III POLICE

19. The creation of the NHRC, the steps it has taken and the education campaign which it has conducted have been instrumental in improving the attitude of the police towards the public. At the same time, the number of complaints has not decreased because members of the public are now more aware of their rights and will not let the police trample on them. They are more prone to make complaints, since they know that a mechanism exists to deal with such complaints.

20. Dealing with complaints against the police has constituted a major part of the Commission’s work, despite the fact that there exists within the Police Department a Complaints Investigation Bureau (CIB) in Rose Hill to deal with complaints against the Police received from the different police stations all over the island or at the CIB itself. Section 4(6) of the Protection of Human Rights Act 1998 provides that the Police may still receive complaints against the Police Force. The CIB enquires into complaints and either refers cases to the Director of Public Prosecutions or to the Commissioner of Police for disciplinary action. By law, the NHRC must be informed of all the complaints received by the CIB. This enables the NHRC to monitor or take over the enquiry in certain cases (for example, cases of death in police custody). In addition, the NHRC is empowered to reopen a CIB enquiry, where the circumstances so warrant, if the police has not taken action upon the complaint or has filed it.
21. Police brutality was reported to be physical or verbal. Quite a few complaints came from persons suspected of having committed offences who complained that they had been beaten by the police investigators to extract confessions from them. Some claimed that the confessions had been obtained through torture and that they had not committed the offence they are accused of. As pointed out in paragraphs 29 and 30 of the NHRC Report for 2001, the Court has to decide on the admissibility of such confessions. However, the NHRC may still initiate an enquiry for the purpose of preserving evidence which otherwise may disappear with the passage of time (e.g. marks of bodily injury).

22. A number of cases involved private disputes where policemen exercised force. Strictly speaking, these should not be treated as cases of police brutality, for example, when a police officer beats up his wife or has a quarrel with his neighbour.

23. Cases of police officers using foul language towards members of the public tend to be recurrent. Verbal terrorism does not become members of a disciplined force but this type of complaint is frequent. See Annex V for cases of verbal brutality.
24. In the recent past, police officers have been most zealous in booking people for road traffic offences. This has greatly multiplied reports of friction between road users and police. The former tend to question the basis of the contravention and the rigidity of the police in persisting to book them when a severe warning would have sufficed. Cases of wheel clamping were reported where a driver had not affixed a parking coupon on his car in a parking lot. Wheel clamping is best restricted to more serious cases where drivers park on double yellow lines or where they cause obstruction. A complaint was even received against the police for booking a driver for not wearing his seat belt while he was parking his vehicle in a car park.

25. During the year 2002 there was only one case of death in Police cell. It would be relevant to reproduce extracts of our findings in this sad case.

1. *D was found hanged by the neck in a Police cell at Pope Hennessy Station at 06.54 hours on Saturday 06 April 2002. The autopsy was performed on the same day by Dr. S. Boolell, Police Medical Officer who certified the cause of death as asphyxia due to hanging. Dr. Boolell informed the Commission that the probable time of death was estimated to be around 05.00 hours.*

2. *On 08 April 2002, Mrs. D. complained to the Commission on behalf of her son that the latter died in the custody of the Police who were responsible for his safety.*
3. D. was arrested by Harbour CID at his mother’s place in Ste. Croix on Friday 05 April 2002 at 06.00 hours in connexion with two cases of swindling. He was taken to Harbour Police Station for enquiry. He then appeared before the District Magistrate of Port Louis, 2nd Division on two provisional charges and was remanded to Police cell for one week.

4. At 15.15 hours, Harbour Police conveyed him to Pope Hennessy Station for detention. There are 5 cells for prisoners in the Police Station. D. was allotted cell No. 3 and committed to cell at 15.33 hours.

5. Our investigation has not disclosed the slightest evidence of bodily harm inflicted upon the deceased. If foul play is ruled out, on the other hand the lack of responsibility and negligence of PC S. and PS J. cannot be overlooked. The explanation of PC S. as to why he did not carry out cell visits is far from convincing and cannot be accepted. As a matter of fact, officers were available at various times at the station between 04.30 and 06.54 hours to help out. PC B. was available in the station between 02.25 and 05.00 hours. CPL P. was on duty between 04.32 and 05.00 hours and 05.59 and 06.11 hours. Diary Book entries show that PC M. and PC N. called in at the Station at 06.05 and 06.08 hours respectively before going back on patrol. PC S. could have enlisted the assistance of any one of these officers to allow him to visit the cell block whilst they would stay at the counter. The evidence showed clearly that PC S. failed to comply with the Police Standing Order 56 (11) on the duties of Station Orderlies. We conclude that there is sufficient ground for a case of “dereliction of duty” against PC S..

6. In the light of the evidence, the Commission was of the view that \textit{ex facie} the texts of the Police Standing Orders, the Police sergeant in charge of the station. appears to have acted in breach of the following Standing Orders -
54. **DUTIES OF CHIEF INSPECTORS/INSPECTORS/SERGEANTS IN CHARGE OF STATION AND SHIFT**

**PART I**

1. The Chief Inspector/Inspector/Sergeants in Charge of a Police Station is responsible for:-
   
   (c) keeping of all station books, files and records;
   
   (e) discipline, turn-out and efficiency of his staff;
   
   (j) safe keeping, welfare, care and treatment of prisoners/detainees;

   **PART II**

1. (ii) He is responsible for:
   
   (c) checking men on beats and posts;
   
   (h) safe keeping of property, custody, care and treatment of detainees/prisoners at Station;

7. The Commission is informed however that in practice there is a certain measure of flexibility in the observance of Standing Orders depending on the load and pressure of work of the officer-in-charge of the shift/station. In the specific circumstances of the present case, bearing in mind that it was a quiet night when no incident was reported to the Pope Hennessy Police Station, PS J. was resting in the TV Room from 2.25 to 6.11 hours whilst PC S. was alone at the counter, we refer the matter to the Disciplined Forces Service Commission as it appears that disciplinary measures against PS J. may be warranted.
26. The NHRC also completed its investigation in the case of N. who died in police custody while he was being detained in a murder enquiry. It did not find any evidence of foul play on the part of the police and concluded as follows:

*We recommend that the Commissioner of Police should give urgent attention to this aspect of the case so as to avoid the recurrence of similar situations in the future and should consider the advisability of amending the Standing Orders to make it compulsory that a suspect who is ill or who has been the victim of an accident is medically examined before he is interrogated. Otherwise this may open the door to allegations of police brutality.*

27. The Commission realises that the standard of proof is very high, being one based on proof beyond reasonable doubt, if it were to find policemen guilty of a criminal offence like manslaughter or wounds and blows causing death without intention to kill upon the person of a detainee. On the other hand, the standard of proof for negligence is a civil one, based on a balance of probabilities. Thus, in D’s case, the policemen were clearly guilty of negligence in the performance of their duties and rendered themselves liable to disciplinary proceedings whereas in N’s case no criminal liability could be established. However, the NHRC did recommend that there should be no questioning of a suspect who has met with an accident, unless he has been medically examined first.
28. Many of the complaints before the NHRC were resolved by way of conciliation where the aggrieved parties were prepared to accept the regrets expressed by the police officers involved. Nevertheless, the Commission is compiling a database of such policemen. This will enable the NHRC to closely monitor the behaviour of policemen against whom frequent complaints are made. The Commission has taken special note of police stations from which numerous complaints emanate. We bear in mind that the trend of frequent complaints in a particular area may be attributable to the situation that prevails there. For example, when hawkers became a serious problem in the centre of Rose Hill, invading the pavements and causing obstruction, it was normal for the police to take severe measures against them. The obvious result was that many hawkers filed complaints against the police of Rose Hill especially when their goods were seized.

29. The tendency of the police to immediately side with a colleague when the latter is involved in a controversy continues to prevail. In one instance, a policeman had a fight with a young man who was in company of a former girlfriend of his. When the young man went to the police station to report the incident, he was immediately treated as the culprit and detained overnight, whereas the policeman was given special attention and taken to hospital for what turned out to be minor injuries. No statement was taken from the girl who was told to go home. Yet, she was prepared to support the young man’s version. Though the case was settled by conciliation, the Commission deemed it fit to make the following observations. –
Apart from the disparity in treatment afforded to the Police Constable and the complainant, the above clearly reveals that-

- the version of the Police Constable was immediately accepted and the police did not bother to check its veracity which could have been easily done there and then.
- the police jumped to the conclusion that it was a case of assaulting police causing effusion of blood and locked up complainant overnight whereas a proper handling of the case by the superior police officers would have revealed that this was an ordinary case of wounds and blows.
- a member of the public has been unjustifiably deprived of his constitutional right to liberty.

The Commission disapproves of the laxity and partiality shown by the Curepipe Police Station staff in the handling of this case resulting in a violation of human rights. The Commission recommends that in the interest of justice and to avoid further damage to the image of the Police Force, all possible measures must be taken to ensure that in cases involving members of the Force and the public, strict impartiality must be observed and seen to be observed by the parties.

30. In another case, a group of young men allegedly taunted a police officer who came back to the spot with his fellow officers. Excessive force and violence were used on the person of the complainant, a minor aged 15. The Commission found no justification for such use of force and referred the matter to the Disciplinary Forces Service Commission for disciplinary action against two police officers.
31. Excessive zeal continued to characterise certain members of the police force in carrying out routine checks of members of the public. A young man who was returning home at 9.30 p.m. in Curepipe was stopped by the police. Although he gave his name and address, the police did not believe him. Instead of taking him to his place to confirm the address, they took him to a police station and called for members of the CID. Since the latter were investigating cases of frequent larcenies in the area, they immediately suspected the man and started manhandling him and putting pressure on him. They did not have any evidence on which they could rely. After that, they took him to his home where they met his mother and sister. Even then, because they found the house in the dark and sparsely furnished, they did not believe the young man and his relatives. Thereafter they took him to the residence of the former owner of the house who confirmed that the house had been sold to the young man’s family. It seems that the policemen were misled by one policeman at the station who kept insisting that the young man did not live in the area! The NHRC referred the matter to the DFSC for disciplinary action against the officers and recommended that departmental action should also be taken against the sergeant in charge of the station who mishandled the whole case resulting in a citizen being unduly deprived of his liberty and subjected to ill-treatment at the hands of the police beyond what was reasonably warranted in the circumstances.
32. Sometimes allegations of police brutality are not borne out by the evidence. A complainant who was a suspect in a larceny case positively identified a member of the CID whom he alleged had beaten him in a police station. The evidence revealed that the CID officer was on sick leave on that particular day and his colleagues confirmed that he had not called at the police station. Although the nature of what is credible evidence does not depend on the sheer number of persons who support one version, it was difficult to accept complainant’s version in the teeth of the record at the police station.

33. A different type of situation arises when somebody who is arrested on suspicion claims in return to have been brutalized by the police to get his own back at them. The police received information that a man who was already under suspicion was selling drugs in the Central Market in Port Louis. There were several complaints from stall holders about his activities. It was also alleged that he was harassing tourists visiting the market. On that particular occasion, they took him to the police post in the market and carried out a thorough search on his person, but nothing incriminating was found. He was therefore allowed to go without any charge. He immediately complained that he had been forcibly arrested and brutalized. He went to hospital for treatment, but the medical certificate showed that there was no injury. The complainant admitted that he was a drug consumer. The Commission found his testimony to be far from convincing and set aside his complaint of police brutality.
34. Another problem which constantly crops up is when a complainant who has several previous convictions makes allegations of police brutality. The police tend to round up habitual criminals if they have been present at, or if they have a connection with, a place where an offence has been committed. In such circumstances the questioning tends to be a bit rough and physical. Nothing justifies the use of violence even if the police is dealing with a bad character.

35. In one such case a complainant did complain to the Magistrate that he had been brutalized and the Magistrate ordered that arrangements be made for complainant to lodge a complaint at the Complaints Investigation Bureau and that complainant be medically examined. The CID officers failed to carry out the Magistrate’s orders, partly on the ground that the complainant allegedly declined medical examination. The Commissioner of Police was asked to take steps against the officers responsible for flouting the Order of the Court. In the same case, complainant was not taken before the Magistrate on the same day (a working day) that he was arrested, but on the following day. The police were reminded that the provisions of Section 27 of the District and Intermediate Courts Act (Criminal Jurisdiction), to the effect that a person who is arrested must be taken before a Magistrate as soon as possible, must be strictly complied with.
36. The Commission received two complaints against the Police regarding treatment of two children aged 14 and 10 and found as follows -

1. *In the first case according to the child’s version, he was sitting with his friends near the State Bank in Curepipe one night on 10th April 2001 when there was an incident between his friends and a passerby. A few minutes later the police came in a van. He and his friends ran away, but the police from Curepipe managed to catch hold of him only. The passerby had given a declaration to Curepipe police station that he had been robbed of the money he had withdrawn from the automatic teller machine at the bank. The child of 14 denied having been personally involved in the incident. A statement was taken from him in the presence of his mother that night and he gave the names of his friends. A few days later the declarant (the passerby) withdrew the case against the alleged thieves in view of their young age. In spite of that, the police continued their enquiry and contacted the child at his home, in the absence of his mother and asked him where his friends stayed. The boy rang up his mother at her place of work. His mother spoke to the police on the phone and objected to that course of action, fearing that her child would be ill treated by the police. Nevertheless, the police officers took the boy away. The police gave us to understand that such cases of larceny were becoming too common, whereby youngsters would keep watch near ATMs and rob people of their cash, which is why they pursued their enquiry.*

2. *In the second case a boy aged 10 gave a statement on 30 December 2001 at Quatre Bornes police station in presence of his mother to the effect that 2 persons had stolen his gold chain by wrenching it from his neck. Subsequently, on enquiry, the police suspected that this version was not true and asked the boy and his parents to call at the police station. The boy came accompanied by his father and gave a second statement wherein he implicated his father, alleging that the latter had instigated him to*
fabricate the story, whereas he had lost his chain a few months before December 2001. In the statement itself it was recorded that the father was present when the statement was given. However, the father did not sign the statement as a witness (which is usually the case when a child gives a statement). The police omitted to record the father’s refusal. Some days later the boy returned to the station with his father and Counsel and gave a third statement alleging that the police had threatened to beat him at the time he gave his second statement if he did not change his first version. In the third statement he maintained the first version. Furthermore, he said his father was not present when he gave his second statement, but was kept in another room. The police maintained that the father was present throughout the recording of the second statement, but the Enquiring Officer conceded before us that the father, though present, had wanted to put a stop to the recording of the statement when his son was implicating him. Again, this objection of the father was not recorded by the police. The police intended to prosecute both the father and the mother and to call the son as a witness.

3. We explained to the police officers in each case that we understand their determination and zeal in detecting crimes and misdemeanours, but at the same time the rules for taking statements from minors had to be respected and extra care had to be exercised in enquiries involving minors.

4. In the first case, the rule that the police cannot take along a child in the absence of the parents or without the parents’ consent was breached. The interests of the child have to be protected at all costs and at all times. In the second case it was not proper for the police to record a statement from a child when the father objected to same. The more so that, in this case, the son was implicating the father in his statement. The question which arises is how far this evidence would be admissible in a Court of Law against the father. The Enquiring Officer should have put in a statement
to describe the conduct of father and son. Eventually, it would be for the police to use their discretion in the light of the evidence available in the case of alleged larceny to decide whether the two persons involved should be prosecuted. Obviously, to compel a child to give a statement against his father was not in the best interests of the child.

5. We recommend to the Commissioner of Police that the police officers involved should be sternly reminded of their duty to abide strictly by the Rules.

37. Some of the complaints received at the NHRC against the police concern persons who have psychological or psychiatric problems. These unfortunate persons feel that they are being constantly persecuted by the police and have become completely allergic to police officers. It is difficult to deal with such persons. Senior officers in charge of the area concerned have been asked to adopt a more flexible approach towards such cases and to use more tact. Some persons tend to make repeated complaints to the Commission. Unfortunately, their attitude tends to put them on the wrong side of the law so that they are taken to Court and punished, which exacerbates the problem. Often the same persons, out of disrespect for the police, start misbehaving in Court and have had to be sentenced for Contempt of Court. The solution to such cases is beyond the scope of the Police and of the Commission. In one situation of this kind, the NHRC has approached the relatives of one complainant in an attempt to enlist their cooperation.
38. There are also the compulsive letter writers who raise insignificant issues. A complainant was unhappy that the police refused to record his declaration soon after midnight on the first of January to the effect that his brother had been throwing firecrackers on the roof of their common dwelling. The police was asked later to record his declaration anyway, but he insisted on an explanation as to why it was not recorded in the first place. This complaint illustrates the variegated range of complaints the Commission has to deal with.

39. In so far as the detection of crime is concerned, a leading newspaper, reviewing police activities during the year 2002, entitled its article “Une tortue nommée police” meaning that the police is as slow as a tortoise. It is true that in two recent murder cases (one in Mauritius and one in Rodrigues) the police took a lot of time to trace the fugitives. One particular rape case hit the headlines and still some of the rapists have not yet been traced. The disappearance of a couple at sea remained unexplained and the death of another couple in a natural lake is still a mystery. Criticism from the press, whether justified or not, should not prompt the police to act with too much haste and actuate them to extort confessions from suspects. Too often, there is a reliance on informers whereas scientific methods of investigation may not be sufficiently used.
40. In its endeavour to promote better protection of human rights in Mauritius, the Commission has initiated a consultation process by circulating to various bodies and institutions the following document:

**PROTECTION OF HUMAN RIGHTS**

1. *The National Human Rights Commission has been set up by the Protection of Human Rights Act (Act No. 19 of 1998), inter alia, for the better protection of human rights in Mauritius. Under Section 4 of the Act, the NHRC is required to review the safeguards provided by or under any enactment for the protection of human rights as well as review the factors or difficulties that inhibit the enjoyment of such rights.*

2. *In dealing with complaints received and in reviewing the situation in Mauritius, the NHRC has come across a number of instances where it appears that action may be required to promote better protection of human rights. As they are mostly related to the administration of justice and more specially, our system of criminal justice, we are hereby seeking the views of the Hon. Chief Justice, the Hon. Attorney-General, the Hon. Director of Prosecutions, the Hon. Master and Registrar, the Secretary for Home Affairs, the Commissioner of Police, the Commissioner of Prisons, and the Bar Council. The purpose of this wide consultation is to assist the NHRC in formulating recommendations that will further enhance the level of enjoyment of human rights by the citizens of our country.*
RIGHT TO PERSONAL LIBERTY

3. Involuntary Homicide

Drivers convicted of the offence of involuntary homicide are practically never sentenced to imprisonment. Yet, all drivers involved in fatal road accidents are routinely arrested as if they are dangerous criminals and made to give security for their release on bail. Clear guidelines must be set down to enable police officers to decide when to exercise their powers of arrest in such cases e.g. cases of drunken driving, hit and run and other serious cases warranting a custodial sentence. This may well decrease the number of detainees in police cells and of persons having to report to Court to have their bail enlarged.

4. Non payment of fines

Section 88 (3) of the District and Intermediate Courts (Criminal Jurisdiction) Act provides that the Magistrate may give a convicted person a delay of 8 days for payment of fines failing which he shall issue a warrant of arrest. Many such warrants are issued. As a result the police have the invidious task of having to arrest otherwise law abiding citizens. Measures that can be envisaged to ensure prompt payment of fines are, in the first instance, a non payment of the fine within 8 days would result in a surcharge on the fine being imposed automatically (the exact percentage to be determined). If the fine is not paid, the Magistrate, through the District Clerk, may issue a written warning by registered post to warn the culprit to pay the fine and surcharge within a further delay of 15 days. If the fine still remains unpaid, the warrant of arrest shall issue. It should eventually be possible for Government cashiers to accept payment by credit card.
5. **Arrest for Non-appearance in Court**

Warrants of arrest are regularly issued against suspects or accused parties for non-appearance in Court. The police have to execute these warrants and have to detain the culprits in police cells.

The current practice to secure the presence of an accused party in Court is by means of a summons or a Notice in lieu of summons. Sometimes Accused parties are also warned by the police to appear in Court. This latter practice could be reserved to only the most exceptional cases. We suggest that the following course could be adopted.

Where the accused party does not appear if he has been touched by the summons, in the first outcome he shall be fined except if he can provide a valid reason for his absence. A second summons will then be issued by the Court for the party to appear within 7 days. If he still fails to appear, then the warrant of arrest shall issue.

The Magistrate would retain the discretionary power to issue a warrant in any case of non-appearance of a party charged where he deems it necessary in the interest of the administration of justice.

6. **Detention pending trial**

A number of detainees are being kept on remand for long periods of time pending trial because they cannot afford the expenses involved to be released on bail. Depending on the nature and gravity of the offence, this may well prove to be an unjustifiable restriction on the right to personal liberty e.g. where the
punishment on conviction is likely to be a fine, probation or even a very short sentence.

It is suggested that in the latter case persons arrested for minor offences (even if they are not first offenders) who cannot afford to provide sureties should be released on parole with an undertaking to report to the Police on a regular basis, the frequency of which is to be decided by the Court after hearing the Police Prosecutor.

7. Reducing delays

It has been noted that one third of the prisons population consists of detainees who are on remand. As at 1st July 2002 some 939 male detainees and 42 female detainees were awaiting trial (45 of them for a period of more than 18 months as at 26 June 2002). Obviously, this puts undue pressure on prisons administration with consequent overcrowding etc. To reduce delays in bringing cases to trial, the Mackay Report, at pages 16 and 95, goes to the extent of recommending that an accused party should not be prosecuted if certain time limits are not respected. We would not go that far but we suggest that detainees be released from detention pending their trial after 12 months, except if they are being detained for serious drugs offences or for murder. Otherwise the detainees would be released on bail pending trial.

8. Right to Freedom of movement

Invariably an objection to departure is lodged against all persons subjected to a police inquiry and/or on bail pending conclusion of inquiry and eventual trial. Such wholesale restriction to the freedom of movement of the citizen is not always justifiable. The objection to departure should be limited only to the few cases in
which there is a likelihood that the suspect or accused party will abscond if he is allowed to leave the country.

A party subjected to an objection to departure who applies for authorization to leave the country is often required to deposit substantial sums of money in cash as additional security. Such a requirement may be very harsh in the case of citizens of modest means.

9. **Special Court for accused caught red-handed**

The advisability of having a special Court to hear expeditiously cases of accused parties who have been caught red handed or who plead guilty may be considered (on the lines of the Tribunal des Flagrants Délits in France).

41. The Commission is awaiting a response from different quarters before finalizing its recommendations on those issues.

42. The exact meaning of an arrestable offence also has to be made clear to police officers. There is a tendency to arrest people for minor offences and to detain them, whereas this may be totally unwarranted. The NHRC believes that people should not be unnecessarily detained in police cells. On the other hand, habitual criminals may be detained pending completion of an enquiry in a serious case or if there is a risk of their committing further offences.
43. The final outcome of cases, after enquiry and report by the Commission, gives rise to concern. In particular the fact that the DFSC has delegated a crucial part of its disciplinary powers to the Commissioner of Police means that where sanction has to be taken against a police officer arising out of a complaint to the Commission, ultimately it will be the police judging the police.

44. In a letter to the Secretary for Home Affairs, the NHRC expressed the following views –

On receiving a complaint against the police the NHRC calls the complainant to interview him. If he has already given a declaration and a statement to the police, the latter is requested to submit same. The extracts from Diary Books and Occurrence books of Police Stations are also called for. The NHRC then conducts a full scale hearing where the complainant and his witnesses are examined under oath or solemn affirmation. The ‘Respondent’ police officers are then examined separately. As the procedure is an inquisitorial one and not an adversarial one, there is no cross-examination of one party by the adverse party or his counsel.

Initially, at the hearing the NHRC attempts to conciliate the parties. If this does not succeed, the NHRC refers the matter to the DPP for decision where it appears that a criminal offence may have been committed or to the DFSC where it appears that disciplinary procedures may be warranted. The final decision rests with the DPP or the DFSC. Since under section 8 of the Protection of Human Rights Act 1998 (PHRA) no statement made by a person in the course of giving evidence before the NHRC can be used against the latter in any civil or criminal proceedings, the NHRC cannot send any adverse statement made before it to the DPP or to the DFSC. However, the NHRC may send to the DPP or the DFSC the complainant’s statement, the statements of his witnesses and the statements received from the police.

The unfortunate consequence is that the DPP and the DFSC have to complete the enquiry before any disciplinary action is taken. And it is the Commissioner of Police who is requested to complete the enquiry. In the end it is police officers who once more have to enquire into a complaint made by a member of the public against a fellow police officer, a most unsatisfactory situation.
We have also discussed the situation where the DFSC has delegated to the CP its powers of disciplinary control in respect of officers below the rank of Assistant Superintendent of Police. (See Delegation and Standing Orders). This implies that the complaint against the Police will be heard and decided upon by the Police during the disciplinary proceedings. We understand that steps are being taken to remedy this deplorable situation where a complainant has to prove his case against the police before the Police itself.

The above issues have to be looked into closely before a Police Complaints Board (PCB) is set up. It may be worthwhile to have a PCB staffed by independent enquiring officers detached from the police force. But would the PCB refer cases to the DPP or to the DFSC?

One suggestion would be for the PCB to enquire and refer all cases to the DPP. Where the DPP finds that the case should be prosecuted, the matter is referred to Court. Alternatively, where the DPP decides that the case warrants disciplinary action, the case is referred to the DFSC.

At this stage the DFSC should not refer the case back to the CP, but may refer it to the NHRC which would then attempt a conciliation or conduct a full hearing in an adversarial manner. That is, the complainant and his witnesses would depone and be cross-examined. The same would apply to the respondent police officers and their witnesses. If this course is adopted it would require an amendment to the Constitution to enable the DFSC to delegate its powers to the NHRC as well as an amendment to the PHRA 1998. Finally, the NHRC would recommend to the DFSC the punishment to be inflicted if the police officers are found at fault. Please note that the majority of complaints against the police constitute a breach of human rights to the extent that they involve torture, inhuman or degrading punishment and they infringe section 7 of the Constitution.

The NHRC is composed of four experienced members who can well act as a disciplinary body. At the moment, although the NHRC spends a lot of time and puts in a large scale effort into the enquiry and the hearing, its action constitutes but a preliminary step in tackling the subject of police brutality.

If the suggestion made above is adopted, the NHRC may help to simplify and speed up the cumbersome disciplinary procedures to deal with complaints against police officers.

45. The matter is still under study at the level of the Disciplined Forces Service Commission, the Prime Minister’s Office and the Police Department.
46. Finally, the use of a customer-care approach on the part of the police would improve relations between the public and the police. In most police stations there is no proper place for the police to interview members of the public. The station orderly is behind a counter and often has to attend to a number of complainants at the same time. Ideally, separate facilities should be made available in every police station to receive the public. In certain cases it would be advisable for women police officers to attend to women and children who call at the station. Representations have been made to the NHRC to the effect that handicapped people are not given appropriate attention at police stations. A special effort should be made in that direction.