken [Parliamentary Papers] II 2013-2014, 33.882.
23. Kamerstukken [Parliamentary Papers] II 2013-2014, 29.628, Nr. 456.
24. "Nationale politie op koers," <https://www.rijksoverheid.nl/actueel/nieuws/2014/06/11/nationale-politie-op-koers>.
25. 30 "Aangifte doen blijft drama," De Stentor, 16 June 2014.
26. Emergency services use C2000 to communicate with the control centre and with each other. They use the system for their day-to-day work and in the event of major incidents and disasters.
27. The budget was €5,155 million in 2014.
28. The Ministry's budget was €11,807 million in 2014.
29. Algemene Rekenkamer, Aandachtspunten bij artikel 31 van de begroting 2014 van het Ministerie van Veiligheid en Justitie en de begroting 2014 Nationale politie [Attentional points in Article 31 of the 2014 budget of the Ministry of Security and Justice and the 2014 budget of the National Police Service], 4 November 2013, [http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2013/11/Aandachtspunten\\_bij\\_de\\_begroting\\_2014\\_Ministerie\\_van\\_Veiligheid\\_en\\_Justitie\\_Nationale\\_politie](http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2013/11/Aandachtspunten_bij_de_begroting_2014_Ministerie_van_Veiligheid_en_Justitie_Nationale_politie).
30. Committee chairs are as much as possible equally distributed among political groups in the House
31. The subjects included: police officers' salaries, the process of declaration of offense, ICT, criminal investigation on the islands of Bonaire, St. Eustatius and Saba, psychosocial health of police officers, the Police Academy, ethnic profiling by police officers, wiretaps, and more.
32. Aanwijzingen externe contacten rijksambtenaren [Instructions external contacts civil servants] (so-called "Oekaze-Kok"), Staatscourant [Government Gazette] 1998, Nr. 104.
33. Reglement van de Commissie voor de Verzoekschriften en Burgerinitiatieven [Regulations of the Standing Committee on Petitions and Citizens' Initiatives], Kamerstukken [Parliamentary Papers] II 2005-2006, 30.140 Nr. 13.
34. Jaarverslag van de Commissies voor de Verzoekschriften 2010-2011 [Annual Report of the Standing Committees on Petitions 2010-2011], Kamerstukken [Parliamentary Papers] I/II 2011-2012, 33.030, Nr. 1.
35. General Christian Police Union (*Algemene Christelijke Politiebond ACP*), General Dutch Police Union (*Algemene Nederlandse Politie Vereniging ANPV*), Netherlands Police Union (*Nederlandse Politiebond NPB*) and Association of Middle and Senior Police Officers (Vereniging van Middelbare en Hogere Politieambtenaren VMHP).





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## The United Kingdom

VIC HOGG

This study<sup>1</sup> examines the arrangements for holding the police accountable to parliament in the United Kingdom (UK). It describes the structure of the police service, relevant governance and accountability frameworks, roles and responsibilities of the UK Parliament, and the parts played by various independent oversight agencies and those bodies to whom certain policing responsibilities have been devolved (e.g. the Scottish Parliament, Northern Ireland Assembly, the Mayor of London, Court of Common Council (City of London Police), and police and crime commissioners across England and Wales). It also examines the formal and informal relationships and mechanisms existing within and between the various organisations that together constitute the police governance frameworks, and recent reforms aimed at improving police performance and accountability.

Whilst the systems that operate in England, Wales, Scotland and Northern Ireland are broadly similar in nature, there are also some fundamental differences. For the sake of simplicity, this study therefore focuses on

the arrangements that operate in England and Wales, particularly as that is where the highest proportion of police officers is deployed (around 84 per cent) and the UK Parliament has direct responsibility. The differences existing in both Scotland and Northern Ireland in terms of structures, governance, accountability and funding are, however, referenced in each of the relevant sections of this study.

## Police accountability framework

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### The role of the UK Parliament

The UK Parliament has an overall responsibility to debate and pass law (legislation), examine and challenge the work of the Government (scrutiny) and enable the Government to raise taxes (budgeting). There are numerous mechanisms and conventions in place to enable it to perform these important functions, many of which have been established over many centuries.

Parliament is the ultimate authority for policing in the UK, but has devolved responsibility for policing in Scotland and Northern Ireland to the Scottish Parliament and Northern Ireland Assembly respectively. It has a more direct role with regard to policing in England and Wales. Here, the UK Parliament holds the UK Government accountable, principally, through the Home Secretary as the senior minister responsible for the work of the Home Office, whose remit includes policing across England and Wales.

### The structure of policing

Although the main aims of the police are relatively clear and straightforward (i.e. to prevent and detect crime, maintain peace, and protect the public), its governance and accountability arrangements are complex. There are 43 police services in England and Wales (compared to one each in Scotland and Northern Ireland) based either on metropolitan areas (e.g. the Metropolitan Police Service in London), individual counties (e.g. Hampshire) or a combination of smaller counties (e.g. West Mercia, covering Herefordshire, Worcestershire and Shropshire). A chief constable (or commissioner in both the Metropolitan Police Service and the City of London Police) heads each service. To

further complicate the picture, there are a number of other police services operating in the UK that have specialist functions and their own governance and accountability arrangements. The most significant amongst these are the British Transport Police (responsible for railway policing across England, Wales and Scotland and accountable to Parliament through the Department of Transport); Ministry of Defence Police (providing policing on the Defence Estate and accountable to Parliament through the Ministry of Defence); and the Civil Nuclear Constabulary (safeguarding nuclear establishments and materials and accountable to Parliament through the Department for Energy and Climate Change).

### Governance and accountability

Until recently, governance of the police service was organised through a rather loosely constructed tripartite arrangement between the Home Office (providing central direction), Police Authorities (established in 1996 to hold local police services accountable) and the Association of Chief Police Officers (ACPO)<sup>2</sup>. However, this arrangement changed in 2012 as part of a programme of significant policing reforms introduced by the Coalition Government since taking office in May 2010. These reforms included the provisions of the Police Reform and Social Responsibility Act 2011 that replaced Police Authorities with democratically elected Police and Crime Commissioners (PCCs) and gave them greater devolved powers to hold local police services and their chief constables accountable. Furthermore, the responsibilities of ACPO in police governance terms has been under review as a consequence of recent reforms, including the establishment of a policing college in December 2012 to take over the role of setting professional policing standards and producing appropriate guidance. A report by General Sir Nick Parker in November 2013<sup>3</sup>, commissioned for presentation to the PCCs, recommended a number of changes to the ACPO role and constitution to reflect the wider policing reforms. The recommendations are principally focused on the ACPO conducting operational and managerial coordination between chief constables, providing a forum for command and leadership of the police service, informing policy and practice, speaking as an independent voice on operational policing,

and clarifying its governance and a number of its practices. A board, consisting of members selected from the police governance community (e.g. PCCs, chief constables, the Home Office) was established to oversee the implementation of the recommendations.

The provisions of the Police Reform and Social Responsibility Act of 2011 mean that chief constables in 41 of the 43 police services in England and Wales (i.e. all services outside of London) are now held accountable by PCCs elected for each police service area. The first PCC elections took place in November 2012, alongside three UK parliamentary by-elections and two mayoral-related elections.<sup>4</sup> The role of the PCCs is to produce annual police and crime plans setting out the objectives for their service, allocate the funds needed to achieve them and hold the chief constable accountable for their delivery. Police and crime panels (PCPs) provide oversight and scrutiny of PCC performance at a local level. These panels comprise between 12 and 20 members (depending on the size of the police service area), who are drawn from councillors in each constituent local authority, and augmented by two co-opted independent members appointed for their relevant expertise. Directly elected mayors and council leaders are able to hold PCCs accountable for policing performance in their constituencies through representation on PCPs. In reality, however, the powers of these oversight panels are fairly limited. Similar local governance and accountability arrangements exist in the other two (London-based) police services. For the Metropolitan Police Service, the PCC equivalent role is performed by the Mayor's Office for Policing and Crime and overseen by the London Assembly, whilst the Common Council of the City of London performs equivalent governance and accountability roles for the City of London police.

Although the Government has effectively devolved responsibility for local policing matters to the PCCs and their equivalents within London, it remains ultimately accountable to Parliament for policing matters across England and Wales. For this reason, reserved powers and legislative tools were retained to enable the Home Secretary to intervene at a local level and give directions where there is a perceived risk to public or national security. The Home Secretary also continues to issue an annual "Strategic Policing Requirement"<sup>5</sup> setting out his or

her view of the national threats and the policing capabilities needed to counter them. He or she also remains directly responsible for policing and security matters deemed to be best dealt with at a national level, such as serious and organised crime (the remit of the National Crime Agency sponsored by the Home Office).

### The role of independent oversight and similar bodies

There is a multitude of legislation, regulation and guidance governing how the police should operate and conduct itself, on which the UK Parliament is able to draw in holding the police accountable, including the professional standards set by the College of Policing. The UK Parliament is also assisted in its oversight role by a number of independent bodies, including the National Audit Office (NAO) that scrutinises public spending on behalf of Parliament and provides support in holding the Government accountable. Her Majesty's Inspectorate of Constabulary (HMIC) assesses police services and policing across all activities, including financial, and reports to Parliament on the efficiency and effectiveness of the police. The Independent Police Complaints Commission (IPCC) oversees the police complaints system. Similar to the NAO and HMIC, the IPCC presents an annual report and statement of accounts to Parliament for consideration.

The IPCC was established by the Police Reform Act of 2002 and became operational in 2004. It conducts independent investigations into the most serious cases of police misconduct, deaths, serious injuries and other human rights breaches. It also acts as an appeal body for some categories of complaint handled locally by individual police services and issues statutory guidance on handling complaints to all police services. It is led by a chair, deputy chair and ten commissioners and employs around 560 staff<sup>6</sup>, including a chief executive and small administrative team. The IPCC has generally discharged its responsibilities objectively and competently in a high profile and challenging environment. It has brought genuine independence to the oversight of police complaints, whilst a strong focus on critical issues, such as deaths following police contact, has contributed to notable improvements in such areas.<sup>7</sup> However, the IPCC has been the subject of significant criticisms, including inadequate funding by successive governments (leading to

on-going backlogs and delays); failure to independently investigate a higher proportion of the more serious complaints and incidents<sup>8</sup>; oversight of a too complex and bureaucratic complaints system; and failure to achieve the core objective of securing and maintaining public confidence in the police complaints system.<sup>9</sup> In response to these growing criticisms, the Home Secretary launched a review of the police complaints system in July 2014, which was due to report in the autumn of 2014.

In addition to the independent oversight bodies mentioned, the Home Secretary also seeks advice on policing matters relating to recruitment, diversity, collaboration and more general issues from a statutory body established under the Police Act of 1996, known as the Police Advisory Board for England and Wales. This Board meets about four times each year to consider such matters, including draft regulations proposed by the Home Secretary to affect change in such areas, and provide appropriate advice. It does not, however, cover police pay and conditions of service (such as hours of duty, leave and allowances), which fall within the remit of another statutory body established under the Police Act of 1996, known as the Police Negotiating Board (PNB). The PNB negotiates between police employers and staff representatives across the UK on such matters and makes recommendations to Scottish and Northern Irish ministers, as well as the Home Secretary. In the event of a failure to agree on a recommendation made by the PNB, the matter may be referred to a police arbitration panel. The PNB was due to be replaced in the autumn of 2014 by the Police Remuneration Review Body in England, Wales and Northern Ireland (for officers at the chief superintendent level and below) and the Police Negotiating Board for Scotland, following changes introduced by the Anti-social Behaviour, Crime and Policing Act of 2014 and Criminal Justice (Scotland) Bill (introduced in June 2013) respectively. When the changes are implemented, officers above the rank of chief superintendent will be covered by the Senior Salaries Review Board, which provides independent advice on the pay of senior public officials such as senior civil servants, the judiciary and senior officers in the armed forces.

### The part played by other policing-focused professional bodies

Although not part of the formal governance and accountability arrangements, a number of professional bodies contribute to influencing, or attempting to influence, the daily role of the police and periodic proposals for policy and operational change. These actors include academic researchers and think tanks (e.g. the Police Foundation), employer representative bodies (e.g. Association of Police and Crime Commissioners), and staff representative organisations (e.g. the Chief Police Officers' Staff Association, Police Superintendents Association, the Police Federation, and Unison).

### The role of the judiciary

The judiciary has no formal role in the governance and accountability of the police to Parliament in the UK. Yet, it is not unusual for the Government to appoint senior members of the judiciary to lead high profile inquiries into alleged or suspected instances of police maladministration. Furthermore, the police, like other members of the public, are subject to all aspects of the rule of law. Consequently, a police officer arrested and prosecuted for a criminal offence would be subject to exactly the same judicial procedures as any other UK citizen. If convicted, though, any evidence that the offence committed was associated with an abuse of public office could be treated as an aggravating factor and lead to a comparatively tougher sentence.

As explained, oversight of the police complaints system is the responsibility of the IPCC rather than the judiciary. If, however, the investigation of a complaint against a police officer by the IPCC, or an individual police service, uncovered evidence of a criminal offence, or the common law offence of misconduct in public office, the matter would normally be referred to the Crown Prosecution Service for consideration of judicial proceedings.



## Functions of parliament

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### The legislative function

#### *The legislative process: Primary legislation*

Similar to other established democracies across the globe, the UK's legislative framework is set within or alongside a range of international laws and commitments in various treaties and conventions (e.g. the UNHCR Refugee Convention 1951).

Against this international background, and taking full account of the inherent commitments, the legislative process in the UK usually commences with a political party developing a set of policy proposals, which it then embodies in a pre-election manifesto. It is also common practice for political parties to develop additional legislative proposals once in government. Regardless, the next stage normally involves the publication of a Green Paper that sets out the Government's policy proposals in broad terms for public consultation, followed by a White Paper that transforms the post-consultation proposals into concrete legislative plans. If approved by the Government's top ministerial team (i.e. the Cabinet), departmental lawyers and the Parliamentary Counsel translate the legislative proposals into a draft Bill, which is introduced in Parliament (usually the House of Commons) for debate and scrutiny. The main focus of such scrutiny takes place within a dedicated General Committee (Public Bill Committee) in the House of Commons and the Grand Committee in the main chamber of the House of Lords. Even though a mechanism for the Government to submit a draft Bill to the appropriate Select Committee for prior scrutiny (e.g. the Home Affairs Committee for a policing-related Bill) exists, this facility is used only occasionally. In any event, Select Committees tend to subject legislative proposals to their own scrutiny either before or in parallel to the formal scrutiny taking place elsewhere in Parliament and feed their observations into that dedicated process. Once the draft Bill has received a majority in favour in both Houses, it receives formal Royal Assent and becomes an Act of Parliament.

### *The legislative process: Secondary legislation*

It is usual for Acts of Parliament (primary legislation) to confer the power to make secondary or delegated legislation on the executive to cover matters of detail, such as the timing of implementation and technical design. Statutory instruments form the majority of secondary legislation in the UK. Such legislation is subject to the full rigour of parliamentary scrutiny through the Commons Select Committee on Statutory Instruments, the Joint Committee on Statutory Instruments<sup>10</sup> and the Secondary Legislation Scrutiny Committee.<sup>11</sup> Secondary legislation may also be challenged in the courts by any organisation or member of the public through a process known as judicial review. Judicial reviews are used, quite extensively, to test whether a government minister has properly used the powers conferred by the relevant Act of Parliament in authorising the introduction of secondary legislation.

### *The legislative framework governing policing*

Policing in the UK has traditionally attracted a strong political and media focus. The legal framework governing police activity and accountability is extensive and subject to regular public and parliamentary scrutiny, not least in the wake of high profile incidents and real or perceived failings. The statutory basis for police operation covers ranges from governance<sup>12</sup> to states of emergency<sup>13</sup>, public order<sup>14</sup>, cross border domestic and international assistance<sup>15</sup>, and police pay and conditions of service<sup>16</sup>.

In each case, the underpinning statutory base usually contains elements of international, primary and secondary legislation. For example, the use of firearms and less lethal weapons by the police is governed by a legal framework that includes the European Convention on Human Rights, the Human Rights Act 1998, Section 3(1) of the Criminal Law Act 1967, Section 117 of the Police and Criminal Evidence Act 1984, Corporate Manslaughter and Corporate Homicide Act 2007, health and safety legislation, common law (e.g. self-defence and use of reasonable service), Police (Conduct) Regulations 2012 and statutory guidance<sup>17</sup>. The development and operational use of new weapons is also governed by statute<sup>18</sup>, which requires prior authorisation by the Home Secretary

following a period of technical and medical evaluation by subject experts.<sup>19</sup>

In addition to legislative proposals generated and presented by the Government, the catalyst for policing reform or change can arise from a variety of sources, including public petitions, lobby groups, media pressure, individual Members of Parliament, and the recommendations of Parliamentary Committees. The chances of success depend, however, on proactive government support and sponsorship for the proposals in question and, of course, the parliamentary approval in processing the necessary legislation.

### The oversight function

The UK Parliament is able to perform its police oversight function in a number of ways. These are all based on long-established parliamentary mechanisms and conventions that exist for holding public bodies accountable.

#### *Written and oral parliamentary questions*

Individual Members of Parliament, for example, can ask Home Office ministers written questions on policing and other matters falling within their areas of responsibility. These require written answers within fairly tight deadlines. On a set date and time every month, Members of Parliament are also able to orally question the Home Secretary in the main chamber of the House of Commons on the full range of his or her responsibilities, including policing. A similar process takes place in the House of Lords for thirty minutes at the beginning of every day (except for Friday), but it is aimed at government representatives as a whole and not individual government departments.

#### *Early day motions*

Members of Parliament can also draw attention to a particular issue or concern by joining to sign an Early Day Motion (EDM). Whilst not normally debated, EDMs with a significant number of signatures can often force the Government into making a response.

### *Select committees*

Arguably the most effective form of parliamentary oversight takes place through the current House of Commons Select Committee system, which was established in 1979. In essence, there are two Select Committees, which together play an important role in holding the police to account. First, the Public Accounts Committee (PAC) is responsible for checking that government expenditure is in strict accordance with the plans approved by Parliament and represents optimum value for money. In this role, it is able to examine and challenge all aspects of police financial management and control. It normally focuses related hearings on specific areas of police spending and performance based on dedicated reviews and reports from the NAO.

The other important Select Committee is the Home Affairs Select Committee (HAC). It covers all areas of the Home Office remit, but immigration and policing tend to dominate the Committee's programme, given the priority and profile they have within the department's overall set of responsibilities. Similar to the PAC and other Select Committees, the HAC operates throughout the life of a Parliament and sets its own agenda. It has the prerogative to select any aspect of policing for scrutiny, including structure, size and organisation; practices; vision and doctrine; powers; finance;<sup>20</sup> and operational tactics, including the policing of large-scale and violent protests, and the use of lethal weapons. In the latter regard, the HAC conducted an inquiry into the city centre riots that occurred across England in August 2011 following the fatal shooting of Mark Duggan by the police in Tottenham, London. The HAC published its inquiry report<sup>21</sup> with recommendations in December 2011, and the Government responded in February 2012<sup>22</sup>. It is also customary for ministers to provide prompt statements to Parliament, and for the issues to be scrutinised in debate in the event of such critical incidents.

The HAC can, and does, adjust its programme to reflect fast-moving contemporaneous events, such as the public/media criticism of the policing of the G20 demonstrations in 2009 and the dismissal of a chief constable by a police and crime commissioner in 2013. The HAC also plays a role in scrutinising proposed new legislation affecting the

police, either in advance of the introduction of the relevant draft Bill to Parliament or alongside the work of the General Committee established specifically to oversee the passage of the legislation through the House.

In all of these areas, the principal role of the HAC, and that of the PAC, is to subject the government's policies and their operational implementation to continuous scrutiny, expose any failings or weaknesses and make recommendations for improvement. The Government and others involved in policing governance and accountability (e.g. PCCs) are not obliged to accept their observations and recommendations. However, their reports attract significant publicity and place considerable pressure on the executive to manage the cases with the utmost efficiency and effectiveness and explain the reasons coherently and persuasively in instances when it has decided against accepting the recommendations.

### The budget control function

#### *The budgetary process*

The UK Parliament plays a critical role in enabling the Government to raise taxes and meet the costs of public spending. In March or April of each year, the Chancellor of the Exchequer gives a budget speech in the House of Commons on the state of the national finances and proposals for changes in taxation and spending. Following the parliamentary debate, the measures proposed and approved are embodied in an annual finance Bill, which is subject to the same parliamentary procedures as any other Bill.<sup>25</sup>

As part of the budget setting and approval process, the Government allocates a "departmental expenditure limit" (DEL) for each department based on a detailed Treasury-led analysis of respective requirements assessed against government priorities and overall affordability. This analytical process is known as a "spending review" and usually looks several years ahead.<sup>24</sup> In the Spending Review of 2010, the centrally-funded police budget was cut by 20 per cent in real terms between 2011/12 and 2014/15 as part of the Coalition Government's austerity programme aimed at reducing the nation's budget deficit.

### *The sources and allocation of police funding*

Police services in England and Wales receive their funding from three main sources. These sources are centrally in the Home Office and the Department for Communities and Local Government (or the Welsh Assembly in the case of the four police services in Wales), and locally in a proportion of the Council Tax known as the “police precept.” It has been estimated that forecast increases in the local (“police precept”) element of police budgets during the period of 2011/12 to 2014/15 would have the effect of reducing the overall cut in central funding from 20 to 14 per cent in real terms. In addition, PCCs can generate income from charging for policing commercial events (e.g. sporting fixtures and entertainment events) and investments. The ratio of central to local funding is roughly 75 to 25 per cent respectively (i.e. £9billion to £3billion in 2013/14).

The central funding provided to police services is allocated annually by the Home Office on the basis of a long-established and rather complex formula that uses various data sources, including population density, in each service area. Home Office ministers present details of the proposed allocations to Parliament by means of a police grant report<sup>25</sup> each autumn. The proposals are subject to parliamentary debate and vote before being published early in the following year. This process provides Parliament with the opportunity to compare and contrast the proposed allocations and debate their relative fairness and potential implications. Almost inevitably, these debates tend to reflect the determination of individual constituent Members of Parliament to promote and protect the interests of their local service. However, the ability of Parliament to alter the allocations proposed by Home Office ministers is limited, because the vote following the debate most likely favours the Government and, therefore, the proposed allocations, when it has a working majority. Beyond these processes, Parliament has the ability to commission and review reports on aspects of police budgeting and financial management through the Select Committee mechanisms.

### *Financial accountability mechanisms*

The significant reforms recently made to the police governance and accountability arrangements in England and Wales necessitated

the introduction of new or additional mechanisms to ensure robust financial management and the delivery of value for money within the transformed landscape. These have included the issuing of a policing protocol<sup>26</sup> by the Home Secretary, describing how the functions of police and crime commissioners, chief constables and police and crime panels will be exercised in relation to each other. This was followed in 2012 (and revised in October 2013) by the Financial Management Code of Practice,<sup>27</sup> which provides clarity on the new financial governance arrangements and high-level guidance to help ensure effective and constructive relationships in all financial matters. They came into effect in 2012 and flow from statutory powers conferred by the Police Reform and Social Responsibility Act of 2011.

As the most senior civil servant in the department, the Home Office Permanent Secretary is accountable to Parliament for the proper stewardship of the resources allocated to the Home Office, including those partly funding policing in England and Wales. By way of an assurance, s/he is required to publish an annual statement<sup>28</sup> describing the accountability system that ensures the functioning of appropriate controls and delivery of value for money. This assurance covers the arrangements generally in place at a local service level, notwithstanding the extent of the recent devolution of responsibility to locally elected PCCs and the degree of autonomy they now have. Parliament holds the Permanent Secretary accountable to the robustness and effectiveness of the systems in place. Indeed, the NAO recently conducted a review of the new accountability landscape following the introduction of PCCs and identified a number of potential risks. Their related report, “Police accountability: Landscape review”<sup>29</sup>, was published and presented to Parliament on 22 January 2014 and provided the Public Accounts Committee and Home Affairs Committee with a firm foundation for holding the Permanent Secretary to account on such matters.

#### *Scotland and Northern Ireland: The “Barnett Formula”*

The budgets of Scotland and Northern Ireland are normally considered and determined within the parliamentary budget-setting arrangements described previously. A long established formula (the “Barnett Formula”) is applied to provide each jurisdiction with a population-based share

of changes in comparable spending across government departments as a whole. The funding provided, however, takes the form of a block grant, which means that the governing bodies in Scotland and Northern Ireland are able to spend money on their devolved responsibilities, including policing, according to their own determined priorities and subject to the approval of the Scottish Parliament and Northern Ireland Assembly respectively.

## Parliamentary committees

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### Background

As briefly described previously, the committee system plays a significant role in the parliamentary accountability arrangements for public bodies. Much of Parliament's activities take place within committees, which typically comprise ten to 50 Members of Parliament or Members of the Lords. They examine issues in detail across the full spectrum of government policy and action, including proposed new legislation and wide ranging subjects such as the economy. The number of committees varies over time, depending on the nature and range of business in each Parliamentary session. A snapshot in June 2014 revealed that there were just over 100 committees in existence at that time, of which 39 were House of Commons Select Committees, 35 were House of Lords Select Committees, and ten were Joint Committees.

### Types of committees

There are essentially four types of committees in the UK Parliamentary system. First, the House of Commons Select Committees, such as the HAC and PAC previously referred to, each focus on the work (i.e. policies, administration and spending) of an individual government department or on cross-cutting issues such as public administration or the economy. There are also Select Committees operating in the House of Lords, but these do not shadow individual departments. Instead, they concentrate on four key cross-cutting topics: Europe, science, economics and the UK Constitution. Second, Joint Committees comprise both Members of Parliament and Members of the Lords and operate similar to Select Committees, but focus on a limited number of significant topics (e.g. Human Rights or Statutory Instruments<sup>30</sup>). Third, General Committees



are established principally to scrutinise and debate individual draft Bills.<sup>31</sup> General Committees (also known as Public Bill Committees when established for this dedicated purpose) play a significant role in challenging and influencing the content of draft Bills during their passage through the parliamentary process. Fourth, there are three Grand Committees examining issues relating to Scotland, Northern Ireland and Wales respectively, and one based in the House of Lords, which debates draft Bills outside of the main Lords Chamber.

From a policing perspective, the most important committees are those House of Commons Select Committees that oversee the police and its governing bodies on a regular basis (i.e. the HAC and PAC) and General Committees established to scrutinise new policing related legislation as it is introduced to Parliament.

### Select committees

House of Commons Select Committees are normally established at the beginning of each Parliament. A minimum number of 11 Members of Parliament are appointed to each Select Committee, drawn from a cross-section of all parliamentary parties represented in the House. Following a report by the Reform of the House of Commons Committee (the “Wright Committee”) in November 2009<sup>32</sup>, the Chair of each Select Committee is now appointed as a result of a secret ballot amongst all Members of Parliament using an alternative voting system. Other members are selected following a secret ballot within individual party groups.<sup>33</sup> The Chair and other members of each Committee are appointed for the entire five-year term of a Parliament, though changes in membership can occur (e.g. as the result of a member being promoted to a ministerial position). By convention, the Chair of the PAC is always a member of the opposition party.

Having chosen a subject to examine, a Select Committee will establish a programme of evidence gathering and analysis, leading to the publication of a report with recommendations.<sup>34</sup> The process normally starts with a formal announcement by the Committee of the subject or issue to be examined and an invitation to relevant organisations and individuals to submit evidence and comments in writing. The Committee then tests and supplements these written contributions by taking oral

evidence at a series of formal hearings from invited politicians, civil servants, professional bodies (e.g. those representing the police) and independent experts. The majority of these hearings are televised, and the questioning tends to be both direct and robust.

Select Committees have the power to order the attendance of witnesses at their hearings and to request written information or data from government departments, the bodies or agencies performing a governance role (such as the police), or other relevant sources. Committee members can also conduct field visits<sup>35</sup> to help inform their inquiries. There are some rather ancient rules and conventions, through which Select Committees can, with Parliamentary authority, apply sanctions for refusal to provide information or attend hearings or giving false testimony, but these are rarely used in practice. Committees prefer to rely on the adverse media and public criticism, on inferences that usually flow from an individual's failure of compliance, and on the ability to reflect their own conclusions in their eventual report and recommendations. The associated reputational damage, or its threat, generally has the effect of persuading the reluctant or hesitant witness to comply with Committee requests. The powers and procedures described are covered by Parliamentary Privilege, which enables freedom of speech and protects Parliament's internal affairs from interference by the courts.

Select Committees are supported by a small team of administrators, and they have the power to appoint specialist advisors on either a general basis or to assist with particular inquiries. The HAC, for example, employs four administrators and three specialist advisors. The latter tend to be academic researchers paid on a small daily rate. Whilst it is possible for a Committee to appoint policy or operational experts in such roles (e.g. police officers in the case of the HAC), the tendency is to rather rely on the questioning of subject experts at Committee hearings or informal discussions to obtain such expertise.

In terms of process, the Select Committee's reports and recommendations are published on the UK Parliament's website. Regardless of the Select Committees' conclusions, their comments cannot be questioned in a court of law. Moreover, there is no right of reply, or redress, in the

event of reputational damage caused as a result of a Select Committee's findings.<sup>36</sup>

Once a report is published, the Government normally has 60 days to respond to the Committee's comments and recommendations. The reports may give rise to their own dedicated parliamentary debates depending on the nature and profile of the issues covered and the will of the House. The Government is not bound to accept the Select Committee's conclusions and recommendations, but its response is expected to clearly explain what it is both accepting and rejecting and why. These responses are also published on the UK Parliament's website. Select Committees play an important role in monitoring government responses to ensure that the recommendations that have been accepted are implemented in an appropriate and timely manner. They are also free to re-visit rejected recommendations on future occasions, if they feel particularly strongly about the issues and reasons for rejection.

### General committees

General committees, which are mainly established to scrutinise newly proposed legislation, are normally appointed as each draft Bill is published. They are unique to the House of Commons, as the entire House of Lords (and its single Grand Committee)<sup>37</sup> debates new legislation introduced to the House. General Committees comprise between a minimum of 16 and maximum of about 50 members drawn from a mix of political parties in the proportion that they are represented in the House of Commons. Thus, there is always a majority of members representing the political party in Government on General Committees. Each Committee is assigned a Chairman, and they debate draft Bills in the way that they would debate issues in the Commons chamber and with broadly the same rules of engagement. Similar to Select Committees, General Committees can request oral and written evidence in relation to the subject under scrutiny.

General Committees responsible for scrutinising draft legislation go through each Bill line by line before reporting its conclusions and any proposed amendments to the Commons as a whole, where the Bill is further debated. The Bill is then published again, incorporating any agreed amendments, before progressing through the remaining stages

in Parliament (including the House of Lords) en route to Royal Assent and passing into law.

### The handling of complaints against the police

None of the existing Parliamentary Committees have a direct role in receiving and investigating complaints relating to the police. This is a function residing with the Independent Police Complaints Commission (IPCC) in England and Wales (and the Police Inspections and Review Commissioner in Scotland and the Police Ombudsman for Northern Ireland). However, the UK Parliament has the ability to hold the IPCC to account (principally through the PAC and HAC) in the same way that it does other publicly funded bodies. It is not unusual, for example, for the HAC to conduct hearings on the basis of incidents or complaints that have been the subject of an IPCC investigation.

## Parliament-police liaison mechanisms

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### Formal mechanisms

Beyond the previously described arrangements, there are few formal mechanisms for interaction between the UK Parliament and the police. Yet, given the extent to which the UK Parliament is able to hold the police to account in England and Wales, either directly or through their governing and oversight bodies (e.g. Home Secretary, Home Office, PCCs, HMIC, and IPCC), it is doubtful if the room or need exists for any additional accountability or liaison mechanisms.

### Informal mechanisms

The picture concerning the informal liaison between the UK Parliament and the police is, however, somewhat different. There is no restriction on the ability of, for example, the Chair and Members of Committees dealing with policing issues, or individual constituency Members of Parliament, to liaise informally with Home Office ministers, PCCs, Chief Constables, leaders of independent oversight agencies and professional representative bodies to seek information, obtain clarity, improve knowledge and understanding, and undertake field visits, provided that normal courtesies of engagement<sup>38</sup> are observed. There is also a considerable amount of informal liaison that takes place behind the

scenes, such as ad hoc telephone conversations, and discussions in the margins of formal business meetings and conferences.

There are general codes of conduct and propriety in place to guide public officials, including Members of Parliament and the police, on the standards expected of them in the execution of their duties and the consequences of non-compliance.<sup>39</sup> There are no additional or specific codes dedicated to liaison between Parliamentary representatives and the police, the informal nature of which is generally regarded as conducive to the efficacy of the more formal accountability arrangements. There are inevitably some risks inherent in placing a degree of reliance on the existence and appropriate function of informal liaison networks. These include the adverse impact on transparency and accountability, if the informal contact is not properly recorded or reported, the potential for conflicts of interest, and the possibility of abuse to go undetected. However, overall experience suggests that the benefits of allowing a proportionate element of informality within liaison arrangements outweighs the risks, particularly in ensuring that the bureaucracy normally associated with formal processes does not result in progress being reduced to an unacceptably slow rate.

## Relationship with other overseers

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The relationship between the UK Parliament and other oversight institutions operating within the policing landscape is little different from that existing between the police and its governing bodies, particularly concerning the Select Committee system. The HAC can, for example, call witnesses and obtain evidence from members of the HMIC, IPCC, PCCs and others on the same basis as from ministers, civil servants, other professional experts and members of the wider policing community. It can, and does, conduct dedicated inquiries focused on the work and performance of each of the oversight bodies.

At a working level, some early tensions have been observed with regard to the embryonic relationship between the UK Parliament and some of the pioneering PCCs, due, in no small part, to the high degree of autonomy the latter feel has been invested in them as democratically elected overseers of police services at a local level. However, the

legitimacy of the UK Parliament to hold all elements of the police governance structure accountable, including PCCs, is difficult to deny given its ultimate responsibility for policing legislation, funding and oversight.

In performing its latter role, the UK Parliament also involves and challenges non-governmental organisations, think tanks, interested lobbying groups and wider members of civil society, particularly when conducting inquiries through the Select Committee mechanism. Although these organisations and individuals are obviously not accountable to Parliament in the same way as the police and its governance and other oversight bodies, the same rules and conventions apply to the provision of written and oral evidence. Consequently, an appearance before a Select Committee can be just as daunting and lead to similar reputational damage in the event of a failure to comply or presentation of inaccurate or misleading information.

## Conclusions and recommendations

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### Conclusions

The main conclusion to be drawn from this study is that, whilst the funding and structure of policing across the UK is extremely complex, the ability of the UK Parliament to hold the police and its various oversight bodies to account is both strong and effective. This ability is based on many years of evolving powers, custom and practice that are now well established, described in clearly articulated and accessible parliamentary guidance, and thoroughly transparent (e.g. through the public transmission of Select Committee hearings).

The complicated policing structures, governance arrangements and funding mechanisms, however, bring forth the obvious question as to whether or not a simpler and clearer policing landscape would make the UK Parliament's role a good deal easier and more straightforward. Successive studies have suggested or hinted that sustaining as many as 43 police services in an area as relatively small as England and Wales is not really tenable in terms of either efficiency or effectiveness and a move to a regional, or even national, structure would lead to greater economies of scale, and consistency of practice and procedure across

the two countries. Whilst the introduction of democratically elected PCCs in November 2012 has resulted in greater local awareness of policing issues in most areas, and more of a direct community input to the determination of priorities based on local need, these benefits are offset by the increased risk of a widening divergence of policy and practice between local services, led by individual PCCs.

These are early days, of course, and the increased risk of divergence is mitigated to some extent by the work of independent policing bodies (e.g. HMIC, IPCC and the College of Policing) that are focused on informing and guiding the delivery of excellence and consistently high standards within and across individual police services. However, it is difficult to escape the conclusion that a single police service serving England and Wales, or eight or nine regional services, would be an easier structure to administer and oversee than the current 43. It is worth noting, in this respect, that Scotland recently moved from an eight service structure to a single service in the interests of improved efficiency and effectiveness.

On the basis of this case study, therefore, it is considered that the current structure, governance and funding of policing across England and Wales would require some significant rationalisation, along the lines briefly described, before they could be recommended as a composite model for other jurisdictions. Such rationalisation could be achieved without losing the focus on local democratic accountability and the principle of ensuring that communities have a substantial input in determining the policing needs and priorities in their particular areas (e.g. by embodying arrangements for local democratic accountability within larger and fewer police services).

On the other hand, the role that the UK Parliament performs in holding the police and its various governance and oversight bodies to account, and the formal and informal procedures it follows in doing so, are clear, transparent, robust and highly effective. This is despite the complexities inherent in the policing landscape described above. Therefore, the UK Parliament provides a model of democratic accountability that could be presented to other jurisdictions as a possible framework for adoption or adaptation.

## Recommendations

On the basis of this study, and drawing on the conclusions described above, the following recommendations have been formulated for general consideration:

- a. In any democratic society, it is important that the nationally elected parliament holds the police service fully accountable in the same way as any other public sector body.
- b. The rules and procedures governing the accountability arrangements should be comprehensive, unequivocal and transparent.
- c. The accountability arrangements should include the ability of parliament to inquire about any policing-related matter of its choosing; request any relevant evidence or other written information from whatever source; summon witnesses to open hearings; and impose sanctions in the event of non-compliance or false testimony.
- d. The national parliament should be supported in its role by a number of independent oversight bodies charged with setting policing standards; checking police performance; ensuring financial best practice and value for money; and overseeing the police complaints system.
- e. The police service and oversight body structures and relationships should be rational, uncomplicated and clear. Their respective roles and responsibilities should be articulated in a way that avoids any potential for doubt or confusion.
- f. The liaison arrangements between parliament, the police service and other oversight bodies should be clearly defined and governed by protocols covering both formal and any informal modes of engagement.



## NOTES

1. The study was drafted in Summer 2014.
2. ACPO is a separate legal entity comprising the most senior police officers that provided professional expertise, a national voice, the setting of standards and central co-ordination.
3. General Sir Nick Parker KCB, CBE, "Independent Review of ACPO" (London: ACPO, 2013).
4. Elections take place every four years.
5. Home Office, "The Strategic Policing Requirement, 2013" (London: Home Office, 2012).
6. It employs 560 staff as of 31 March 2014.
7. For example, the number of deaths in, or following, police custody has reduced from 36 in 2004/5 to 11 in 2013/14.
8. The majority is investigated by police services under IPCC management or supervision.
9. That is based, in part, on regular public surveys showing low satisfaction and confidence levels, particularly amongst black and minority ethnic communities and young people.
10. The Commons Select Committee on Statutory Instruments and the Joint Committee on Statutory Instruments focus on potential legal and drafting defects.
11. The Secondary Legislation Scrutiny Committee refers to the House for consideration any secondary legislation which it believes to be of special interest and importance and therefore worthy of critical attention
12. An example is the Police Reform and Social Responsibility Act of 2011.
13. An example is the Civil Contingencies Act of 2004.
14. Examples are the Public Order Act of 1986 and Criminal Justice and Public Order Act of 1994.
15. An example is the Police of 1996.
16. These regulations are made by the Home Secretary under Section 50 of the Police Act of 1996 and Section 1 of the Police Pension Act of 1976 and are subject to a statutory negotiating framework.
17. An example is the Code of Practice on Police use of Firearms and Less Lethal Weapons made in December 2003 under the Police Acts of 1996 and 1997.
18. Police Acts of 1996 and 1997, as amended by the Police Reform Act of 2002.
19. College of Policing, Legal Framework [Internet], <http://www.app.college.police.otg.uk/app-content/armed-policing/legal-framework/> [accessed 26 April 2014].
20. It is able to cross PAC boundaries.
21. House of Commons, Home Affairs Committee, "Policing Large Scale Disorder: Lessons from the disturbances of August 2011" (London: The Stationery Office, December 2011).
22. The Government Response to the Sixteenth Report of the Home Affairs Committee Session 2010-12 HC 1456, "Large Scale Disorder: Lessons from the disturbances of August 2011" (London: The Stationery Office, February 2012).
23. However, as a Money Bill, the House of Lords cannot reject the contents of the draft legislation and can only delay progress for up to one month
24. The 2010 Spending Review determined expenditure limits for each department in each of the years 2011/12 through to 2014/15
25. Home Office, "Police Grant (England and Wales), The Police Grant Report (England and Wales) 2012/2013" (London: The Stationery Office, 2012).
26. Home Office, "Statutory Instruments, Police, England and Wales, The Policing Protocol Order 2011" (London: The Stationery Office, 2011).
27. Home Office, "Financial Management Code of Practice For The Police Service of England and Wales" (London: The Stationery Office, 2012).
28. Home Office, "Home Office Accounting Officer: Accountability System Statement for Policing and Crime Reduction (2013)" (London: Home Office, 2013).
29. National Audit Office, "Police accountability: Landscape review" (London: The Stationery Office, 2014).

30. Statutory Instruments Select Committee is dedicated to the scrutiny of secondary legislation.
31. A dedicated General Committee is established to scrutinise every draft Bill introduced into Parliament
32. House of Commons, "House of Commons Reform Committee, Rebuilding the House, First Report of Session 2008-09" (London: The Stationery Office, 2009).
33. Under the previous arrangements the appointment of the Select Committee members was heavily influenced by the recommendations of Party Whips.
34. For instance, the HAC has recently identified and investigated topics such as "E-Crime" and "Leadership and Standards in the Police".
35. For example, they can take field visits to police services, individual police establishments and, occasionally, fact finding visits overseas
36. Robert Rogers, "Liaison Committee – Select Committee effectiveness, resources and powers, Written Evidence submitted by the Clerk of the House" (London: The Stationery Office, 2012).
37. The Grand Committee discusses draft legislation outside of the main chamber of the House of Lords.
38. For example, by making their objectives clear and ensuring to book appointments beforehand.
39. Examples include a code of conduct for Members of Parliament, and a code of ethics produced by the College of Policing in July 2014 for members of the policing profession.



# 10

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## **Role of Parliament in Police Governance in Asia and Europe: Insights from Comparative Analysis**

MARIO J. AGUJA AND HANS BORN

In this edited volume, the role of parliament in police governance in eight country case studies in Asia and Europe was researched. In Asia, the four country case studies are India, Indonesia, Thailand and the Philippines and in Europe the case studies concern Belgium, Germany, The Netherlands and the United Kingdom. This concluding chapter integrates and provides an analysis of the various case studies and relevant findings. Analysed below are matters relating to police governance, and the role of parliament in police governance in relation to its legislative, oversight and budget functions. The role of parliamentary committees, independent oversight bodies and the police-parliament liaison mechanism across the different case studies are likewise discussed below. Best practices are also highlighted in each of the succeeding discussions.<sup>1</sup>

## Police Governance

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While the objectives of the police are clear and straightforward (i.e. to prevent and detect crime, maintain order, and protect the public), the case studies demonstrate that the governance and structure of the police is a complex matter, with a great variety of governance models between states, due to contextual matters, such as legal framework, political system and other factors discussed in the introduction.

In each country case study, a variety of state institutions are involved in the oversight of the police, including various executive bodies, the legislature, the judiciary and independent oversight bodies, as well as local government. Tables 1 and 2 in this chapter give an overview of the institutions involved in the governance of the police in the eight case studies. While each country is unique and no single model for the governance of the police exists, various commonalities across the countries can be distinguished. First, in all countries, parliament has the overall responsibility for passing laws, scrutinising the activities of the police, and allowing government to use public funds for the police. While parliament is the ultimate authority, in many states some of its responsibilities are devolved to regional and local governments.

Furthermore, all case study countries illustrate that the police is accountable to the law rather than to the government of the day. This is achieved in all case study countries by setting up a system of checks and balances that limits and details the executive's tasking and reporting of the police. In all countries, this system of checks and balances consists of a combination of internal, executive, parliamentary, judicial and specialized oversight institutions whose mandates and powers are based on publicly available law. For example, in the **Netherlands**, all directives of the minister of home affairs to the police are in writing, and parliament is duly informed. Most countries have a system of police accountability that includes at least one civilian body that is independent of both the police and executive. The combined remit of oversight institutions covers all aspects of police work, including their compliance with the law, the effectiveness and efficiency of their activities, their finances, and their administrative practices.

In various countries, efforts are made to bring the police closer to the public by decentralising the decision-making power over the police to local bodies. For example, in the **United Kingdom**, in 2011, a system of democratically-elected local police and crime commissioners was set up to devolve greater responsibility for community-based policing to the local level. In the **Philippines**, local People's Law Enforcement Boards (PLEBs), which are local independent representative bodies with the power to resolve people's complaints against the police, were set up. In the **Netherlands**, while the minister determines the national priorities and budget of the police, authority over the police rests with the mayor of each municipality (for maintaining order) and the local prosecutor (for criminal investigation) at the local level. In **India and Germany**, provincial or State Assemblies have extensive powers to examine any police matter and make the police answerable to local elected representatives. With the exception of **Thailand and Indonesia**, the case studies illustrate that the decentralisation of decision-making power to local police units reinforces the implementation of community based policing, as it enables local police chiefs to directly respond to the needs of the local constituency.

In most countries, structures are in place to insulate, but not to isolate, the police from politics and avoid that political authorities exercise direct control over police operations. The case studies show that there are three ways to limit political control over the police. First, in countries such as the **Netherlands and India** political control is limited by creating civilian capacity in the ministry of home affairs to draft ministerial guidelines for the police and monitor the activities of the police. In a second group of countries (e.g. the **Philippines and Indonesia**), a national police commission is mandated to provide administrative control and operational supervision over the police. National police commissions are independent executive agencies that provide guidance and operational control over the police. In doing so, they act as a buffer between political authorities and the police and limit political control over the police. In a third group of countries (e.g. the **United Kingdom**), the scope for political control over the police is limited because the minister of home affairs shares the responsibility of police governance

with other institutions, including the Association of Chief Police Officers and the locally elected police and crime commissioners.

Furthermore, most countries have avoided that the police is policing itself. To this end, independent police complaints bodies are set up that are empowered to receive and investigate complaints about police misconduct. In some countries, specific independent police complaints bodies are set up, such as in **Belgium**, the **Philippines** and the **United Kingdom**. In other countries, generic independent complaints bodies are mandated to receive and investigate complaints, such as in the **Netherlands** (National Ombudsman) or in **Indonesia** (National Human Rights Commission and the Corruption Eradication Commission).

Lastly, in all countries, civil society organisations play a major role in the governance of the police. In some cases, on the initiative and pressure of citizen movements, parliament has enacted an independent oversight body (e.g. an ombuds institution in **India** in 2014). In other cases, such as in **Indonesia**, civil society organisations have contributed to the exposure of corruption within the police. The enactment of Freedom of Information (FoI) laws (e.g. in **India**) were of great importance for citizens to have access to information about the functioning of the police.

### Good practices

1. While no single model for police governance exists, the governance of the police is a combination of internal, executive, parliamentary, judicial and specialised oversight institutions whose mandates and powers are based on publicly available law. An effective system of police accountability includes at least one civilian body that is independent of both the police and the executive.
2. Parliament possesses ultimate responsibility for law-making, scrutiny and allowing the use of public funds for the police, while respecting the decision-making powers of the police at the local level.
3. To devolve greater responsibility for community-based policing to the local level, local government and police boards have decision-making power over the police budget and policing priorities.

4. In order to avoid the politicisation of the police, political authorities, including members of parliament and the cabinet, have no operational control over the police. To this effect, independent executive agencies are mandated to provide administrative control and supervision over the police.
5. A common feature of police governance is that the police is not policing itself. Citizens can submit complaints about police misconduct to independent oversight bodies, which are mandated to receive and investigate complaints related to the police.
6. The role of civil society organisations in public transparency of the police is enhanced by the enactment of FoI laws.

Table 1. Police governance in selected countries in Asia and Europe (2014)<sup>2</sup>

	Police framework	Branch of Government		
	Federal or centralised	Ministry	Parliament	Local government
Belgium	<ul style="list-style-type: none"> <li>• Federal Police</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Interior</li> <li>• Ministry of Justice</li> </ul>	<ul style="list-style-type: none"> <li>• House of Representatives</li> <li>• Standing Committee of Home Affairs</li> <li>• Special Committee for Police Oversight</li> </ul>	<ul style="list-style-type: none"> <li>• Mayors</li> <li>• Public prosecutors</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Federal Police</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Interior</li> </ul>	<ul style="list-style-type: none"> <li>• Bundestag Committee for Interior</li> <li>• Bundestag Committee for Budgets</li> </ul>	<ul style="list-style-type: none"> <li>• State Assemblies, and executives</li> </ul>
Indonesia	<ul style="list-style-type: none"> <li>• Indonesian National Police</li> </ul>		<ul style="list-style-type: none"> <li>• House of Representatives (DPR)</li> <li>• DPR Commission III</li> </ul>	
India	<ul style="list-style-type: none"> <li>• Indian Police Service</li> </ul>	<ul style="list-style-type: none"> <li>• Union Ministry of Home Affairs</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament of India</li> <li>• Standing Committee for Home Affairs</li> </ul>	<ul style="list-style-type: none"> <li>• State Assemblies</li> </ul>



	Police framework	Branch of Government		
	Federal or centralised	Ministry	Parliament	Local government
Netherlands	<ul style="list-style-type: none"> <li>National Police Service</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of Security and Justice</li> <li>Public Prosecution Service</li> </ul>	<ul style="list-style-type: none"> <li>House of Representatives</li> <li>Standing Committee on Security and Justice</li> <li>Senate</li> </ul>	<ul style="list-style-type: none"> <li>Mayors</li> <li>Public prosecutors</li> </ul>
Philippines	<ul style="list-style-type: none"> <li>Integrated National Police</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of National Defence</li> <li>National Police Commission (NAPOLCOM)</li> </ul>	<ul style="list-style-type: none"> <li>Congress</li> <li>House of Representatives Committee on Public Order and Security</li> <li>Senate</li> <li>Committee on Public Order and Dangerous Drugs</li> </ul>	<ul style="list-style-type: none"> <li>Mayor</li> </ul>
Thailand	<ul style="list-style-type: none"> <li>Royal Thai Police Force</li> </ul>	<ul style="list-style-type: none"> <li>Prime Minister</li> </ul>	<ul style="list-style-type: none"> <li>House of Representatives</li> <li>Committee on Police</li> <li>Senate</li> <li>Committee on Justice System and Police</li> </ul>	<ul style="list-style-type: none"> <li>-</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>Territorial Police Forces</li> </ul>	<ul style="list-style-type: none"> <li>Home Secretary</li> </ul>	<ul style="list-style-type: none"> <li>United Kingdom Parliament</li> <li>Home Affairs Committee (HAC)</li> <li>Public Accounts Committee (PAC)</li> </ul>	<ul style="list-style-type: none"> <li>Elected</li> <li>Police and Crime Commissioners</li> </ul>

## Police governance and the role of parliament

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In the following section, the three generic functions of parliament are applied to police governance. They concern the legislative, oversight and budget control functions.

### Police governance and the legislative function of parliament

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As demonstrated by the country case studies, it is common practice for parliament to legislate an up-to-date legal framework for the police that enumerates not only the mandate, powers, organisation and functions of the police, but also provides for oversight on and accountability of the police.

The case studies show that the legal framework of police services covers the constitution, as well as a wide range of laws pertinent to police governance, including police act, penal code, code of criminal procedure, acts related to peacefully assembly, laws governing oversight institutions (including parliament and ombuds institutions), and laws related to dealing with specific issues such as public order and state of emergency. Furthermore, the legal framework includes regulations (sometimes referred to as secondary legislation) issued by the executive dealing with specific police matters, e.g. internal control procedures and codes of ethics. Last but not least, in federal countries, e.g. Germany and India, local assemblies can adopt laws that pertain to the police within their jurisdiction.

All the case studies demonstrate that parliament exercises wide latitude of legislative powers. With specific reference to the police, parliament provides for an updated legal framework that addresses contemporary governance issues. Such updating aims to address issues relating to decentralisation and deconcentration (as in the cases of **Belgium** and the **United Kingdom**), or demilitarisation/democratisation as in the case of the **Philippines, Indonesia**, or nationalization of the police as is the case in the **Netherlands. India** has still has laws in place that originate directly from colonial times, e.g. the Police Act V (1861) or the Indian Penal Code (1860). Current legislations governing the police go beyond

the structure, qualification and promotions, ranks, retirement, etc. of the police. New legislations include accountability mechanisms such as complaint bodies, internal affairs units, and roles of local elective officials in the governance of the police.

Various case study authors have cited the growing interest on demilitarisation/democratisation, creation of a national police, community policing and decentralisation as reasons for the updating of legal frameworks governing the police. This is in response to the growing public clamour to make the police service increasingly accountable to the public, especially to the locally elected authorities, while simultaneously addressing the need for efficient and effective policing.

In the cases of the **Philippines** and **Indonesia**, with the fall of the dictatorship, demilitarising the police and organizing a national police service under civilian authorities became an urgent task. Aguja cited the passage of the new police law in the **Philippines** in 1990 as paving the way for the creation of one national police, civilian in character, under the supervision of a national police commission. The Philippine law also gives power to local chief executives to appoint the chief of police, discipline the police, inspect the police service, and oversee the police, including developing local police plans. The law likewise provides for the establishment of an internal affairs office within the police service, and a citizen's complaints body.

In the **Netherlands**, the study describes the creation of a national police service through the Police Act of 2012. The 25 regional police services and the Dutch Police Services Agencies, each with their own police commissioner, were all placed under one single police commissioner to ensure coordination of the various (local) police services. The author, however, noted that the reorganisation did not diminish the authority of local chief executives (e.g. mayors) and the chief prosecutors (responsible for criminal investigations) over the police.

On the other hand, Easton and Dormel noted that the recent Police Reform Law of 1998 in **Belgium** was guided by the principles of deconcentration and decentralisation. This will strengthen the powers

of locally elected representatives over the police. The authors further noted that the Belgian integrated police is structured on two levels (one federal police service and 195 local police services), where “both levels are autonomous without any hierarchical link binding them.”

A similar trend of local accountability is occurring in the **United Kingdom** through the passage of the Police Reform and Social Responsibility Act of 2011. According to Vic Hogg, all chief constables in 41 of the 43 police services in England and Wales are now accountable to elected Police and Crime Commissioners (PCCs). The PCCs are in turn under the oversight of Police and Crime Panels (PCP), where its most of its members are drawn from councillors in each constituent local authority, and two more members are appointed for their expertise. Similar accountability mechanisms are in place in two (London-based) areas.

The different studies show that, aside from addressing police organisations, parliaments are equally preoccupied with passing legal measures that strengthen police accountability through the creation of oversight bodies, protection of the rights of the public and the police, and maintenance of public order and security.

### Legislation of independent oversight bodies and complaints bodies

To increase police accountability to the public, parliament passes laws creating oversight bodies and providing for public accountability measures. In the case of the **Philippines**, Congress passed laws governing the Ombudsman, and the code of conduct and ethical standards for public officials and employees, including the police. The parliaments of **Thailand** and **Indonesia** also passed measures institutionalising their respective human rights commissions and independent anti-corruption bodies. Furthermore, parliament legislated independent complaint and police oversight bodies in the **United Kingdom** and **Belgium**.

### Participation of the public in law-making process (open hearings and public consultation)

Except for **Germany**, where parliamentary committee procedures are *in camera*, the case studies show a transparent, inclusive and democratic process of legislation. Stakeholders, the general public and the media have access to parliamentary documents and debates, and actively

participate in the legislative process through the sending of position papers and personal appearances as resource persons during committee hearings. For example, while in **Germany** committee proceedings are *in camera*, **Germany** parliamentary committees frequently organise public hearings, especially when new pieces of legislation are under discussion. As normally the party groups select the experts to be heard, the input depends on the kind of experts that are invited. Hearings may therefore be dominated by lobbyists, but they are often used to integrate external experts, such as university professors, into the law-making process.

The media plays an active role in shaping public opinions on pending legislation. The media is given access to parliamentary documents and is often in attendance during committee hearings and parliamentary debates. Political parties and members of parliament make their positions known to the public through the media and conduct public consultation on their own initiative.

### Good practices

1. Parliaments actively exercise their legislative power. Current updating of legal frameworks governing the police is undertaken to improve governance and make the police more democratic by ensuring their accountability to locally elected officials.
2. The democratisation of the legislative process is currently a norm among the parliaments studied. Parliamentary materials are highly accessible to the public, and there is now greater openness of legislative proceedings through on-time media coverage, as well as greater public participation in committee hearings. The crafting of public policies is no longer an exclusive domain of legislators and their political parties, with the participation of stakeholders and the media, thereby democratising the entire legislation process.

## Police governance and the oversight function of parliament

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### Inquiries: Mandate, powers and organisation

All case studies show that oversight functions or the power of inquiries are inherently exercised by the parliaments, albeit with variations

of the mechanisms and intensities and thus with differing levels of effectiveness. Inquiries are exercised either in the plenary or via the committees. Members of parliament could raise matters of public concern during parliamentary question hours, either in writing or orally (as in the case of the **United Kingdom**), when a concerned minister may respond to queries. However, the most dominant expression of the power of inquiry/oversight is exercised by the committee system through a select/standing committee or commission that existed in all case studies.

In the case of the **United Kingdom, the Netherlands, Belgium, Germany, Indonesia, the Philippines**, and **Thailand**, parliamentary inquiries are open to the public. In fact, the case study authors of **Netherlands**, the **Philippines** and the **United Kingdom** mentioned that the inquiries are broadcast live on television unless the committee members agree to make it closed or limited to the public due to justified reasons. In the case of the Philippines, congressional proceedings including inquiries, as a general rule, are open to the public except when the President requests that it be held in an executive session or when the committee determines that national security necessitates that it be held *in camera*.

#### Field-visits: organisation

The case studies of **Belgium, Indonesia, Philippines** and the **United Kingdom** explicitly highlight the power of concerned parliamentary committees to make field visits, fact-finding missions or field investigations.

#### Hearings: power to call-up police officers and executives

The majority of the case studies affirm the power of inquiring/investigating parliamentary committees to compel or summon individuals to appear before or to submit documents to the committee under pain of penalty. This system is institutionalized in **Belgium, Germany, the Philippines, Thailand** and the **United Kingdom**. The exercise of power of *subpoena duces tecum ad testificandum* is considered necessary for the effective conduct of inquiry. In the case of **Indonesia**, the author highlighted that one of the source of weakness of parliamentary oversight is the lack of the inherent power of parliament to compel witnesses, especially top-ranking government executives,

to attend or submit documents to inquiring committees. In the **United Kingdom** case study, the author observed that parliament rarely uses its contempt powers against those who fail to personally appear or turn over documents. Accordingly, with its transparent process, parliament relies more on adverse media, public criticism and influence against those who fail to heed the parliamentary order. Failure or refusal to attend or submit documents to the inquiring parliamentary committee is believed to bring severe reputational damage to the concerned parties. In **Germany**, only parliamentary inquiry committees have the right to summon other government representatives as witnesses. The hearing of government representatives under oath by the standing parliamentary committees, however, is not foreseen by German law. Nevertheless, government and police officials mostly give a positive response in such cases, but the members of parliaments' right to force police officers to respond to their questions is limited to parliamentary inquiries. In **Thailand**, Srisombat noted that, while subpoena and contempt powers exist, there is no record that such powers have been used. On the other hand, the Congress of the **Philippines**, in its history of congressional inquiries in aid of legislation, has fully utilised both its subpoena and contempt powers. In fact, the contempt power has been directed against those who failed to heed Congress' power of subpoena, who failed to cooperate at all during the inquiry, and who failed to observe proper decorum or lied to the committee during inquiries.

### Good practices

1. There is a growing consciousness in public accountability, with a number of parliaments conducting inquiries open to the public, as these inquiries are imbued with public interest.
2. For the parliament to be successful in its inquiry, it must be clothed with subpoena and contempt powers to compel witnesses to appear or submit documents needed to shed light onto the subject of inquiry. Without such powers, parliamentary committees will be rendered inutile in their exercise of their power of oversight of the executive branch or the public in general. The exercise of such power must be used with utmost professionalism with the aim of uncovering the truth, rather than as a tool for political persecution.

## Police governance and the budget control function of parliament

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### Access to budgetary information

All case studies highlight the important role played by parliament in passing the national budget, including that of the police. It plays the role of scrutinising the proposed budget and eventually passing it. It is apparent in all case studies that members of parliament have full access to budgetary information, including analysis of the proposed budget as prepared by their respective in-house think-tank (i.e. Bureau of Research of the Parliament of the **Netherlands** or the Congressional Policy and Research Department for the **Philippines**).

### Extra-treasury budgets/revenues of the police

Two case studies mention the existence of extra-treasury budgets of the police. In the **United Kingdom** case study, Hogg noted the different sources of funding for the police. One source is from the Home Office and the Department for Communities and local Government (or Welsh Assembly in the case of the four police services in Wales). There are also locally sourced funds from a proportion of Council Tax known as the “police precept,” which is estimated to represent 14 to 20 per cent of the central funding. In addition to the sources of income of the police, the author details further sources from the PCCs from charges for the policing of commercial events (e.g. sporting and entertainment events) and from investments. In 2013/14, Hogg reported that the ratio of central to local funding is roughly 75 to 25 per cent respectively. The author raised no issues related to off treasury budget of the police.

In the **Indonesian** case study, Aditya argued that, despite the parliamentary power over the budget of the ministries, parliament remains weak in terms of controlling the non-tax revenue usage of the police. Government Decree No. 31/2004 authorized the police to use up to 90 per cent of certain non-tax revenues, such as driving license and car license registrations, driving courses, criminal record letters and arms ownership licenses to support its operation. The non-tax revenues of the Indonesian police are not without its share of controversies, as the case study revealed. In 2011, the Indonesian media reported that



the police received USD 71.9 million from PT Freeport Indonesia for its services in providing security for the port. In 2012, the Corruption Eradication Commission arrested a top ranking police chief of traffic for corruption. It was discovered that the money was sourced from the revenues of the driving simulator. The Indonesian Parliament, through Commission III, investigated these controversies. However the author concluded that “in the context of non-state budget funds accountability, the commission appears to be powerless.” As the power of the purse is one of parliament’s most important powers, extra treasury or non-tax revenues are undermining parliaments power to oversee police affairs.

### Budget processing

Different parliaments adopt varying procedures for processing their respective national budgets. Nevertheless, the process could be briefly summarised: the presentation of the proposed budget, parliamentary hearing/deliberation on the budget, and voting for approval of the budget bill. Presentation usually entails either a ceremonial turn-over of the budget documents to the parliament or a speech by the head of finance of government to members of parliament during a plenary session to signal the start of the budget process in the parliament.

The ceremonial turn-over of budget documents to parliament is exemplified in the Philippines and the Netherlands. In the case of the **Philippines**, the secretary of the Department of Budget and Management presents the leaders of Congress a copy of the budget, and other relevant documents (i.e. the President’s Budget Message, Budget Expenditures and Sources of Financing, National Expenditures Program, Details of Selected Programmes and Projects, and Staffing Summary), within thirty (30) days after the State of the Nations Address (SONA) of the President. The SONA is delivered by the President every 4th Monday of July before the joint session of Congress. In **the Netherlands**, the case study showed that during the “Prince’s Day” (3rd Tuesday of September) where the King as head of state, delivers the so-called “King’s speech” (Troonrede), the Minister of Finance presents the “Third-Tuesday-in-September” briefcase to the speaker of the House of Representatives. It contains the budget memorandum, and the proposed national budget.

The Budget memorandum includes policy documents about the state's financial situation ten years back and four years ahead. The submission also includes the advice of the independent Council of State on the budget memo.

In the **United Kingdom**, the author cited that during the month of April or May, the Chancellor of the Exchequer delivers a speech in the House of Commons on the state of the country's finance, including proposals for taxation and spending. In **Indonesia**, the case study showed that the government submits the budget proposal to the plenary session towards the end of May. During the plenary presentation, party caucuses will make a response, followed by a subsequent government response.

After the budget has been formally presented to the parliament, there are different processes involved in parliaments for its scrutiny, until the eventual passage of the budget bill. In **the Netherlands**, even prior the start of the parliamentary debate on the budget, members of parliament can already ask factual questions in writing about the budget bill to their Parliamentary Bureau for Research and Public Expenditure. The bureau in turn prepares an internal memorandum for the use by the members of parliament, which includes proposed questions and clarifications that could be raised during the budget deliberation. In the Dutch system, while the budget is deliberated in both chambers, only the House of Representatives has the right to amend the budget. The Senate does not exercise such right to amend. It can only adopt or reject the proposed budget.

In the case of the **Philippines**, as soon the budget is presented, the Committee on Appropriations of the House of Representatives and its sub-committees start the budget hearing. It is an annual event where executives are called by Congress to present their plans, defend their budget, and appraise Congress of their performance. After the committee hearings of all agencies are done, the budget bill is presented to the plenary and once again debated per agency. The heads of the executive agencies are expected to be present when Congress deliberates their budgets in the Plenary. A similar exercise is done in the Senate. After both chambers have completed their deliberations and passed it

during a third reading, a bicameral conference (or bicam), composed of representatives from both chambers, is called to reconcile the disagreeing provisions. Once a consensus is reached, the bicam transmits the finalised version of the bill for ratification to both chambers. After both chambers have ratified the bicam report, it will be delivered to the President for his signature or veto of certain line items. Just like any other law, the President has 30 days to act on the proposed bill, or it will lapse into law. The Constitution provides that the budget bill must emanate from the House of Representatives. While both chambers have the power to amend the budget submitted by the executive, it can only lower it. Increasing the budget as proposed by the chief executive is prohibited by the constitution.

In **Indonesia**, the budget process is equally rigorous. Once the presentation of the budget in the plenary is completed, the budget proposal is distributed to the different parliamentary commissions, who in turn deliberate the proposal with the concerned ministers. It is during the commissions' budget hearing where government agencies present their utilisation of the current budget, and their proposed budget. After all the commissions' hearings, a budget proposal will be submitted to the budget committee (composed of representatives of various commissions) where it will be discussed with government representatives (e.g. Ministry of Finance). It is only after the budget committee and the government representatives agree on the budget bill that it will be submitted to the plenary for approval.

In **Germany**, while the formal powers of the Bundestag to control the government's budget are formidable, Aden mentioned that, in practice, the parliament's influence is limited by the fact that governments are elected by the majority of the members of parliament in the German democracy, making it not probable that parliaments use their budgetary power to force governments to change policies.

#### **Audit of past expenditures: Role/use of supreme audit institutions**

Audit institutions do play an important role in the effective performance of the parliamentary budget control function. More often than not, budget institutions are required to submit to parliament a comprehensive

report on how the government spent the money and whether it was in accord with the policies set by parliament.

In the case of the **Netherlands**, the author noted the role played by the Court of Audit as “advisor for both government and parliament.” While the “Prince’s Day” signals the beginning of the budget process, the Accountability Day (*Verantwoordingsdag*), on the 3<sup>rd</sup> Wednesday of May, marks the end of the budget cycle. It is during this day that the government presents its annual report to the House of Representatives, at the same time that the President of the Court of Audit presents its findings and recommendations, including annual reports of the different ministries. It points out matters that require attention from the parliament.

In the case of **United Kingdom**, aside from the National Audit Office<sup>3</sup> (NAO) that “scrutinizes public spending” on behalf of the Parliament, the PAC of the parliament is tasked to check the government expenditures in reference to the plans approved by parliament. The PAC also oversees the NAO. It is a unique parliamentary feature, as the parliament oversees government expenditures, in cooperation with the NAO, on a regular basis, unlike many parliaments that scrutinise only during the budget process.

In the case of **Belgium**, the Court of Audit, a collateral body of parliament, provides an external review of the budgetary, accounting, and financial operations of government. It is regularly consulted by parliament on records of performance of government agencies.

In **India**, the Comptroller and Auditor General (CAG), who audits the different levels of government, submits its report to the President/or Governor who in turn submits the report to the federal/state parliaments. The author noted that the CAG “provided some checks against blatant political shenanigans.”

In the case of the **Philippines**, the Commission on Audit (COA) is mandated to submit to the President and to Congress its annual audited report of all government agencies. The COA report is also publicly accessible on its website. Individual members of Congress, more often than not, use

the COA audit reports during budget deliberation of concerned agencies. The congressional planning office in its briefing paper/annual analysis of the proposed national budget for legislators included relevant audit observations of COA.

### Good practices

1. It is common practice for parliaments to provide members of parliament access to relevant information about the proposed budget (including economic assumptions, government strategic plans, and analysis of differences between planned and real police expenditures). It allows members of parliament to freely question concerned agencies, not only on their proposed budget, but also on their overall performance. As access to information increases, members of parliament become more effective in their mandate to pass the national budget.
2. To effectively scrutinise the budget, members of parliament are assisted by either an internal or external think-tank in the timely analysis of the budget.
3. It is equally necessary that committee hearings on the police budget be undertaken to not only fully scrutinise the police budget but also to increase the transparency of the budget process. This also creates an opportunity for the legislative and executive branches of government to annually discuss matters of public concern.
4. The report of the audit body, when made available in time for the budget process, enhances the quality of the dialogue between the elected officials and appointed civil servants.
5. Parliament engages with the public and the budget process by organising public debates in the committee and the plenary, and public hearings, as well as putting all non-classified government documents in the public domain. In doing so, the budget process creates windows for greater public involvement and enhances public involvement in state affairs.
6. As a common practice, off-budget revenues are disbursed in accordance with guidelines and are accounted to the treasury. If not, there is a need to subject it to stringent accountability measures to ensure the integrity of the fund.

## Role of parliamentary committees

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Parliamentary committees are the core actors for parliaments' oversight role of public administrations. Members of parliament specialised in a policy, often with a relevant professional background, meet in specialised parliamentary committees. As shown in the case studies, parliamentary committees vary in types (standing committees, special committees, ad hoc commissions, and commissions of inquiry), size of membership, and rules on membership and leadership (majority and minority representation).

All case studies show the existence of different types of parliamentary committees with varying mandates. The **United Kingdom** has four types of committees (i.e. select committees, joint committees, general committees, and grand committees); the **Philippines** has three (standing committees, special committees, and joint congressional committees); **Belgium** has three (standing committees, special committees, and inquiry committees); and, **Indonesia** has commissions and special committees.

### Committee procedures (transparency, open/closed meetings)

The case studies show different levels of transparency in the procedures of parliamentary committees. In the case of the **Philippines**, **Indonesia**, the **Netherlands**, and the **United Kingdom**, parliamentary proceedings are public and open to the media. In **India**, committee proceedings are *in-camera*, or not open to the public, in "consideration of the subjects discussed" and to ensure that "members perform their duties in non-partisan ways." In **Germany**, it is attempted to keep parliamentary committees free of party politics and "window dressing". This is the main reason for why committee meetings are generally not public – with possible exceptions, especially for hearings with invited external experts.

### Committee staff/expertise

In terms of staff support, availability of experts and resources for the disposal of the committee, the case studies revealed that there is a great variation between continent and countries. Some authors, in fact, highlighted the need for additional resources. In **Indonesia**, for example,

the author notes that “support of parliamentary staff is still far from ideal requirements.”

### Committee mandate

The case studies show different levels of focus in terms of police matters. Some countries have committees that are primarily and directly, but not necessarily exclusively, responsible for police matters. Most are not directly responsible for police matters, but have them as one of their mandates (i.e. in the **Philippines**, these are the human rights committees, Blue Ribbon committee, public finance and budget). For those with a bi-cameral legislature, both chambers have counterpart committees.

Among the countries studied, **Thailand** and **Belgium** have committees exclusively focusing on the police. The House of Representatives of **Thailand** has a committee on police; its Senate counterpart, the Committee on Justice System and Police, however, does not focus exclusively on police matters. The **Belgium** Parliament has a special committee dealing with the police. The Committee P (see the section on independent police oversight bodies) reports to the special committee in parliament. In **Germany**, on the Federal level, two Bundestag committees deal with police affairs, including the Home Affairs Committee and the Budget Committee, with further parliamentary committees dealing with police affairs within each of the parliaments of the states (“*Länder*”).

The rest of the case studies subsumed police matters under general social concerns committees such as: the Home Affairs Committee (HAC) and Public Accounts Committee (PAC) of the House of Commons of the **United Kingdom**; the Standing Committee-Ministry of Home Affairs of **India**; the Standing Committee on Security and Justice for **the Netherlands**; the Committee on Public Order and Safety for the House of Representatives; and Committee on Public Order and Dangerous Drugs for the Senate in the **Philippines**.

To enable committees to effectively exercise their oversight role, they are provided with different levels of power. In the **Philippines**, Aguja described that the Philippine Congress is clothed with the power to subpoena persons to appear before the committees and/or to subpoena documents (*subpoena duces tecum ad testificandum*). It also has contempt powers against those who disobey the orders of Congress and/or its

congressional committees. It can detain those who violate its orders or rules.

Such subpoena and contempt powers are also available in inquiry committees of **Belgium**, or to the select committees of the **United Kingdom, Thailand** and **Indonesia** have the power to invite but have no power of contempt or have never used said power, as the police in these countries are directly under the head of state, the President/Prime Minister. Such organisational set-up, and the absence of contempt power limit the oversight power of parliament.

### Committee membership

The size of the committee varies, as the case studies revealed. It is often dependent on the size of the parliament or of a specific chamber. The existence of a system of proportional representation of majority and minority parties/coalitions is notable, however, in most of the case studies. In fact, in some parliaments, the committee is headed by a member of parliament from the opposition, as in the cases of the United Kingdom, India, and the Netherlands. As a matter of convention, the chair of the Public Accountability Committee (PAC) in the UK Parliament is from the opposition party.

### Good practices

1. While having one exclusive committee that focuses on the police is ideal (regardless of the type of police service), the existence of multiple committees that handle police affairs is common practice.
2. The mandates of these committees are clear and describe its objectives, powers and methods.
3. It is common practice that committee meetings, hearings, documents, and reports are publicly accessible, both in theory and practice.
4. In terms of membership, it is common practice that the proportional representation of minority and majority parties is observed to ensure transparency and accountability.
5. As members of parliaments have different backgrounds and expertise, the availability of qualified staff and consultants, and committee resources ensures that the committee will be able to perform its mandates effectively.



## Independent oversight bodies

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In all states, a variety of external oversight bodies exist with jurisdiction over the police (see Table 2). The following types of oversight bodies can be distinguished across the country case studies:

- Independent police complaints and oversight bodies,
- National ombuds institutions and human rights institutions, and
- Anti-corruption bodies and audit institutions.

### Independent police complaints bodies

Independent police complaints bodies can be found at the heart of various police reform programmes. The objectives of setting up independent complaints mechanisms are to:

- Improve external civilian oversight of the police,
- Strengthen credibility of police complaints mechanisms in the eyes of the public, and
- Monitor the compliance of the law and respect for human rights by the police.

In the recent past, independent police complaints bodies became a common feature of the police governance in many states, including Cyprus, France, Hungary, Ireland and Portugal, and they are in the process of being set up in other status, such as Austria, Denmark, Norway Sweden and Turkey.<sup>4</sup> Independent external police complaints bodies can be found in **Belgium, the Philippines** and the **United Kingdom**.

In **Belgium**, the parliament has established by law the Standing Police Monitoring Committee - also known as Committee P- which is an external, independent and neutral body that assists parliament in overseeing the activities of both the police and the executive agencies including the minister of home affairs, mayors and police boards. Committee P has jurisdiction over all police services and police inspectorates, both at the federal and national level. The members of the committee are appointed by parliament, and it reports to parliament on its monitoring activities of the police. Committee P issues public reports and issues recommendations to parliament about making the police in Belgium more professional and accountable. As a result, it not only strengthens

parliamentary oversight of the police, but also informs civil society at large about the functioning of the police. Committee P has independent staff that assist the committee in conducting the monitoring activities.

In the **Philippines**, parliament has established by law the People's Law Enforcement Board (PLEB), which is an independent and local body that is empowered to receive, investigate and resolve complaints against the police. It is duly organised in all cities and municipalities and participatory in its membership. Normally, its members are those active in the city or municipality council. The law prescribes that at least one member of the PLEB is a woman. The PLEB is a quasi-judicial body on administrative cases filed by citizens against erring police personnel. The decision of the PLEB is final and executory, except for those imposing a penalty of demotion or dismissal from the service.

In the **United Kingdom**, Parliament established by law the Independent Police Complaints Commission, which oversees the internal police complaints system. It undertakes independent investigations into the most serious cases of police misconduct, death and serious injuries as well as other breaches of human rights. It is also an appeal body for internally-handled (minor) complaints and issues guidance on complaints-handling to the police services. It is led by a chair and ten commissioners, who are supported by 380 staff. The Chair is appointed by the Minister of Home Affairs. The IPCC submits an annual report and statement of accounts to the Home Affairs Committee of Parliament, enabling members of parliament to be informed about the nature and amount of complaints against the police.

In all these states, independent police complaints mechanisms have in common that there is no hierarchical or institutional connection between the police officer under investigation and the investigator. Furthermore, the conduct of investigation is independent not only on paper (according to the law) but also in practice.<sup>5</sup>

For independent oversight bodies to be credible, effective and accountable, they need to have the following characteristics:

- Oversight bodies are subject to close scrutiny and, for that matter, report to parliament and the public at large;

- Oversight bodies have the capacity of gathering evidence if police behaviour was unlawful and have the power to identify, sanction and correct those responsible;
- They are able to act promptly, as delays may lead to the loss of evidence; and
- They involve the complainant or victim in the complaints procedure.

Civil society organisations in the **United Kingdom** have warned that police oversight bodies are vulnerable to capture by the police. In particular, capture can take place if oversight bodies overly rely on the use of former police officers in their investigations, leading to a situation in which they might need to investigate their former colleagues in the police.<sup>6</sup> To minimise the danger of capture, in **Belgium**, the **Philippines** and the **United Kingdom**, civilian oversight bodies are chaired by a civilian who is not a current or former police officer. In addition, the staff of police oversight bodies is composed of civilians (not current police officers), and only a minority of the civilian staff are allowed to be former police officers.

### National human rights and ombuds-institutions

Most case study countries have a national human rights institution and/or an ombuds institution mandated to receive and investigate complaints about human rights violations and maladministration concerning the entire government, including the police. In most countries, citizens can issue a complaint to the ombuds or national human rights institution if they believe that the police did not handle their complaints properly.

An international point of reference for national human rights and ombuds institutions are the Paris Principles on “National Institutions for the Promotion and Protection of Human Rights” adopted by the United Nations (UN) General Assembly in its Resolution 48/134 of 1993. The UN Paris Principles stipulate that:

- The institution shall monitor any situation of human rights violation that it decides to take up;
- The institution shall be able to advise the government, parliament and any other competent body on specific violations, issues related to legislation and general compliance, and implementation of international human rights instruments;

- The institution shall relate to regional and international organizations;
- The institution shall have a mandate to educate and inform in the field of human rights; and
- Some institutions are given a quasi-judicial competence.

According to the UN Paris Principles, the key elements of the composition of a national institution are its independence and pluralism. In relation to the independence, the Paris Principles prescribe that the appointment of commissioners or other kinds of key personnel is regulated by statutory law (not a decree), establishing the specific duration of the mandate, which may be renewable.<sup>7</sup> All case study countries are in line with the Paris Principles.

In **Indonesia**, the *Komisi Nasional Hak Asasi Manusia* (Komnas HAM - National Human Rights Commission) was set up in 1993 and put on a statutory basis (enacted by parliament) in 1999, after the collapse of Suharto's authoritarian regime. According to the law, Komnas HAM is an independent state body with the aim of performing analysis, research, campaign, monitoring and mediation of cases of human rights violations. In terms of monitoring, the commission is able to conduct investigation of all state officials. In 2012, the annual report of Komnas Ham mentions that the police as the worst human rights offender in Indonesia. Of the total of 5.422 complaints, the biggest share of 1.635 complaints was against the police. The Komnas HAM was confronted with the following type of police misconduct in 2012:

- 893 reports referred to alleged discriminatory acts by police during investigations,
- 134 reports on arrests and detentions of suspects,
- 104 reports on shootings and other uses of violence, and
- 39 reports of alleged torture during interrogations.

However, apart from the massive number of reports, little can be done by Komnas HAM to perform follow-up investigations. The existing regulations on Komnas HAM reflect the commission dependency on police assistance during their investigation and beyond. In practice, the commission relies on the 'good will' of the police to provide information or have access to autopsy or any medical reports in terms of human rights violations involving police personnel. Furthermore, it does not possess

the power to submit its investigation report on 'light' human rights violation cases to the public prosecutor. The Komnas HAM has frequent contacts with the parliamentary Committee III on Human Rights, and it is frequently invited to attend hearings of the parliamentary committee and submits reports to parliament.

Furthermore, **Indonesia** has a national ombudsman whose objectives are to monitor or investigate complaints of citizens against misconduct and corruption of government officials. The Indonesian ombudsman was set up in 2000 by presidential decree and put on a statutory basis in 2008. With regards to the police, most of the complaints about the police are related to driving license and license plate processes, indicating massive bribery practice from the side of the police.

In the **Netherlands**, the minister appoints the chair, as well as the members, of the police complaints committees on the basis of a joint recommendation by the regional mayor and chief public prosecutor. In case the complainant disagrees with the decisions of the police complaint commissions, he or she can submit a complaint to the national ombudsman. The ombudsman was created by a parliamentary act in 1982 and is an impartial, independent intermediary between the citizen and the state. In 2013, the ombudsman received 2.958 complaints against the police (only the tax office and local municipalities scored higher), related to discrimination, destruction of citizen property, not accepting reports of crime and accidents, and the use of excessive force. The ombudsman has the power to initiate his or her own thematic investigation into problems within the police (not related to a specific complaint), for example about the use of force by the police or alleged discriminatory practices in certain police services. The ombudsman submits annual reports to parliament and his or her reports are generally well covered by the national media.

In **Thailand**, a national human rights commission and ombudsman are mandated to receive and investigate complaints of citizens against the police. Furthermore, the national ombudsman (enacted in the constitution) has set standards for all state agencies to have a code of ethics in place, including the Royal Thai Police (RTP).

In the **Philippines**, as well as in other countries, various independent bodies have jurisdiction over the police. Generally, the Philippine courts have jurisdiction over criminal offenses committed by members of the police. On the other hand, the Office of the Ombudsman is responsible for the prosecution of graft and corruption cases committed by senior civil servants, including the police, before the *Sandiganbayan*, the anti-graft court, or before any court of law. The Ombudsman is an independent constitutional body and it has a deputy Ombudsman specifically dealing with the military and police. To ensure speedy disposition of administrative cases against police officers and members and to avoid overlapping jurisdictions, the National police commission, the Philippines National Police and the Ombudsman concluded a Memorandum of Agreement (MOA) on September 25, 2012. The MOA outlines the primary jurisdictions of the three aforementioned agencies in order to effectively dispose administrative and criminal cases against the police. This manifests the high level of cooperation among the tripartite agencies in an effort to effectively hold erring police accountable.

The **Philippines** Congress maintains regular contact with the Ombudsman, in particular during budget hearings, in which Congress organises the approval of the annual budget of the Ombudsman. In addition to the Ombudsman, the Philippines has a Commission for Human Rights (CHR). The CHR receives and investigates complaints related to human rights violations by the government, including the police. Congress consults the CHR when it deliberates legislative proposals related to human rights.

In **India**, citizen's movements forced Parliament recently to enact the 2014 Lokpal and Lokayukts Act, setting up an institution similar to the Ombudsman to hold all public officials accountable, the police included. This new institution will be able to supervise and control the investigations of all police agencies and hence demand accountability.

In overview, it can be observed that ombuds-institutions:

- Function on the basis of the constitution or a parliamentary act rather than a presidential or governmental decree, which is important as a constitutional or a statutory framework contributes to the independence of the institution;

- Submit annual public reports to parliament; and
- Conduct investigations that are independent from the police.

### Anti corruption bodies

Anti-corruption bodies in various countries have greatly contributed to the financial control and transparency of the police. They are normally independent bodies, enacted by parliament, and report to parliament about their audit activities. Parliaments benefit from their reporting and analyses of small and big corruption, abuse of office and dubious financial transaction involving state officers, including the police. Countries that have ratified the United Convention against Corruption are obliged to set up an independent anti-corruption body that can carry out its functions effectively and free from undue influence. Furthermore, states are obliged to endow the anti-corruption body with sufficient capacity, staff and other resources to carry out its duties.<sup>8</sup> It goes beyond the scope of this study to discuss the causes and measures to combat police corruption, which are often rooted in long-term, systematic and structural factors. In this study, the focus is on giving a brief overview of anti-corruption and graft bodies mandated to deal with the police.

In **Indonesia**, the KPK (*Komisi Pemberantasan Korupsi*/Corruption Eradication Commission) and the PPATK (*Pusat Pelaporan Analisis Transaksi Keuangan*/Indonesian Financial Transaction Reports and Analysis Center) are mandated to investigate cases of corruption and dubious financial transactions involving police officers. Parliament established the anti-corruption body KPK by law in 2002. The KPK is an independent state body that is responsible to: coordinate and supervise corruption eradication authorities; prevent corruption; investigate and prosecute public corruption cases; and monitor the state administration. The KPK has extensive powers to investigate corruption, including the power to wiretap communication, impose overseas travel restrictions, and request financial statements and reports from police officers. In 2012, the KPK made a breakthrough by arresting a two-star police general, who was the chief of the traffic police, on the charge of corruption causing the state a loss of approximately ten million USD. In spite of this and other breakthroughs, the impact of the KPK on police

corruption is still limited. For example, the KPK is allowed only to investigate corruption cases above 88'000 USD, leaving 'small' or 'retail' police corruption outside the scope of the anti-corruption commission.

Due to the interactions and reporting between anti-corruption institutions and the parliament, the **Indonesian Parliament** has been better able to scrutinise and control the finances of the police. However, tensions exist between the KPK and the parliament in cases of investigations into corrupt practices of politicians. As a result, some parliamentarians, however, without success, have tried to weaken the legal basis of the KPK.

In **Thailand**, the National Anti-Corruption Commission (NACC) is the constitutionally mandated independent agency tasked with preventing and combating corruption, as well as the designated centre for anti-corruption matters and, more specifically, for implementing international anti-corruption instruments, such as the UN Convention against Corruption. It was noted that the NACC would be more effective if police officers would be legally obliged to disclose and submit accounts relative to their properties to the NACC on a yearly basis.

In the **Philippines**, as discussed above, the ombudsman is mandated to monitor the three branches of government, including the police, for graft and corruption practices of police officers.

In **India**, the office of the Comptroller and Auditor-General (CAG) plays an active role in promoting financial accountability and transparency of government, including the police. The CAG conducted various audits of police finances (e.g. the modernisation of the police in various states of India), as well as of the effectiveness of the police (e.g. the reporting time of police in cases of crimes and accidents).

With regard to **India**, concerns were raised about the possible extent of criminalisation of politics and the potentiality that members of parliament are beholden to criminal elements. The cases of **India** as well as **Indonesia** demonstrate that the concern of possible corrupt practices within parliament needs to be addressed as well (e.g. through independent anti-corruption bodies, a code of ethics, and



special procedures to lift immunity, as well as legislation that requires parliamentarians to publicly declare annual statements of their asset).

### Good practices

1. For police to be accountable, it is subjected to independent oversight bodies, including independent police complaints bodies, ombuds and national human rights institutions, and anti-corruption/ financial audit bodies.
2. Independent oversight bodies are set up in accordance with internationally accepted and recognised conventions and principles, notably the UN Paris Principles on National Institutions for the Promotion and Protection of Human Rights (UNGA 48/134, 1993) and the UN Convention Against Corruption (2003).
3. In addition to internal police complaints mechanisms, the police is subject to external and independent complaints mechanisms mandated to investigate citizen complaints about the police. These can be specific independent police complaints bodies or general-purpose national ombuds and human rights institutions with jurisdiction over the police.
4. For external oversight bodies to be independent their office and functioning is based on the constitution or statutory law; they have wide legal powers to investigate the police without undue influence, and the capacity (budget, staff, and expertise) to promptly investigate police misconduct.
5. Independent oversight bodies report regularly to parliament and have regular interactions with members of parliaments.
6. Civil society is enhanced by public reporting of independent oversight bodies, as well as Fol laws that open up the police to the public.

Table 2. External oversight bodies: mandate and functions (at Federal/National level)<sup>9</sup>

Independent oversight bodies	Mandate
Belgium	
Committee P Standing Police  Monitoring Committee	<ul style="list-style-type: none"> <li>• Assists the legislature in oversight of the executive</li> <li>• Monitors police and officials involved in policing, inspection and monitoring activities</li> <li>• Reports to parliament about its investigations and issues recommendations</li> </ul>
Germany	
Federal and State Data Protection Commissioner	<ul style="list-style-type: none"> <li>• Exerts oversight functions for police data processing, independently from the executive and the police</li> </ul>
Court of Auditors at State and Federal level	<ul style="list-style-type: none"> <li>• Scrutinises police spending and reports to parliament</li> </ul>
India	
National Human Rights Commission	<ul style="list-style-type: none"> <li>• Deals with citizen complaints against police officers and inquires <i>suo motu</i> into any human rights complaint</li> <li>• Examines conditions of detainees, reviews factors that cause rights violations and recommends effective and remedial measures</li> </ul>
Comptroller and Accountant General of India	<ul style="list-style-type: none"> <li>• Scrutinises spending by police departments</li> </ul>
Central Information Commission	<ul style="list-style-type: none"> <li>• Implements the Right to Information Act 2005 and opens the operations and decisions of public administration for public inspection</li> <li>• Demands accountability from police officers and exposes corruption in police stations and brings greater transparency to its functioning</li> </ul>
Ombudsman	<ul style="list-style-type: none"> <li>• Will be able to supervise and oversee police investigations, promote accountability</li> </ul>
Indonesia	

Independent oversight bodies	Mandate
Human Rights Commission	<ul style="list-style-type: none"> <li>• These bodies are legally mandated by the law to oversee and investigate human rights issues, corruption, public service and suspicious financial transactions (respectively) involving state officers, in this case, the police</li> </ul>
Corruption Eradication Commission	
The National Ombudsman	
Indonesian Financial Transaction Reports and Analysis Center	
Netherlands	
Council of State	<ul style="list-style-type: none"> <li>• Issues recommendations for parliamentary debates</li> </ul>
Court of Audit	<ul style="list-style-type: none"> <li>• Scrutinises police spending</li> <li>• Reports to Parliament on the use or misuse of government funds</li> </ul>
National Ombudsman	<ul style="list-style-type: none"> <li>• Addresses complaints of human rights violations or maladministration relative to the police, among other government bodies</li> </ul>
Philippines	
Office of the Ombudsman	<ul style="list-style-type: none"> <li>• Addresses complaints of human rights violations or maladministration</li> <li>• Promotes transparency and accountability</li> <li>• Attends congressional deliberations or inquiries on police legislation, corruption and/or human rights violations</li> </ul>
Commission on Audit	<ul style="list-style-type: none"> <li>• Scrutinises the use and/or misuse of government funds</li> <li>• Attends congressional meetings and deliberations for legislation as a resource agency</li> </ul>
Commission on Human Rights	<ul style="list-style-type: none"> <li>• Promotes and defends human rights through effective measures</li> <li>• Issues recommendations to Congress</li> </ul>
Thailand	
National Anti-Corruption Commission	<ul style="list-style-type: none"> <li>• Scrutinise the exercise of duties and powers by the police</li> <li>• They have set standards for all state agencies to have a code of ethics in place, preventing and addressing issues of corruption, human rights and maladministration</li> </ul>
National Human Rights Commission	
Ombudsman	
United Kingdom	
National Audit Office (NAO)	<ul style="list-style-type: none"> <li>• Scrutinises public spending</li> </ul>
Constabulary (HMIC)	<ul style="list-style-type: none"> <li>• Assesses police performance</li> </ul>
College of Policing	<ul style="list-style-type: none"> <li>• Sets professional standards</li> </ul>
Police Complaints Commission (IPCC)	<ul style="list-style-type: none"> <li>• Oversees the police complaints system</li> </ul>

## Police-Parliament liaison mechanisms

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Parliament has the mandate to pass laws pertaining to the police, approve and amend the budget of the police, and conduct oversight of police conduct. To fulfil these constitutional functions, parliament needs to have comprehensive and up-to-date information about the functioning of the police. For this reason, many states have set up parliament-police liaison mechanisms. The case studies show a wide variety of parliament-police liaison mechanisms in terms of the scope, organisation and existence of informal networks between parliamentarians and police personnel.

### Scope of parliament-police liaison

In various countries, the liaison between parliament, minister and the police concerns the following types of requests for information and interactions:

- Data about the police budget, strength, performance, modernisation projects, training and resource availability, and crime statistics, notably crimes against women (**India**);
- Information about the government's police policy, police priorities and performance goals, and the draft/final budget of the police, as well as detailed information about the differences between the police budget and realization (**Netherlands**); and
- Requests for police officers to testify in a hearing and answer written questions, as well as motion and consultation requests (**Thailand**).

### Organisation of parliament-police liaison mechanism

In some countries (e.g. **Belgium, Philippines and Thailand**), the executive has established special units to deal with requests from parliament. In **Belgium**, as part of their oversight function, each member of parliament has the right to submit parliamentary questions on the functioning of the federal and local police. To answer these questions, the minister of interior and the minister of justice are each advised by a ministerial Technical-Administrative Secretariat. These secretariats are composed of police officers and mandated to provide a liaison between the police, the minister and parliament. In the **Philippines**, the Presidential Legislative Liaison Office and the Office of the Presidential Advisor on

Political Affairs are tasked with interactions and increasing cooperation and coordination between parliament and the executive, including the police. In **Thailand**, the parliamentary committees dealing with the police have the right to directly contact any agency overseeing the RTP with requests for police officers to deliver documents or appear before parliament to testify. To this end, the RTP has established a Parliament Coordination Group within the RTP's Legal Affairs Division. It is tasked with a) coordinating communication between parliament and the police, including organising field visits, and b) providing guidelines to police officers concerning testifying in parliamentary hearings in order to answer written questions, as well as motion and consultation requests. In case a police officer fails to comply with a request of parliament, he or she would be subject to criminal procedure and disciplinary measures, as prescribed by law.

In another group of countries (i.e. **Germany, India, Netherlands** and **the United Kingdom**), parliament-police liaison is part of the normal functioning of parliament, the minister and the police. No additional or special units are established within the parliament, executive or the police to support liaison between them. Therefore, contacts between parliament, the minister and the police occur on the basis of a legal framework that regulates the three parliamentary functions: law-making, budget control and oversight. Within the context of these functions, parliament-police interaction takes place (e.g. hearings, questions to parliament, field visits to police units, requests for information, and discussion about police priorities and budget).

### Informal parliament-police liaison

In **Germany**, the **Netherlands** and the **United Kingdom**, informal networks between parliamentarians, members of the executive and the police play a substantial role in police governance. In these countries, members of parliament maintain wide network contacts with police officers that are members of a political party or police union. These informal contacts are important, as members of parliament take decisions that impact the functioning of the police, all the way down to the work floor level.

### Good practices

1. Parliament-police liaison takes place in order to assure that

parliament receives all information it needs to fulfil its constitutional duties.

2. Parliament-police liaison pertains to:
  - Data about police strength, performance and budget;
  - Crime statistics, in particular crimes against women;
  - Policies and priorities of the police; and
  - Other requests from parliament to the police, including requests to police personnel to testify before parliament, answer written questions, visit police stations, and address motions and consultation requests.
3. Parliament-police liaison may occur via any or all of the following mechanisms:
  - Special dedicated units within the executive or the police;
  - Normal parliamentary procedures, for example, hearings, parliamentary question hour, written questions; and
  - Informal contacts between parliament and the police.

## Concluding thoughts

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The case studies show that the governance and structure of the police is a complex matter, with a great variety of governance models between states, due to contextual matters, such as the legal framework, political system and other factors discussed in the introduction. Nevertheless, invariably in all states the executive, parliament, judiciary and independent oversight bodies play a role in police governance. In all case study countries, the police is accountable to the law rather than to the government of the day. This is achieved by setting up a system of checks and balances that limits and details the tasking and reporting of the police by the executive. The parliament plays an important role in the system of checks and balances and, in particular, parliament fulfils three generic functions that are applied to police governance. These generic functions are law-making, oversight and budget control.

The findings of the cases studies, as presented in this concluding chapter, can be taken into account when answering the question of who is policing the police and for exploring the role of parliament in police

governance. However, it must be emphasised that the good practices always need to be adapted to the exigencies of the local context.

For future research projects, it would be worthwhile to consider the role of civil society in police governance, which was not the central focus of this research project due to its focus on the role of parliament. The evaluation of independent oversight bodies, including assessing the factors leading to their success or failure, would be a second subject for further research. A third important topic for research would be an assessment of police reform projects conducted in the recent past in various countries and how these reforms have affected the oversight and accountability of the police.

## NOTES

1. It is noted that the case studies were drafted in 2014.
2. This table was compiled based on the information presented in the eight country case studies in this publication in 2014.
3. The Comptroller and the Auditor General are officers of the House of Commons.
4. Graham Smith, "Oversight of the police and residual complaints dilemmas: independence, effectiveness and accountability deficits in the United Kingdom," *Police practice and research*, 2013, vol. 14, no. 2, pp. 92-103.
5. European Court of Human Rights, *Ramsahai v. the Netherlands* (2007) 46 EHRR 43.
6. Graham Smith, "Oversight of the police and residual complaints dilemmas: independence, effectiveness and accountability deficits in the United Kingdom," p. 95.
7. United Nations General Assembly, *Resolution 48/134* (New York: United Nations General Assembly, 1993).
8. United Nations, "Article 6", in *United Nations Convention against Corruption* (New York: United Nations, 2003); United Nations General Assembly, *Resolution 58/4* (New York: United Nations General Assembly, 2003). To date, 140 states have ratified the Convention, including all states of the sample, as well as Myanmar.
9. This table was compiled based on the information presented in the eight country case studies in this publication in 2014. It details the independent oversight bodies responsible for police oversight in each of the country case studies.



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As the primary agency for law enforcement, the police operates at close proximity to the public and exerts significant influence over the security of individuals and communities through its behaviours and performance. Therefore, ensuring accountability of both the individuals and institutions of the police is a fundamental condition for good governance of the security sector in democratic societies. The parliament, as the highest representative body in a democratic system, plays a significant role in maintaining police accountability.

The objective of the edited volume on “The Role of Parliament in Police Governance: Lessons Learned from Asia and Europe” is to put forward good practices and recommendations for improving police accountability, with an emphasis on the strengthening of the role of parliament in police governance. The comparative analysis includes insights and lessons learned from eight country case studies including Belgium, Germany, India, Indonesia, the Netherlands, Philippines, Thailand and the United Kingdom. The findings of the cases studies can be taken into account when analysing and considering options for improving the accountability of the police to parliament as well as strengthening independent oversight bodies and parliament-police liaison mechanisms. However, it must be emphasised that these good practices always need to be adapted to the exigencies of the local context.

DCAF is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. DCAF develops and promotes norms and standards, conducts tailored policy research, identifies good practices and recommendations to promote democratic security sector governance, and provides in-country advisory support and practical assistance programmes. Visit us at [www.dcaf.ch](http://www.dcaf.ch)