

**AN EVALUATION OF THE SYSTEMS FOR HANDLING POLICE
COMPLAINTS IN THAILAND**

by

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ABSTRACT

This thesis, based on empirical evidence and documentary analysis, critically evaluates the systems under the regulatory oversight of the Royal Thai Police (RTP), the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) in respect of the handling of police complaints. Comparisons will be drawn from the system under the control of the Independent Police Complaints Commission (IPCC) in England and Wales in order to provide alternative perspectives to the Thai police complaints system.

This thesis proposes a civilian control model of a police complaints system as a key reform measure to instill public confidence in the handling of complaints in Thailand. Additional measures ranging from sufficient power and resources, complainants' involvement, securing transparency and maintaining police faith in the system are also recommended to enhance the proposed system.

DEDICATION

To victims of police malpractice.

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An evaluation of the systems for handling police complaints in Thailand is an ambitious research project for a sole PhD student. It has been greatly facilitated by the valuable contributions from experts as well as a number of public bodies in Thailand and England.

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LIST OF ABBREVIATIONS

Government Agencies in Thailand

CIB	Central Investigation Bureau
CSD	Crime Suppression Division
DSI	Department of Special Investigation
NACC	National Anti-Corruption Commission
NHRC	National Human Rights Commission
OAG	Office of the Attorney General
OBRTTP	Office of Board of the Royal Thai Police
OCCC	Office of Counter Corruption Commission
OCG	Office of the Commissioner General
OIG	Office of the Inspector General
OPC	Office of the Police Commission
PACC	Public Sector Anti-Corruption Commission
RLPD	Rights and Liberties Protection Department
RPCA	Royal Police Cadet Academy
RTP	Royal Thai Police
WPB	Witness Protection Bureau

British Public, Private and Charitable Organisations

ACPO	Association of Chief Police Officers
CAB	Citizen Advice Bureau
CPS	Crown Prosecution Service
HAC	Home Affairs Committee, House of Commons, UK
IOSH	Institution of Occupational Safety and Health
IPCC	Independent Police Complaints Commission
MPS	Metropolitan Police Service
OCPA	Office of the Commissioner for Public Appointments
PALG	Police Action Lawyer Group

PCA	Police Complaints Authority
PCB	Police Complaints Board
PSD	Professional Standard Department
SAR	Social Research Association

International Institutions and Bodies

ECtHR	European Court of Human Rights
ICC	International Coordinating Committee for National Human Rights Institutions
SCA	Sub-Committee on Accreditation
UNODC	United Nations Office on Drugs and Crime

CHAPTER 1: POLICE MALPRACTICE AND THE COMPLAINTS SYSTEMS IN THAILAND

I. Introduction

This thesis aims to examine critically, and propose reforms to, the existing systems for handling complaints against the police in Thailand. The thesis begins with this introductory chapter which is divided into six different sections.

In section two, the background to police malpractice in Thailand is discussed. The discussion begins with the opinion polls which have been conducted to chart the level of public confidence in the Thai police. This is followed by an analysis of the connection between the police and human rights situations in Thailand. All of this will provide readers with some basic understanding of how serious police malpractice in Thailand is. In section three, a short history of the Thai police force and its current organisational structure is presented alongside a concise analysis of the relationship between politics and the police; all of this will provide a basis for discussion of the political dimension of much police malpractice in Thailand. In section four, the institutional arrangements of the independent complaints authorities namely the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) is explained. Then, the nature and limitations of the functions of each complaints body under review of this research is highlighted in section five. Finally, an overview of what this research project involves is presented in section six.

II. Background to Police Malpractice in Thailand

In 2007, an opinion poll on reforms to the police administration in Thailand was carried out, partly, to explore public perceptions concerning the performance of the police. The

findings, as presented in Table 1.1, highlighted that, 87.1 per cent of respondents, more often than not, viewed the police as submissive to influential politicians; 77.3 per cent felt that the police adopt discriminatory practices when dealing with people; 72.1 per cent claimed that the police are involved with extortion and bribery; 67.5 per cent believed that [some] police officers associate themselves with position-buying [during an annual reshuffle]; notably, only 28.3 per cent felt that the police treat people equally according to the principles of human rights.¹

Table 1.1: Public perception of the Thai police

Rank	Popular views on performance of the police	Percentage
1	Being submissive to influential politicians	87.1
2	Showing discrimination against people	77.3
3	Resorting to extortion and bribery	72.1
4	Involving themselves in buying the post	67.5
5	Being friendly and sociable	46.6
6	Being reliable	32.7
7	Promptly arriving at the scene of crime	28.4
8	Treating people fairly in line with the principles of human rights	28.3
9	The police have given members of the public the opportunity to participate in performance appraisal of themselves	27.4

In December 2014, another opinion poll was conducted to gather Thai people’s views on police reforms. The results showed that only 15.92 per cent of respondents said they had confidence in the Thai police whilst 55.28 of them agreed that there should be a replacement for the current governing bodies of the Thai police force to ensure that greater

¹ The ABAC Social Innovation in Management and Business Analysis, ‘Public Poll for Views on Structural Reform of the Police Work: A Study of the People in Bangkok and Neighboring Cities and the Police Serving Nationwide’ (as cited in *The Minutes of the Special Meeting of the National Assembly 65/2550 on the National Police Bill* (21 November 2007) 153-156) [in Thai].

transparency in the force could be secured.² Whilst the figures from the 2007 and 2014 opinion polls all reflected that the majority Thai population was deeply distrustful of the police, a comparison of these two periods also interestingly indicated that there was a 16.78 per cent reduction in the level of public confidence in the police over that seven year period.³

We can see that the survey evidence indicates a serious problem of police malpractice and non-respect for the human rights of Thai people, much of which appears to be linked to high-level political concerns. In addition to the opinion surveys, it has been widely acknowledged for some 30 years at national and international levels that certain parts of the Thai police community have acquired considerable notoriety for brutality and abuse of power.⁴ Substantiated by a series of studies and reports,⁵ more often than not the police are also the prime suspects of the country's most sensational crimes including the Blue Diamond Affair and the forced disappearance of Somchai Neelapaijit.⁶ In the following section, we will begin to examine the extent to which the Thai police manage to accord with the existing frameworks for human rights protection in Thailand.

² 'NIDA Poll Showed the People Agreed with the Proposal for Police Reforms' (as cited in *Daily News* (Bangkok, 21 December 2014) <<http://www.dailynews.co.th/politics/288853>> accessed 9 January 2015) [in Thai].

³ Note that, in the 2007 poll, 32.7 per cent of respondent said that the police are reliable whilst, in the 2014 poll only 15.92 per cent of respondent pointed out that they had confidence in the police.

⁴ Asian Human Rights Commission, 'Thailand: Police Reforms Mean Command Responsibility' (Statement) (14 December 2006) AS-313-2006.

⁵ See, for example, Kasemsarn Chotchakornpant, Preeda Sataworn and Prasert Patanaponpaiboon, 'A Study of Preventative Measures to Combat Abuse of Power: The Case of Abuse of Police Power' (NACC 2009) [in Thai]; see also, Asian Legal Resource Centre, 'Rule of Law versus Rule of Lords in Thailand' (2005) 4 Article 2, 1.

⁶ 'The Thai Police: A Law unto Themselves' *Economist* (London, 17 April 2008) <<http://www.economist.com/node/11058580>> accessed 20 May 2015. The Blue Diamond Affair is an unresolved crime involving police corruption, serial killings and worsening diplomatic relations between Thailand and Saudi Arabia; see, Mehan A. McClincy, 'A Blue Thai Affair: The Blue Diamond Affair's Illustration of the Royal Thai Police Force's Standards of Corruption' (2012) 1 Penn St JL & Int'l Aff 182; Andrew Marshall, 'The curse of the blue diamond' *Thomson Reuters Foundation* (22 September 2010) <<http://www.trust.org/item/20100922171500-nipvs/?source=search>> accessed 5 February 2014. See also, text accompanying n 13 for the case of Somchai Neelapaijit.

Thai Police in the Human Rights Era

As part of the global community, Thailand has associated itself with an international trend of upholding human rights principles; for example, it is a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁷ The Thai constitutional structure places the government and its agencies under a duty to ensure that people's rights will be defended. Section 27 of the 2007 Constitution, for example, specifies that:⁸

Rights and liberties recognised by this Constitution expressly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts, constitutional organs and State agencies in enacting, applying and interpreting laws.

Even though people's rights are protected in legal principle, the reality shows that, too often, these legally protected rights are violated, especially at the hands of the police who are supposed to uphold them in the first place. The NHRC research illustrated that there had been 109 complaints cases of human rights abuses filed to the NHRC between 2002 and 2009. The examination into these cases found that there were 11 factors that influenced the police to commit malpractice.⁹ The five most serious factors driving the police to violate people's rights are as follows:¹⁰

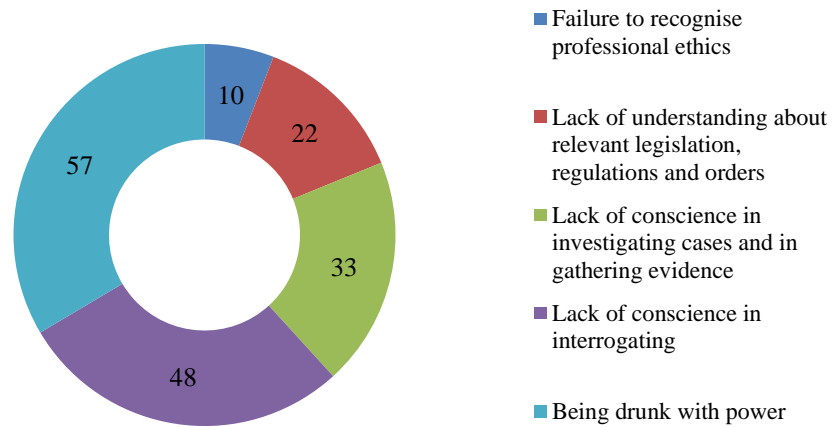
⁷ UN OHCHR, 'Status of Ratification Indicative Dashboard: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)' <<http://indicators.ohchr.org/>> accessed 19 July 2015. See also, National Human Rights Commission, 'International Obligations' (NHRC) <http://www.nhrc.or.th/en/International_Obligations.php> accessed 19 July 2015.

⁸ Pinai Nanakorn (tr), *Constitution of the Kingdom of Thailand 2007* (Bureau of Committee 3, the Secretariat of the House of Representatives, Thailand 2007). The Constitution will, hereinafter, referred to as the "Constitution". Note that the English version of the 2007 Constitution translated by Pinai Nanakorn is used throughout this thesis.

⁹ Sunya Buachareon, Chakrapong Vivatvanit and Kraiwut Wattanasin, 'The Reasons for the Police to Violate Human Rights in Criminal Justice System' (NHRC 2011) III [in Thai].

¹⁰ *ibid.* Note that there may be more than one factor for human rights violations that become the cause for one complaint. For example, the complaint case no. 111/2549 (shown in the above research report) was found to have been connected with two factors for violations of human rights.

Chart 1.1: Contributing factors in police malpractice



The pie chart highlights that ‘getting drunk with power’ is the most influential factor, with 57 out of 109 cases of this nature. Next in importance are ‘police irresponsibility (or ‘lack of conscience’) during the investigation and interrogation’ as the factor underlying human rights abuses in 48 and 33 complaints respectively. The NHRC has commissioned further research to explore the attitudes of the Thai police towards enforcing law and order. This showed that the police, especially those who are commissioned officers, saw themselves as having a sound understanding of human rights.¹¹ The same research that looked into the factors behind police malpractice revealed, however, that 79 out of 109 human rights violation cases (72.48 per cent) had been committed by commissioned officers.¹²

¹¹ Sunee Kanyajit, Patchara Sinloyma and Pemika Sanitpod, *The Attitudes of Police Officers on Law Enforcement and the Protection of People’s Rights in the Criminal Justice System (Stage 1)* (NHRC 2011) 95-96 [in Thai].

¹² Buachareon and others (n 9) 71. In Thailand, a commissioned officer is normally an officer who has graduated from the Royal Police Cadet Academy (RPCA) and tends to hold a higher rank in the police force such as the position of a police captain and upwards, whilst a non-commissioned officer is an officer who holds a lower rank in the police force such as a sergeant and is, in most circumstances, a front-line officer.

Speaking in an open seminar on ‘Police and the Expectation of Thai Society’ organised by the Commission of Police Administration Development, Angkana Neelapaijit highlighted the following:¹³

In any society where justice doesn’t exist, it is difficult that [such a] society will become peaceful. What the people expect from the performance of the police is not so difficult for them to achieve. But how can we make the police see the people as a friend rather than a foe? How can the learning and teaching system of the Royal Thai Police foster the culture of love for fellow men rather than love for people wearing the same colour uniform? And how can [the police] protect the people rather than themselves?¹⁴

The above remarks arguably sum up the popular mood as “the police department [force] is hated and despised by all people outside of it”,¹⁵ notably, the police also recognise this very fact.¹⁶ Interestingly, on the day of his appointment in 2014 as Thailand’s police chief, Police General Somyot Poompanmoung said that “he would do his best to make people love the police [again]”.¹⁷

On 25th November 2014, after just a month serving as the National Police Chief, Somyot gave a press conference announcing the arrest of Police Lieutenant General Pongpat

¹³ Angkana Neelapaijit is the wife of the late Somchai Neelapaijit whom was supposedly kidnapped, and presumably murdered, by the police after having fought against them in court on behalf of many Muslims in the insurgency-prone areas in Thailand; see Kingsley Abbott and Sirikarn Charoensiri, ‘Ten Years without Truth: Somchai Neelapaijit and Enforced Disappearance in Thailand’ (ICJ 2014); Amnesty International, ‘Thailand: 10 Years on, Find Truth and Justice for Family of Somchai Neelapaijit’ (Report) (12 March 2014) AI-Index ASA 39/001/2014. See also, Ukrist Pathmanand, ‘Thaksin’s Achilles’ Heel: The Failure of Hawkish Approaches in the Thai South’ (2007) 38 *Critical Asian Studies* 73; Amnesty International, ‘Thailand: Torture in the Southern Counter-Insurgency’ (Report) (13 January 2009) AI-Index ASA 39/001/2009. Note that the Commission of Police Administration Development has now been defunct.

¹⁴ Kittipong Kittayarak, *A Seminar Report on Police and the Expectation of Thai Society* (the Secretariat of the Commission of Police Administration Development 2007) 41 [in Thai].

¹⁵ AHRC (n 4).

¹⁶ For example, the police inspector given an interview for this research pointed out to me that the police know full well that most people dislike them.

¹⁷ ‘Somyot Gets National Police Chief Job in Unanimous Vote’ *The Nation* (Bangkok, 21 August 2014) <<http://www.nationmultimedia.com/politics/Somyot-gets-national-police-chief-job-in-unanimous-30241396.html>> accessed 20 May 2015.

Chayapan, the then head of Central Investigation Bureau (CIB) and six other colleagues of his for bribery, extortion, money laundering, and oil smuggling.¹⁸ More importantly, the former head of the CIB was also charged with insults to the monarchy since he had claimed close ties as an uncle of the Thai Prince's wife (now ex-wife) as part of committing all the aforementioned crimes.¹⁹ Pongpat admitted all the charges.²⁰ Somyot, who is now retired,²¹ had this remarkable achievement to his credit. For many Thais, it was astonishing to see a powerful police officer like Pongpat being caught by the police themselves²² but it is arguable that his case is exceptional as in many other cases substantial progress in establishing the truth where the police were alleged to have committed disciplinary or criminal offences has yet to be achieved.

For example, the investigation into the killings in 2014 of two British nationals on Koh Tao, an island in Southern Thailand, raised doubts about a cover-up since the accused, two Burmese workers, complained that they were forced to confess under duress. The father of one of the defendants informed the media that:

The [police] interrogators told them [the accused] to confess to the crime, and threatened to cut off their limbs, put them in a bag, and dump them in a river if they did not.²³

¹⁸ Associated Press, 'Thai Police's Internal Investigation into Corruption Widens Following Arrests' *The Guardian* (London, 25 November 2014) <<http://www.theguardian.com/world/2014/nov/25/thai-senior-police-officer-corruption-charges>> accessed 5 March 2015.

¹⁹ Jocelyn Gecker, 'Thai Intelligence Chief Jailed on Corruption Charges Owned Rolex Watches and Vintage Wine Costing \$4,000 a Bottle', *Independent* (London, 5 March 2015). <<http://www.independent.co.uk/news/world/asia/thai-intelligence-chief-jailed-on-corruption-charges-owned-rolex-watches-and-vintage-wine-costing-10089115.html>> accessed 6 March 2015.

²⁰ AP (n 18).

²¹ Pol. Gen. Somyot Poompanmoung's term in office was between 1st October 2014 and 31st August 2015.

²² Gecker (n 19).

²³ Peter Walker, 'Koh Tao's Dark Side: Dangers of Island Where Britons Were Murdered' *Guardian* (23 November 2014) <<http://www.theguardian.com/uk-news/2014/nov/23/briton-thailand-murder-hannah-witheridge-david-miller-mystery-mafia-fear>> accessed 2 February 2015.

The RTP, again, failed to investigate the complaints about death threats and torture. At the time of this writing the accused are now standing trial, according to their testimonies, they still insist that they were threatened by the police and that their confession was extracted by torture.²⁴

It should be noted that none of the complaints systems analysed in subsequent chapters of this thesis have played a crucial role in addressing high-profile cases such as those noted above.

Russell has rightly pointed out that one of the channels intended to resolve tensions between the police and citizens is the procedure by which the latter are allowed to complain against the former.²⁵ In the following sections we will start looking at the existing institutional arrangements of the police watchdog bodies in Thailand. First, however, it is important to provide a brief sketch of how the Thai police itself have developed historically.

III. Thailand and the Royal Thai Police

The aim of this section is to provide readers with some knowledge about Thailand and its police force. It begins with some key facts about Thailand, most important of which are the country's constitutional arrangements and the current political situation. It then lays some foundations of the history of the Thai police and its modern form – the Royal Thai Police (RTP). This will help illuminate the close proximity between police and politics in Thailand.

²⁴ Philip Sherwell, 'Suspect in British Backpacker Murder Trial Describes Thai 'Police Torture'' *The Telegraph* (Koh Samui, 2 September 2015) <<http://www.telegraph.co.uk/news/worldnews/asia/thailand/11838501/Suspect-in-British-backpacker-murder-trial-describes-police-torture.html>> accessed 12 October 2015. See also, ch 4.

²⁵ Ken Russell, *Complaints against the Police: A Sociological View* (Milltak 1985) 2.

A Short Introduction to Thailand

Thailand (officially the 'Kingdom of Thailand') is the only country in the region to have avoided colonial rule.²⁶ Thailand has a written constitution and according to its constitutional framework, Thailand is a parliamentary democracy with a constitutional monarchy. The elected prime minister serves as the head of government whilst the king acts as head of state.²⁷

Thailand has a unitary and centralised government which controls and implements national policy.²⁸ As regards its legislative body, the Thai parliament is bicameral as it is comprised of two separate assemblies namely the Senate and the House of Representatives discharging their responsibilities to pass the law of the land.²⁹ Even though the constitutional system in Thailand adheres to the principle of the separation of executive, legislative and judiciary powers, it should be noted that the executive and legislative powers are not totally separate from one another in practice. The heart of the matter is that the Prime Minister must be a Member of Parliament in accordance with the constitution, and he or she is normally the leader or at least a member of the ruling party.³⁰ The judicial power is more obviously separate. The judicial system has independent administration; the court of justice, in particular, enforces its own regulations as to recruitment, promotion, increase of salaries, and the dismissal of judicial personnel.³¹

²⁶ Douglas A. Phillips, *Thailand* (Charles F. Gritzner (ed), Chelsea House Publisher 2007) 24.

²⁷ Constitution (n 8) ss 2, 3.

²⁸ Rinn-Sup Shinn, 'Government and Politics' in Barbara Leitch LePoer (ed), *Thailand: A Country Study* (Library of Congress 1987) 186.

²⁹ Constitution (n 8) s 88.

³⁰ *ibid* ss 171, 172.

³¹ *ibid* s 220.

Thailand has so far experienced 19 (real and attempted) military coups³² since the end of an absolute monarchy in 1932.³³ The most recent and important ones were the coups in 2006 and in 2014, triggered by decades of political unrest.³⁴ The 2006 coup undermined the 1997 Constitution or the so called ‘the People’s Charter’³⁵ which had completely transformed Thailand’s democracy to become more participatory, accountable and transparent. Indeed, it introduced a proper system of checks and balances for the first time in the country’s history.³⁶ The latest coup in 2014 ripped apart the 2007 Constitution and brought Thailand once more under military rule. In late 2014, the military government selected an expert panel to draft a new constitution.³⁷ However, many aspects of constitutional arrangements under the 2007 Constitution have been preserved whilst a new constitution is still in the drafting process.³⁸ For example, under the National Council for Peace and Order no.11/2557, a number of watchdog bodies including the Office of the Ombudsman, the National Human Rights Commission (NHRC), and the National Anti-Corruption Commission (NACC) etc. are still discharging their duties albeit with some

³² Kate Hodal, ‘Thailand Army Chief Confirms Military Coup and Suspends Constitution’ *The Guardian* (Bangkok, 22 May 2014) <<http://www.theguardian.com/world/2014/may/22/thailand-army-chief-announces-military-coup>> accessed 19 July 2014.

³³ Chris Baker and Pasuk Phongpaichit, *A History of Thailand* (3rd edn, CUP 2014) 117-118.

³⁴ ‘Thailand Country Profile’ *BBC* (London, 28 August 2015) <<http://www.bbc.co.uk/news/world-asia-15581957>> accessed 30 December 2015.

³⁵ Kittipong Kittayarak, ‘The Thai Constitution of 1997 and its Implication on Criminal Justice Reform’ (120th International Senior Seminar: Effective Administration of the Police and the Prosecution in Criminal Justice, Tokyo, February 2003) <<http://www.unafei.or.jp/english/pages/RMS/No60.htm>> accessed 31 December 2013.

³⁶ Peter Leyland, ‘The Ombudsman Principles in Thailand’ (2007) 2 JCL 137, 137-139.

³⁷ Amy Sawitta Lefevre and Panarat Thepgumpanat, ‘Thai Junta Picks Panel to Write Constitution after Draft Rejected’ *Reuters* (Bangkok, 5 October 2015) <<http://www.reuters.com/article/2015/10/05/us-thailand-politics-idUSKCN0RZ0EB20151005>> accessed 15 October 2015.

³⁸ ‘Thailand’s Controversial Draft Constitution Explained’ *BBC* (6 September 2015) <<http://www.bbc.co.uk/news/world-asia-34149522>> accessed 19 November 2015.

limits.³⁹ It should be noted that the analysis of this thesis is based on the statutory framework laid down in the 2007 Constitution.

A History of the Thai Police

The Thai police entity is generally regarded as having been officially founded in 1455 during the Ayutthaya kingship.⁴⁰ The role of an ancient policeman was solely associated with royal protection which was deemed as an extraordinary mission.⁴¹ Over the following centuries, the structure of the police authority became more sophisticated whilst the police service became subject to a more formal style of management.⁴² The Thai police service was drastically reformed in the late 19th century (from 1860 onwards) during a time when a radical overhaul of public administration in Thailand was introduced.⁴³ In 1890, for instance, the son of King *Rama V* – *Krom Phra Narasuan Vorarid*, who was renowned for being a repository of ideas about modern policing as he had previously served as the Siamese (Thai) Ambassador to London and saw the evolution of policing in England, was designated to accomplish the police reform.⁴⁴ Owing to the experience of the prince in England, it is unsurprising that the evolution of policing which was initiated in the city of Bangkok would follow the model of the British constabulary.⁴⁵ The application of the British police model prompted improvements to the Thai police service, principally in the

³⁹ National Council for Peace and Order no.11/2557. Note that the National Council for Peace and Order (NCPO) is a body of the military junta.

⁴⁰ Pratueng Thaniyaphol, 'Thai police: The Guardian of the Land, the King and the People' (2006) 3 RUJ 13, 13 [in Thai].

⁴¹ Eric James Haanstad, 'Constructing Order through Chaos: A State Ethnography of the Thai Police' (PhD thesis, University of Wisconsin-Madison 2008) 48.

⁴² *ibid* 48-52.

⁴³ Prayong Temchavala and Ruedej Kirdvichai, 'The Reform in the Organisational Structure and Working System of the Thai Police' (The Secretariat of the Senate 2005) 52 [in Thai].

⁴⁴ Krisanaphong Poothakool, 'The Royal Thai Police, 2006-2011: Five Years without Reform' (PhD thesis, University of Aberdeen 2012) 20.

⁴⁵ *ibid*.

aspect of the gathering of evidence and crime recording;⁴⁶ The Thai police continued to evolve when the absolute monarchy came to an end in 1932.

Following the dawn of the democratic era in Thailand, the roles of the Thai police had changed somewhat dramatically. The motto appearing on the Thai police cap badge, which reads “*Pitak Sandti Raat*”, meaning “guarding peace and people”, shows that the duties of the modern police are not limited to only safeguarding the monarchy but also to relieve distress and promote contentment for the people.⁴⁷ However, since the beginning of the post-absolute monarchy, Thailand has repeatedly been engulfed by the usurpation of political power by the military establishment. Thus, it was not that easy for the Thai police to perform their duties properly. During the time of Field Marshal Pleak Pibunsongkram as the Prime Minister (1938-1944 and 1948-1957), for instance, the police were mainly exploited to suppress political opponents.⁴⁸

We can understand from the history of the Thai police that, from the outset, the police authority was established and designed primarily to safeguard and to extend the power of the rulers.⁴⁹ Even though the administration of the police force and the nature of the service might have been changed every now and again after the dissolution of the absolute monarchy, it is apparent that the function of the Thai police, still, was to “impose central authority rather than afford community protection”.⁵⁰ In the following sub-section, we will see how the evolution of the Thai police in terms of being the machinery for the central government was deeply ingrained in the police community.

⁴⁶ *ibid* 14-15.

⁴⁷ Thaniyaphol (n 40) 1.

⁴⁸ Haanstad (n 41) 59-60.

⁴⁹ Pasuk Phongpaichit and Sungsih Piriyarangsana, *Corruption and Democracy in Thailand* (Silkworm Books 1994) 114-115.

⁵⁰ *ibid*.

The Modern Police Organisation – the Royal Thai Police

In consequence of the 1997 Constitution, the Thai police organisation was once again subjected to a fundamental reform. The reform of the Thai police was a subject of vigorous and wide-ranging debate shortly after the Constitution came into effect.⁵¹ People viewed the Police Bureau as a rotten barrel containing bad apples. The Thai police were seen to be incompetent and politically partisan since their organisation lacked a clear direction that connected with public services and, on many occasions, the police organisation had proved to be very much under the influence of political factions for political gains.⁵² In addition, the Police Bureau became a cumbersome and over-complicated department which could no longer be effective; hence, the organisational reform for the Police Bureau introduced in 1998.⁵³

In the light of public concern over political influence upon the police, it was proposed that the Police Bureau should operate away from the Ministry of Interior.⁵⁴ The core concept of separating the Police Bureau from the Interior Minister's influence was that this would enable a greater degree of independence for the police organisation;⁵⁵ eliminate the patronage system in the Thai police organisation;⁵⁶ and lower the level of seriousness of police misconduct.⁵⁷ Further national debate on the status of the police organisation following the separation from the Ministry of Interior ensued. One proposal was that the police organisation should be transferred to be under the direction and control of the

⁵¹ Kittayarak 'The Thai Constitution of 1997' (n 35). The 1997 Constitution is generally called "the People's Charter" for the reason that it was a participatory constitution that Thailand had ever had.

⁵² Porntep Prasirtpum, 'A Study on Administrators' Attitude toward Restructuring of the Royal Thai Police' (MBA thesis, Ramkhamheang University 1999) 2-9 [in Thai]. During which time the Thai police organisation was answerable to the Minister of Interior.

⁵³ *ibid.*

⁵⁴ Poothakool (n 44) 36.

⁵⁵ Prasirtpum (n 52) 2-9.

⁵⁶ Amorn Wanichwiwatana, 'The 1998 Thai Police Reform: A Study of the Persistence of Institutional Corruption' (DPhil thesis, University of Oxford 2004) 36. See the discussion about the patronage system within the Thai police in ch 3.

⁵⁷ *ibid* 37.

Ministry of Justice which was also subjected to considerable reform at the same period of time.⁵⁸ However, the idea was dismissed on the basis that the Ministry of Justice would not be able to shoulder an onerous burden of managing the Police Bureau, an organisation with more than 200,000 officers.⁵⁹ In consequence, the Police Bureau was later transferred to be under direct command of the Prime Minister instead. This prompted a number of subsequent changes in respect of organisational structure and image.⁶⁰ In the wake of these reforms, the police organisation had its name changed from the Police Bureau to the ‘Royal Thai Police’ (RTP) to accord with its new image as being a national body. In addition, it rearranged the positions and the chain of command by having a Police Commissioner as the head of the organisation instead of a director general to correspond with the organisational changes.⁶¹

It took a few years before the relatively sparse pieces of legislation in relation to the police administration would be agglomerated into a single and comprehensive regulation – the National Police Act (NPA).⁶² Under the legal framework established by the NPA, the RTP has the Office of the Commissioner General (OCG) as its headquarters where a decision-making process, implementation of policies, a chain of command and disciplinary control centre around the direction and control of the Commissioner.⁶³ With the total number of 204,678 men and women serving as police officers (as of 2013),⁶⁴ the RTP divides its agencies into many divisions. The most important ones in terms of crime prevention are the Metropolitan Police Bureau which has its paramount responsibility for suppressing

⁵⁸ Kittayarak ‘The Thai Constitution of 1997’ (n 35).

⁵⁹ *ibid.*

⁶⁰ Prasirtpum (n 52) 9.

⁶¹ *ibid.*

⁶² Temchavala and Kirdvichai (n 43) 54.

⁶³ National Police Act 2004, s 6. This Act, hereinafter, will be referred to as the ‘NPA’.

⁶⁴ Royal Thai Police, ‘The Total Number of Serving Officers’ <http://pdd.police.go.th/page/data_page.htm> accessed 10 March 2013.

crime and maintaining law and order in the city of Bangkok, and nine other Provincial Police Divisions preventing crime and keeping public order in each region nationwide.⁶⁵ According to the NPA, the Office of Board of the Royal Thai Police (OB RTP) and the Office of the Police Commission (OPC) are the two important agencies having oversight of the RTP's administration.⁶⁶ The Board is presided over by the Prime Minister as one of the *ex officio* members. It has the primary mission to formulate policies in relation to the responsibilities of the police. In addition, it also has a remit to monitor and command the RTP to conform with the government policies, cabinet resolution and other relevant regulations.⁶⁷ Nonetheless, what appears to be of paramount importance for the OB RTP is its authority over the selection process of the senior police officer whom the Prime

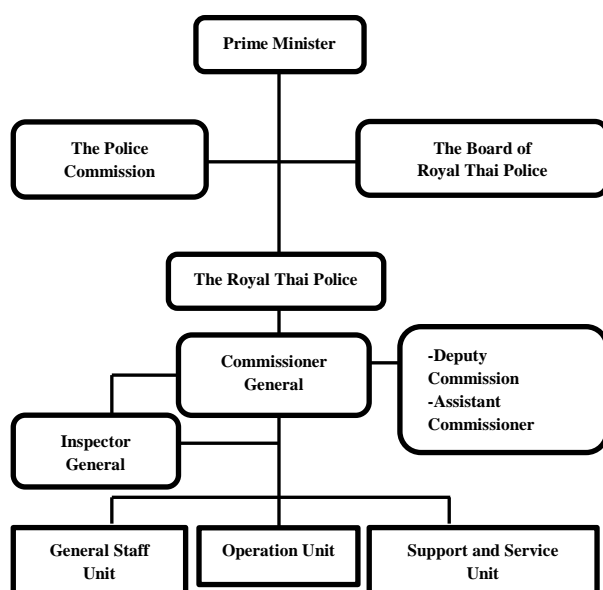


Figure 1: The Organisational Structure of the RTP

Source: Phongthon Thanyasiri, 'The Public Participation in Police Administration' (DPhil Thesis, Mahidol University 2002) 45.

Minister nominates to assume the position of the Commissioner General.⁶⁸ The OPC, of which the Prime Minister is also the chair, has the remit of handling the administrative work in the RTP such as human resources, training programmes, welfare and disciplinary action (see figure 1).⁶⁹

Arguably, the objective of reforming the police organisation in Thailand was not

⁶⁵ Royal Thai Police, 'Internal Agencies' <http://www.royalthaipolice.go.th/agencies_under.php> accessed 10 March 2014.

⁶⁶ NPA (n 63) ss 16, 30.

⁶⁷ *ibid* s 16.

⁶⁸ *ibid* s 18.

⁶⁹ *ibid* s 30.

achieved. The structural and administrative changes, not least the fact that the interior minister as the superior of the Thai police has now been replaced by the Prime Minister, did not separate the police from politics. The 1998 reform merely gave the appearance that the police organisation had improved where it actually had not.

Interviews conducted for ‘a research project examining the 1998 reform of the police’ confirmed this, as illustrated by the following quotes:

Despite the reform we will still lack the trust and confidence of the public. As long as this attitude remains we can’t police effectively. Often the higher ranks just do things as a media stunt, such as going to slum areas with TV cameras and having a crack-down on crime. But this only lasts a few days and then everything goes back to the way it was. I can’t blame the public if they don’t trust us.⁷⁰

The reform was simply a political manoeuvre for the politicians and high-ranking officers to fulfill their needs. The police could detach itself from the Ministry of Interior while the politicians could claim that the reform was their masterpiece.⁷¹

The interviews suggest that the 1998 reform was unsuccessful in terms of solving the perennial issues of corruption and political interference, which is not surprising given that it left untouched the root causes of the aforesaid problems.

The above historical analysis of the Thai police demonstrates that since its inception the police institution was designed to be a part of the machinery to help the rulers preserve their political power. Successive reforms did little more than re-arrange power amongst the political class and did not in any way encourage the police to become more loyal to the law and the people. It is worth pointing out that certain aspects of the history of the Thai

⁷⁰ Wanichwivatana (n 56) 84.

⁷¹ *ibid* 79.

police have shaped the police community and led to violations of human rights. Referring back to the above study on the factors underlying police malpractice in Thailand, the findings show that a sizable proportion of the police was drunk with power (see Chart 1.1); this is arguably because the police force is closely connected with the central authority. In the Thai context, many people stand in awe of those who are in power by which I mean they both admire and are afraid of them. Thai people are certainly in awe of the police.⁷² Many police officers in Thailand are well aware of this which I would argue feeds into their perception of themselves as being superior to ordinary people. This in turn leads to abuse of power. The work of Wanichwiwatana reflected this as he indicated that:

During observations at the police stations and on the patrol I frequently saw the police behave in an over-authoritarian way when stopping, questioning and searching members of the public.⁷³

This is why the mechanisms for providing remedial solutions when conflicts between the police and the people arise are of great importance.

IV. Independent Complaints Authorities

The promulgation of the 1997 Constitution brought about the emergence of many watchdog bodies; amongst them are the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC). These bodies were tasked with the missions to hold the executive branch accountable in

⁷² Kittayarak, *Police and the Expectation of Thai Society* (n 14) 36.

⁷³ Wanichwiwatana (n 56) 85. My interviews with a number of police officers left me with the clear impression that many police officers see themselves as a powerful force in Thai society. For example, many of them talked [off record] about the way in which they exercise their power in order to obtain cooperation from indigenous peoples and in doing so demonstrated a mindset that they see themselves as being superior to the common people.

various dimensions.⁷⁴ The Ombudsman, the NHRC and the NACC have managed to survive the coups and are therefore still playing a crucial role in the checks and balances system including in handling police complaints in Thailand. To come to grips with the above authorities, we will now outline the history and institutional arrangements of each of them.

The Office of the Ombudsman

Leyland has underlined that “the primary reason..., for introducing an ombudsman was not to provide a remedy for routine administrative shortcomings, but to provide another weapon to combat the endemic corruption associated with Thailand’s central and local government”.⁷⁵ Despite that, the role of the Ombudsman in addressing routine complaints against government wrongdoing has also proven to be important to ordinary members of the public in Thailand.

Paragraphs 1, 5 and 6, section 242 of the 2007 Constitution prescribed the elements of the Ombudsman and members’ term in office as follows:

There shall be three Ombudsmen appointed, by the King with the advice of the Senate...

Ombudsmen shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term..

There shall be the Office of [the] Ombudsmen as an independent agency, with autonomy in personnel administration, budgeting and other activities, as provided by law.

When it comes to the matters of jurisdiction, paragraph 1(1) and (2), section 244 of the Constitution prescribes that:

⁷⁴ Peter Leyland, ‘Thailand’s Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs’ (2007) 2 JCL 151, 153.

⁷⁵ *ibid* 141.

Ombudsmen have the powers and duties as follows:

(1) to consider and inquire into the complaint for fact-findings in the following cases:

(a) failure to perform in compliance with the law or performance beyond powers and duties as provided by the law of a Government official, an official or employee of a Government agency, a State agency, a State enterprise or a local government organisation;

(b) performance of or omission to perform duties of a Government official, an official or employee of a Government agency, a State agency, a State enterprise or a local government organisation, which unjustly causes injury to the complainant or the public, whether such act is lawful or not;

(2) to take action in connection with ethics of holders of political positions and State officials under section 279 paragraph 3 and section 280;

The above arrangements show that the Ombudsman has as its main statutory responsibility to handle complaints against state officials on grounds of action or inaction that perpetuates injustice. In addition, the remit of the Ombudsman under the Constitution also covers the matters of professional ethics of state officials; for instance, it has dealt with a high profile case of one of the former Metropolitan Police Commanders in 2013 (see chapter 4).

The National Human Rights Commission

The National Human Rights Commission (NHRC)'s functions are concerned with promoting human rights, including handling and reporting violations and suggesting general reform measures to the government and/or relevant authorities. According to paragraphs 1, 4 and 6, section 256 of the 2007 Constitution:

The National Human Rights Commission consists of the President and six other members appointed, by the King with the advice of the Senate...

The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

There shall be [the] Office of the National Human Rights Commission, with autonomy in personnel administration, budgeting and other activities as provided by law.

In dealing with human rights issues, paragraph 1 (1) and (4) of section 257 authorises the NHRC:

(1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to persons or agencies committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report it to the National Assembly for further proceeding;

(4) to file a lawsuit to the Court of Justice on behalf of the injured person when a request is made by the injured person and it is deemed appropriate to find a solution to violation of human rights vis-à-vis the public at large, as provided by law;

These institutional arrangements point to the fact that the NHRC does not just deal with complaints but may also act on behalf of the complainants in court. Whilst this has proven helpful for individual complainants (especially those who are vulnerable) it is important to

recognise that the NHRC will represent the complainants in court only when it is of the view that the legal action will lead to the benefit of the society as a whole.⁷⁶

The National Anti-Corruption Commission

Having been established as a leading corruption fighter, the National Anti-Corruption Commission (NACC), within the framework of the Constitution, was thrust into “the role of a specialist criminal investigatory body”.⁷⁷ The structure of the NACC was specified as follows:

The National Counter [Anti-] Corruption Commission consists of the President and eight other members appointed by the King with the advice of the Senate.⁷⁸

Members of the National Counter [Anti-] Corruption Commission shall hold office for a term of nine years as from the date of their appointment by the King and shall serve for only one term.⁷⁹

The National Counter [Anti-] Corruption Commission shall have its independent secretariat, with the Secretary-General of the National Counter Corruption Commission as the superior responsible directly to the President of the National Counter [Anti-] Corruption Commission.⁸⁰

There shall be [the] Office of the National Counter [Anti-] Corruption Commission, with autonomy in personnel administration, budgeting and other activities as provided by law.⁸¹

The jurisdiction of the NACC encompasses political and administrative areas. It investigates allegations of corruption and unusual wealth;⁸² also, it verifies asset disclosure

⁷⁶ Andrew Harding and Peter Leyland, *The Constitutional System of Thailand: A Contextual Analysis* (Hart Publishing 2011) 229.

⁷⁷ *ibid* 174.

⁷⁸ Constitution (n 8) s 246.

⁷⁹ *ibid* s 247.

⁸⁰ *ibid* s 251 para 1.

⁸¹ *ibid* s 251 para 3.

⁸² *ibid* s 250 (3).

of those holding political positions.⁸³ Last but not least, the NACC also has the remit to do the following according to section 250 (3) of the Constitution:

(3) to inquire and decide whether State officials, from high-ranking executives or Government officials holding positions of Director or its equivalent upwards, have become unusually wealthy or have committed an offence of corruption, malfeasance in office or malfeasance in judicial office, and take action against State officials or Government officials holding lower positions, who have committed offences in conspiracy with the aforesaid holders of positions or with persons holding political positions...

It can be seen that the NACC has formidable investigatory powers that enable it to look into a wide-range of cases involving government wrongdoing. Nevertheless, the Commission no longer shoulders the burden of dealing with complaints about corruption and malfeasance in office alone because some power was devolved to the Public Sector Anti-Corruption Commission (PACC) in 2008.⁸⁴ The devolution of power has consequently made the handling of police complaints involving corruption and misconduct a shared responsibility between the NACC and the PACC. To draw a clear line of responsibility between the two bodies, the NACC Declaration lays out police complaints that fall within its purview are the ones relating to misconduct allegedly perpetrated by:⁸⁵

[A] Superintendent or an investigating officer in the advisory level and other levels upwards;

⁸³ *ibid* s 250 (4).

⁸⁴ This research does not explore the work of the Public Sector Anti-Corruption Commission (PACC); therefore, the PACC will not be discussed.

⁸⁵ National Anti-Corruption Commission Declaration of the Classification of the Lower Level of the Directorial or Equivalent Positions in accordance with Organic Act on Counter Corruption 1999, 2011, no. 9 (1).

This means complaints against the police holding a superintendent or of a higher rank such as the police chief need to be registered with the NACC whilst those made against officers whose ranks are lower than a superintendent will be handled by the PACC.

V. The Statutory Functions of the Complaints Bodies and their Capacity to Handle Police Complaints

In the interest of clear understanding, this section is devoted to a discussion of the functions of each complaints agency under review of this research and their capacity when handling police complaints.

Within the framework of the NPA, the RTP discharges its main function as a crime fighter where it has the power to investigate crime and commence criminal proceedings.⁸⁶ It is indeed the sole authority in Thailand possessing the power to deal with everyday crime (eg, crimes against the person and/or property). The RTP is also tasked with maintaining good discipline in the force and a complaints system is run internally to support the fulfilment of this task.⁸⁷ As a complaints authority, the police are capable of investigating disciplinary offences in parallel to criminal offences.⁸⁸ Following the investigation, the police authority is able to take disciplinary action against the officer involved provided disciplinary offences have been identified; also, it has the power to institute criminal proceedings if there is an indication that the officer involved may have committed criminal offences (see in-depth discussion in chapter 3).⁸⁹

In the previous section, we saw that the constitutional arrangements for the Thai Ombudsman indicate that the key function of the Ombudsman is to tackle

⁸⁶ NPA (n 63), s 6(3).

⁸⁷ *ibid* pt 6 'The handling of Misconduct'.

⁸⁸ *ibid*.

⁸⁹ *ibid*.

maladministration.⁹⁰ Regarding the handling of police complaints, the Ombudsman is given the power to inquire into complaints to find whether action or inaction by any individual police officers and/or police authorities inflicts harm and/or damage or perpetrates injustice to an individual or the public.⁹¹ However, distinctions need to be recognised between inquiring into complaints to identify defects in public administration and investigating criminal offences intended for prosecution in the criminal courts. Therefore, it should be noted from the outset that the Ombudsman of Thailand can neither exercise the power to instigate disciplinary proceedings nor can it assume the responsibility of initiating criminal proceedings during or following its inquiry (see further discussion in chapter 4). Interestingly, the inability of the Thai Ombudsman in relation to disciplinary and criminal processes distinguishes it from the ombudsmen of Sweden and Finland, from which the institution of the ombudsman emanated, as both of those bodies are capable of taking disciplinary action and/or pressing criminal charges against the alleged culprit.⁹²

As part of the oversight mechanisms of Thailand, the NHRC has its main function of defending and promoting human rights and exercises a number of legal powers in doing so.⁹³ As for its capacity as a police watchdog, the NHRC, like the Ombudsman, merely inquires into complaints to determine if the officers involved have violated people's rights — but does not seek to indicate, specifically, any disciplinary and/or criminal offences. Subsequent to the inquiry, therefore, the NHRC does not have the remit to commence disciplinary and/or criminal proceedings against the alleged wrongdoer (see chapter 4).

⁹⁰ Constitution (n 8) s 244.

⁹¹ *ibid.*

⁹² Michael Götze, 'The Danish Ombudsman: A National Watchdog with Selected Preferences' (2010) 6 *Utrecht L. Rev.* 33, 34. See also, Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Springer-Science+Business Media, B.V. 2004) 137.

⁹³ Constitution (n 8) s 256.

The fact that the NHRC does not have this function in relation to disciplinary and/or criminal procedures seems to reinforce Harding's conclusion that the Commission had been created out of a political compromise since, similar to the notion previously adopted by governments of many other Asian nations,⁹⁴ human rights norms were originally regarded by certain quarters in Thai society (especially the traditional establishment) as alien to Thai values; as a result, the Commission's power has been restricted to ensure that national security and traditional values would not be hampered.⁹⁵

According to the Thai constitution, the NACC is seemingly a formidable force.⁹⁶ As noted above, the NACC's functions extend beyond fighting corruption to include addressing malfeasance in public office.⁹⁷ To fulfil its function, the NACC is capable of undertaking an investigation into complaints about corruption and malfeasance in office directed at identifying disciplinary and/or criminal wrongdoings; crucially, the NACC commissioners and investigating officers are regarded by law as law enforcement personnel according to the Thai Criminal Procedure Code and this means that they are authorised to exercise 'police powers' (eg, arrest and/or detention powers) during the investigation into complaints.⁹⁸ This shows that the NACC's jurisdiction covers certain areas of criminality even though it does not tackle everyday crime like the police do. Upon the completion of its investigation, the NACC has the power to instruct the police to pursue disciplinary action providing disciplinary offences have been identified; in addition, it also has the

⁹⁴ Li-ann Thio, 'Implementing Human Rights in ASEAN Countries: "Promises to Keep and Miles to Go before I Sleep"' (1999) 2 Yale Hum. Rts. & Dev. L. J. 1, 13-20.

⁹⁵ Andrew Harding, 'Thailand's Reforms: Human Rights and the National Commission' (2006) 1 J. Comp. L. 88, 97-99.

⁹⁶ Harding and Leyland (n 76) 172-174.

⁹⁷ Constitution (n 8) s 250.

⁹⁸ Organic Act on Counter Corruption 1999, s 31 para 2.

power to instigate criminal proceedings against the alleged culprit if there is an indication of criminal wrongdoings (see chapter 4).⁹⁹

As this research aims to gain some inspiration from the Independent Police Complaints Commission (IPCC) of England and Wales (see below, *the Scope of the study*),¹⁰⁰ it is important to also explain the function and the role of the IPCC in handling police complaints. The IPCC discharges its function as a specialist police watchdog tackling police malpractice throughout England and Wales.¹⁰¹ The IPCC has a wide range of powers akin to that of the police when they investigate police complaints; the powers include arrest, search and surveillance powers to name but a few.¹⁰² On the completion of the investigation, the IPCC has the power to direct the police to take disciplinary action against the wrongdoer; in the meantime, it is also capable of referring the investigation report to the Crown Prosecution Service (CPS) for further criminal proceedings (see chapters 4 and 5).¹⁰³

The above discussion sets out the functions of each complaints body in question and the powers each of them have when dealing with complaints against the police. This paves the way for readers to understand the subsequent analysis contained within the rest of this thesis of the different complaints systems from two distinct jurisdictions.

⁹⁹ *ibid* ss 93, 97. See more detail in ch 4.

¹⁰⁰ See also, s **II. Proposed Design** in ch 2.

¹⁰¹ IPCC statutory guidance to the police service on the handling of complaints 2015, 3 para 1.1. See also, Police Reform Act 2002, pt 2 s 10(1)(a), (2)(a); this Act will hereinafter referred to as the 'PRA'.

¹⁰² PRA (n 101) sch 3, para 19(4)(b), s 19. See also, IPCC, 'Consultation Pack' on Review of the IPCC's Work in Cases Involving a Death 2012, 10, para 4.1-4.3.

¹⁰³ *ibid* sch 3 paras 23, 24.

VI. An Overview of the Research

This research is concerned with the handling of police complaints in Thailand. Harrison and Cunneen underline that:¹⁰⁴

If citizens are to have confidence in the police service as a whole, they must feel that when they complain about individual instances of police misconduct their allegations will be investigated thoroughly and impartially.

Considering the level and nature of police malpractice in Thailand, the importance of Thai society having an effective system for dealing with police malpractice and complaints against the police is unquestionable. This research will critically examine the mechanisms for handling complaints against the police in Thailand. The examination centres around the internal system of the police themselves and the three independent complaints systems described in section four above. In order to consider the effectiveness of these systems from an appropriately critical standpoint, reference will be made to international standards for the handling of police complaints.

Research Question

To investigate the Thai police complaints system, the overarching research question is therefore formulated as follows:

To what extent does the operation of the Thai system of handling complaints against the police correspond to international standards laid down for this form of police accountability?

¹⁰⁴ James Harrison and Mary Cunneen, *An Independent Police Complaints Commission* (Liberty 2000) vii.

Following on from the overarching question are the following related questions:

- 1) How are the Thai systems supposed to work?
- 2) How do they actually work in practice?
- 3) Do the systems (in theory or practice) correspond with institutional arrangements for the handling of police complaints called for by international standards?
- 4) What could be changed to make them correspond with such standards?
- 5) Could the Thai systems draw inspiration from the English model (the Independent Police Complaints Commission)?¹⁰⁵

Answers for all of these questions can be found in each subsequent chapter of this thesis.

Aims and Objectives

1. To describe and provide evidence in relation to the current situation of police complaints as a form of police accountability in Thailand;
2. To analyse how the complaints mechanisms under the regulatory oversight of the RTP, the NACC, the NHRC and the Ombudsman, actually work in practice;
3. To understand whether the foregoing mechanisms, in theory or practice, correspond with the institutional arrangements for handling police complaints called for by international standards;
4. To suggest any possible changes that could be made to the Thai complaints mechanisms in order for them to correspond with international standards (drawing inspiration from the UK model where appropriate).

The Scope of the Study

In Thailand, there are many mechanisms for dealing with police complaints ranging from the Office of the Inspector General (OIG) or the Crime Suppression Division (CSD) as the

¹⁰⁵ See sub-s *the Scope of the Study*.

internal ones; the Department of Special Investigation (DSI) (answerable to the Ministry of Justice, Thailand) as the external one; and the Ombudsman, the NACC and the NHRC as the independent ones that would-be complainants may seek to register their complaints with.¹⁰⁶

This research confines its attention to the internal system under the control of the RTP and the independent systems of the Ombudsman, the NHRC and the NACC. The RTP system is significant in this study as it shows the arrangements that the police use for dealing with complaints against themselves. We will need to consider whether those arrangements are effective for tackling abuse within the police force. It is also important to examine the mechanisms of the independent bodies in order to understand whether and how the element of independence enhances the effectiveness and impartiality of the handling of complaints. Although the NACC has devolved some power to the PACC since 2008, the latter will not be examined in this research. The reasons are, first and foremost, it is not an independent body,¹⁰⁷ in addition, it has very much the same arrangements as the NACC. Therefore, the study of the NACC proves sufficient for our understanding.

It should be noted that England has made successive attempts to improve its own police complaints system over the last four decades, generating much debate and research.¹⁰⁸ This study accordingly draws inspiration (where appropriate) from the English complaints system, now under the regulatory oversight of the Independent Police Complaints

¹⁰⁶ Internal complaints mechanisms denote those within the RTP, whilst the external complaints mechanisms represent those independent of the police but are part of the government, but the terms ‘external’ and ‘independent’ will be used interchangeably from time to time to differentiate the RTP system and the systems under the control of the Ombudsman, the NHRC and the NACC.

¹⁰⁷ Act on Administrative Measures for Anti-Corruption 2008, s 4. See also, Benjawan Phothong, ‘Legal Problems regarding the Prosecutorial Power in relation to Section 47 of the Act on Administrative Measures for Anti-Corruption 2008’ (LLM Thesis, Ramkhamheang University 2010) 1-2 [in Thai].

¹⁰⁸ Graham Smith, ‘A Most Enduring Problem: Police Complaints Reform in England and Wales’ (2005) 35 *J Soc Pol* 121, 122.

Commission (IPCC). The study concludes by proposing reforms designed to ensure the better handling of complaints against the police in Thailand.

The Significance of the Research

The significance of this proposed research project can be claimed to be profound. This project constitutes trailblazing social research that investigates fully the major, existing police complaints mechanisms in Thailand to see how they actually work and to identify if there is any room for improvements. To do so, the criteria for an effective mechanism for handling complaints against the police laid down by the United Nations Office on Drugs and Crime (UNODC); the principles distilled from the caselaw of the European Court of Human Rights (ECtHR); and the Principles relating to the Status of National Institutions (the Paris Principles) will be used for benchmarking the systems under review in order to help us understand the Thai police complaints system from a wider perspective. The findings of this study will offer fresh insights into the police complaints mechanisms in Thailand. Moreover, the findings can help raise public awareness of the issues around the major, existing complaints mechanisms in Thailand and thus contribute to creating the right political environment in which fundamental reform of the police complaints mechanisms could finally be introduced.

The Organisation of the Thesis

Chapter two relates to research design and methodology. The discussion in this chapter includes the overall research strategy, the methods adopted in this research, sampling, the conduct of the research fieldwork, potential ethical issues and limitations of the research.

Chapter three discusses the scale of police misconduct in Thailand and the root causes of it. It also critically evaluates the internal complaints systems of the RTP at local and national levels to see if they are sufficiently effective against police malpractice.

Chapter four examines the systems under the regulatory oversight of the Ombudsman, the NHRC and the NACC. The study aims to investigate if these systems are effective in handling complaints against the police and also identify any outstanding problems. In addition, the theory of regulatory capture will be adopted as the conceptual framework to assess whether their systems are truly independent.

Chapter five lays out the criteria for an effective mechanism for handling police complaints outlined by the UNODC; the principles from the caselaw of the ECtHR; and the Paris Principles, and examines whether the Ombudsman, the NHRC, the NACC and the RTP satisfy these international standards on a police complaints system. The IPCC will also be used as a benchmark in order to provide some new perspectives on the Thai system.

Chapter six considers a package of reforms measures that would improve the current system in Thailand.

CHAPTER 2: RESEARCH DESIGN

I. Introduction

Research design is crucial because it functions as a “blueprint of research”¹ that “deals primarily with aim, purposes, intentions and plans within the practical constraints of location, time, money and availability of staff”.² Research design therefore enables researchers to construct a logical plan to identify what questions to study, what data is required, and how an analysis can be done. Having research design in place will ultimately ensure that researchers are able to use the evidence obtained to answer the initial research question as clearly as they possibly can.³ In the following sections, we will document key elements of the research design relevant to this research-based thesis. To do so, this chapter begins by explaining how the proposed design works to achieve the aims and objectives of the project. We will then discuss research methodology including methods and sampling to demonstrate the practicality of this research. Ethical issues, research access, and difficulties encountered during the fieldwork are then examined. The approaches taken for analysing the data in this research will be underlined in the final part of this chapter.

II. Proposed Design

The aims of this research involve critique of the existing systems for handling police complaints in Thailand thus necessitating a thorough investigation into each of them. Equally important for the study of a fragmented police complaints system, such as exists in Thailand, is to make a comparison between each element in order to comprehend the

¹ Robert K. Yin, *Case Study Research: Design and Methods* (3rd edn, Sage Publications 2003) 21.

² Catherine Hakim, *Research Design: Successful Designs for Social and Economic Research* (2nd edn, Routledge 2000) 1.

³ David de Vaus, *Research Design in Social Research* (Sage Publications 2001) 9.

issues around the handling of complaints as a whole. This means that the research design might be labelled as, ‘a critical study with an element of comparison’. At the core of this proposed design frame is a critical examination of the systems under the control of the Royal Thai Police (RTP), the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC). The function of this design is threefold: to identify key features of each complaints system in terms of its organisational structures, statutory powers and the procedures for complaints, to highlight and compare how these systems operate in practice, and to assess the unresolved issues around the handling of police complaints.

Within social research, it is arguable that “thinking without comparison is unthinkable”.⁴ When the surrounding social realities are observed partially by social scientists, a comparison between the selected phenomenon for observation and other social phenomena is always a choice to be made equivocally or unequivocally; as a result, “thinking in comparative terms is inherent in social research”.⁵ Hence, this research project also includes an element of comparison in order to develop a holistic perspective and gain new inspirations when it comes to proposing reforms for the complaints systems in Thailand. Ragin pointed out that ‘comparative study’ can be commonly understandable as a study of comparable data.⁶ This brings us to one of the most fundamental questions in a comparative study which is the comparability of units of analysis. In what respect and to what extent are the complaints systems overseen by the RTP, the Ombudsman, the NHRC

⁴ Guy E. Swanson, ‘Frameworks for Comparative Research: Structural Anthropology and the Theory of Action’ in Ivan Vallier (ed) *Comparative Methods in Sociology: Essays on Trends and Applications* (UC Press 1971) 145.

⁵ Else Øyen, ‘Some Basic Issues in the Comparative Methodology of Cross-national Social Research’ (Research Symposium on: The International Comparisons of Social Security Policies and Systems, Paris, 13-15 June 1990) <<http://bora.uib.no/handle/1956/3381>> accessed 29 September 2014.

⁶ Charles C. Ragin, *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies* (UC Press 1987) 4.

and the NACC really comparable? To draw a useful comparison, a balance between units of analysis is required to a certain degree. To put it simply, although it is not always possible for researchers to select the objects of comparison that are equally comparable, it is also inadvisable to compare the objects indiscriminately not least those extremely different from one another. In the context of police complaints in Thailand, the systems overseen by the Ombudsman, the NHRC and the NACC, whilst they undoubtedly have different priorities and responsibilities, were all established by the same constitution with a common purpose of becoming the systems for checks and balances and are similarly running independent complaints systems; from this angle, they are legitimately comparable. On the contrary, the complaints system overseen by the RTP is not comparable to the external ones because; first, the main functions of the RTP and the external complaints authorities are entirely different (see chapter 1); in addition, the RTP complaints system comprises a non-independent closed disciplinary process based on loose procedures (see figures 3 and 4 in chapter 3), even if the comparison between them was to be made, the knowledge gain from this would be slight at best.

Turning now to international comparisons, these allow researchers to examine a wide range of solutions for tackling common problems and/or to evaluate the transferability of police complaints handling policies not least from the countries perceived to have operated a more progressive system. In the past four decades, England has instituted several rounds of reform to its system of handling complaints against the police, eventually establishing the independent police complaints system under the control of the Independent Police Complaints Commission (IPCC).⁷ The English system is therefore able to provide historical and also fresh perspectives on a police complaints system and the handling of

⁷ Graham Smith, 'A Most Enduring Problem: Police Complaints Reform in England and Wales' (2005) 35 J Soc Pol 121, 121.

complaints. In referring back to the point of comparability between the units of analysis, Azarian underlined that the consequence of selecting objects that are not truly comparable is to put the researcher in the position of drawing asymmetrical comparisons and ultimately negates the advantage of comparison.⁸ Is a comparison between the Thai external complaints systems and the IPCC asymmetrical? The Thai external complaints systems have certain features in common with the IPCC in England. Most important of all, they are all independent bodies; also, they share similar issues around independence and impartiality in the investigation of complaints (see chapters 4 and 5). Notably, both the Thai and the English systems have grappled with the question of whether serving police officers or people having police backgrounds should work within a supposedly independent police complaints system. Ultimately, the real test for the usefulness of an international comparison lies in the results, and the subsequent chapters will hopefully reassure readers that this particular comparison was worthwhile.

The question arises here as to how comparative study as a logical plan for this research is supposed to work. Ragin highlighted that social researchers have attempted to approximate scientific rigor for the sake of a comparative study; later, such attempts culminated in the introduction of two significant strategies, namely a case-oriented strategy and a variable-oriented strategy.⁹ Whilst the former strategy is very much predicated upon the pursuit of empirical evidence as it seeks to interpret a social world, the latter strategy is theoretically oriented which focuses more on evaluating the relationship between general features of social structures regarded as variables.¹⁰ With regard to the matter of strategies, this research seeks to adopt the case-oriented one. Why so? In this

⁸ Reza Azarian, 'Potentials and Limitations of Comparative Method in Social Science' (2011) 1 *IJHSS* 113, 121.

⁹ Ragin (n 6) 53-56.

¹⁰ *ibid.*

research, the IPCC is selected for comparative purposes due to its intrinsic value of being a more progressive model than those that currently exist in Thailand. The historical chronology of how the IPCC had been developed since its inception and the current situation of how the IPCC system is operated are helpful in pinpointing how an independent and effective police complaints system is supposed to run. The case-oriented strategy, as a result, is worth employing as it enables us, based on empirical work, to interpret and see where the shared problems of the systems in both countries lie and where Thailand can gain inspiration from the English system.

III. Research Methodology

To rush into decisions about which research methods will be used for the collection of data without having a thorough understanding of the philosophy and the principles underpinning research methodology may trap researchers into a situation where gross inconsistencies between the tenets and the use of research instruments arise. It is important, then, to discuss research from a paradigmatic perspective.

Weaver and Olson described ‘paradigms’ as “sets of philosophical underpinnings from which specific research approaches (e.g. qualitative or quantitative methods) flow.”¹¹ Philosophically speaking, a quantitative paradigm is underpinned by a positivist epistemology whilst a qualitative paradigm is upheld by an interpretivist epistemology.¹² Positivism is a theory of knowledge that approximates scientific approach and applies it to unpack the complexity of the social world.¹³ Collier highlighted that:

¹¹ Kathryn Weaver and Joanne K. Olson, ‘Understanding Paradigms Used for Nursing Research’ (2005) JAN 459, 460.

¹² Alan Bryman, *Social Research Methods* (4th edn, OUP 2012) 30-32.

¹³ Matt Henn, Mark Weinstein and Nick Foard, *A Critical Introduction to Social Research* (2nd edn, Sage Publications 2009) 12-13.

Positivism sets up a certain model of science as value-free, atomistic; discovering causal laws... These are supposed to be characteristic of the natural sciences that have made them so successful, and the assumption is that if the social science could only imitate them, they would achieve similar success.¹⁴

This leads positivist researchers to strive for a study that rigorously looks into objective reality through means of exact measures and hypotheses testing; thus, the positivist paradigm largely centres on the analysis of numerical data and the evaluation of the relationship between variables.¹⁵

In contrast to positivism, Weber pointed out that social science “shall speak of ‘social action’ wherever human action is subjectively related in meaning to the behaviour of others”;¹⁶ this means an interpretive epistemology holds that we should examine motives and reasons that influence an individual’s feelings and eventually leads to a decision to act or not to act in a particular fashion.¹⁷ Neuman concisely summarised the interpretive approach as:

[T]he systematic analysis of socially meaningful action through the direct detailed observation of people in natural settings in order to arrive at understandings and interpretations of how people create and maintain their social worlds.¹⁸

From an epistemological perspective, the approach of this research set out in the proposed design section clearly leans towards the qualitative paradigm. To put this in the context of the study of police complaints in Thailand, it is important that we look not just into the

¹⁴ Andrew Collier, ‘Philosophical and Critical Realism’ in George Steinmetz (ed), *The Politics of Method in the Human Sciences: Positivism and its Epistemological Others* (DUP 2005) 328.

¹⁵ W. Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (7th edn, Pearson Education Limited 2014) 97.

¹⁶ Max Weber, ‘Some Categories of Interpretative Sociology’ (1981) 22 *Sociological Quarterly* 151, 159.

¹⁷ Neuman (n 15) 103.

¹⁸ *ibid* 103-104.

regulations and procedures for complaints but also the views and experiences of stakeholders in the complaints systems in order to be able to fully grasp how the systems are run. A rich understanding of the views and experiences of the people involved in the systems under the control of the RTP, the Ombudsman, the NHRC and the NACC will provide insights into the ‘particularity’ of how each of these systems operates in practice. These in turn will help answer the overarching question of this research as to whether the Thai police complaint systems conform to international standards on a police complaints mechanism.¹⁹ The question is would the quantitative or the mixed-methods approach be sensible for this research?

A quantitative approach places emphasis on establishing objective facts to “document universal causal laws of human behaviour”²⁰ and using the findings of a study to generalise and make claims about the world. Suppose, for example, that the quantitative approach were to be adopted in this research; the examination of police complaints in Thailand would then proceed by hypothesis testing in an attempt to establish causal relationships between relevant variables. Such research would need to rely on numerical statistics or a mass of surveys or questionnaires as objective evidence. Nevertheless, the above approach would merely produce general if not superficial findings concerning how the Thai police complaints systems operate and bar us from understanding whether these systems, in practice, are effective and capable of upholding international standards set out for the effectiveness of a police complaints system. By contrast, the mixed-methods approach implements quantitative and qualitative techniques of gathering data and allows researchers to examine the generality and the particularity of social phenomena at the same time. However, the use of a mixed-methods strategy involves enormous efforts in

¹⁹ Henn and others (n 13) 16-17.

²⁰ Neuman (n 15) 98.

terms of time and costs. In addition, there is a high likelihood that the findings from the use of qualitative and quantitative methods will not corroborate each other. For instance, the findings from a survey may suggest that the general public is normally satisfied with the existing police complaints systems whilst the findings from in-depth interviews may indicate differently, thus creating new problems for the researcher to address. The upshot is that it would be difficult for a sole doctoral student to attempt mixed-methods research, and nigh impossible in the context of Thailand where there are significant problems of access (see further below).

Data Collection Methods

Denscombe suggests that “selecting [research] methods is a matter of horses for courses”.²¹ Methods are instrumental in allowing researchers to pin down the subject matters that they are studying. To draw an analogy here, one can view a research method as a key whilst conceiving of a mystery in a social world as a locked room. The selection of unsuitable methods to solve the mystery of social phenomenon is equivalent to the situation where we use the wrong key to open the door to that room. To unpack the complexities of the handling of complaints in Thailand, the in-depth interview and a documentary study of the relevant literature are selected as key methods in this research. However, this research is not aimed at collecting empirical evidence relevant to the English system because the abundance of the existing literature on the IPCC and its complaints system appears to be sufficient for a critical analysis and to draw some inspiration from for the changes in the Thai systems.

²¹ Martyn Denscombe, *The Good Research Guide for Small-Scale Social Research Projects* (4th edn, Open UP 2010) 153.

(a) *In-depth Interview*

The in-depth interview is the most widely accepted method in qualitative research because it is a straightforward tool that allows researchers to gain insight into the subject matter of the study. This method maximises the opportunity for researchers to be aware of the sentiments and mentality of interviewees towards social phenomenon happening around them. The in-depth interview is a vehicle that facilitates this research to gain understanding about the interviewees' feelings and their perception of the handling of complaints by different complaints authorities. In Thailand, there seems to be a general consensus that the NACC complaints system is sufficiently powerful to bring 'rogue cops' to justice.²² In-depth interview with the stakeholders of the systems, however, will allow this research to elicit detailed information and reflect whether or not the NACC system, in reality, is effective and whether it is able to attain or falls short of international standards laid down for a police complaints system. By comparison with quantitative methods such as surveys or questionnaires, a qualitative in-depth interview is far more capable of drilling down into the crux of the matter. Qualitative in-depth interviews are divided into three separate types; a structured interview, an unstructured interview and a semi-structured interview.²³

A *structured interview*, as the name suggests, is based on a set of closed questions prompting a limited range of answers. This format does not require the interviewer to have advanced skills at conducting interviews as the whole process of how to do an interview can be well-prepared in advance. All interviewees will face identical questions and are provided with pre-coded answers. The purpose of this is to ensure that an analysis of the

²² For instance, see text accompanying n 118 in ch 5. See also, Organic Act on Counter Corruption 1999, ss 92, 97.

²³ Denscombe (n 21) 174-175.

data is straightforward. Therefore, a structured interview lends itself to the gathering of a large volume of data, which can be coded easily and subjected to quantitative analysis. It is a useful technique where the main dimensions of a problem are already known, and the object is therefore merely to quantify the relative weight of each dimension (eg, how many crimes of what type has a person suffered in a year). *An unstructured interview*, in contrast with a structured one, involves nothing much in advance apart from a broad topic and a theme of the matter that is the subject of discussion. Unstructured interviews are conducted with the attempt to place the interviewees' thought at the centre of the study whilst the interviewers will only be facilitators who smooth the path for interviews.²⁴ To do this, the interviewers need to possess advanced skills at undertaking interviews because they have to strike a balance between allowing interviewees to focus on the matters that concern them whilst still ensuring that material relevant to the research questions is collected. The aim of unstructured interviews therefore leans towards the discovery of matters that are complicated, or where the main dimensions of a problem are not already known (eg, someone's thoughts about bereavement). The answer will require extensive coding (eg, to enable thematic discussion) and will not easily lend themselves to quantitative analysis.

A semi-structured interview – a combination between the above two formats of interview – engages interviewees with open-ended questions where the interviewees will be asked a set of prepared questions but also be allowed to advance interesting points that they deem relevant to the question.²⁵ The lack of closed answer options means that such interviews lend themselves more to qualitative than quantitative analysis. Such interviews are suitable where some of the main dimensions of a problem are well-known but there remains

²⁴ *ibid.*

²⁵ *ibid.*

uncertainty about others, or there are issues to be explored which do not lend themselves easily to closed options (eg, the meaning of justice). The semi-structured interview is the most suitable format for this research. As noted above, the main concerns of this research fall within the interpretivist paradigm, requiring a qualitative approach, and thus a structured interview with closed category answers is inappropriate. An unstructured interview would also be inappropriate, because many of the dimensions of the problem to be investigated are known (eg, independence and accountability) and comparisons need to be drawn with published research on the English system – thus necessitating systematic prompting. A semi-structured interview thus will fit the purpose of this research which aims to understand in-depth how the complaints systems are run whilst leaving the option open for those being interviewed to put forward the points that they think important, and for the researcher to dig deeper into any interesting comments made by the interviewees.

A successful interview requires effective techniques. One of the most common techniques is a one-to-one interview. This technique usually involves a meeting between one researcher and one research participant.²⁶ One-to-one interviews bring a number of advantages to the process of data collection in qualitative research. One is that it enables researchers to locate specific ideas during an interview because they are able to focus upon opinions and views expressed by only one person at a time. They may also be the best technique in cases where the matters to be discussed are highly confidential or personal. A one-to-one interview is also simply and flexibly arranged as a meeting can be held in private or office accommodation depending on the agreement of only two people.

A group interview is another important technique that provides a number of different advantages. The obvious benefit is the chance it provides to collect a wide variety of

²⁶ *ibid* 178.

opinions and views in an efficient manner. More importantly, when people are exposed to a range of different viewpoints this can prompt them (with the help of the interviewer) to think more deeply about the subject matter. The group interview can also be a useful technique where it is thought that individuals may be uncomfortable talking in isolation (eg, police officers may feel safer in opening up to researchers about the dilemmas of their job if their colleagues are there to corroborate and support them). However, arranging a group interview involves a great deal of effort in terms of time, places and costs.

Apart from the conventional techniques, the internet interview has recently emerged as an alternative option. This interview technique obviously saves the time and lowers the cost of travel.²⁷ Nonetheless, the most serious disadvantage of an internet interview for research looking into sensitive issues is that it hinders rapport and mutual confidence, thus making it less likely that interviewees will relax and give frank, fulsome answers.

As for this research, it is arguable that the conventional techniques are better suited than the high-tech one. The handling of police complaints is a sensitive matter and the participants may not be cooperative. Therefore, the participants' trust in the researcher is significant and needs to be developed, prior to and over the course of interview. By comparison with an internet interview, the conventional interview techniques which are carried out by means of a face-to-face meeting can help researchers to achieve this more easily. For instance, the researcher can start by introducing himself to the participant(s) (adopting normal social conventions such as shaking hands), and have a brief talk about general matters to create an intimate atmosphere before a real interview begins. In this research, the techniques of a one-to-one and a group interview were applied to suit the circumstances.

²⁷ *ibid.*

(b) *Documentary Study*

This research is an empirical study supported by documentary research. In contemporary social research, the survey or field research may take precedence over documentary research but the document “remains an important research tool in its own right”.²⁸ This method is relevant to the study of police complaints in both Thailand and England. The selection of documents for research inevitably starts with public records. In the case of Thailand, the annual reports of each complaints authority are an important source of data since they provide the researcher with access to important statistics and the details of high-profile cases which can be used for a critical evaluation. As for the English system, the IPCC annual report, its statistical information and relevant research are invaluable sources. In addition, government and parliamentary reports such as reports produced by the Home Affairs Committee (HAC) in the House of Commons, UK which provide critical commentary on the performance of the IPCC, are also crucial for this research. Academic papers exploring the complaints authorities in Thailand and England can be another useful tool in documentary research. Academic work can provide insights into how the complaints authorities perform their duties and what the existing issues around the police complaints systems are. Media publications are also useful for documentary research. Although it is arguable that this type of publication can be particularly biased at times, it does not mean that everything reported by the media is untrustworthy. More often than not, media publications can reflect the reality of many social issues; added to this, they, on occasion, may be the only up-to-date sources for getting across and/or arguing some particular points. In England, the Guardian’s reporting of the death of Ian Tomlinson (see sub-section *Powers*, (c) *Power to conduct an investigation* in chapter 5), and the Thai

²⁸ Nigel Gilbert, *Researching Social Life* (3rd edn, Sage Publications 2008) 286.

media's exposure of cover-ups in the handling of police complaints, for instance, proved to be helpful. However, the point is that the researcher must take a cautious approach when using those publications.

Crucially, the support offered by documentary research in this study is not only in terms of more data to be obtained but also in respect of having the data collected through empirical work cross-checked against those gathered from documents. This latter idea brings us to the notion of 'triangulation', explained by Thomas as follows:

In social science, the term [triangulation] is used simply in a metaphorical way,...to indicate that viewing from several points is better than viewing from one.²⁹

Some researchers associate this term with the use of mixed-methods research but others conceive triangulation as a combination of quantitative and qualitative strategies or approaches as opposed to research methods.³⁰ The reality, however, is that within a single approach, say a qualitative one, researchers are able to implement two or more research methods for their data collection. By doing so, we are also able to triangulate our data. Thus, in-depth interview and documentary research can be used for the purpose of triangulation for the benefit of this research study. Should the data obtained from both tools corroborate one another, the findings can be claimed to be somewhat more solid. If not, then the further questions might be raised as to whether the lack of corroboration is merely an artefact of the different methods used or instead suggests that one or both of the methods has produced unreliable data.

²⁹ Gary Thomas, *How to Do Your Research Project: A Guide for Students in Education and Applied Social Sciences* (2nd edn, Sage Publications 2013) 146.

³⁰ Donna M. Mertens and Sharlene Hesse-Biber, 'Triangulation and Mixed Methods Research: Provocative Positions' (2012) 6 *JMMR* 75, 75.

Sampling

In social research, the discussion of sampling inevitably concerns the choices between ‘probability sampling’ or a random selection of cases to study, and ‘non-probability sampling’ or a discretionary selection of cases to study as two broad and basic forms. In qualitative research, samples are generally used to explore uncharted territory — to discover new ideas and perspectives rather than being taken as representative of a wider population; as a result, non-probability sampling, which involves the selection of samples on the basis of their intrinsic value, such as the professional expertise and/or practical experience of participants, is normally applied within a qualitative approach.³¹

(a) *Purposive sampling*

The process of data collection in this research entails the use of non-probability sampling. To examine the handling of police complaints, however, ‘purposive sampling’ is employed as one of the key sampling techniques in this research. Bryman elucidated the core concept of purposive sampling and its strategies as follows:

The goal of purposive sampling is to sample cases / participants in a strategic way, so that those sampled are relevant to the research questions that are being posed. Very often, the researcher will want to sample in order to ensure that there is a good deal of variety in the resulting sample, so that sample members differ from each other in terms of key characteristics relevant to the research question....The researcher needs to be clear in his or her mind what the criteria are that will be relevant to the inclusion or exclusion of units of analysis (whether the units are sites, people, or something else).³²

To understand the extent to which the operation of the Thai systems for handling police complaints corresponds to international standards, the perception of the stakeholders in the

³¹ Denscombe (n 21) 23-25.

³² Bryman (n 12) 418.

police complaints systems is vitally important. This research, therefore, adopts purposive sampling by selecting a number of executives serving in each complaints authority as the samples and approaching them for interview. Two commissioners each from the NHRC and the NACC and one ombudsman from the Office of the Ombudsman (the Ombudsman has only three executives) were selected for interview; these executives are generally known to have dealt with most police complaints in the past. Notably, none of them refused to give an interview for this research.

The selection of police officers to interview for the purpose of this study is even more hand-picked. The aim was to recruit at least two police officers to participate in in-depth interview. These officers needed to be senior and holding a position that is capable of instigating disciplinary proceedings because they are likely to be able to share their experience about the internal complaints system and express some pragmatic views on the external systems. During the process of recruitment, five commissioned officers were approached for an interview. However, only two officers agreed to take part in this research, one a superintendent serving in the Office of Inspector General (OIG) and the other a Deputy Commander serving in one of the police force areas in one of the Northern provinces of Thailand. Purposive sampling was also applied to the selection of police complainants. The idea was that they had experienced both internal and external complaints systems and therefore it made sense to access them via the external complaints bodies. With the assistance of the external complaints bodies, four complainants were approached for interview but two of them declined to participate. This research also recognised the importance of the role of the experts in contributing to this project and selected seven knowledgeable figures to take part in this project. These included a social

researcher, a human rights lawyer, a senator, a judge and three retired police officers. However, two of these retired officers declined to participate.

(b) *Snowball sampling*

In this research, purposive sampling alone cannot help ensure the adequacy of data; as a result, the researcher sought to adopt more than one non-probabilistic technique in order to reach more potential participants; thus, snowball sampling was employed as another technique. Its function is described as follows:

[Snowball sampling is] a sampling technique in which the researcher samples initially a small group of people relevant to the research questions, and these sampled participants propose other participants who have had the experience or characteristics relevant to the research.³³

Why does snowball sampling matter in this research? Generally, the police complainants best able to understand how complaints against the police are handled are likely to be those who have been involved in serious cases and thus have experienced large parts of the complaints systems. Whilst the perceptions of these people towards how the complaints system is run are regarded as worthwhile capturing through in-depth interview, the reality is that such individuals are normally hard-to-reach. Snowball sampling can therefore be helpful; the complainants' trust in the researcher can be built up from the involvement of an intermediary who shares the experience of being a complainant and who can vouch for the interviewer's integrity. This sampling technique eventually helped recruit five more complainants for this research. Apart from the complainants, this same sampling technique was also applied to increase the number of police officers interviewed for this research as well. Notably, the use of this technique helped recruit four more police

³³ *ibid* 424.

officers. Last but not least, the snowball sampling technique also helped recruit an inquiry officer from the Ombudsman.

Sample Size in Empirical Research

In the collection of empirical evidence in social research, the problem of how to determine sample size looms large. Social researchers — especially novice ones — are troubled by the question of how many qualitative interviews is enough. In this research, 24 participants were interviewed in total. Is that number high enough? Mason has usefully highlighted that:

Sometimes, it is a knee-jerk reaction to simply want to do ‘more interviews’ because that must somehow be ‘better’. But how many more depends on the logic by which each one adds to your understanding of the phenomenon you are investigating.³⁴

In similar vein, some scholars also indicated that increasing the size of samples is not always the best option and it is more advisable for social researchers to strike a balance between the size and the quality of samples:

[A] small number of cases, or subjects, may be extremely valuable and represent adequate numbers for a research project. This is especially true for studying hidden or hard to access populations such as deviants or elites. Here, a relatively few people, such as between six and a dozen, may offer us insights into such things as the stratification hierarchy of a drug-producing subculture (i.e., methamphetamine), an outlaw motorcycle gang, or a corporate boardroom.³⁵

³⁴ Jennifer Mason, ‘How Many Qualitative Interviews is Enough: Expert Voices and Early Career Reflection on Sampling and Cases in Qualitative Research’ in Sarah Elsie Baker and Rosaline Edwards (eds) NCRM Review Paper 2012, 29 <<http://eprints.ncrm.ac.uk/2273/>> accessed 26 January 2013.

³⁵ Patricia A. Alder and Peter Alder, ‘How Many Qualitative Interviews is Enough: Expert Voices and Early Career Reflection on Sampling and Cases in Qualitative Research’ in Sarah Elsie Baker and Rosaline Edwards (eds) NCRM Review Paper 2012, 8 <<http://eprints.ncrm.ac.uk/2273/>> accessed 26 January 2013.

To refer back to the total number of people interviewed for this research, it can be seen that even though the number of the interviewees is not substantial, the fact is that participants like the ombudsman, the NHRC and the NACC commissioners, and the former deputy police commander are not just experts but embodiments of police complaints systems; added to this, when looking at chapters 3 and 4 we will see that many of these people were forthcoming about objective facts and also upfront about their subjective views on the handling of police complaints in Thailand. By the same token, the complainants interviewed for this research also showed remarkable insights into how the complaints systems are operated in practice because most of them have had their complaints registered with all of the complaints bodies examined in this research; added to this, most of them complained about death and serious injuries (eg, extrajudicial killings, forced disappearance). This suggests that they have practical and extensive experience on complaints that enable them to give very useful comparative impressions of the systems they have gone through as the complainants.

I would accordingly argue that the interview samples for this research are capable of enriching a solid understanding of how the police complaints system in Thailand are supposed to run and how they are actually operating in practice (see Appendix 1: List of Research Participants).

IV. Ethical Considerations

Barnes suggested that ethical considerations arise when:

[W]e try to decide between one course of action and another not in terms of expediency or efficiency but by reference to standards of what is morally right or wrong.³⁶

It is not right for social researchers to conduct research for the acquisition of knowledge while ignoring ethical issues that may be attached to their research projects. Neuman asserts that researchers must “never coerce anyone into participating; all research participation must be voluntary”.³⁷ In Britain, the Social Research Association (SAR) has laid down ethical guidelines advising that:

Inquiries involving human subjects should be based as far as practicable on the freely given informed consent of subjects. Even if participation is required by law, it should still be as informed as possible. In voluntary inquiries, subjects should not be under the impression that they are required to participate. They should be aware of their entitlement to refuse at any stage for whatever reason and to withdraw data just supplied.³⁸

All of this leads us to the first essential point of ethical considerations – informed consent. The doctrine of informed consent holds that social researchers should give the people invited to participate in their research project the fullest information in relation to the aims and objectives of the project, including potential risks to which they may be exposed; also,

³⁶ John A. Barnes, *Who Should Know What?: Social Science, Privacy, and Ethics* (Penguin 1979) 16.

³⁷ Neuman (n 15) 149.

³⁸ Social Research Association, ‘Ethical Guidelines’ (SAR 2003) 27.

researchers should put in place arrangements to ensure that anonymity and confidentiality will be protected.³⁹

In this research, the participants were informed about the aims and objectives of the research project and how it was going to be conducted. The participants understood that this research is concerned with the handling of police complaints and is being undertaken for the purpose of developing proposals for possible reforms in police complaints systems in Thailand. Furthermore, the details of how the interview was to be conducted, including length of interview, the participants' right to withdraw from this research and a time period to exercise such a right, have been clearly notified (see Appendix 2: Participant Information Sheet). Informing about possible harm is also crucial. This research does not involve scientific experiment; therefore, there is no physical harm to be concerned about. Nonetheless, I was mindful that the interviewees, the complainants in particular, were likely to describe during the interviews how badly they were treated by the police during the matter that gave rise to the complaint, and that this might result in a certain level of psychological stress. Hence, during the interviews, the explanation was given to the interviewees from the outset that the key purpose of the interview was to explore how complaints are handled by each complaints system. Legal jeopardy is another issue that this research was always aware of during the interviews as some complaints are very controversial, whilst the investigations of some others remain ongoing. As a result, the interviewees were guaranteed that they would remain anonymous and the confidentiality of data will also be protected.⁴⁰

³⁹ Gilbert (n 28) 150.

⁴⁰ Neuman (n 15) 147-150.

Crucially, the participants' right to privacy is essential for the conduct of social research as personal information on each individual participant will be disclosed during interview. Accordingly, this all comes down to the protection of anonymity. Nevertheless, a number of social researchers might not take it seriously enough. Henn and others cited the following example showing the failure of some researchers to protect the anonymity of the participants:

[A]lthough Holdaway (1982) used pseudonyms for the police stations in which his research took place, he left many other details unchanged. As a result, it was easy to identify his research as being conducted with the Metropolitan Police.⁴¹

In recognition of this problem, in this research, the participants are identified merely by their statuses. For example, the interview with police officers is described as a group interview with police officers in a Northern Province, Thailand which comprises a number of police force areas. Nonetheless, it is impossible to make the interviews with the executives in the Ombudsman, the NHRC and the NACC wholly unidentifiable. The best option therefore is, not to specify which commissioners have given interviews for this research. Anonymity and confidentiality normally go hand in hand. To protect the confidentiality of the data, those interviewed for this research were assured that their interview transcripts would be kept safely and would not be shared with other people apart from the researcher and his supervisors.

Last but not least, there is an increasing trend amongst social researchers to have the participants sign a consent form to help ensure that informed consent is given. This research deployed a consent form to notify the participants all the relevant details in

⁴¹ Henn and others (n 13) 95.

relation to the interview. Crucially, the participants of this research were informed that their participation was voluntary and that they had the right to withdraw from this research within a certain period of time specified in the participant information sheet. Also, they were assured that their identities would be protected (see Appendix 3: Informed Consent Form). All participants signed the form prior to the interview.

V. Arranging the Research Fieldwork

This research is a PhD research-based thesis. Ethical review is therefore conducted by the university prior to the fieldwork. Having set out all the details of research fieldwork in Thailand, the application for ethical approval of this project was submitted to the Humanities and Social Sciences Ethical Review Committee, University of Birmingham and the official approval was subsequently granted. This project was designed to be compliant with the Code of Practice for Research issued by the University of Birmingham⁴² whilst the issues of health and safety in research were also recognised by having an assessment of risks to personal safety and health carried out to follow the guidance delivered by the Institution of Occupational Safety and Health (IOSH).⁴³

The recruitment of research participants started straight after the official approval from the university was granted. Three different approaches were implemented for the recruitment. It is standard that interviewing any person holding an official position requires official permission; therefore, the interviews with the executives serving in the external complaints authorities were arranged by prior authorisation (see Appendix 4: Sample of Written

⁴² 'Codes of Practice, Policies and Guidance' (*University of Birmingham*)
<<http://www.birmingham.ac.uk/university/governance/Legislation/codes-of-practice-policies-and-guidance.aspx>> accessed 30 December 2013.

⁴³ 'Responsible Research – Managing Health and Safety in Research: Guidance for the Not-For-Profit Sector' (*IOSH*, October 2012)
<<https://intranet.birmingham.ac.uk/hr/wellbeing/worksafe/management/hsmanagement.aspx>> accessed 30 December 2013.

Authorisation). However, I did not have any established relationship with any of the executives in the complaints authorities; in order to reduce the risk of non-participation in the research, the role of a middleman was crucial. I relied upon my personal contact who is the secretary of one of the senators in the House of Senate, Thailand, to increase the chance that the commissioners would participate in this research project. Once the commissioners' personal secretaries confirmed that the commissioners had no objection to taking part in the project, formal letters were dispatched to the commissioners to seek that participation. The ombudsman, the NHRC and the NACC commissioners were furnished with a thorough explanation about the objectives of this research and how the interview would be conducted. Moreover, each of them were given a participant information sheet and an informed consent form explaining that their participation was voluntary, that anonymity and confidentiality would be protected and they had a right to withdraw from the project within a given time frame. The appointment was scheduled shortly after the letter had been received. Then, the secretarial officers notified me where and when the interview would take place.

By comparison, the approach of this research to recruit police officers as participants is somewhat dissimilar. It proved difficult to gain cooperation from the police (see section VI Research Limitations) and the role of my personal contacts in the recruitment of police officers as participants were therefore even more pivotal. With the assistance of some respected figures in the Thai criminal justice system, a number of police officers were finally persuaded to take part in this project. However, I was advised not to submit a formal request for authorisation to their superior officers since the officers who agreed to participate expressed their wish to avoid becoming the centre of attention not least from the police force area they are serving with. Notably, each of them was provided with a

participant information sheet and an informed consent form. The documents explained the objectives of this research, how the interview would be undertaken, the protections relating to anonymity and confidentiality, and their right to withdraw within a given time period. Each officer was informed of a prearranged time and location for interview on the same occasion that a participant information sheet and an informed consent form were sent to them, as a travel plan needed to be arranged weeks ahead.

The recruitment of the complainants proved the most challenging aspect of sample construction. Even though I have personal contacts with a few police complainants, their complaints cannot be regarded as serious enough to be able to reflect whether the existing complaints systems are capable of dealing with police misconduct. Hence, my approach to recruiting complainants as participants in this research was to seek help from the external complaints authorities. This seemed likely to be a productive way forward because a sizable proportion of complaints are lodged with them each year and their general image of being transparent and accommodating meant cooperation could be anticipated. Once the interview with each commissioner in different complaints authorities had finished, my intention to obtain help from them in recruiting complainants for interview was communicated. Whilst the NACC declined to assist, the secretariat office of the Ombudsman and the NHRC notified me shortly afterwards that my request was granted. A few days later, the Ombudsman and the NHRC informed me that a couple of complainants were approached and expressed their willingness to take part in this project. A participant information sheet and an informed consent form were duly dispatched to the complainants whilst a prearranged time and location (mainly the complaints authority premises) were also notified. To gain a larger sample size, however, this research also adopted 'snowball sampling' as a strategy for recruitment. Subsequent to each interview with a complainant,

a request for putting forward some other complainants was made to the complainants interviewed for this research. This strategy was successful as it resulted in the recruitment of some more complainants who have valuable experiences on the complaints systems.

Gaining cooperation from a broader range of experts for this research proved to be easier than from the key stakeholders in the police complaints systems already discussed. Thus, a human rights lawyer, a social researcher, a judge and a former senator were all keen to participate in this project with no strings attached. Interestingly, apart from the judge, all of them intimated that there was no need to keep their identities anonymous because they regularly voice their concern over police misconduct through the national media; however, I felt obliged to protect their identity and did so anyway.

Some participants required me to provide them with a list of interview questions beforehand (see Appendix 5: Sample of List of Interview Questions). I believed that giving them a list of interview questions would help smooth an interview while it would also allow me to discuss in depth with interviewees because they would have had a chance to give some prior thought to their answers, although there was also the risk that they would prepare stock answers of course. On balance it seemed the benefits of providing advance notice of the questions outweighed the risks and I decided to satisfy their requirement.

VI. Research Limitations

Prior to the discussion of limitations which emerged during the fieldwork for this research, the work on *The Royal Thai Police, 2006—2011: Five Years without Reform* by a Thai graduate of Aberdeen – Krisanaphong Poothakool – is worth looking at as a specific instance demonstrating how difficult is the undertaking of extensive research on serious issues concerning Thai policing.

Poothakool was a serving Police Captain in the RTP prior to his study leave to the UK and was required to return to his duty in 2010; in this respect, he apparently is an insider of the police force.⁴⁴ His police background aided him in “re-establishing a network of contacts throughout the country with fellow police graduates from the late 1990s who were now serving in promoted posts outside Bangkok”.⁴⁵ In the introductory chapter of his work, Poothakool pointed out that the rebuilding of his network of friends in the police organisation was done through many social get-togethers several months prior to his PhD programme officially started.⁴⁶ All the above suggests to the audiences of his thesis that his research project would go smoothly. This is, however, somewhat mistaken. Difficulties began when he sought formal approval for the research from the police leadership, as is the normal requirement. Poothakool explained that he had attended a lengthy interview at the RTP headquarters and was also engaged in controversial debates with members of the RTP committee over his project. Furthermore, he and his co-supervisor who accompanied him to Thailand both experienced some blocking tactics by the RTP ranging from keeping Poothakool waiting almost interminably; requiring him to seek multi-party approval of his project; and insisting that he clarified his project to each bureaucratic department potentially involved, however, tangentially.⁴⁷

This instance highlights how difficult it is to examine controversial issues surrounding the RTP even for an insider like Poothakool. The problems I faced as an outsider were different but no less challenging, not least because I was also seeking to study the external

⁴⁴ Krisanaphong Poothakool, ‘The Royal Thai Police, 2006—2011: Five Years without Reform’ (PhD thesis, University of Aberdeen 2012) 6.

⁴⁵ *ibid* 8.

⁴⁶ *ibid*.

⁴⁷ *ibid* 118-120.

complaints authorities. The limitations arising out of the conduct of my research fieldwork can be reflected from different experiences and perspectives as follows:

(a) *No established research tradition of studying the police complaints systems*

Policing is not a new field of study in Thailand. A number of Thai scholars had previously embarked upon the conduct of research that looked into police administration whilst a few of them have explored the issues which engulfed the Thai police in many other aspects.⁴⁸ However, conducting research examining the police complaints systems in Thailand proved to be arduous due to a lack of an established research tradition around the topic of police accountability through the complaints system.⁴⁹ The following underlying reasons account for this.

First, the Thai police have a very high-octane culture nurtured by a Thai-style authoritarian democracy. In the past three decades, there has been a widespread public perception that investigating the issues around police malpractice is perilous. For example, Prasong Lertratanawisute, a veteran crime journalist, began his conversation about police malpractice whilst in attendance at an open seminar on police reforms on 16th May 2007 as follows:⁵⁰

I [have to admit that I] come here today with fear as I'm an outspoken person, and when I express my view on or criticise something, I do it

⁴⁸ For instance, Amorn Wanichwiwatana, 'The 1998 Thai Police Reform: A Study of the Persistence of Institutional Corruption' (DPhil thesis, University of Oxford 2004); Krisanaphong Poothakool, 'The Royal Thai Police, 2006-2011: Five Years without Reform' (PhD thesis, University of Aberdeen 2012).

⁴⁹ In Thailand, there is only a piece of academic paper by Phongthon Thanyasiri that discusses police complaints systems. However, the analysis made in this particular paper is superficial as it is a non-empirical Master's thesis based principally on documentary research. See, Phongthon Thanyasiri, *The Idea of Establishing the Organisation Responsible for Controlling and Inspecting the Performance of the Police by Receiving Complaints* (Kittipong Kittayarak ed, the Commission of Police Administration Development 2007) [in Thai].

⁵⁰ Kittipong Kittayarak, *A Seminar Report on Police and the Expectation of Thai Society* (the Secretariat of the Commission of Police Administration Development 2007) 54 [in Thai].

unreservedly. So I'm not sure whether I would be abducted after I got home!

The above perception is heightened by the systematic harassment of those who have sought to complain against the police in the past.⁵¹ Second, from an academic point of view, 'socio-legal studies' is much less popular in Thailand compared to those top subjects such as law or politics. The existing literature on policing is accordingly not extensive and diverse. It should also be noted that most of the literature on policing in Thailand was mainly conducted by documentary research at Master's degree level which merely provides shallow analysis. In addition, the police complaints system in Thailand is fragmented whilst each complaints authority is entrusted with different tasks. The great majority of Thais including academics therefore tend to discuss each complaints system in isolation from one another and lose sight of considering the police complaints issues as a whole. Third, the fact that the RTP is under the control of the political establishment leads numerous people to the position that the rottenness of policing in the country is heavily shaped by political failure. Accordingly, they tend to discuss the issues within the Thai police force from a political perspective, and this means that the discussion of police complaints is too often overshadowed by a political discourse.⁵² All of the above factors discourage people from exploring in-depth the police complaints systems in Thailand and are ultimately responsible for a lack of established research on this subject.

(b) *Personal safety*

As shown in chapters 1 and 3, the RTP is an institution that inspires both deep-rooted respect and fear within Thailand. Undertaking rigorous research on police complaints in

⁵¹ See text accompanying nn 139, 140 in ch 3.

⁵² This can be seen from a number of interviews given for this research. See text accompanying n 4 in ch 6, for example.

Thailand is therefore a tricky business. Care was needed to reduce the risk of finding myself in life-threatening situations at some points during the fieldwork or even after the completion of the research. Why do I say so?

Over the course of research interviews with the police, I was likely to be mistaken by the officers as a person who was trying to extract confidential information and therefore as something of a threat. Most of the complainants interviewed for this research have suffered from gross malpractice and are still in the middle of fighting in court. Those who have been alleged of perpetrating misconduct are likely to be keeping a close watch on the the complainants interviewed for this research and those who come into contact with them, including myself. There were also particular precedents that made me wary (eg, the case of Mr. Somchai Neelapaijit and the experience of one of my interviewees whose attempt to expose the cover-up of an extrajudicial killing by the police was met by persistent police harassment).⁵³ Then there is my own previous experience as a lawyer, during which I was told by senior colleagues which police force areas are particularly notorious for the use of extralegal means. All of this suggested to me that I had to be cautious during the process of research fieldwork, a period characterized by tension. Indeed, it was noticeable that every interviewee was very vigilant during the interview; a few of them asked me to show my identification and letter from the university (of course, I did), this happened even though the complaints authorities had helped me contact them in the first place. Moreover, the police interviewed for this research clearly drew a line by talking only in generalities rather than discussing any specific complaints made against their colleagues. I took this as a warning that I should follow suit. As a Thai it was clear to me that if I pushed deeper into such sensitive issues either the interview or my access to the police might terminate

⁵³ See text accompanying n 140 in ch 3.

prematurely or I would have put my own life at risk. I nonetheless managed to obtain some useful and rare interview data, albeit expressed in general terms.

(c) *The recruitment of police officers and complainants*

The sensitivity of the research topic, a lack of immunity against the high-octane police culture and the concomitant concern over personal safety, and the fears of criticisms amongst Thai bureaucrats (see the next sub-section), are factors that posed daunting challenges to the recruitment of police officers as research participants.

Even though my former background as a lawyer contributed much to the establishment of a network of friends in the RTP, when it came to the conduct of this research fieldwork most of those friends were very reluctant to take part or offer help. Some of them explained that they were afraid of the consequences of letting an outsider in on the sensitive and controversial areas of the Thai police organisation, whilst others claimed that they were not senior enough to protect me from the very powerful police culture. The above reasons led me as an outsider of the RTP to seek help from certain personal contacts (respected figures in the Thai criminal justice system) to convince more open-minded officers to give an interview for this research. It might be arguable that more officers could have been successfully recruited with the assistance of those personal contacts. However, my personal contacts were doubtful that they could find more open-hearted officers for interview. It of course cannot be assumed that the Thai police officers with whom I spoke are representative of all such officers. The recruitment of complainants was similarly difficult. Apart from those already in the limelight, most complainants do not want to reveal themselves to the public; a number of reasons ranging from the trauma of the alleged incident of misconduct, and the concerns over retaliation and legal jeopardy

account for this. As a result, the role of the external complaints authorities as intermediaries between the researcher and the complainants is crucial.

However, this research found that some complaints authorities were keen to select and put forward the complainants who have relatively pleasant experiences on the handling of their complaints whilst those who might have unpleasant experiences were screened out. Thus, I had to appeal to the complainants put forward by those authorities to propose some other complainants whom they knew. Ultimately, interviews with some more complainants who have extensive experience on the handling of complaints by the external complaints authorities were successfully arranged. There was scope for increasing the number of interviews still further but some of the complainants contacted were afraid of giving an interview for this research, two of whom said they had no confidence that the information they gave could really be protected.

(d) *The culture of fear of criticisms*

The NHRC commissioner interviewed for this research hit the nail on the head when he observed that the culture of fear of being criticised has long been ingrained in Thailand. During a group interview with the police, even though some of them were very candid as to how complaints registered with them are actually handled, others would every now and again interrupt the interview to remind their colleagues not to go too far with the answers.

When it comes to the interviews with top executives of the external complaints authorities, it was surprising to find that some of these people proved to be not very forthcoming as they are generally expected by the public to be open in their approach. Amongst them, the ombudsman and the NHRC commissioners were more approachable and forthcoming than the NACC commissioners. One of the NACC commissioners interviewed for this research

said bluntly to the researcher that the time for interview should be reduced from 60 to 20 minutes as there were a number of more important tasks for that particular commissioner to complete. During interviews, all commissioners interviewed for this research took a very cautious approach in answering each question and were clearly reluctant to elaborate on the points advanced by the researcher. Too often, they used ‘yes’ or ‘no’ to answer the questions and, when being pressed, they would say ‘I’ve already given the answer’. The given answers were useful but could have been clearer. For example, when the question was put to the NHRC commissioner as to why the Commission seeks cooperation from the police to come in for interview even though they rarely cooperate with them, the NHRC commissioner restricted his response to pointing out that the NHRC prioritises cooperation from the police rather than using any formal power requesting them to come in for interview. The commissioner failed to explain the reason behind that stance and discouraged the interviewer from seeking clarification.

(e) *The incompleteness of statistical data*

Though this research adopts the qualitative approach, statistical data on complaints against the police also proved to be useful for data analysis especially in terms of comparing and contrasting. During the research fieldwork in Thailand, it was found that some potentially useful quantitative data that should have been made available (eg, statistics on police complaints or disciplinary investigations) are missing from police complaints statistics normally released by the RTP and the external complaints authorities.

I was informed during my interviews with senior members of each Thai complaints authority under review of this research that statistics on ‘substantiated investigations’ and ‘withdrawn complaints’ have never been systematically produced or published. Attempts were made during this research to make good this gap. For example, the statistical data

presented in Table 3.3 in chapter 3 were supplied to this research by one of the local force areas; the data lacks statistics on substantiated investigations and/or withdrawn complaints. I personally appealed to the police leadership in that particular force area for more comprehensive data. That police force area responded that they do not produce statistics on substantiated investigations and withdrawn complaints.

In addition to the above issue, the quantitative data published by most of the complaints bodies in Thailand is confusing. The Ombudsman, the NHRC and the NACC all use the term ‘finished cases’ to mean the complaints cases are no longer being dealt with. In my view, however, this creates uncertainty because ‘finished cases’ is an ambiguous term which can be interpreted differently as ‘investigated’ or ‘withdrawn’ or even ‘resolved’ complaints. Even more perplexing, some complaints bodies like the NHRC and the NACC simply merge the numbers of police complaints with complaints made against other law enforcement personnel. All the above creates difficulty for those using the police complaints statistics to understand, for example, how many cases are actually related to the police only.

To obtain more useful data, three separate appeals were made to the Office of Inspector General (OIG), the Ombudsman, the NHRC and the NACC for the statistics on substantiated investigations and withdrawn complaints. Nearly eight months after the third attempt, the Ombudsman, the NHRC and the OIG eventually accommodated the request and provided more statistical data for this research, although the data provided by the OIG still lacks statistics on substantiated investigations and withdrawn complaints.

The NACC however did not respond. The analysis of the NACC’s complaints statistics needs to rely on the material I have to hand, even if these statistics are incomplete.

The statistics on ex-police personnel serving in each organisation are also unavailable. I understand that each external complaints body releases the statistics on manpower every year; however, I have been informed during the interviews with the executives of each authority that detailed statistics on backgrounds of personnel have never been produced, but they offered to estimate the numbers of the personnel with a police background for the sake of this research. Therefore, the interview data is the best source available for this research.

(f) *Constraints of time and funding*

Time and funding are critical to the conduct of the fieldwork for this research. Whilst some might argue that I could have done more to gain a larger sample size, owing to constraints of time and funding, it was impractical to do so in reality. This research is a three-year PhD project and originally focused on a full comparative study between the Thai systems and the IPCC. A certain amount of time in the first year was therefore set aside for a critical study into the IPCC. It was not until the second year that the research question and the focus of this research project were settled. By the time that the arrangements for the research fieldwork had been finalised, an unexpected military coup had been staged in Thailand on 22nd May 2014 following several months of political turmoil and violence. Whilst the long-standing political volatility and the coup did not create insurmountable obstacles to the research fieldwork, it certainly delayed the progress of the whole research. Why so? It is common practice of the military establishment to revoke the constitution after a coup is staged because the coup in itself is clearly against the law. There was thus a real possibility that the external complaints authorities which I intended to study would be abolished as a result of the repeal of the constitution. It took some time before the military junta issued an order allowing the complaints authorities to continue performing their

functions (see chapter 1). Furthermore, most of the bureaucrats and the police whom I had preliminarily approached with a view to arranging research interviews were not prepared to discuss my research in the first few months following the coup. Indeed, the political crisis and tense atmosphere meant that uppermost in their minds was what their future would hold.

Some months after the coup the potential participants were finally given the green light to take part in this research. Given the amount of time left for this project to be completed, the plan for the main period of research fieldwork was set to be completed within a six weeks' time period. This was based on my calculation that at the conclusion of the fieldwork, half the amount of PhD time would already have been spent. I needed to allow myself a certain amount of time to analyse the data and to complete the first full draft of my thesis before a final writing-up stage. In addition to time constraints, a dearth of funding also contributed to the arrangements for this research. I am a sponsored student but my sponsorship excludes research expenses. Although I was granted almost £1,000 of research support funds from Birmingham Law School and College of Arts and Law Graduate School which was really helpful, it was not sufficient to cover all the expenses incurred during the fieldwork because two-thirds of the funding was spent on travel already. Thus, funding limitations also shaped this project.

VII. Data Analysis

Thomas argued that every analytical technique applied to any research that adopts the interpretivist paradigm is backed by the so called ‘constant comparative method’.⁵⁴ He explained further what the constant comparative method entails as follows:

The constant comparative method involves going through your data again and again (this is the *constant* bit), comparing each element – phrase, sentence or paragraph – with all of the other elements (this is the *comparative* bit).....From the constant comparison you mark you data up with *codes*...You eventually emerge with *themes*...⁵⁵

What we can understand from Thomas’s clarification of the qualitative data analysis is that the constant comparative method provides a useful starting point for the critical analysis of the data the researcher has in hand, and it was adopted in this project. Next, we turn to another significant stepping stone of data analysis which is ‘coding’. This involves reviewing field notes and/or transcripts and attaching labels to any component parts in those notes that illustrate theoretical significance and/or that give the impression of being specific salient features of the social worlds under investigation.⁵⁶ Coding of data is essential in qualitative research as it is one of the most common approaches assisting the researcher to arrange the collected data into unifying themes for the ease of analysis. In this research, coding helps reflect a number of salient features from the collected data. For example, the coded data identified patronage as one of the main themes that undermines the impartiality of the in-house system for handling police complaints in the RTP. It should be noted that this research did not use computer-assisted software for the data analysis

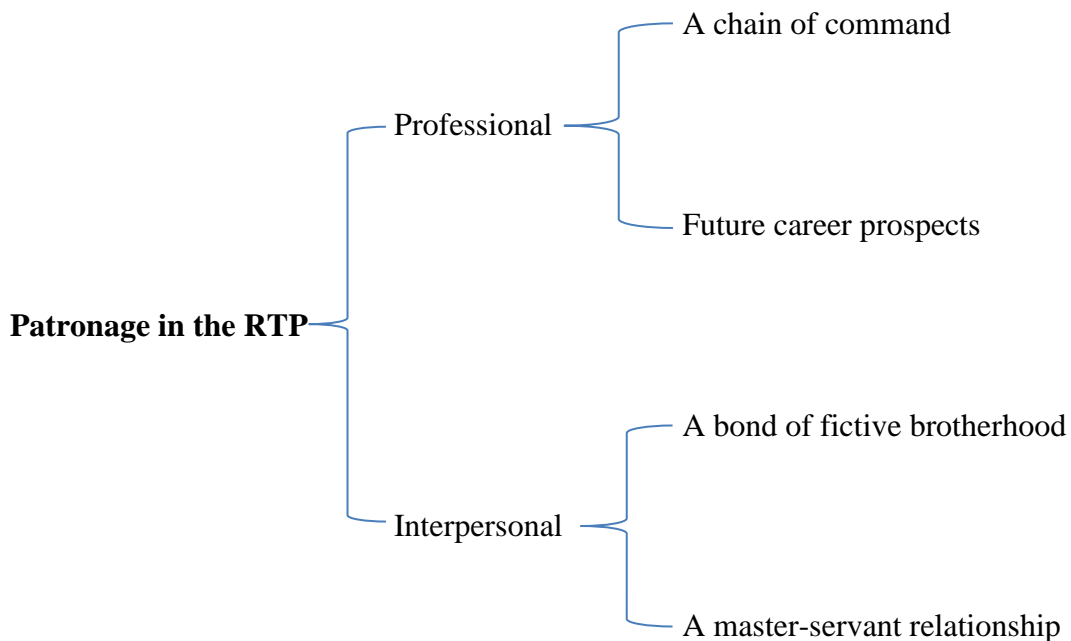
⁵⁴ Thomas (n 29) 235.

⁵⁵ *ibid.*

⁵⁶ Bryman (n 12) 568.

since the size of the raw data is not massive; as a result, manual coding proved to be more convenient and sensible.

Network analysis is a crucial method when it comes to the identification of themes. This method is involved with the attempt to demonstrate how one idea relates to another by identifying a network of themes comprising the basic idea and a number of constituent ideas (if any).⁵⁷ For example, network analysis played an important role in helping this research to underline branches of ideas spreading from the key theme of patronage in the RTP; this is demonstrated as follows:



With the aid of network analysis, we are able to analyse more critically the extent to which the Thai police organisation is influenced by a patronage system. Network analysis as a method highlights a number of constituent ideas (sub themes) found in the data and also gives insights into the contributory factors of patronage in the Thai police organization. Ultimately, the sub themes of patronage enable us to draw a conclusion as to whether the

⁵⁷ Thomas (n 29) 236.

RTP internal system is capable of holding the police accountable for their performance of duties.

VIII. Conclusion

Thinking carefully about research design proved to be a critical part of this research project. It helped not just in terms of shaping the direction of this research and in pursuing answers to the research questions, but also it helped overcome possible pitfalls throughout the conduct of this study. The critical examination of each element of the Thai system enabled this research to drill down to the crux of the matters around the handling of complaints, whilst the comparative element allowed this research to draw useful comparison between the Thai system and the English system and to develop fresh perspectives that may be applied to the Thai system. The implementation of the in-depth interview as a key research method with the support of documentary study proved to be beneficial for this research. Whilst seeking penetrating insights into the handling of complaints against the police, this research project committed itself to the protection of anonymity and confidentiality; however, where possible, the data demonstrating significant points of how complaints are handled in reality will be disclosed for the sake of the arguments for reform, unless those data are likely to jeopardise the informants. Last but not least, this research has inevitable limitations, most notably in terms of the relatively small sample sizes of police officers and complainants. However, as argued above, the research design helped in terms of setting out proper strategies and effective techniques for data collection and analysis which proved to be useful in addressing these limitations.

CHAPTER 3: INTERNAL POLICE COMPLAINTS SYSTEMS

I. Introduction

The introductory chapter of this thesis demonstrated that police malpractice is a real and perennial issue in Thailand. The true scale of malpractice, however, is yet to be examined. In section two of this chapter, the exact scale of police malpractice in Thailand will therefore be explored. This discussion will form the basis for the later assessment of whether the internal police complaints system is capable of addressing any such malpractice effectively.

Two different sets of arguments over the scale of malpractice will be outlined. Whilst the police suggest that the extent of malpractice should be assessed by the total number of complaints, members of the public believe that it should be considered from the gravity and frequency of the problem. As noted in chapter 1, the Thai police have always been subject to political interference since its inception; in the second part of section two, therefore, the connection between the Royal Thai Police (RTP) and the political establishment will be investigated to show the extent to which political influence comes into play in police malpractice. Although a mechanism for addressing complaints against the police has been put in place within the RTP, there is no evidence to suggest that such a mechanism is effective in remedying or guarding against malpractice. In sections three and four, the RTP complaints system will be critically examined drawing on the perceptions of those who have experienced the system. This will help us determine whether it is capable of handling complaints in a fair and effective manner. Lastly, this chapter will, in section five, discuss a number of outstanding issues that are arguably the root causes undermining the impartiality of the internal complaints system.

II. Police Malpractice – The Scale and the Connection with Politics

Consistent with the constitutional framework of the country, the RTP has, at least in theory, adopted human rights values in its legislation.¹ However, the concise overview of police malpractice in Thailand presented in chapter 1 highlighted that police malpractice is still prevalent. In this section, the scale of malpractice will be examined and reflected through official statistics and the empirical data collected for this research. The current political context within which police malpractice must be viewed will be discussed in the second part.

The Scale of Police Malpractice

Extensive research exploring the scale of malpractice is not available in the existing literature on Thai policing.² Although the situation of human rights in Thailand is the focus of attention of international human rights movements, prominent NGOs such as Amnesty International (AI), Human Rights Watch (HRW) or International Commission of Jurists (ICJ) etc. do not supply statistical data on police malpractice in Thailand.³ It seems therefore that, except for the statistics rarely released by the RTP itself (see Tables 3.2-3.4), the ‘Country Reports on Human Rights Practices’ published annually by the Department of State, United States is the single external source of statistics on police malpractice in Thailand.

¹ For example, regs 8 and 19 (1) of the Police Regulations on Code of Ethics 2008 outline that:

8 Police officers must strictly respect the rights and liberty of the people specified in the constitution and other pieces of legislation without discrimination.

19(1) [When investigating crime, the police] must not torture any person or the other people having relationship with such person [whom they suspect].

² See s VI. Research Limitations in ch 2.

³ See, for example, Amnesty International, ‘Amnesty International Report 2014/15: The State of the World’s Human Rights’ AI-Index POL 10/0001/2015.

Between 2012 and 2015, the US human rights reports reveal the statistics on police malpractice in Thailand as follows:

Table 3.1: US Human Rights Reports’ Statistics on Investigations into Police Malpractice in Thailand⁴

Year of Report	Numbers of Internal (disciplinary) Investigations
2012	7,024 investigations (between 2010-2011)
2013	4,760 investigations (between 2011-2012)
2014	2,663 investigations (in 2013)
2015	2,243 investigations (in 2015)

There are two important points worth making here. First, the data shown in the US human rights reports clearly supports the point that statistics on ‘substantiated investigations’ and ‘withdrawn complaints’ are simply unavailable (see section **VI. Research Limitations** in chapter 2). The second point is that the reliability of the statistics presented in the above reports can be called into question. These statistics appear credible on the surface as they have been published by an official authority; however, the fact that the source of this data has not been explicitly identified raises a legitimate concern over the reliability and, indeed, the accuracy of this data; we can only presume that the US Department of State received the statistical data from the Thai police.

In the absence of reasonably reliable and comprehensive quantitative data on police malpractice produced by the Thai police, the discussion about the scale of malpractice in this section will rely on the empirical data that I have collected during the research fieldwork in Thailand. However, it should be noted that this research will not involve

⁴ US Department of State, ‘Country Reports on Human Rights Practices for 2012-2015’. It is worth noting that the statistics for 2014 are missing and that the unusually large number of complaints between 2010 and 2011 was arguably due to political unrest in Thailand during this time.

itself in discussing in depth the scale of police malpractice from the angle of quantitative data, but rather seek to reflect broadly on the extent of malpractice under the current circumstances in Thailand.

A seasoned social researcher on Thai policing and anti-corruption interviewed for this research observed that whether police malpractice is serious can be interpreted from different perspectives:

It [the scale of police misconduct in Thailand] is very subjective. I mean you may have people with different standpoints arguing that the scale of police misconduct is huge or small.⁵

In 2009, the National Anti-Corruption Commission (NACC) commissioned research on preventive measures against the abuse of police power. This was undertaken by a group of researchers a majority of whom had police backgrounds.⁶ The research referred to the RTP data on police complaints at national level in a seven-year period from 2002-2008 as follows:⁷

⁵ Interview with [anonymous], a social researcher (Bangkok, Thailand, 7 July 2014).

⁶ Kasemsarn Chotchakornpant, Preeda Sataworn and Prasert Patanaponpaiboon, 'A Study of Preventative Measures to Combat Abuse of Power: The Case of Abuse of Police Power' (NACC 2009) [in Thai].

⁷ Royal Thai Police, 'Statistics on Police Complaints' (RTP 2008) (as cited in Chotchakornpant and others (n 6) 3). It should be noted that the NACC research acknowledged the RTP as the source for this set of statistics without going into details from which department (within the RTP) the data was produced.

Table 3.2: RTP's police complaints statistics 2002-2008

Year	Complaints against commissioned officers	Complaints against Non-commissioned Officers	Total number of complaints
2002	89	67	156
2003	88	94	182
2004	90	118	208
2005	118	100	218
2006	189	208	397
2007	162	209	371
2008	115	101	216

It, then, identified that "...when calculating the figures of complaints against the police nationwide, those officers complained against made up less than one percent of the total number of serving officers".⁸ Unsurprisingly, the same line of argument manifested itself in my own interviews with a sizable number of police officers. During a group interview with the police officers serving in one of the provinces in Northern Thailand, the complaints statistics for this province were disclosed as follows:⁹

Table 3.3: Provincial police force area's complaints statistics 2010-2014

Year	Number of Complaints	Allegation of gross misconduct	Allegation of misconduct	Investigation	Interrogation
2010	50	1	49	17	2
2011	53	1	52	-	1
2012	51	2	49	11	2
2013	31	2	29	7	2
2014	23	3	20	4	3

⁸ Chotchakornpant and others (n 6) 3.

⁹ Interview with [anonymous], a group of police officers (Thailand, 13 June 2014).

One of the officers observed:

So considering 50 complaints [officially made] in a year in comparison to the proportion of 1,900 police officers serving in the province, it can be seen that complaints are a low percentage.¹⁰

Consistent with the NACC research, this argument illustrates the train of reasoning found within much of the police community concerning the true extent of police malpractice. By contrast, in an interview with one of the human rights lawyers and activists, the whole premise of the police's arguments that a low percentage of complaints reflect the true extent of malpractice was categorically refuted:

Why don't you [the police] compare this [the total number of complaints] with other departments [agencies]? Why not compare it with statistics collated in other countries or recorded by other organisations?¹¹

Two points are being made here. First, that the statistical data on police complaints gathered by the police themselves are not subject to external review; hence, they are partial. Second, a lack of comparison between the data presented by the police and the data gathered from other complaints mechanisms such as the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) etc. means that the people are likely to be misled by skewed statistics (see Tables 4.1-4.3 in chapter 4 for comparison). Nevertheless, it is not surprising that the police are keen to convince public audiences that the relatively low number of police complaints recorded by the police organisation reflects the accurate extent of police misconduct. Arguably, their aim is to protect a professional image of the RTP, and to

¹⁰ *ibid.*

¹¹ Interview with [anonymous], a human rights lawyer (Bangkok, Thailand, 15 July 2014).

portray police misconduct as individualistic ('a few rotten apples') rather than systematic. Conspicuously, the foregoing NACC research also underpinned this position.¹²

By contrast, the social researcher quoted above rejected the argument of the police that a low percentage of complaints means the full scale of malpractice is trivial. One of the complainants interviewed for this research similarly suggested that wider aspects should be considered when assessing the true extent of malpractice:

I believe that from the perspective of ordinary people, the scale of malpractice is huge.¹³

They [the police] can't point out this way [a low percentage of complaints reflects the scale of malpractice]. I think it should be considered from wider aspects such as negative effects upon the victims [the gravity of the problem] and how often the police commit malpractice.¹⁴

Apart from a number of instances of malpractice described in chapter 1, the infamous cases of five teenagers who were electrocuted around their testicles to compel confession in connection with an accusation of theft in 2013¹⁵ and a similar case of a local fireman in the Ayuthaya province who suffered the same act of brutality as the police tried to elicit his confession regarding an accusation of snatching in 2004;¹⁶ the notorious case in 2008 in which eight former border patrol police officers robbed and gang-raped someone wrongly accused by those same officers of possessing illicit drugs;¹⁷ the extrajudicial

¹² Chotchakornpant and others (n 6) 1-3.

¹³ Interview with a social researcher (n 5).

¹⁴ Interview with [anonymous], a complainant A (Bangkok, Thailand, 25 June 2014).

¹⁵ 'Complain of Police Brutality in Electrocuted Five Teenagers in relation to a Theft Case' *Thairath* (Bangkok 2013) <<http://www.thairath.co.th/content/334052>> accessed 1 September 2014 [in Thai].

¹⁶ Pichaet Pinthong, 'Excessive Force of Police Power in Thailand: The Effect upon Human Rights Violations' (2012) 2 *Thai Journal of Public Administration* 135, 147 [in Thai].

¹⁷ 'Police Gang Gets Jail for Robbery-Rape' *Bangkok Post* (Bangkok 2013) <www.bangkokpost.com/news/local/385279/woman-robbed-and-raped-by-police-gang> accessed 1 September 2014.

execution of an innocent man whom the police claimed possessed illicit drugs and fought them in a gun battle at Sakon Nakhon province in 2012;¹⁸ and the most recent infamous case of the student whose car was damaged with bullets after the police mistook her for a drugs trafficker in 2014;¹⁹ all underline the point that the overall levels of brutality and abuse of power indicate serious cause for concern in relation to the extent of police malpractice, even though the frequency of such events have never been estimated officially.

In addition, to argue that police malpractice is on a low scale without taking into account the people's mentality towards the police force and its complaints system is a serious misjudgement. It can be claimed that a feeling of fear of harassment or retaliation if complaints were to be lodged is a contributory factor that undermines the courage and determination of would-be complainants to voice their grievances. In Thailand, there has been a general perception that "the cell is for incarcerating the poor" which reflects the belief that the poor are the ones that typically become the victims of injustice. Singkaneti has pointed out that:

The criminal justice system nearly went rotten to the core. If [we] fail to take action, the disparity in the Thai society [in relation to criminal justice] will become wider.²⁰

¹⁸ 'The Police Committee of the House of the Representatives Concluded that the Police Planted Illicit Drugs and Murdered the Innocent' *Manager Online* (Bangkok, 14 March 2012) <<http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=955000033297>> accessed 5 October 2014 [in Thai].

¹⁹ 'Pongsapat sorry for shooting mistake' *Bangkok Post* (Bangkok, 3 August 2014) <<http://www.bangkokpost/news/local/423862/pongsapat-sorry-for-shooting-mistake>> accessed 30 October 2014.

²⁰ Banjerd Singkaneti, 'Only Suspension in the Case of a Hit-and-Run Millionaire, the Cell Is for Incarcerating the Poor' *Manager Online* (Bangkok, 5 September 2012) <<http://www.manager.co.th/daily/viewnews.aspx?NewsID=9550000109547>> accessed 1 October 2014 [in Thai].

To similar effect is the following interview data from a human rights lawyer:

[T]he police are the worst in the public eye, they twist the facts in the case, and very often, they abuse their power. So, this leads to a general public perception, especially among the poor, that when they [become] involve[d] in [the] criminal justice system, they will become victims.²¹

The implication is that people who are socially disadvantaged will tend to stay silent when suffering from police malpractice. The interviews underlined that the public are aware that it is possible for a socially underprivileged group to be treated unjustly and/or even become a victim of the justice system from which they might seek redress. All of this indicates the extent to which police malpractice is serious in the perception of the public; undeniably, these facts certainly discourage would-be complainants from filing their complaints with the police. Interestingly, previous research has shown that the police recognised that their positions and roles struck fear into the heart of ordinary members of the public.²² A few exceptional officers also acknowledged that this has implications for the statistics on police complaints, as can be seen from these comments made during a group interview:

I agree [with my colleagues that based on the data available for the police, the scale of misconduct is small]. But, OK, to be fair, I believe that there might be some people who nurse their grievances against the police but owing to some apprehension that the police might bully them; as a result, they're afraid of registering their complaints with us.²³

²¹ Interview with a human rights lawyer (n 11).

²² Amorn Wanichwiwatana, 'The 1998 Thai Police Reform: A Study of Persistence of Institutional Corruption' (DPhil thesis, University of Oxford 2004) 84.

²³ Group interview with police officers (n 9).

We now move onto the discussion about the connection between the police force and politics in Thailand. This will show that politics has recently become one of the key factors shaping the extent of police malpractice in Thailand.

Police Malpractice in a Modern Political Context

As noted in chapter 1, the police reforms in 1998 which were aimed at ensuring a greater degree of independence within the Thai police force have proven abortive.²⁴ A turning point in the link between the police and modern-day politics in Thailand was marked with the rise of a former Prime Minister Thaksin Shinawatra – a businessman with a police profession background – to power in 2001.²⁵ Hence, a number of major instances of police malpractice are drawn from what had happened during the Thaksin and successive pro-Thaksin governments.

Thitinan highlights that the Thaksin administration was very authoritarian, “so much so that it can be compared to past military dictatorships”.²⁶ The way in which Thaksin used the Thai police force (and the troops, on occasion) to tackle illicit drugs; to counter-attack the insurgents in the insurgency-prone areas; and to suppress his critics and political opponents all point to the strong connection of his government and the police. In 2003, Thaksin ordered the RTP to wage ‘war on drugs’.²⁷ He gave the following speech encouraging the police:

²⁴ Porntep Prasirtpum, ‘A Study on Administrators’ Attitude towards Reconstructing of the Royal Thai Police’ (MBA thesis, Ramkhamheang University 1999) 2-9 [in Thai].

²⁵ Pasuk Phongpaichit and Chris Baker, *Thaksin* (2nd edn, Silkworm Books 2009). See also, ‘Profile: Thaksin Shinawatra’ *BBC* (London, 2011) <<http://www.bbc.co.uk/news/world-asia-pacific-13891650>> accessed 1 September 2014. Note that Thaksin Shinawatra was removed from power in 2006 by the military coup.

²⁶ Thitinan Pongsudhirak, ‘Thailand: Democratic Authoritarianism’ [2003] *Southeast Asian Affairs* 277, 278.

²⁷ Human Rights Watch, ‘Thailand’s ‘War on Drugs’’ (*HRW*, 12 March 2008) <<http://www.hrw.org/news/2008/03/12/thailand-s-war-drugs>> accessed 3 September 2014. See also, Asian Legal Resource Centre, ‘“Unsubstantiated” Police Abuses, Impunity and Human Rights Charades’ (Statement) (3 September 2009) ALRC-CWS-12-05-2009.

With the [drug] traders, you must use hammer and fist, that is, act decisively and without mercy. Police General Phao Sriyanon once said, “There is nothing under the sun that the Thai police cannot do.” So I’m confident that drugs are something that the Thai police can deal with.²⁸

A few months later, Thaksin praised the police for their performance in suppressing drugs:

In the first three months, the police did very well...The enemy are weakening. Kill them off. Don’t leave a trace behind, because they are [a] threat to society.²⁹

Shortly afterwards, the implementation of the ‘war on drugs’ turned out to involve the bloody massacre of innocent people as formal investigations confirmed that more than half of the 2,800 people who lost their lives through extrajudicial killings carried out in the first three months ‘had no connection whatsoever to drugs’.³⁰ The slaughter of innocent people, beyond doubt, led to a grand scale of police complaints.

In addition to the ‘tsunami of casualties’ inflicted by war on drugs, the problem of police malpractice worsened in parallel to the eruption of violence in the three southern border provinces of Patani, Yala and Narathiwat where Muslim insurgency is rampant.³¹ In 2004 Thaksin introduced the pro-war policy which he dubbed the ‘iron fist in a velvet glove’, and was quite proud of, but admitted later to be a wrong approach to counter-insurgency.³² Due to Thaksin’s antagonistic approaches to Muslim insurgency, the RTP was once again

²⁸ Pasuk Phongpaichit and Crist Baker, *Thaksin: The Business of Politics in Thailand* (Silkworm Books 2004) 158.

²⁹ Pran Phisitsetthakan, *Thaksinomics and Social Policy* (Matchon 2004) 232 [in Thai] (as cited in Pasuk Phongpaichit and Chris Baker (trs), *Thaksin: The Business of Politics in Thailand* (Silkworm Books 2004) 165).

³⁰ HRW (n 27).

³¹ Aurel Croissant, ‘Muslim Insurgency, Political Violence, and Democracy in Thailand’ (2007) 19 *Terrorism and Political Violence* 1, 1-2.

³² Tom Plate, *Conversations with Thaksin (Giants of Asia series) From Exile to Deliverance: Thailand's Populist Tycoon Tells His Story* (KWF Printing 2011) 211-212.

tasked with responsibilities that are “far beyond the scope of normal police work”.³³ The policy was analogous to the one used to tackle illicit drugs, i.e., extrajudicial killings³⁴ and other draconian measures. The approach to counter-insurgency has claimed roughly 3,000-3,500 lives since 2004³⁵ and frequently led to “a host of mysterious disappearance of ‘suspects’”.³⁶ Notably, one of the most mysterious and notorious cases in connection with insurgency in Southern Thailand is the forced disappearance of Somchai Neelapaichit.³⁷ All of this apparently shows the then government’s firm stance on the implementation of

an authoritarian approach.

Police misconduct linked to political context has become ever more evident following a series of anti-government protests. For example, on 7th October 2008, two of the anti-government protestors against the pro-Thaksin People Power Party were killed and another 443 protestors injured during a police operation to disperse a crowd in order to clear the Parliament’s entrance

Figure 2: Police fired tear gas at the protestors during the protest on the 7th October 2008.

Source: www.telegraph.co.uk

for the cabinet to get in and make a statement on the government policies (see figure 2).³⁸

³³ Jeff M. Moore, *The Thai Way of Counterinsurgency* (A Muir Analytics Book 2013) 228.

³⁴ *ibid* 228.

³⁵ ‘The Thai police: A Law unto Themselves’ *The Economist* (Bangkok, 17 April 2008) <<http://www.economist.com/node/11058580>> accessed 1 September 2014. See also, Amnesty International, ‘Thailand: Torture in the Southern Counter-Insurgency’ (Report) (13 January 2009) AI-Index ASA 39/001/2009.

³⁶ Joseph Chinyong Liow and Don Pathan, *Confronting Ghosts: Thailand Shapeless Southern Insurgency* (Lowy Institute for International Policy 2010) 53-55.

³⁷ Human Rights Watch, ‘Thailand: Lawyer’s ‘Disappearance’ Unsolved 10 Years On – Shoddy Investigations, Cover-Up Undermine Justice for Somchai Neelapaijit’ (*HRW*, 11 March 2014) <<http://www.hrw.org/news/2014/03/11/thailand-lawyer-s-disappearance-unsolved-10-years>> accessed 10 September 2014.

³⁸ Pinthong (n 16) 150-151. See also, Thomas Bell, ‘Thai Army Deployed in Bangkok after Bomb Leads to Coup Fears’ *The Telegraph* (Bangkok, 7 October 2008) <<http://www.telegraph.co.uk/news/worldnews/>

Later, the Administrative Court ruled that the police did not follow the crowd control standards which they themselves announced in the first place. In addition, they had recklessly resorted to excessively disproportionate force even though the majority of the much larger number of protestors eschewed violence and refrained from counter-attacking.³⁹ The NACC also implemented its resolution to prosecute the then Prime Minister Somchai Wongsawas and the Deputy Prime Minister General Chavalit Yongchaiyudh as the principals who ordered this police operation to be launched, and to prosecute the former Police Commissioner and the Metropolitan Police Commander as the accomplices.⁴⁰ It can be stated that Thaksin himself and the latter pro-Thaksin governments had turned Thailand into something approaching a police state (L' Etat de Police) which exacerbated the problem of police malpractice in the meantime.⁴¹ The heavy innocent casualties caused by the war on drugs campaign, and the suppression of insurgency and protests perhaps provide a clear answer to the question of the true extent of malpractice in Thailand.

In a seminar on the Thai Police, a former member of the National Legislature – Sungsidh Piriyanasang – pointed out that:

Thai politicians are always keen to interfere in the RTP for their own sake, and the last government (the Thaksin Administration) had unreasonably exploited the police organisation, leading to the

asia/thailand/3151874/Thai-army-deployed-in-Bangkok-after-bomb-leads-to-coup-fears.html> accessed 5 February 2013.

³⁹ Administrative Court (Central), Thailand, ruling no. 1862/2555 (2012).

“The Administrative Court of Thailand” serves as the judiciary for the adjudication of disputes between state authorities; and also between state authorities and members of the public. In this case, it has a role in conducting judicial review of the government order to disperse the protestors.

⁴⁰ ‘The NACC Tabled a Resolution to Bring the Case of the Somchai Administration Dispersed the PAD to the Supreme Court’s Criminal Division for Person Holding Political Positions’ *Matichon Online* (Bangkok, 10 October 2008) <http://www.matichon.co.th/news_detail.php?newsid=1349863225> accessed 10 September 2014 [in Thai].

⁴¹ Phongpaichit and Baker, *The Business of Politics in Thailand* (n 28) 164-165.

emergence of a police state in Thailand. The police force was also exploited for the suppression of the opposition.⁴²

Consistent with this, in an interview with a former senator who has experience in addressing human rights issues, the view was expressed that the extent of police misconduct has worsened due to political interference:

It's [the scale of misconduct] huge. I view that the police enforce the law without acceptable standard. They perpetuate discrimination pretty much on grounds of political-orientation, and what's more, I think they have a wrong attitude towards the execution of their power, so it has been used unfairly.⁴³

Based on the available literature, and also, the interview data more generally, the causality of political interference and police malpractice is not in doubt. Whilst it is true that political interference is most evident at the higher levels of the Thai police, Armacost reminds us that “decision-making in the organisational context is a function of the hierarchical relationships that define authorities and subordinates”.⁴⁴ To put it simply, one can think of the situation where an individual officer is faced with an order to pursue a particular course of conduct that he views to be wrong. This places him, on the horns of a dilemma – whether to follow his own conscience or to obey the superior. In the Thai context, political interference and the actions of senior police officers who succumb to this interference need to be taken into serious consideration in any discussion of police

⁴² Kittipong Kittayarak, *A Seminar Report on Police and the Expectation of Thai Society* (the Secretariat of the Commission of Police Administration Development 2007) 48 [in Thai].

⁴³ Interview with [anonymous], a former senator (Bangkok, Thailand, 14 July 2014).

⁴⁴ Barbara E. Armacost, ‘Organisational Culture and Police Misconduct’ (2004) 72 *Geo Wash L Rev* 453, 508.

misconduct. In assessing the scale of police misconduct in Thailand under current circumstances, political factors must be kept firmly in view.

III. Internal Police Complaints Systems

We now turn to the second question posed at the start of this chapter: can the internal police complaints system handle complaints effectively? The need for it do so is neatly summarized by Perry:

[P]atterns and practices of police misconduct will not become apparent without the rigorous investigation of individual complaints. Absent thorough investigation it is unlikely that discipline of an individual police officer or reform of flawed policing practices will occur.⁴⁵

We start with a clarification of how complaints are dealt with under the RTP regulatory framework. Next, we will assess the internal complaints systems, considering whether or not these systems are sufficiently workable to address the problems, to deter future police misconduct, to maintain the credibility of the police and to increase the confidence of the public in the internal complaints systems.

Paragraph 1, section 84 of the National Police Act 2004 prescribes that:

Once an accusation has been leveled, or it falls under suspicion, that any police officer has committed professional misconduct, the superior [of such officer] must investigate or enquire preliminarily to see if there are reasonable grounds for such officer to be accused of committing misconduct.⁴⁶

⁴⁵ Robert A. Perry, *Mission Failure: Civilian Review of Policing in New York City 1994-2006* (NYCLU September 2007) 13.

⁴⁶ This Act hereinafter will be referred to as the 'NPA'.

This provision lies at the heart of access to the whole internal complaints systems. It can be seen that an officer who is in a superior status is tasked by the NPA with the responsibility of handling complaints against his subordinates. It can be inferred that the superior, in particular, and the police force area concerned as the appropriate authority, in general, has a remit to deal with complaints against officers in the force area. In practice, this also means that putative complainants who seek to access the internal complaints system need to register their complaints with the local force area concerned. It should also be noted that the law does not require the complainants to complain solely with the police force area as complainants can complain to the Office of Commissioner General (OCG) – the RTP headquarters – or to the Crime Suppression Division (CSD) which has the remit to investigate high profile crimes which means that the internal complaints system is relatively flexible in terms of accessibility to the public. However, the OCG and the CSD are not directly responsible for the handling of police complaints; hence, whether or not complaints will be investigated by them very much depends on the gravity of the misconduct; less serious complaints will normally be transferred to the police force area concerned.

By virtue of rule 5(b)(7)(c) of the Royal Decree, the Office of the Inspector General (OIG) has also been given the remit:

To deal with complaints against the police or internal complaints of a person serving with the police, a civil servant and an employee working in the RTP; and to conduct an investigation into a complaint in accordance with its remit.⁴⁷

⁴⁷ Royal Decree on the Organisational Structure of the Royal Thai Police 2009, r 5(b), (7)(c).

The Decree makes clear that, apart from each police force area, the OIG also play a vital role in the police complaints procedures as a central unit for handling complaints both from outsiders – members of the public – and insiders – any person serving in the RTP. In this regard, the complainants are entitled to file their complaints either with the police force area concerned or the OIG.

As the internal complaints systems are highly flexible, for ease of analysis and understanding, the discussion of the internal systems in this paper will be hereafter categorised into two different levels; local level and national level. The former focuses on complaints made directly to each police force area concerned whilst the latter looks at complaints handled by the OIG as a central unit.

Prior to the discussion of the internal complaints systems at local and national levels, it is worth reminding readers that statistical data on ‘substantiated investigations’ and ‘withdrawn complaints’ are not available (see section **VI. Research Limitations** in chapter 2); thus the evaluation of the internal system will rely on the empirical evidence collected for this research.

Complaints at Local Level

To comprehend the complaints procedures, we shall begin by looking at the NPA as a broad legal instrument outlining how complaints should be handled. To start with, the handling of complaints generally is governed by two key provisions. It is prescribed in section 85 of the NPA that:

In case a police officer is accused of committing non-serious misconduct, the superior shall [investigate and if the complaint is substantiated, he shall impose minor disciplinary measures (see figure 3)].

In addition, paragraph 1, section 86 prescribes in its first paragraph that:

In case a police officer is accused of committing gross misconduct, there shall be a committee organised to interrogate the matter, ...

It can be inferred that police complaints dealt with by the internal system are managed according to the gravity of misconduct, namely non-serious misconduct and gross misconduct. The handling of complaints is governed by paragraph 1, section 87:

The rules, procedures and a time frame in relation to the investigation and the interrogation according to section 84 and section 85 shall conform to the provisions set out in the police regulations.

The detailed procedures for dealing with complaints can be found in the Police Regulations on Factual Investigation 2013⁴⁸ and the Police Regulations on Interrogation and Hearing 2004.⁴⁹ The former regulations govern the uncovering of the facts to see if the conduct of any officers amounts to non-serious misconduct or gross misconduct, whilst the latter regulations apply to a stage where there is a case to answer for gross misconduct.

The regulations on investigation apply to any case where the superior of the officer whose conduct is subject to investigation reaches the view at the preliminary stage that a complaint made against his subordinate, if proved, would amount to misconduct. Under the framework of these regulations, 'recording of complaints' is not described as a defined stage within the internal complaints-handling process; hence, the superior or the appropriate authority can, without delay, launch an investigation to uncover the facts on potential misconduct when: it comes to the attention of the superior that his subordinates

⁴⁸ Police Regulations on Factual Investigation 2013; this Regulations, hereinafter, will be referred to as "the regulations on investigation".

⁴⁹ Police Regulations on Interrogation and Hearing 2004; this Regulations, hereinafter, will be referred to as "the regulations on interrogation".

have committed misconduct;⁵⁰ a complaint has been made against an officer in the force;⁵¹ the appropriate authority receives a written notification from another department in relation to the conduct of an officer that amounts to misconduct;⁵² an anonymous letter identifying the facts and evidence concerning an officer's misconduct has been submitted to the force;⁵³ conduct of an officer amounting to misconduct, with ample evidence, appears in the news media;⁵⁴ and the superior deems it appropriate to do so.⁵⁵ Once the superior of the officer concerned (or anybody who has the authority to do so such as the Prime Minister) deems an investigation is warranted, he selects three civil servants, two of which need to be commissioned officers whose ranks are higher than the officer complained against, as members of the investigatory panel to investigate the complaint.⁵⁶ The investigatory panel needs to immediately notify the officer involved regarding the investigation of his conduct,⁵⁷ whilst the investigation, subject to extension, must be completed within 60 days after the date that a chair or any committee members have received the notice of the convening of the investigating committee.⁵⁸ Over the course of an investigation, the officer concerned is entitled to be accompanied by a legal representative or an adviser during an investigation interview but this person cannot act on his behalf.⁵⁹

Following an investigation, if a complaint is substantiated that the conduct of the officer involved amounts to non-serious misconduct, the investigating committee shall suggest in

⁵⁰ Regulations on investigation (n 48) reg 5(1).

⁵¹ *ibid* reg 5 (2).

⁵² *ibid* reg 5 (3).

⁵³ *ibid* reg 5 (4).

⁵⁴ *ibid* reg 5 (5).

⁵⁵ *ibid* reg 5 (6).

⁵⁶ *ibid* reg 10, paras 1, 2.

⁵⁷ *ibid* reg 12 (1).

⁵⁸ *ibid* reg 17 (1).

⁵⁹ *ibid* reg 35.

a report what disciplinary action should be taken.⁶⁰ Once the superior who convened the investigating committee has received the report and agreed upon the conclusions, subject to section 89 of the NPA, he should impose disciplinary action⁶¹ which ranges according to the seriousness of misconduct from being put on probation, [minor] penalty (like using labour or performing community service)⁶² or the more serious penalty of confinement, solitary confinement, and deductions (see figure 3).⁶³

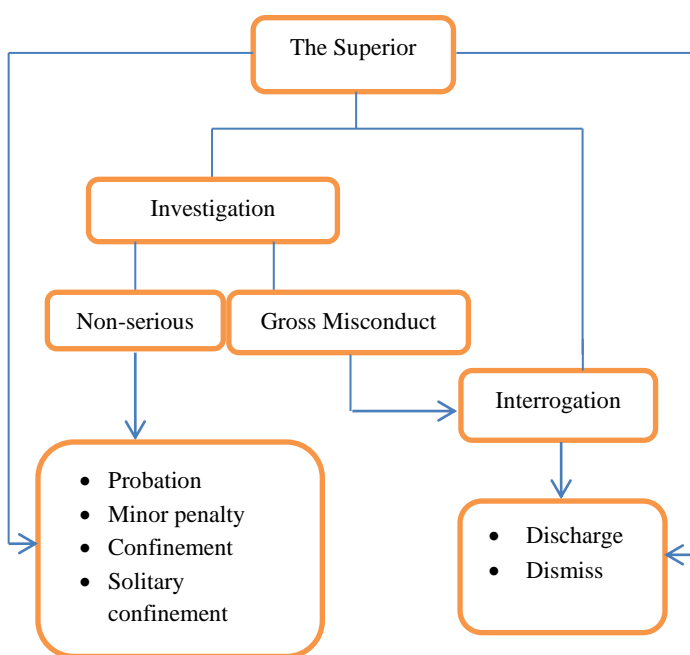


Figure 3: A sketch of internal disciplinary procedures

If the investigating committee arrives at a conclusion that the conduct of the officer involved amounts to gross misconduct, it shall suggest the further step of setting up an interrogation and hearing committee.⁶⁴ If the superior officer agrees, he shall submit the same report to the superior of a higher rank for further action to be taken.⁶⁵ The structure of the

interrogation and hearing committee is very much the same as the investigating committee. However, there is a clearer time frame for every step to be taken within it; at this stage, the interrogation and hearing committee must within 15 days inform the officer involved that his conduct is to be subject to interrogation; then, this is followed by the process of

⁶⁰ *ibid* reg 31 (2).

⁶¹ *ibid* reg 36 (4).

⁶² NPA (n 46) s 82 para 2.

⁶³ *ibid* s 89 para 1.

⁶⁴ Regulations on interrogation (n 49) reg 31 (1).

⁶⁵ *ibid* reg 36 (5).

gathering and defending evidence which can last up to 165 days before the interrogation is concluded.⁶⁶

Shortly afterwards, the committee must submit the report to the superior who convened the committee. This will include recommendations, if the conduct of the officer involved is proved to amount to gross misconduct, as to what disciplinary action should be taken.⁶⁷ If in agreement, the superior should arrive at a decision whether to discharge the officer concerned in which case his pension is still subject to be paid, or to dismiss him in which case he will leave the office with nothing.⁶⁸ Notably, the disciplinary action as a result of investigation and/or interrogation outcomes is undertaken without prejudice to criminal proceedings.⁶⁹ The local complaints system relies entirely on internal disciplinary procedures. This is comparable to the system introduced in 1830s by the Metropolitan Police in England⁷⁰ which lasted until the arrival of the Police Complaints Authority (PCA) in 1984.⁷¹

Complaints at National Level

The Office of Inspector General (OIG) has as one of its main responsibilities to maintain police discipline including the handling of complaints against the police.⁷² The annual statistics on police complaints that were registered with the OIG from 1st October 2012 – 30th September 2013 are shown in the table as follows:⁷³

⁶⁶ *ibid* reg 15 (1)-(5).

⁶⁷ Regulations on investigation (n 48) reg 31 (1).

⁶⁸ NPA (n 46) s 90 paras 1-3.

⁶⁹ Regulations on investigation (n 48) reg 36 (6).

⁷⁰ Mike Maguire and Claire Corbett, *A Study of the Police Complaints System* (HMSO 1991) 6.

⁷¹ *ibid* 9.

⁷² Royal Decree on the RTP's Organisational Structure (n 47) r 5(b), 7(c).

⁷³ Email from the Office of the Inspector General (OIG) concerning 'Police Complaints Statistics' to the author (25 June 2014). Some crucial statistics are missing (see s **VI. Research Limitations** in ch 2).

Table 3.4: The OIG's 2012-13 complaints statistics

The RTP Agencies	Abuse of Power				Breach of Professional Ethics				Total
	bribery	torture	omission	miscellaneous	incivility	discrimination and injustice	laziness	miscellaneous	
The Met, Provincial Police Region 1-9, and others	714				850				1,564

The statistics shown in the table alone are enough to attest to the significance of the OIG in respect of its role in dealing with police complaints in the eyes of ordinary members of the public. Given the importance of the OIG in this aspect, it is astonishing that there is no specific legal instrument for the OIG to handle complaints. During an interview with a police inspector it was revealed that:

Basically, our procedures for the handling of complaints begin by the investigating officer who is responsible for the recording of complaints interviewing a complainant in the preliminary stage. Then, he will help a complainant to navigate the complaints mechanism by offering an explanation as to how the next step is going to be and also when a complainant will be informed about progress.⁷⁴

The diagram (see figure 4) provided by the OIG shows the overall complaints procedures undertaken by the Office. It was explained during my research fieldwork that once complaints have been made, they will be referred for screening, a process which takes one hour.

⁷⁴ Interview with [anonymous], a police inspector (Bangkok, Thailand, 17 June 2014).

Then, the screening unit will pass the matters to the superiors in the OIG for consideration to see if there are grounds for complaint: this step takes three days. After that, if the superiors deem appropriate, it takes 24 hours for complaints to be officially recorded and referred to the appropriate authority where the officer involved is serving.

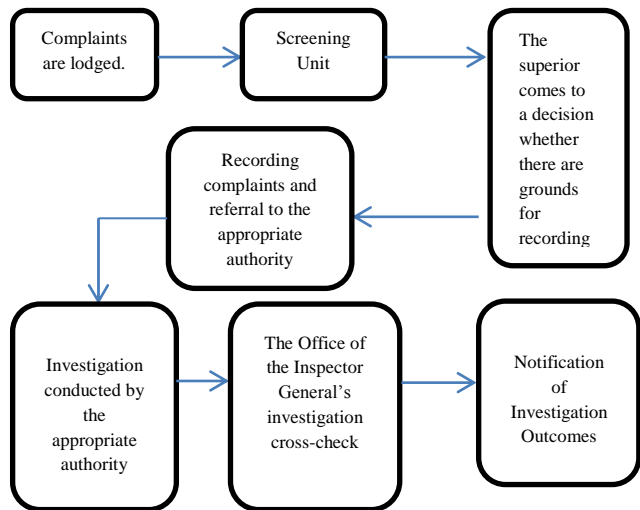


Figure 4: The OIG's complaints process

Now, it comes to the important and final stage where complaints are investigated by the appropriate authority and subject to the cross-check process by the Office which takes 30 days in total before a complainant is notified of the outcome.

IV. Critical Discussion on Internal Police Complaints Systems

An effective complaints system is of vital importance as it does not just provide redress for injustice that individual victims have suffered but also deters bad police officers from perpetrating malpractice. In this regard, it is arguable that the effectiveness of the system can be reflected through a degree of public confidence in it. One of the means for the complaints authority to make sure that it is capable of maintaining public confidence in the system is to ensure impartiality in the complaints-handling process. In the following sections, the chapter seeks to evaluate wider social and political dimensions in order to see whether or not the internal system is capable of instilling confidence in the public. Then, it looks specifically into the matter of impartiality in the handling of complaints with the aim of determining whether or not the internal complaints system is working in practice.

Issues around Public Confidence in the RTP Complaints System

Having been in the forefront of reforms in police complaints for decades, England and Wales can be a model from which useful lessons for Thailand may be drawn. In 1976, the Police Complaints Board (PCB) had been established to secure a certain degree of independence in the handling of police complaints in England and Wales, yet the investigation into complaints remained the responsibility of the police.⁷⁵ In 1981, the outbreak of rioting and public disorder in Brixton, London paved the way for a public inquiry into the incidents and its ramifications.⁷⁶ Lord Scarman who was appointed to conduct the inquiry summarised the findings on the complaints system:

The evidence, which was given in the two Phases of my inquiry and reinforced by my visit to the West Midlands and to Liverpool, has convinced me that there is a widespread and dangerous lack of public confidence in the existing system for handling complaints against the police. By and large, people do not trust the police to investigate the police.⁷⁷

The summary suggests that members of the public did not take the complaints system on trust as it was under the direction and control of the police and lacked the element of independence. The system lacked credibility across all sections of society not just amongst Black and Minority Ethnic (BME) people in Brixton.

Scarman went further in observing that there was:

[A] distrust in the procedure for investigating complaints against the police so great that many people would not even report their complaints.⁷⁸

⁷⁵ Robert Reiner, *The Politics of the Police* (4th edn, OUP 2010) 224.

⁷⁶ Home Office, Report of an Inquiry on the Brixton Disorders 10-12 April 1981 (Cmnd 8427, 1981) 88.

⁷⁷ *ibid.*

⁷⁸ *ibid* 46.

This raises the central question of why numerous people so distrusted the procedure that they would decide not even to lodge their complaints about police misconduct. The PSI Report on *Police and People in London* is useful for throwing light on the above question. The report confirmed that public disquiet about the honesty and integrity of the police was at a high level, as evidenced by the findings revealing that 25 per cent of informants said police ‘often’ made threats against people during questioning;⁷⁹ over two thirds of ‘West Indian’ informants pointed out that the police sometimes stopped people with no grounds;⁸⁰ which linked to the more general perception that the police treated some groups in society unfairly, particularly ethnic minority people.⁸¹ This led to the conclusion that:

There need to be mechanisms that try to achieve a measure of harmony between how the police behave ... and how people wish and expect them to.⁸²

The findings from this report encapsulated the prevailing mood of public dissatisfaction towards the performance of the police in everyday policing at the time when the Brixton disorder took place, and, apparently substantiated what Scarman underlined in his report – that heavy-handed police methods and racial prejudice had brought about a break-down in relations between the people and the police.⁸³ The report further shows how the credibility of the police in the society is linked to the overall level of public confidence in an internal complaints system. Thus, in a society where problematic everyday policing exists as a strong ground for ordinary members of the public to be distrustful of the police, the confidence of the public in such an internal system will be fragile.

⁷⁹ David J. Smith and Jeremy Gray, *Police and People in London* (Gower Publishing 1985) 101.

⁸⁰ *ibid* 224.

⁸¹ *ibid* 228-233.

⁸² *ibid* 15.

⁸³ Report of an Inquiry on the Brixton Disorders (n 76) 46.

Turning now to the Thai system, as noted in chapter 1, the performance of the Thai police force inspired little confidence in the public (see Table 1.1 in chapter 1). When it comes to the internal complaints system, it is well-documented that the RTP system also fails to secure the confidence of most Thais.⁸⁴ One of the complainants participated in this research stressed:

In Thailand, a police investigation into complaints against the police is an utter disgrace. More often than not, the police fail to bring the wrongdoer to justice. The whole system is non-transparent, so most people don't put their trust in it.⁸⁵

In line with the above, a human rights lawyer interviewed for this research pointed out:

Somehow, the police need to ask themselves why the people don't trust them to investigate complaints against their colleagues.⁸⁶

Chappell and Piquero argue that public awareness of the manner in which the complaints authorities handle complaints against the police substantially contributes to the rates of citizen complaints and accounts for a lack of trust in the complaints system.⁸⁷ The deep distrust of the police which exists in Thai society closely correlates with the failure of the Thai police to ensure justice in everyday policing; their misbehaviour ranges from the abuse of position and power; ineptitude in handling day-to-day problems; and the deliberate neglect of duty. The following comments drawn from my interviews are illustrative of the general public perception towards the roles and performance of the Thai police in everyday policing:

⁸⁴ Phongthon Thanyasiri, *The Idea of Establishing the Organisation Responsible for Controlling and Inspecting the Performance of the Police by Receiving Complaints* (The Commission of Police Administration Development 2007) 32 [in Thai].

⁸⁵ Interview with [anonymous], a complainant B (Bangkok, Thailand 27 June 2014).

⁸⁶ Interview with a human rights lawyer (n 11).

⁸⁷ Allison T. Chappell and Alex R. Piquero, 'Applying Social Learning Theory to Police Misconduct' (2004) 25 DB 89, 92.

I'm telling you, the police are armed and use absolute authority to investigate and make a decision about the case but usually abuse their power. They are drunk with power and are keen to turn Thailand into a police state.⁸⁸

First of all, I should say that the management of the police organisation in Thailand lacks morality, ethics and justice. I believe that up to 90 per cent of the officers are involved with some sorts of abuse of power and corruption.⁸⁹

The problematic nature of everyday policing in Thailand inevitably erodes public confidence in the internal complaints systems. To borrow a phrase from Scarman, there is a similarly widespread and dangerous lack of public confidence in the existing internal system for handling complaints against the police in Thailand, particularly the system at local level. The interview with a human right lawyer reflects this point:

The police will distort the facts and/or fail to deal with complaints [including a report about crime] particularly when the complaints are related to influential figures. I view that the society has the same feeling which is whenever the police are engaged in any matters, they are likely to cause more trouble rather than offer help. People don't get co-operation from the police.⁹⁰

Loss of public confidence in the internal system, particularly the system at local level, results from widespread concern that it is not working. An air of uncertainty amongst members of the public as to whether or not the complaints will be handled formally is one of the causes for concern. This particular point comes from the so called "*Pao Kadee*", or 'to blow the case away' in a word-for-word translation, which is a well-known

⁸⁸ Interview with [anonymous], the NACC commissioner A (Bangkok, Thailand, 30 June 2014).

⁸⁹ Interview with [anonymous], a former Deputy Commissioner (Provincial Police Region) (Bangkok, Thailand 24 June 2014).

⁹⁰ Interview with a human rights lawyer (n 11).

phenomenon amongst Thais. It is the common practice that the police simply turn a blind eye to the handling of crime and complaints cases when reported to them by members of the public.⁹¹ The NACC research on combating abuse of power highlighted the following facts from a group discussion:

When the case comes before the police, they record the case but fail to launch an investigation and produce the interrogation report; they do nothing! Sometimes they just suggest the conflicting parties should negotiate instead of following what the law said. Whenever the benefits in the case are there, the police will either blow the case away or freeze it until the injured party checks on progress, so they will redo the case again. This kind of practice happens with numerous cases.⁹²

In a seminar on police reforms, one of the representatives described how the police had managed to evade dealing with her case:

I reported the case regarding burglary. The police couldn't find who the offender was until we finally caught him red-handed. We called to the police to take him to the police station first and we would follow in a short time. But when I arrived there, the offender simply disappeared; thus, I decided to complain. At the time that I started to do so, the officers just shifted their responsibility from one person to another even though many of them were still around. One of the officers spoke to me: "Sister, you see, it is his duty to handle your complaint but he [another officer] just left it with me". I asked him: "What would you want me to do"? To which he replied "I'm afraid

⁹¹ Chotchakornpant and others (n 6) 56.

⁹² *ibid.*

I'm finishing, so you need to wait until there is another officer coming in".⁹³

A former police officer and a former senator, when interviewed for this study, claimed that the reason the police neglect to address crime when it comes to their attention is because they are distracted and frustrated by a flood of trivial matters:

The police are tasked with so many irrelevant responsibilities. Just thinking about these, when people do not know how to solve the problem, for example, when the tree collapsed and bent in a way that obstructed the pathway or when a snake crawled into the house, the police will be called to help.⁹⁴

I believe that most police officers are apathetic with many problems in their own organisation, so they won't be able to see complaints as something serious that need to be dealt with.⁹⁵

People expect the police to serve as guardians of social order and to become a symbolic and practical means of reconstructing it when it is shaky.⁹⁶ Hence, the fact that the police are tasked with countless duties, most of which are irrelevant to what they should do seems understandable but is not a reasonable excuse for abdicating their statutory responsibility. To put it simply, the police's top priority is to keep people safe; consequently, turning a deaf ear to a crime people face is unacceptable. On the basis of the failure in everyday policing, the consequences of it, without doubt, seriously undermine public confidence in the standard of police service and the police organisation as a whole. It strengthens people's personal conviction that the police should not be trusted as even the issues arising

⁹³ Kittipong Kittayarak, *A Seminar Report on Police Reform – What Will the People Obtain* (the Secretariat of the Commission of Police Administration Development 2007) 136 [in Thai].

⁹⁴ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

⁹⁵ Interview with a former senator (n 43).

⁹⁶ Jonathan Jackson and Ben Bradford, 'Crime, Policing and Social Order: On the Expressive Nature of Public Confidence in Policing' (2009) 60 BJS 493, 500.

from everyday crime are likely to be ignored; thus, there is no reason to expect that the police will through an internal complaints system address the problems that they themselves or their colleagues created in the first place.

Discrimination against people who have no personal contacts in the police force is another underlying cause shaking public confidence in the internal system. In the interviews with a social researcher and a human rights lawyer, the point that a personal contact in the police force leads to better treatment was raised as follows:

It is the fact that if any complainants have connections with the police, they will be treated with care.⁹⁷

In Thailand, if you have connections [contacts], you can breach the law.⁹⁸

Sungsidh stresses that the Thai police enforce a double standard in everyday policing where the underprivileged are denied justice and are frequently taken advantage of by the police themselves:

What we need is a standard of justice that the police will deliver for the people and our society. There were so many cases in which police officers bullied people and this ended up with those people being put in jail. Four five years ago, the then director general of the Department of Correctional Service revealed that up to 80 per cent of prisoners had no connection whatsoever to crime, this is the suffering of the common people who are socially underprivileged and bullied by the police.⁹⁹

⁹⁷ Interview with a social researcher (n 5).

⁹⁸ Interview with a human rights lawyer (n 11).

⁹⁹ Kittayarak, *The Police and the Expectation of the Thai Society* (n 42) 48.

Under the recent political crisis in Thailand, discrimination on the ground of political orientation has been increasing. As pointed out in section two, the RTP has been heavily involved in the suppression of protests; hence, this led to a rise in complaints.¹⁰⁰ There is a general public perception that if those opposed to the government (known to have a well-established relationship with the police) seek to complain about malpractice, fair treatment will not be forthcoming. Public concern over discrimination on the basis of political stance was discussed in the following interview:

If you are not the supporter of the government, you will not be taken care of. Look at the case of Mr.Sutin Taratin; even though the gunman has been captured by the video camera the police have not yet made any progress so far. Moreover, the camera also captured the moment where there are a group of people who were trying to collect and destroy the bullets from the crime scene, even [after] complaints have been made, the police did nothing.¹⁰¹

Mr. Sutin was one of the anti-government protest leaders who was shot dead during his campaign at Bangna district, Bangkok in January 2013. In this particular case, there are a number of reasons to assume that some ex-police officers were involved, and the incident taken as a whole indicates that the police feigned indifference and neglected to intervene in the situation.¹⁰² Even with ample evidence little progress has been made in the murder investigation. This is one of the most obvious cases strengthening a widespread perception

¹⁰⁰ Pharkphoom Rukhamate and Satithorn Thananithichote, 'The Ombudsman' in Satithorn Thananithichote (ed), *Constitutional Organisations: Foundation Knowledge and Lessons for Reforms* (KPI 2015) 84 [in Thai].

¹⁰¹ Interview with a social researcher (n 5).

¹⁰² 'Suthin Tharatin, Thai Protest Leader, Killed In Pre-Election Violence' *Reuters* (Bangkok, 26 January 2014) <http://www.huffingtonpost.com/2014/01/27/suthin-tharatin-killed-thailand_n_4671669.html> accessed 6 October 2014; 'Who Killed 'Sutin'?: The Answer Lies with Pol.Sen.Sgt.Maj. 'Thi'' *Manager Online* (Bangkok, 1 February 2014)<<http://www.manager.co.th/AstvWeekend/ViewNews.aspx?NewsID=9570000012261>> accessed 6 October 2014 [in Thai].

that the police discriminate against the people who are not the supporters of the government.

Impartiality in a Local Complaints System

In many jurisdictions the police have failed to convince society that they have the ability to investigate and deter malpractice within their own force.¹⁰³ Prenzler argues that:

Traditional controls such as internal discipline [procedures of the police force]...have been shown by successive inquiries in many countries to be easily subverted.¹⁰⁴

In England and Wales, it was not until 1987 that a comprehensive survey on complainants' views about the police complaints procedure was undertaken. This found that "many respondents were unhappy that there appeared to be an underlying bias against the complainant in the procedure. Nearly two-thirds of the sample (65 complainants [out of 105 in total]) attributed this to the fact that the police themselves conducted the investigation of complaints."¹⁰⁵ The findings of this survey apparently supported the conclusions drawn in the Scarman report some years earlier that the people did not have confidence in the complaints system as the police were the ones who investigated complaints.

In Thailand, the following interviews with police officers show how the police are likely to become biased in favour of their colleagues when it comes to the handling of complaints:

You know what, when an officer is disciplined, their future career prospect will certainly be ruined; accordingly, the investigators will be

¹⁰³ Andrew J. Goldsmith, 'External Review and Self-Regulation: Police Accountability and the Dialectic of Complaints Procedures' in Andrew J. Goldsmith (ed), *Complaints against the Police: The Trend to External Review* (Clarendon Press 1991) 13.

¹⁰⁴ Tim Prenzler, 'Civilian Oversight of Police: A Test of Capture Theory' (2000) 40 BJC 659, 659.

¹⁰⁵ David Brown, *The Police Complaints Procedure: A Survey of Complainants' Views*, Home Office Research Study 93 (HMSO 1987) 18.

sympathetic towards their colleagues [who are under investigation] and help them at times. That's also the reason why they usually advise the commander to give officers proved to have done wrong lenient punishment.¹⁰⁶

[T]he complaints mechanism as operated by the police only exists as a means of negotiation but not as a way to put things right. To be more precise, the operation of the complaints mechanism solely aims to minimise the damage happening on the police side. So if you ask me about what people will gain from the complaints system, the answer is the outright majority of complainants will not achieve justice when making complaints with the police because they tend to help each other by whatever means possible.¹⁰⁷

In Thailand, public concern over a lack of impartiality is at least as grave as that documented in the history of the English complaints system. Even in the absence of large-scale research evidence, it is reasonable to conclude that there is an overwhelming sense of public distrust of the internal police complaints systems. The climate of a deep mistrust of the police in dealing with complaints against their colleagues is particularly obvious amongst those who have experienced the systems firsthand. Over the course of data collection, the following accounts in relation to internal systems have been given by a number of complainants:

I don't believe that the Thai police will be impartial when it comes to the handling of complaints against their colleagues. I prefer the idea of separating the unit for interrogation from the RTP.¹⁰⁸

¹⁰⁶ Group interview with police officers (n 9).

¹⁰⁷ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

¹⁰⁸ Interview with [anonymous], a complainant C (Bangkok, Thailand, 2 July 2014).

The police are all bad. They like to break the law. So, I don't believe that they will investigate complaints neutrally; this is why I think it is ineffective.¹⁰⁹

Of course, the police shouldn't investigate themselves and I think the complaints system without police involvement will increase public confidence.¹¹⁰

Who is going to believe that the police will investigate themselves impartially when they involve themselves in the wrongdoing in the first place?¹¹¹

In Thailand, quantitative data about rates of substantiation and withdrawal of complaints is not available to support or refute claims of a lack of impartiality. That notwithstanding, the findings from this research fieldwork suggest that there is a tendency for the internal systems to lack impartiality. What are the fundamental issues leading to the conclusion that the internal systems are not impartial? Chief amongst them is the diverse range of underhand tactics that the police adopt to stall complaints, mainly at local level. The empirical evidence collected for this study suggests that the following tactics are regularly used by the police to ensure that complaints would not be dealt with properly:

(a) Unrecorded Complaints

Recording of complaints is a critical first step in reassuring complainants that their grievances concerning police misconduct have been heard and will be handled subsequently. Under the English system, regulation 3(2) of the Police (Complaints and Misconduct) Regulations 2012 makes clear that a complaint should be recorded unless:

¹⁰⁹ Interview with [anonymous], a complainant E (Bangkok, Thailand, 17 June 2014).

¹¹⁰ Interview with [anonymous], a complainant D (Bangkok, Thailand, 8 July 2014).

¹¹¹ Interview with a complainant A (n 14).

- (a) the matter is already the subject of a complaint made by or on behalf of the same complainant;
- (b) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- (c) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (d) the complaint is repetitious; or
- (e) the complaint is fanciful.

By comparison, regulation 5(2)-(4) of the Thai Regulations on Investigation 2013 set out that a complaint will be recorded when:

- (2) it is made by a complainant...;
- (3) the superior of the officer involved has been informed by government offices or any other bodies about misconduct;
- (4) the anonymous letter which clarifies the incidents of misconduct or provides any evidence that can lead to the conduct of an investigation has been sent to the superior of the officer involved;

The rules that govern how police complaints should be recorded under the Thai internal system are much looser compared to the English ones. Under the system of the Thai police, the complaints procedures begin with the complainant giving a full account of the incident of malpractice, similar to when people report crime to the police.¹¹² But to have a complaint officially handled, most complainants need to overcome a tactical ploy designed to ensure that complaints go unrecorded. One of the complainants explained how this could happen as follows:

¹¹² Ibid.

We don't really know what the police would actually do when we complain. In my case, the police didn't record my complaint from the outset. I became aware of this as I went to the force area for the second time to check on progress, and I noticed that he [the responsible officer] just started to process my complaints, so I suspect that the first time round he simply wrote the accounts I gave in his notebook. Just imagine if I wasn't determined to have my complaint addressed, it wouldn't have been recorded. This is why I need a change in the procedures for complaint.¹¹³

The evidence of this research suggests that, after the complaint has been made, unless the complainant is deadly serious about seeing the complaint through to the end, the police just simply 'stay cool under pressure' and wait until the complainant's anger at the officer complained against subsides or until the complainant's determination declines; then, they will simply throw the complaint away. In line with the above, a former deputy commissioner interviewed for this research made the following comments:

I'll give you some examples of how complaints will go unrecorded. Assuming you complain against the officer on grounds of omission of duty, instead of having your complaint recorded for a formal complaints-handling process, some police officers just pretend that they take your complaint seriously. They will take notes of your accounts and now you feel like your complaint is being taken seriously, but the fact is your account of what had happened will simply be recorded in a fake casebook. After that, you wait months after months and start to lose your nerve as there is no progress being made; then, the police just cunningly get rid of your complaint.

¹¹³ Interview with a complainant B (n 85).

Another technique the police use, including for those complainants who do seek to pursue their cases, is to persuade complainants to opt for negotiation instead, thus ensuring that the complaint remains unrecorded. As the former deputy commissioner continued:

But if you are absolutely determined to see your complaints being dealt with, the police will change the tactic by trying to convince you to go through the evil cycle of negotiation eventually.¹¹⁴

Interestingly, the police utilization of salesmanship to divert complainants' original intention to complain is a feature not unique to Thailand. The study of 'Informal Resolution of Police Complaints' by Richard Young and others revealed that the British police also tend to persuade people seeking to complain not to follow formal procedures.¹¹⁵ This is akin to a typical practice of the Thai police of which the people are acutely aware. The following comments demonstrate the complainants' accounts of being convinced not to make complaints:

[When complaining against the police] the police would take complainants to the side of a police station and convince or negotiate with them in the direction that results in the discontinuance of complaints.¹¹⁶

I have received so many calls from the police [after the complaint was made]. They said sorry to me about what has happened and explained the tough situation, they were in which I think it's too personal; and then, they convinced me not to go further with the case. The Deputy Superintendent has personally contacted me in order to make compromise and I didn't understand why [he had to do so]?¹¹⁷

¹¹⁴ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

¹¹⁵ Richard Young, Carolyn Hoyle, Karen Cooper and Roderick Hill, 'Informal Resolution of Police Complaints: A Quasi-Experimental Test of Restorative Justice' (2005) 5 *Criminal Justice* 279, 288.

¹¹⁶ Kittayarak, *The Police and the Expectation of the Thai Society* (n 42) 58.

¹¹⁷ Interview with a complainant D (n 110).

The police begged me to stop complaining about the mysterious disappearance of my brother just like they did to him before he really disappeared. He made the point that my complaint dragged him into more trouble.¹¹⁸

The manner in which the police try to cajole the complainants to put off complaining is unjustifiable and is not within the law. This clearly shows that the internal system seriously lacks impartiality. Note that as we move onto discuss other underhand tactics, we will see an increasing degree of dishonesty and harshness of those tactics at the same time.

(b) Silencing Complainants

This research found that, under certain circumstances, the police are keen to offer concrete inducements for the complainants to silence them. For example, the police may seek to make a one-off payment to the complainants in exchange for them not persisting with their complaint. The interviews with some police officers demonstrate how this tactic is used:

You know what, some of these people [complainants] can be satisfied by some sorts of payments. The superior of the officer complained against just sometimes just cuts corners by giving the complainants some 3,000 Baht [Thai currency], for example, to stop the complaints process.¹¹⁹

Following the negotiation, if the complainants are not convinced to stop complaining, most of the times, the superior of the officer involved will seek to offer the complainants some money in exchange for discontinuance of complaints. My experience is that in less serious cases, the complainants tend to receive the money as they realise that

¹¹⁸ Interview with a complainant B (n 85).

¹¹⁹ Group interview with police officers (n 9).

if they refuse the offer and persist head-on in seeing their complaints go through to the end, they may not get the results they need.¹²⁰

In addition, one of the complainants gave an interview for this research explaining that the incentives the police officer use to silence the complainants may not necessarily be in the form of a payment; it can also be something like ‘doing favours’ or ‘string-pulling’:

The tactics I and other complainants whom I knew have experienced are random. But their [the police’s] first few attempts are to beg you [complainants] personally not to go further with the case, and in the meantime, they, in conversation with you, will try to spot if you have any requirements that can be fulfilled by them without resorting to a formal complaints process. In my case, it was money. But in some other cases, if the complainants do not care much about money, they will try something like making a promise to help the complainants’ sons or daughters to get a job if they haven’t got one already, or if they have, they will say something like they can ask their personal contacts to help pull strings for them to earn promotion to a higher post. Under these circumstances, in our society, if you are a nobody, would you receive the offer and go back to live your normal life or would you turn down what the police offer and continue to fight for the right thing?¹²¹

The question arises here as to whether or not the practice of offering inducements in exchange for withdrawal of complaints at any point during the handling of complaints is within the law. In relation to this, neither the NPA nor other relevant legislation allows the discontinuance of complaints to be agreed on grounds of payment or other kinds of unregulated satisfaction. These are not like the out-of-court settlements that conflicting parties involved in civil litigation are legitimately able to negotiate nor are they akin to

¹²⁰ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

¹²¹ Interview with a complainant B (n 85).

mediation-like process used in some areas of the law. Rather, the payment paid to the complainants is actually hush money whilst the promise to return the favour should a complaint be dropped is merely a dubious settlement. Thus, these tactics are unlawful. Added to this, the police's claim that the complainants are satisfied with the offer they receive is a controversial point. As Reiner put it in relation to the UK, 'police property' – the groups of people who are regarded as socially and particularly financially powerless – are frequently abused by the police.¹²² This is similarly the case in Thailand, where the poor are well-documented as 'police property'.¹²³ It is arguable, therefore, that complainants who are socially underprivileged are left with no effective choice but to accept an unwanted offer.

(c) Discrediting Complainants

Where initial attempts to silence complainants prove fruitless, the police resort to tougher approaches. Discrediting is one of the techniques done by “condemnation of the condemners [complainants]”¹²⁴ which involves denying their identities as victims of misconduct so as to justify decisions that complaints should not be substantiated. One of the tactics the Thai police normally adopt to discredit complainants — which seems to be in common with what Box and Russell found in England and Wales — is the use of a previous criminal record.¹²⁵ One of the complainants gave the following pertinent account:

My nephew was 14 when he was thrown in jail as a result of motorcycle theft. During his time in jail, he'd witnessed some police

¹²² Reiner (n 75) 21.

¹²³ Kanna Hayashi and others, 'Reports of police beating and associated harms among people who inject drugs in Bangkok, Thailand: a serial cross-sectional study' (2013) 13 BMC Public Health 733, 734; see also, Kittayarak, *The Police and the Expectation of the Thai Society* (n 42) 48.

¹²⁴ Steven Box and Ken Russell, 'The Politics of Discredibility: Disarming Complaints against the Police' (1975) 23 *Sociol Rev* 315, 320.

¹²⁵ *ibid* 324.

officers and correctional officers selling drugs to the prisoners. These people then compelled him to help them. He refused, so he was tortured. He then told me to complain on his behalf, I did so, but the police [at the police force area] didn't believe in what he said; the police said my nephew was a crook, his words weren't reliable.¹²⁶

In the Thai context, the process of discrediting complainants is likely to go beyond the use of criminal record to include features of complainants which are regarded as deviant, such as drug addiction. A perception that a drug addict is an evil person who does not deserve respect appears to be widely shared in most parts of Thai society.¹²⁷ Though drug abusers are now classified as patients not criminals, it seems that the above-mentioned norms and a status of being 'police property' still license the police to beat them.¹²⁸ When these people seek to complain, they will no doubt be treated as unreliable sources which will eventually lead to the non-substantiation of their complaints.

A vicious slander on victims or complainants as posing an imminent threat to justify the course of action the police have taken to maintain order is another discrediting technique. This tactic had been a matter for debate in the UK for decades, it originally derives from what Philip Corrigan and Derek Sayer defined as "state talk".¹²⁹ Sim described the notion of state talk as the misrepresentation of dangerousness the personnel in criminal justice system face in their work which legitimises them to resort to violence.¹³⁰ Pemberton pointed out that, in England and Wales, "a facet of 'mania', which is often associated with Black victims, is their reported physical strength. Victims portrayed in this way are often

¹²⁶ Interview with a complainant A (n 14).

¹²⁷ Government Strategic Information Centre, ' "The Patients of Drug Addiction": The Life Needing to Reintegrate into the Society' (National Statistics Office, Thailand 2013) 1 [in Thai].

¹²⁸ Kanna Hayashi and others (n 123) 1-3.

¹²⁹ Philip Corrigan and Derek Sayer, *The Great Arch: English State Formation as Cultural Revolution* (Basil Blackwell Inc. 1985) 3.

¹³⁰ Joe Sim, ' "One Thousand Days of Degradation": New Labour and Old Compromises at the Turn of the Century' (2000) 27 *Social Justice* 168, 183.

characterised by state talk as possessing ‘super-human strength’”.¹³¹ In many cases, the depiction of victims as a threat to the officers when they seek to maintain law and order helps them evade accountability, as in the case of the death of Olaseni Lewis – a young black male with mental difficulties. He was restrained by a grand total of 11 police officers who were, however, initially found by the Independent Police Complaints Commission (IPCC) to have done nothing wrong.¹³² In Thailand, the people who complain on behalf of victims who died during or following police contact will normally encounter the police’s devious tactic of portraying the dead, one way or another, as a person who committed or was about to commit an unlawful act against the police in the first place. In the interview with a complainant whose relative had been shot dead during the police crackdown on drug smuggling, the following comments were made:

On the day of the incident, the officers complained against argued that during an exchange of fire with a group of bodyguards who were trying to protect my brother-in-law, they saw some of those bodyguards had mistakenly fired on my nephew. But the evidence has later proven that there wasn’t any bodyguard involved, the police alone were firing on the car that my sister with my nephew was driving away.¹³³

In addition to the above instances, in the case of Aungkana Pradubpanya-avut – an anti-government protestor who died as a direct consequence of a tear-gas canister fired by the riot police directly at her chest,¹³⁴ the police had tried to create the misleading impression, even before the post-mortem, that the cause of her death was due to the explosion of a

¹³¹ Simon Pemberton, ‘Demystifying Deaths in Police Custody: Challenging State Talk’ (2008) 17 *Social and Legal Studies* 237, 249.

¹³² INQUEST, ‘IPCC Investigation into Death of Olaseni Lewis Ruled to be Unlawful and Quashed by the High Court’ (4 September 2013) <<http://inquest.org.uk/media/pr/ipcc-investigation-into-death-of-olaseni-lewis>> accessed 9 October 2014.

¹³³ Interview with a complainant C (n 108).

¹³⁴ Amnesty International, ‘Amnesty International Report 2009 – Thailand’ (Report) (28 May 2009) AI-Index POL 10/001/2009.

hand grenade that she carried.¹³⁵ The case of Somchai Kwanjun is another example which shows how state talk in Thailand works. In this case, the officer concerned planted an illicit drug – methamphetamine – on Somchai.¹³⁶ When he complained, the officer complained against portrayed him as having possessed an illicit drug, perverting the course of justice, and having a malfunctioning brain. It turned out that all of these allegations had been made in order to discredit him.¹³⁷

(d) Concealment and/or Fabrication of Evidence

Under the internal complaints investigation, the police are in charge of gathering evidence. The interviews given to this research by a number of complainants suggest that one of the devious tactics that the police use for undermining the legitimacy of the complainants in order to dismiss their complaints is concealing or fabricating evidence or both.

From my personal experience, I'm sure that the police have concealed some key evidence relevant to my complaint. Just think about it, my brother [who complained against a senior officer at the local force area concerned] got a call from the police telling him to go to the [police] station to discuss his complaint. He was last seen at the police station at about 20.00 and has not been seen since then. The police kept saying that my brother went home after an hour of talk but the distance from his house to the police station was shorter than a kilometre, how could it be possible that he went missing? If there was an accident or anything like that happened to him, we or the people living nearby could have known it but there wasn't any trace. And most importantly, in the early morning of the following day, his son

¹³⁵ Crime Correspondent Team 'Suraphon' Made an Apology to 'Beau's Mom' for Not Making a Case against Him as a Result of His Slandorous Remarks' *Manager Online* (Bangkok, 16 February 2009) <<http://www.manager.co.th/Crime/ViewNews.aspx?NewsID=9520000017765>> accessed 20 July 2014 [in Thai].

¹³⁶ Kittayarak, *The Police and the Expectation of the Thai Society* (n 42) 43.

¹³⁷ *ibid.*

[the complainant's nephew] got up and saw two missed calls from his dad [the complainant's brother] around midnight. I thought that that was the last chance that my brother could do something to let someone else know that he was in great danger. So, from what has happened, I'm sure that my brother was a forced disappearance and I suspect that some officers in the local force area concerned are involved with this case, and I'm sure that some important evidence was concealed.¹³⁸

The fabrication of evidence to harass complainants was also alluded to during my interview with a former deputy commissioner:

In the case where a complaint is made due to the fact that the police have carried out a search in the private premises without a search warrant because they believed that they would be able to catch somebody [who breaks the law] red-handed but it turned out that nothing wrong had happened; the superior of those officers involved will call the complainants to negotiate for compensation in exchange for the discontinuance of complaints. However, if the complainants are still determined to carry on with their complaints, the police will bluff their way by pressurising the complainants into accepting the deal. For example, the police may fabricate evidence to seek a search warrant in order to search the complainants' premises again and again until the complainants feel that they cannot tolerate this kind of situation any longer and eventually accept that deal.¹³⁹

This latter interview is valuable information as an insider has confirmed that the concealment and/or fabrication of evidence is one of the underhand tactics that some police officers employ with the intention to dismiss complaints.

¹³⁸ Interview with a complainant B (n 85).

¹³⁹ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

(e) Intimidation

Under the circumstances where complaints are sufficiently serious to amount to gross misconduct, it is very likely that intimidation and violence will be used as the last resort to petrify complainants and/or witnesses. One of the complainants who complained about an extrajudicial killing explained that:

Soon after my complaints were made, a group of men whom I knew to be police officers from the local force area concerned that I complained against had been stalking me and some witnesses of mine for months. Once I realised that I decided to apply for witness protection. I filed the application to the Rights and Liberties Protection Department (RLPD) [the governing body of the Witness Protection Bureau (WPB), see chapter 5]. But instead of protecting my identification, this particular authority has supplied a tape recording of where I lived to the local force area even though they knew that I complained against them. And importantly, they've done that even before informing me of the result of my application for witness protection. This was the collusion between them, wasn't it? I've reported this to the National Human Rights Commission (NHRC). The NHRC required the representative from the RLPD to attend an interview. During the interview, one of the representatives admitted that they had given a tape recording of me to the local force area. But when I asked the NHRC commissioner to give me the interview statement as I wanted to sue them [the RLPD], the commissioner said it may worsen the case, so I followed the advice. Apart from my own case, I'd helped some other complainants in my local province as well and I can tell you that most of them especially female complainants have experienced some forms of intimidation particularly stalking.¹⁴⁰

¹⁴⁰ Interview with a complainant A (n 14).

What is interesting from the above comments is not just the fact that some police officers resort to intimidation but also the fact that the police seem to have a network of contacts in other government departments that are able to help them to intimidate complainants into giving up complaining.

The empirical data in the previous paragraphs have built up a picture of how the police employ a range of underhand tactics to convince, pressurise or even threaten complainants. During the research fieldwork, many complainants pointed out that their perception of how the internal system is not impartial was heightened by the fact that the RTP was keen to shelter the alleged officers. One of the interviewees of this research said:

How can the systems be impartial if the police organisation aims to shelter the wrongdoers from the outset? You know what, in my case, the RTP has provided the officers whom I complained against with a certificate of accreditation to prove their decency, and these officers used this certificate to back up themselves whenever they are required to give an interview with complaints authorities or even the court.¹⁴¹

Corresponding to the account of the above complainant, in the forced disappearance case of Somchai Neelaphaijit, Angkhana Neelaphaijit has made a number of observations which give rise to a reasonable suspicion that the police organisation dishonestly protected the wrongdoers:

I've got a chance to observe this case from start to finish. I've made so many attempts to ask the RTP why one of the alleged wrongdoers who spent 30 days in jails could resume his post again, even though the law said that in such a case, the officer must be spontaneously

¹⁴¹ *ibid.*

dismissed? Why is his misconduct an exception? As yet, I haven't got any answer.¹⁴²

One of the senior crime journalists also made the following comments:

Believe it or not, in the case of Blue Diamond Affair, some of the officers alleged to have been involved in the murder of the Saudi businessman only received lenient disciplinary sanctions whilst some others came out of it smelling of roses. Even worse, some of these officers had later been promoted and have now become Police General. You see, we don't have the mechanism to get rid of these people. Hence, the problems have gradually been escalated until it was nearly rotten to the core as what you can see now.¹⁴³

This shows that ordinary members of the public share in the frustration of complainants when the officers at fault are undeservedly protected.

The following interview with a former deputy commissioner outlined one of the key reasons behind the attempt of the police, especially those who are in superior ranks, to stop complaints:

The key factor is that the outcome of disciplinary sanctions imposed on the officers involved will also negatively affect their superiors of higher rank in the chain of command.¹⁴⁴

The above comments on the possible negative effects upon the superiors in cases where their subordinates are disciplined find their legal basis in paragraph 4, section 80 of the NPA which stipulates that:

¹⁴² Kittayarak, *The Police and the Expectation of the Thai Society* (n 42) 45.

¹⁴³ Kittayarak, *Police Reform: What Will People Achieve from It* (n 93) 54.

¹⁴⁴ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

Any superior who fails to conform to this section [to promote and improve rigid discipline and to prevent misconduct] ... shall be regarded as committing misconduct himself.¹⁴⁵

This clearly creates a built-in incentive for the superior officer to avoid a complaint running its full course.

Overall, the evidence of this research underlines that the complaints system at local level severely lack impartiality as the police are keen to protect themselves. We turn next to the system under control of the OIG where we will examine whether the handling of complaints at national level is any more effective and impartial.

Issues around a Complaints System at National Level

The OIG, as explained above, is in a position of responsibility for the handling of complaints. The OIG is, on the surface, comparable to the Professional Standards Department (PSD)¹⁴⁶ in each police force in England and Wales as both are the internal units in the police organisation with special responsibility for disciplinary control and complaints.¹⁴⁷

The total number of 1,564 complaints recorded by the OIG in 2013 alone makes it clear the extent to which members of the public attribute importance to the roles of inspectors in handling police complaints.¹⁴⁸ One of the key reasons is that the OIG is a national body with a rule-keeping responsibility and is generally portrayed as being capable of bringing “rogue cops” to book. In 2012, for example, the then Police Spokesperson at a press conference announced that, owing to a substantial number of complaints being made

¹⁴⁵ NPA (n 46) s 80 para 4.

¹⁴⁶ Rob C. Mawby and Alan Wright, ‘The Police Organisation’ in Tim Newburn (ed.), *Handbook of Policing* (2nd edn, Willan Publishing 2008) 231-233.

¹⁴⁷ Home Office circular 025 / 2008, ‘The Taylor Reforms – Police Conduct, Performance and Associated Regulations’ (21 November 2005).

¹⁴⁸ Email from the OIG (n 73).

during the year, the RTP would require the OIG to inspect the work of each police provincial region.¹⁴⁹ However, a former senator interviewed for this research pointed out that the reality is different from that which the OIG is painted to be:

It's meaningless [the roles of the inspectors in dealing with police complaints]. That's [the OIG] where the police go to sit and slap mosquitoes. They haven't got a powerful tool for dealing with complaints; besides, they lack authority and resources in many aspects. So the OIG's complaints system is just perfunctory. I'd say that the police organisation does not enthusiastically support the work of the OIG.¹⁵⁰

The fact that the OIG is merely serving as a reference agency with no real power also emerged clearly in the interview with one of the police inspectors concerning his role in investigating police complaints:

Let me put it this way, the OIG was able to appoint a group of investigators to deal with police complaints in the past; however, the amendment of the Police (Factual Investigation) Regulations has changed the way we work. Therefore, the Office currently pretty much serves as a reference agency that passes the matter to the appropriate authority.¹⁵¹

Consistent with the above interview, the current regulations on investigation do not confer any power on the OIG to handle complaints.¹⁵² The amendment of the regulations apparently undermined the authority of the OIG in terms of handling complaints. It also shows, at the same time, that the RTP does not place emphasis upon this aspect of the

¹⁴⁹ Crime Correspondent Team, 'The Royal Thai Police Disclosed the Information regarding People's Complaints against the Police', *Manager Online* (Bangkok, 9 October 2012), <<http://www.manager.co.th/Crime/ViewNews.aspx?NewsID=9550000123808>> accessed 15 March 2013 [in Thai].

¹⁵⁰ Interview with a former senator (n 43).

¹⁵¹ Interview with a police inspector (n 74).

¹⁵² Regulations on Investigation (n 48).

complaints system as a means to ensure the accountability within the organisation. The following interview reinforces this argument:

I accept that it is not so effective [complaints system] because there are a number of problems within the OIG, and these problems undeniably lie with the fact that senior police officers in the RTP do not recognise the importance of our work. Therefore, we lack sufficient resources, especially financially, to do our best.¹⁵³

This interview highlights that the complaints system at national level is not working as the OIG is clearly neglected and under-equipped. However, the OIG can still be tasked with the responsibility of investigating complaints on an occasional basis according to the Police Commissioner's instruction. In this regard, the question arises as to whether the handling of complaints by the Office is impartial. The following comment from a former Deputy Commissioner casts light on this question:

Most police officers are similar, the inspectors are also the police, and therefore, they can help the officers concerned at times.¹⁵⁴

The same complainant who disclosed how the police discredited victims of malpractice gave the following interview underlining that the handling of complaints at the national level is not working any better than at the local level:

The OIG [at first] pressed some officers with the charge of intentional murder [first degree murder] of my nephew. But when the alleged officers argued that my nephew was mistakenly shot dead by the bodyguards who were trying to protect my brother-in-law [the father of the dead], the police inspector later dropped all the charges without

¹⁵³ Interview with a police inspector (n 74).

¹⁵⁴ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

reasons being provided, without letting me know and without providing me any opportunity to challenge.¹⁵⁵

The abrupt manner in which the inspector dropped the charges without providing any justification lends weight to the view that the OIG lacked impartiality. Even though the OIG has nothing to do with local police force areas, let it not be forgotten that it is also under the control of the National Police Chief just like any other police officer; therefore, using contacts in the chain of command to pull strings for those wrongdoers is possible. This example demonstrates the crucial point that so long as the police are still investigating themselves, there tends to be a lack of impartiality because the OIG is, as other divisions are, under the direction and control of the RTP.

Above all, one of the most important points about the OIG is that it has no power to handle a complaint against the Commissioner for the reason that the Inspector General is a subordinate of the Commissioner; besides, the Commissioner has the authority over the task allocation and the transfer of all police (see figure 1 in chapter 1). Hence, if there is any complaint against him, it is uncertain as to whether the key investigating officers are likely to be transferred and forced to abdicate the responsibility or not. In this respect, this internal mechanism cannot fully function as the interested party, namely the Commissioner, can intervene into the investigation process. The aftermath of the tragic incidents during the anti-government protest on 7th October 2008, for example, proved that the OIG lacked authority to hold the then Commissioner General and also the Metropolitan Police Commander to account.¹⁵⁶ Therefore, as long as the OIG is an internal body in the RTP and is still under the influence of the Commissioner General, its complaints system cannot be impartial.

¹⁵⁵ Interview with a complainant C (n 108).

¹⁵⁶ Pinthong (n 16) 150-151.

V. Root Causes of a Lack of Impartiality

In this section we discuss the root causes of a lack of impartiality in the RTP system from a deeper and wider perspective. It will be argued that the patronage system within the RTP and the authoritarian mindset are the main problems undermining impartiality in the handling of complaints.

Patronage System in the RTP

The patronage system is explained as “an exchange relationship between roles which may be defined as a special case of dyadic (two-person) ties involving a largely instrumental friendship in which an individual of higher socio-economic status (patron) uses his own influence and resources to provide protection or benefits, or both, for a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal service, to the patron.”¹⁵⁷ In the Thai context, the patronage system is comprised of the following types of connections; a master-servant relationship; an emotive brotherhood relationship; the ties of civil servants, businessmen, politicians and political canvassers; and the ties of kinship.¹⁵⁸ The influence of the ties of kinship upon impartiality is obvious and is already acknowledged by the law on police complaints as a conflict of interest;¹⁵⁹ thus, it will not be discussed in this part.

The ranks and the chain of command in the RTP represent a quasi-military top-down management. The administration within the Thai police organisation, therefore, is controlled by a few most powerful officers at the top.¹⁶⁰ The classification of the police into

¹⁵⁷ James C. Scott, ‘Patron-Client Politics and Political Change in Southeast Asia’ (1972) 66 Am Polit Sci Rev 91, 92.

¹⁵⁸ Somchart Sangiamsak, ‘The Patronage System in Thai Society: A Case Study in Appointing and Transferring Commissioned Police Officers’ (MA Thesis, Ramkhamheang University 2001) 27 [in Thai].

¹⁵⁹ Regulations on Investigation (n 48) reg 5 (4).

¹⁶⁰ NPA (n 46) ss 11, 13. Note that the highest rank of a commissioned officer is ‘Police General’ whilst the highest rank of a non-commissioned officer is ‘Police Senior Sergeant Major’.

a commissioned officer, who has the opportunity for getting to the top, and a non-commissioned officer, who lacks the same opportunity,¹⁶¹ even strengthened the chain of command because such classification created the barrier between a superior and an inferior. These conditions cement a master-servant relationship in the Thai police organisation. There is a Thai saying to the effect that “in the police, subordinates give money to the superior”;¹⁶² beyond doubt, the aforesaid money is largely collected from illegal businesses.¹⁶³ More often than not, in the RTP, subordinates (servants) have to provide their superior (a master) with benefits for job security. Having received the benefits, the superior provide his subordinates protection in return. This reciprocity is just in line with the definition of patronage given above.

The interview with a human right lawyer demonstrates that the servant-master relationship within the Thai police organisation entails that impartiality is improbable in the handling of complaints:

You see, the culture of feudal patronage is still there in the RTP. The superior carries on helping his subordinates even after they have been disciplined [as a result of malpractice]. These people are not going anywhere because the superior continues feeding and taking care of them with exchange of their personal service such as giving help with taking bribery.¹⁶⁴

The comments illustrate that the superior will give protection to his subordinate at any cost. In the rare case where a subordinate loses his job, the protection, flagged up during the

¹⁶¹ *ibid* ss 24, 25.

¹⁶² Pasuk Phongpaichit and Sungsidh Piriyaarangsarn, *Corruption and Democracy in Thailand* (Silkworm Books 1994) 111.

¹⁶³ Pasuk Phongpaichit, Sungsidh Piriyaarangsarn and Nualnoi Treerat, *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy* (Silkworm Books 1998) 6-8.

¹⁶⁴ Interview with a human rights lawyer (n 11).

above interview to mean the support for a living, will nonetheless extend beyond the end of that subordinate's career.

An emotive brotherhood relationship is a second obstacle impeding impartiality when it comes to the handling of complaints. Haanstad expounded on the cultural hegemony that shapes the mindset of the Thai police during their time in the Royal Police Cadet Academy (RPCA); it was indicated that:

[M]any Thai officers enter into pre-cadet academy as young as 15 years old, and the militarised 2- or 4-year academy classes produce a strong sense of *esprit de corps*: an emotive, but bureaucratic brotherhood.¹⁶⁵

It is unsurprising that the pedagogic strategy which ensures that experience is shared amongst cadets almost 24/7 throughout four-year training will construct strong social networks that lasts perhaps a lifetime. The following interview with a police inspector shows how the ties of imaginary brotherhood fostered since he was in the police cadet academy plays a part in his life when it comes to the decision-making on important issues:

You just think about how heartbroken I was when I still served as a Deputy Superintendent and I found that my subordinate, also my junior in the police academy, accepted a bribe. I have to put him into jail, and I saw him handcuffed and walked into jail!¹⁶⁶

Though the comments convey the impression that this police inspector has managed to do the right thing, his tone of voice shows how influential the emotive relationship is in the Thai police organisation. The police mindset of emotive brotherhood leads to the conclusion that if the options are open, an imaginary bond of this kind really undermines

¹⁶⁵ Eric J. Haanstad, 'Thai Police in Refractive Cultural Practice' in William Garriott (ed.), *Policing and Contemporary Governance: The Anthropology of Police in Practice* (Palgrave Macmillan 2013) 188.

¹⁶⁶ Interview with a police inspector (n 74).

impartiality. Support for this can be found in my interview with a former deputy commissioner:

[T]he culture of patronage – the senior-junior relationship [an emotive brotherhood relation] that had very well been fostered when the police officers were in the RPCA in particular – is also another factor why complaints will not be addressed impartially. For example, if you investigate complaints against your subordinate, who is also your junior in the police academy, the complaints process will be, either more or less, manipulated in favour of that subordinate.¹⁶⁷

The ties of civil servants, businessmen and politicians also play a huge part in the patronage system in Thailand. In the following discussion, however, the relationship between the police and politicians becomes the focal point. As noted in chapter 1 the RTP is a unitary body under the direction and control of the Prime Minister, who exercises the statutory power to nominate or dismiss the Chief Police Officer.¹⁶⁸ This, therefore, affords politicians the opportunity to exert undue influence upon the police. The interference fosters an institutional culture within which a sizable number of senior police officers, who seek to stand out from the crowd and win favour, are keen to be a servile follower of politicians. This becomes a factor shaping a lack of impartiality when it comes to the handling of complaints against the officers who abused their position due to political reasons. For example, the NACC decided to prosecute three senior police officers for their abuse of power in relation to the instruction given to riot police to adopt violent tactics to disband anti-government protestors. The resolution submitted shortly after by the Office of the Police Commission (OPC) (see figure 1 in chapter 1) which authorised these three

¹⁶⁷ Interview with a former Deputy Commissioner (Provincial Police Region) (n 89).

¹⁶⁸ NPA (n 46) ss 18 (3), 31 (3).

officers to resume their positions apparently shows how patronage between politicians and the police works in order to shelter the wrongdoers.¹⁶⁹

The case of the Deputy Commissioner – Police General Pongsapat Pongcharoen – who stood down in order to run for the office in the shirt of the leading political party in a coalition government – the Phue Thai party – in the 2013 Bangkok gubernatorial election provides further evidence of how political patronage serves to protect key police officers. During the election campaign, a number of Pongsapat’s fellow party members tried to expose the alleged corruption in the construction of 365 police stations approved by the opposition party while they were in government; this was generally seen as an attempt to discredit the candidate from the opposition party. The plan, however, backfired on Pongsapat as it turned out later that he was one of the stakeholders that signed the construction contract.¹⁷⁰ Having lost the election, Pongsapat sought the opportunity to have his old job back, and when he resumed the same position again,¹⁷¹ instead of being called to a disciplinary hearing for the alleged corruption, the government leapt to his defence and failed to dig deeper into the matter.¹⁷²

¹⁶⁹ ‘The NACC Reveals the Police Commission Resolution Must be Interpreted by the Constitutional Court’ <<http://www.bangkokbiznews.com/home/detail/politics/politics/20100115/95686/>> 15 January 2010 [in Thai].

¹⁷⁰ Crime Correspondent Team, ‘Corruption in the Construction of Police Stations: ‘Accidental Discharge’ over People in the Same Party’ *Manager Online* (Bangkok, 11 February 2013) <<http://www.manager.co.th/Crime/ViewNews.aspx?NewsID=9560000017327&CommentReferID=22715649&CommentReferNo=1&TabID=2&>> accessed 6 August 2014 [in Thai].

¹⁷¹ Fredrickson T, ‘Pongsapat Wants Police Job Back’ *Bangkok Post* (Bangkok, 5 March 2013) <<http://www.bangkokpost.com/learning/learning-from-news/338896/pongsapat-wants-police-job-back>> 30 June 2013.

¹⁷² ‘The Massage Parlour Owner Shows Evidence How ‘Adul-Pongsapat’ Need to Be Responsible for the Scandalous Police Stations Project’ *Manager Online* (Bangkok, 15 February 2013) <<http://www.manager.co.th/daily/ViewNews.aspx?NewsID=9560000019413>> accessed 30 October 2014 [in Thai].

All of this not just shows how close are the police and influential politicians, but also demolishes the argument that the 1998 police reform would lead to a greater degree of independence in the Thai police organisation (see the discussion in chapter 1).

The Authoritarian Attitude towards Law Enforcement

It is arguable that the manner in which the police justify their own action when dealing with crime inevitably influences their decision whether complaints made as a result of the action they have taken should be substantiated. In the NACC research, some officers expressed the following views during a group discussion:

The police work consists of objectives and approaches, the aim of peaceful society may not be achieved if lacking one of them. Sometimes inappropriate approaches are necessary for the society if it is to become peaceful...the Thai society and the American society are dissimilar, so we need to consider the practicality.¹⁷³

The police need to adopt illegal methods at times, for instance, we need to interrogate the suspect by means of threatening, using both soft and harsh methods until he confesses in order to gather other evidence.¹⁷⁴

These comments evidence an aura of authoritarianism within the RTP, and that is so notwithstanding that it cannot be claimed either that an authoritarian characteristic belongs exclusively to the police profession or that every policeman is authoritarian. From the above viewpoints, it is arguable that the Thai police would use whatever means available to achieve their desired ends without giving consideration to human rights principles and/or the lawfulness of the course of action. Interestingly, this is in sharp contradiction to

¹⁷³ Chotchakornpant and others (n 6) 73. It can be assumed that the interviewee wanted to compare the Thai society and the liberal society in the Western world by citing American society as an example.

¹⁷⁴ *ibid* 72. See also, Asian Legal Resource Centre, 'Defective Criminal Justice Institutions Cause Systematic and Widespread Rights Abuse in Thailand' (Statement) (18 March 2007) ALRC-SHRC-04-19-2007.

the claims made by some commissioned officers interviewed for the NHRC research that they are aware of and always uphold the principles of human rights.¹⁷⁵ This leads to the conclusion that, when it comes to the handling of complaints, it is highly likely that the police just cling to their own mindset which makes impartiality impossible. For instance, the fact that many officers are keen to threaten the suspect as they believe it is a necessary evil as it is a better and quicker approach to the handling of cases suggests that if the suspect makes a complaint about threatening, it is unlikely that such a complaint will be substantiated.

VI. Conclusion

Police malpractice is a serious and perennial issue in Thailand. From ordinary people's perspective, the scale of malpractice is large because the facts show that the problem of malpractice is aggravated by political factors. The Thai police force has put in place a mechanism for addressing people's grievances against police malpractice. Although the internal complaints system provides complainants with a number of advantages, one of which seems to be the flexibility in the process, the evidence from this research suggests that the internal system has failed to instill public confidence. The interview data drawn from the complainants and relevant stakeholders have painted a coherent picture of the internal system as being unworkable because it severely lacks impartiality. Two root causes have been identified – the patronage system within the RTP and the authoritarian attitudes towards law enforcement. So long as these fundamental causes have not been dealt with seriously, huge numbers of 'rogue cops' will still enjoy impunity. It is argued therefore that the disadvantages of having complaints against the police dealt with by the police far outweigh the advantages. It may be, however, that this conclusion is a little

¹⁷⁵ See text accompanying nn 11, 12 in ch 1.

premature. We must first consider whether the Thai systems for investigating complaints that are external to the police are capable of remedying the problems outlined above. This will be the subject of the next chapter.

CHAPTER 4: EXTERNAL POLICE COMPLAINTS SYSTEMS

I. Introduction

In recent times, “the operation of a fair and effective system for dealing with complaints against the police has come to be recognised as a core component of democratic and accountable policing”.¹ There followed a global trend of creating an independent complaints agency to enhance the effectiveness of a police complaints system.²

As noted in chapter 1, the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) as independent watchdog bodies were established since 1997 and formed the backbone of the police oversight mechanisms in Thailand, even though none of them was designed to be a specialised police watchdog. This chapter is divided into two major parts to examine the Ombudsman, the NHRC and the NACC in relation to their responsibility for dealing with police complaints. The first part examines the statutory responsibilities of the Ombudsman, the NHRC and the NACC and their roles as a police watchdog. This includes a discussion on the accessibility and complaints procedures of the complaints systems overseen by them. Following on from that is a critical analysis of the Ombudsman, the NHRC and the NACC which aims to see whether or not these complaints bodies are capable of dealing with police complaints and identify whether there are any outstanding issues that diminish the capability of each of them to resolve complaints effectively. The second part of the chapter will be devoted to deal particularly with the notion of “independence” as it applies to the ombudsmen and the commissioners. In doing so, the theory of regulatory capture is

¹ Graham Smith, ‘Every Complaint Matters: Human Rights Commissioner’s Opinion concerning Independent and Effective Determination of Complaints against the Police’ (2010) 32 Int’l JLC Just 59, 59.

² Graham Smith, ‘The Tripartite Police Complaints System of Hong Kong’ (2015) 15 Asia Pac JHR & L 119, 119.

adopted as a conceptual framework for obtaining insights into the extent to which the systems under control of the Ombudsman, the NHRC and the NACC are working independently.

II. External Complaints Systems

This section starts by reflecting on the role of the Ombudsman, the NHRC and the NACC. There follows a critical evaluation of these systems to see if there are any specific issues that may undermine the capability of the above agencies to deal with police complaints, and the extent to which the system overseen by each of them is effective against police malpractice. As we examine the Thai external complaints systems, a comparison between these systems and the English one will also be drawn in order to broaden our perspective on the handling of police complaints.

Reflection on the Thai Independent Watchdog Bodies in Addressing Police Complaints

The Thai constitutional framework makes it clear that there is no single authority which has responsibility to deal with police complaints exclusively. Moreover, each of the above organisations has a jurisdiction extending far beyond the handling of police malpractice. In practice this means that the systems adopted for handling complaints are not tailored specifically for dealing with such malpractice but rather are generic in nature. Moreover, complaints against the police have to jostle for attention with many other kind of complaint. Another notable feature of the current ‘system’ is that these organisations have overlapping jurisdictions. Some may argue that the greatest advantage of the existing arrangements is that, no doubt, there is a wide variety of choices open for the Thai public to have their grievances against the police addressed. In addition to that, some of those who are working in these systems also pointed out another benefit of a fragmented system that:

From my point of view, this [the fragmentation of the existing system] provides the opportunity for the decision the complaints body has made to be cross-checked by other bodies. This helps make sure that the investigation contains fewer or no mistakes.³

These arguments seem true as under current circumstances in Thailand the facts show that a number of complainants have registered their complaints with more than one watchdog body.⁴ The downside of the existing arrangements, however is that it brings about a duplication of efforts between the complaints bodies to solve similar issues and, all too often, such a duplication results in an unnecessary delay.

In a study by Rukhamate and Thananithichote, one of the directors serving with the Ombudsman confirmed that, in recent years, there has been an increasing duplication of effort between the Ombudsman and the NHRC in relation to the handling of complaints (a sizable proportion of them, police complaints).⁵ At the peak of the political unrest in Thailand (between 2007 and 2012), for instance, the Ombudsman and the NHRC have dealt with many complaints about deaths and serious injuries as a result of riot police dispersing protestors. Grounds for such complaints can be viewed as administrative wrongdoing as well as human rights violations; hence, it is difficult for these bodies to determine from the outset which complaints fall within their remit. The same director then elaborated that, to make things clear, the Ombudsman set up a screening committee to look into each complaint. But this apparently caused delay, wasted resources and also

³ Interview with [anonymous], a former NHRC commissioner (Bangkok, Thailand, 26 June 2014).

⁴ See further the discussion of the samples of this research in ch 2.

⁵ Pharkphoom Rukhamate and Satithorn Thananithichote, 'The Ombudsman' in Satithorn Thananithichote (ed), *Constitutional Organisations: Foundation Knowledge and Lessons for Reforms* (KPI 2015) 84 [in Thai].

undermined a certain level of public confidence in the system as some complainants perceived the Ombudsman to have abdicated its own responsibility.⁶

The current chair of the Ombudsman has observed that whilst there might be some overlap between the work of the Ombudsman and the NHRC they do not duplicate one another, and in fact work in harmony with one another. He did acknowledge, however, that the responsibility of the Ombudsman in some ways duplicates that of the NACC.⁷

The Ombudsman and the NACC have the power to deal with wrongdoing in the domain of law and administration alike. All of this indicates that the duplication of effort between the complaints bodies is one of the significant issues of the existing constitutional arrangements which need to be dealt with in the current study.

Critical Evaluation of the Thai Independent Complaints Bodies

The Office of the Ombudsman

In 2013, the Thai Ombudsman highlighted in its annual report that 2,897 out of 3,420 complaints received (84.71%) had been substantiated in that year.⁸ The overall substantiation rate seems to suggest that the Ombudsman system is effective. When it comes to police complaints alone, however, the statistics revealed the following:⁹

⁶ *ibid.*

⁷ 'The Ombudsman Opposed the Amalgamation with the NHRC' *Prachatai* (Bangkok, 17 April 2015) <<http://www.prachatai.com/journal/2015/04/58872>> accessed 20 May 2015 [in Thai].

⁸ Office of the Ombudsman, 'Annual Report 2013' (Thai Ombudsman 2013) 52 [in Thai].

⁹ Email from the Office of the Ombudsman concerning 'Police Complaints Statistics' to the author (20 June 2015). Note that 'complaints referred to the NACC' means any cases that the Ombudsman tentatively received but subsequently determined as within the purview of the NACC and therefore decided not to record them but handed them over to the NACC instead.

Table 4.1: Police complaints registered with the Thai Ombudsman

Year	Recorded complaints	Unrecorded complaints	Substantiated complaints	Unsubstantiated complaints	Complaints referred to the NACC
2013	122	15	5	117	1
2012	135	11	7	128	5
2011	110	11	18	92	0
2010	108	4	17	91	0
2009	110	11	9	101	0

During the given period, the rates for recording of complaints appear encouraging whereas the rates for substantiation of complaints are anything but. Two questions are prompted. First, what does a low rate of substantiation suggest about the effectiveness of the Thai Ombudsman system in relation to the handling of police complaints? Linked to this is how far can the public place their trust in the Thai Ombudsman when addressing complaints against the police? To answer these questions, we therefore need to look in-depth into the whole system.

(a) Access to the Ombudsman Complaints System

Under the Ombudsman system, paragraph 1, section 23 of the Organic Act on Ombudsmen 2009 specifies that:

Any person, group of persons and community shall have the right to make a complaint to the Ombudsmen in accordance with the provisions of this Organic [Ombudsman] Act.¹⁰

¹⁰ This Act, hereinafter, will be referred to as the ‘Ombudsman Act’. The Ombudsman Act was translated by the Office of the Ombudsman.

As shown in the above provision, the Ombudsman system is widely accessible to everyone irrespective of whether or not those who seek to make a complaint have any connection with the alleged incident of malpractice. To put it in the context of police complaints, this, therefore, suggests that the complainant can be anyone ranging from a direct victim of malpractice, a witness or even a person who has no connection with the alleged incident of malpractice but is aware of such an incident. Interestingly, the [local] community is also allowed to play a part in making complaints. By comparison, under the English complaints system, section 12 paragraph 1(d) of the Police Reform Act (PRA) 2002 circumscribes the scope of ‘complaints’ to include:¹¹

(1) ...any complaint about the conduct of a person serving with the police which is made (whether in writing or otherwise) by—

(d) a person acting on behalf of a person falling within any of paragraphs (a) to (c) [(a)the person in relation to whom the conduct took place; (b) the person claiming to have been adversely affected by the conduct; and (c) the person who have witnessed the conduct].

Similar to the system under control of the Thai Ombudsman, complaining by proxy is also allowed in the English system.

One of the ombudsmen interviewed for this research made the following claim in relation to the accessibility of the Ombudsman:

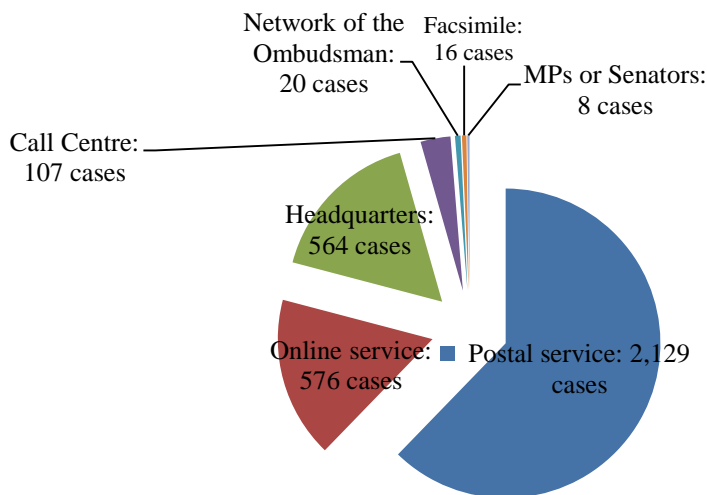
Our complaints mechanism is accessible more easily compared to the other two organisations [the NHRC and the NACC],...¹²

¹¹ This Act, hereinafter, will be referred to as the “PRA”.

¹² Interview with [anonymous], the ombudsman (Bangkok, Thailand, 23 June 2014).

Putting the NHRC and the NACC to one side for now, the claim that the Thai Ombudsman’s system is easily accessible is supported by the survey of the performance of the Thai Ombudsman which illustrated that 64.55 per cent of respondents were satisfied with the way in which complaints can be registered.¹³ According to paragraph 1, section 24 of the Ombudsman Act, “a complaint can be made verbally, in writing or by other means”.¹⁴ The following pie chart demonstrates a wide range of channels available for the public to file their complaints with the Ombudsman system:¹⁵

Chart 4.1: Gateways to the Ombudsman system in 2013



In England and Wales, the Independent Police Complaints Commission (IPCC) points out to putative complainants that:

The best way to make a complaint is to contact the police force involved. Police force websites include information about how to complain or you can visit any police station. You can complain to any force by using the

¹³ Somjate Waiyakarn, *The Survey of Complainants’ Satisfaction towards the Service of the Office of the Ombudsman in relation to the Handling of Complaints* (as cited in Pharkphoom Rukhamate and Satithorn Thananithichote, ‘The Ombudsman’ in Satithorn Thananithichote (ed), *Constitutional Organisations: Foundation Knowledge and Lessons for Reforms* (KPI 2015) 94) [in Thai].

¹⁴ Ombudsman Act (n 10) s 24 para 1.

¹⁵ ‘Ombudsman Report’ (n 8) 58.

online form on the IPCC website. Forms are also available to download, complete and email or to print off, complete by hand and post to the relevant police force.¹⁶

You can, of course, use the IPCC's online complaint form. But please note that if you complete our form it is automatically sent to the relevant police force and we will not log the details.¹⁷

It can be seen that, in effect, the handling of police complaints in England and Wales is a shared responsibility where the police have a crucial role at the initial stage not least the process of recording of complaints.¹⁸ A fundamental difference between access to the complaints systems operated by the Thai Ombudsman and that by the IPCC in England and Wales is thus that the Ombudsman has the remit to handle complaints right from the start whilst the IPCC does not.

Under the Ombudsman system, an inquiry into malpractice may be conducted without a complaint. Subject to paragraph 2, section 13 of the Ombudsman Act, it is specified that:

In exercising of powers and duties ..., the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen is of opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct and inquiry irrespective of a complaint.

The fact that the Ombudsman is capable of handling malpractice on its own initiative is to the advantage of the Thai public as a whole since the Ombudsman can intervene in the

¹⁶ Independent Police Complaints Commission, 'A Guide to the Police Complaints System' (IPCC 2013).

¹⁷ Independent Police Complaints Commission, 'Complaints' (IPCC) <<https://www.ipcc.gov.uk/complaints>> accessed 10 March 2015.

¹⁸ Recording of complaints is the process whereby a complaint is given an official status and will be dealt with.

situation where malpractice has reportedly been perpetrated without having their hands tied by regulations. In contrast, the IPCC does not hold any power to investigate misconduct on its own initiative as the Commission explained that:

Under the existing complaints and conduct system a matter (whether a complaint, a conduct matter or a death or serious injury) must first be recorded before the IPCC can commence an investigation. This means in the majority of cases the IPCC cannot begin to act until a [local] police force has taken the first step. The IPCC has an existing power to direct that a conduct matter be recorded by the force. However, that still requires a force to be identified and for them to assess the matters, complete necessary paperwork and then formally refer the matter back to the IPCC...¹⁹

Thus, the IPCC has to rely on the police whom it oversees to begin the process of investigation;²⁰ this demonstrates how influential the role of the police is in the English complaints system.

(b) Complaints Procedures

Once a complaint has formally been recorded, the Ombudsman needs to proceed with an inquiry. In this regard:²¹

The Ombudsmen shall, upon the complaint under this Organic Act, finish its consideration without delay and shall enable the complainant, government official, official or employee of related government agency, State agency, State enterprise or local government organisation to give a

¹⁹ Independent Police Complaints Commission, 'Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems' (IPCC 2015) para 156.

²⁰ *ibid* paras 157-158.

²¹ Ombudsman Act (n 10) s 31 para 1. Note that the Ombudsman may not record a complaint, if it is of opinion that the complaint is concerned with corruption charges or the matter that is being heard in court, for instance. For further detail, see ss 28, 29 of the Ombudsman Act.

statement and present evidence in relation to their statement as appropriate.

In the course of an inquiry, the Ombudsman inquiry officer has the following powers when establishing the facts:²²

(1) to request a government agency, State agency, State enterprise or local government organisation to give, in writing, a statement of fact or opinion concerning its performance or to submit any related object, document, proof or evidence for consideration;

(2) to request the superior or officer of the agency under (1), public prosecutor, inquiry official or any person to give a statement of fact in writing or orally or to submit any related object, document, proof or evidence for consideration;

To lend some weight to the Ombudsman's request, punitive measures are provided for as follows:²³

Whoever violates or fails to comply with section 15 (2) shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht or to both.

Mr. Wongsarayangkun – the current chair of the Thai Ombudsman has claimed to have led the way in changing the authority's approach to the handling of complaints.²⁴ Prior to the changes, complainants would rarely have the opportunity to be aware of any justification provided in an account by the officers involved. Complainants are now told what justification the officers involved have given which will allow them the opportunity to

²² *ibid* s 15(1), (2).

²³ *ibid* s 45.

²⁴ Office of the Ombudsman, '12 Years on: Thai Ombudsman' (Thai Ombudsman 2013) 51 [in Thai]. Note that Mr. Sriracha Wongsarayangkun has been appointed as the chair of the Ombudsman in 2015 after having served as one of the ombudsmen since 2010.

challenge it. He explained further that in terms of police complaints, what the Thai Ombudsman usually does following the recording of complaints is that the alleged officer would be required to provide a detailed account of the incidents of alleged malpractice. The chair of the Thai Ombudsman stressed that repeated attempts may be made in some cases to maximise the opportunity for complainants to prove all the points that they regard as crucial.²⁵ In addition to that, a number of complainants indicated that one of the merits of the Ombudsman system is the promptness of the handling of complaints:

I decided to use the online application service [to register a complaint with the Ombudsman]. To be honest, I've done that even though I have no confidence that they [the Ombudsman] will respond to me. Unexpectedly, I got a reply email within a week saying that one of the officers at the Ombudsman will take me to the police station where the officer complained against is serving in order to inquire about the alleged misconduct. He [the Ombudsman's officer] did what he said. After that, it took only a month or so for my complaints to have finally been resolved.²⁶

I first raised the issue with one of the senators. He contacted the Ombudsman and advised me to register a complaint. Then, I got a call from the officer there [the Ombudsman] seven days after the submission of a complaint. I would say that even though I haven't got what I wanted, my view is that the Ombudsman responded and addressed my complaint very promptly and I totally understand that it is not within its remit to deal with all the issues I face up to.²⁷

²⁵ *ibid.*

²⁶ Interview with [anonymous], a complainant D (Bangkok, Thailand, 8 July 2014).

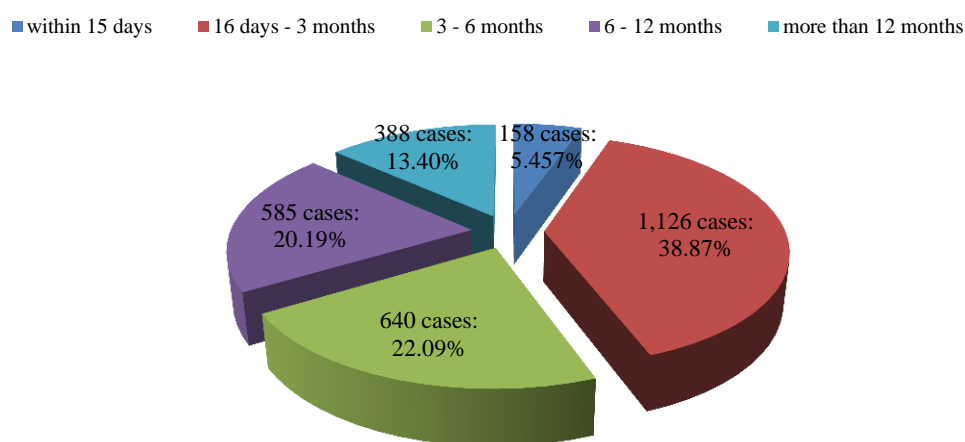
²⁷ Interview with [anonymous], a complainant E (Bangkok, Thailand, 17 July 2014). Note that s 26 of the Ombudsman Act allows MPs or senators to complain on behalf of the injured party.

During my interview with one of the ombudsmen, the agreed time frame for the handling of complaints was commented upon as distinguishing the Thai Ombudsman system from other complaints systems in Thailand:

We've set out our goal to complete each inquiry within six months and, at all events, it should not exceed a maximum of twelve months ,...²⁸

Consistent with the above claim, the following pie chart illustrates the complaints that have been dealt with and completed within different time frames in 2013:²⁹

Chart 4.2: Completion of complaints in different time frames



The above chart shows that two thirds of the complaints were successfully resolved within six months. The success in completing a sizable proportion of inquiries within a reasonable time-scale is apparently one of the main selling points of the Ombudsman system. This gives the general public the impression that the Ombudsman as a complaints authority is attentive to resolving complaints.

²⁸ Interview with the ombudsman (n 12).

²⁹ 'Ombudsman Report' (n 8) 63.

At the end of an inquiry, the enabling law of the Ombudsman prescribes that it:³⁰

[S]hall prepare and submit the report summarising the facts together with its giving opinion and recommendation... to the related government agency, State agency, State enterprise or local government organisation for information or implementation.

In cases where the police fail, within a reasonable period of time, to endorse the recommendations proposed to it by the Ombudsman, further steps may be taken as follows:³¹

[T]he Ombudsmen shall inform the Prime Minister, Minister or the person controlling or supervising such government agency, State agency, State enterprise or local government organisation so as to have necessary order thereon and to report their implementation to the Ombudsmen forthwith.

If the prime minister as the superior of the RTP fails to give any response but the Ombudsman takes the view that it is in the public interest that its proposed recommendations be endorsed:³²

[T]he Ombudsman shall urgently submit the inquiry report to the Council of Ministers, the House of Representatives and the Senate.

Such report shall be disclosed to the public in accordance with the procedure as determined by the President of the Ombudsmen.

It should be noted that if the Ombudsman inquiry report indicates a criminal or a disciplinary offence may have been committed:³³

³⁰ Ombudsman Act (n 10) s 32 para 1.

³¹ *ibid* s 33 para 1.

³² *ibid* s 33 paras 2, 4.

³³ *ibid* s 34 para 1.

[T]he Ombudsman shall inform the agency having the power to investigate such matter and the superior of a government official, official or employee of related government agency, State agency, State enterprise or local government organisation for information and further legal proceedings.

In the context of police complaints, this means that the Ombudsman is capable of instructing the police to conduct an investigation.³⁴ Leaving aside complaints about misconduct, the Thai Ombudsman, as noted above, is also authorised to deal with a breach of professional ethics; in that event, the handling of ethical issues goes through the same procedures as the handling of complaints (see the example case in the next sub-section).³⁵

Clearly the Ombudsman has numerous powers but the question arises as to whether they are used in practice so as to resolve complaints effectively. This will be answered in the following sub-section.

(c) Critical Evaluation of the Ombudsman Complaints System

As described earlier, the handling of complaints under the Ombudsman system is relatively expeditious and also offers the complainants a degree of flexibility. For instance, in some cases, the complainants might be invited by the Ombudsman officers to participate in one or more rounds of talks with the alleged officer in order to seek solutions (see text accompanying note 26). This approach, of course, proves to be useful, at least, in certain aspects of complaints-handling.

Whilst some complainants may enjoy the flexibility of the Ombudsman complaints procedures, others feel differently. It is arguable that a flexible process can also leave the

³⁴ Peter Leyland, 'The Ombudsman Principle in Thailand' (2007) 2 JCL 137, 144.

³⁵ Ombudsman Act (n 10) s 38. If there is a complaint that a State official violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall submit such matter to the person responsible for the enforcement of the code of ethics to make enforcement thereof.

authority room not to make progress at times. Some complainants interviewed for this research aired their grievances that the Ombudsman was lukewarm about their complaints and made no progress subsequent to the recording of complaints. One of the complainants claimed that:

The Ombudsman has never asked me anything about my complaints. I've never been informed about anything until the investigation of my complaints was concluded. And it turned out that they [the Ombudsman officers] referred to the police report as the evidence against my complaints. I think this is unacceptable.³⁶

The evidence from my interview material suggests that the progress of the Ombudsman inquiry into complaints about serious malpractice tends to be held back. In an interview with a human rights lawyer, the role of the Ombudsman was critiqued as follows:

[The Ombudsman is] really inactive. The key reason is the Ombudsman only requires the appropriate authority to clarify the incidents relevant to the complaints, that's it. I can say that the Ombudsman has not any concrete achievement, particularly in relation to the handling of police complaints.³⁷

During an interview with a former senator, the following comments suggest that the Ombudsman, as a complaints authority, needs to do much more to become proactive:

Look, I used to ask one of the former chairs of the Ombudsman some years ago about the work they have done. The ombudsman said to me that it [the system] worked really well because all the complaints registered had been dealt with 100 per cent as they were transferred to the appropriate authority for further action. I was stunned by the answer because I don't think we need the Ombudsman to become a postbox, do

³⁶ Interview with [anonymous], a complainant A (Bangkok, Thailand, 25 June 2014).

³⁷ Interview with [anonymous], a human rights lawyer (Bangkok, Thailand, 15 July 2014).

we? We don't need them to send the letters and hand the complaints over to someone else but we need them to act and to solve the problems with regards to those complaints.³⁸

In other interviews for this research, skeptical views on the role of the Ombudsman fairly similar to the above ones were echoed by a social researcher and a former deputy police commissioner. The comments are shown as follows:

From a cost-benefit dimension, I think the Ombudsman failed to prove that their roles in the handling of complaints can be as much advantageous to Thai society as ordinary members of the public want them to be, even though I believe that the sitting ombudsmen are decent people.³⁹

In my view, the Ombudsman is weaker than a 'paper tiger'. They don't dare to compel the officers involved to attend an interview, for example. Therefore, this organisation is ineffective and only serves as a postbox.⁴⁰

In a group interview with police officers, even though none of the officers unreservedly criticised the Ombudsman complaints system, the following comments suggest that the police also share the view that the Ombudsman is not proactive:

The role of the Ombudsman is pretty diminished. Let me give you an example, they've never conducted a field investigation [in our force area]. Instead, they simply request the submission of a written statement explaining as to what went wrong.⁴¹

³⁸ Interview with [anonymous], a former senator (Bangkok, Thailand, 14 July 2014).

³⁹ Interview with [anonymous], a social researcher (Bangkok, Thailand, 8 July 2014).

⁴⁰ Interview with [anonymous], a former Deputy Commissioner (Provincial Police Region) (Bangkok, Thailand, 24 June 2014).

⁴¹ Interview with [anonymous], a group of police officers (Thailand, 13 June 2014).

The above interviews consistently confirmed the Ombudsman's lack of interest in pursuing a rigorous inquiry.⁴² In reaction to all the criticisms made in relation to the approach to investigation the Thai Ombudsman implements, the ombudsman interviewed for this research pointed out the following:

I know people consider the Institute of the Ombudsman as a “postman” who sends a written warning to relevant departments without any real power to administer punishment for the wrongdoer. Nonetheless, I insist that we have the power to exact cooperation from the police. For instance, we're able to compel any officer to come in for interview as when it comes to an inquiry, we have powers conferred to us by the Penal Code. In the past, whenever I require the police to give me documentary proof, no one dared to refuse to comply with the instructions.⁴³

Interviewing is indispensable in the fact-finding process alongside an evaluation of documentary proof. An investigative interview enables the investigating officer to compare oral accounts with written accounts and spot inaccuracies and inconsistencies amongst the facts given by both kinds of statements; once the investigating officer detects significant discrepancies between them, he will therefore be able to dig deeper into the matter. However, the ombudsman interviewed for this research failed to provide any justification as to why the Ombudsman does not adopt a coordinated approach of checking the veracity of written accounts as well as requiring the alleged officer to come in for interview. In referring back to all the interview comments above, it can be pointed out that the undermining of the inquiry progress, in effect, comes down to the fact that the Ombudsman prefers the analysis of documentary evidence and 'less formal negotiations

⁴² Rukhamate and Thananithichote(n 5) 94.

⁴³ Interview with the ombudsman (n 12).

and consultations⁴⁴ as the approach to the handling of complaints (see also the following paragraphs). Arguably, this merely produces a weak inquiry.

In an interview with a former senator, the work attitude promoted within the Thai Ombudsman was raised as another serious issue:

The effectiveness of the [Ombudsman] complaints system depends very much upon the attitude of the ombudsmen as well. The question is what is the ultimate objective that they aim to achieve in the handling of complaints?⁴⁵

Mr.Prawit Ratanapian – a former ombudsman – proudly suggested while he was still in office that if the Thai Ombudsman was to become successful in addressing complaints, it needed to adopt the approach that:

[C]omes up with a peaceful solution where ‘no one will lose or win, nobody will lose face’ when they turn to the Ombudsman.⁴⁶

This notion of aiming for a ‘win-win’ solution approach has since been accepted and is now one of the organisational values in the Thai Ombudsman.⁴⁷ A win-win solution approach may work well with certain types of conflicts. Indeed, it may well be that a win-win, restorative justice style approach may be a proportionate and appropriate way of handling minor complaints against the police.⁴⁸ Such an approach is not, however, appropriate for the handling of more serious police complaints (ie, of the type that the Ombudsman tends to receive) because, in most cases, there is suffering involved and a clear right and wrong to be determined. Above all, the business of the Ombudsman as a

⁴⁴ Carol Harlow and Richard Rawlings, *Law and Administration* (Weidenfeld and Nicolson 1984) 199.

⁴⁵ Interview with a former senator (n 38).

⁴⁶ ‘12 Years on’ (n 24) 55.

⁴⁷ Unchalita Suvarnajata, ‘The Role of the Office of Ombudsman in Dispute Resolution in Thailand’ (MA Thesis, Mahidol University 2007) 161 [in Thai].

⁴⁸ Graham Smith (n 1) 70.

complaints authority is to establish the facts about the alleged misconduct and not become distracted by the desire to protect anyone's image.

The Thai Ombudsman's win-win solution approach appears to diverge markedly from the prevailing norm followed by the ombudsman institutions in many other parts of the world.⁴⁹ The implementation of such an approach suggests that the Ombudsman lacks the will to use its powers to require police cooperation, not least in relation to an investigative interview. This arguably undermines the effectiveness of the Ombudsman's own inquiry and is responsible for the low substantiation rate of police complaints.⁵⁰ Even though the ombudsman interviewed for this research aired disagreement with the pursuit of a win-win solution approach, the investigative inertia produced by the aforesaid approach remains one of the severe shortcomings in the Ombudsman system. Comparatively, the approach taken by the Ombudsman contradicts sharply with the one that the IPCC implements. The IPCC police witness policy shows that the Commission lays emphasis on an interview as the key fact-finding mechanism. The IPCC has the remit to require the officer involved or even any other officers that the IPCC deems appropriate to be interviewed to come forward.⁵¹

Moving on to the power to enforce disciplinary measures against the officers at fault, some people reason that the Thai Ombudsman should work in a way that does not make any

⁴⁹ Nick O'Brien, 'Ombudsmen and Social Rights Adjudication' (2009) P. L. 466, 468-469.

⁵⁰ The Ombudsman is apparently capable of compelling police cooperation as criminal proceedings may be brought against the officers concerned or the appropriate authority in case they do not accommodate the Ombudsman's request. See text accompanying n 23.

⁵¹ Police (Complaints and Misconduct) Regulations 2012, s 19(7).

enemy; thus, it should not be given the power to punish anyone.⁵² This notion is seriously flawed; the reason for this is given in the discussion below.

The complaint made against Police Lieutenant General Kamronwit Thoopkrachang – the then Metropolitan Police Commander – about a breach of police ethics provides a high profile example of the ineffectiveness of the Thai Ombudsman in dealing with alleged police misconduct.⁵³ In this case, the former commander paid a visit to Hong Kong to have Thaksin Shinawatra – a former Prime Minister of Thailand who absconded and is now living in exile following his conviction for a corrupt land deal⁵⁴ – attach his police insignia as a way to show his personal respect for Thaksin (see figure 5).⁵⁵

Subject to regulation 12 (6) of the Police Regulations on Code of Ethics 2008:

[The police] have to lead their personal lives in the way that does not blemish their position in office...

In this case, the Ombudsman found that Thoopkrachang had breached police ethics because he, as a guardian of law, had displayed a strong affinity for an absconded

offender and paid a visit to that offender which apparently undermined the professional



Figure 5: Pol. Lt. Gen. Kamronwit Thoopkrachang and the former Prime Minister of Thailand - Thaksin Shinawatra.

Source: www.posttoday.com

⁵² Chalot Chongseubphun, Somjate Waiyakarn and Padetkarn Duangtoh, 'Status, Structure and Administration of Constitutional Organization: A Case Study of the Office of the Ombudsman' (KPI 2551) 109 [in Thai].

⁵³ 'Explanation Sought on Senior Police Officer's Meet with Fugitive Ex-PM Thaksin' *MCOT.NET* (Bangkok, 16 July 2013) <<http://www.mcot.net/site/content?id=51e4a3dd150ba04f0600011c>> accessed 5 April 2015.

⁵⁴ Ian MacKinnon, 'Former Thai PM Thaksin Found Guilty of Corruption' *The Guardian* (London, 21 October 2008) <<http://www.theguardian.com/world/2008/oct/21/thaksin-thailand-corruption>> accessed 5 April 2015.

⁵⁵ 'Explanation sought on senior police officer's meet with fugitive ex-PM Thaksin' (n 53).

integrity of the police and eroded public confidence in the criminal justice system as a whole.⁵⁶ However, the Thai Ombudsman could not do anything more but refer the case to the RTP and the NACC for further disciplinary and criminal investigation according to section 34 of the Ombudsman Act.⁵⁷ The incapability of the Thai Ombudsman, upon the completion of its inquiry, to commence disciplinary and/or criminal proceedings against the then commander reflects that its complaints system cannot ensure that complaints would be addressed effectively. The survey of the performance of the Thai Ombudsman highlighted at the beginning of this section indicated that only 43.20 per cent of respondents felt satisfied with the action taken subsequent to the inquiry of the Ombudsman.⁵⁸ The impression given is that the Thai Ombudsman is unable to finish the job properly.

Under the English system, by comparison, paragraph 27(3)(za) and (4)(a), (b), schedule 3 of the PRA specifies that:

27(3) the Commission may make a recommendation to the appropriate authority in respect of any person serving with the police –

(za) that the person has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to his conduct to which the investigation related;

27(4) If, after the Commission has made a recommendation under this paragraph, the appropriate authority does not take steps to secure that full effect is given to the recommendation—

(a) the Commission [IPCC] may direct the appropriate authority to take steps for that purpose; and

⁵⁶ ‘Ombudsman Report’ (n 8) 131.

⁵⁷ See also text accompanying n 33. As yet, no further progress in this case has been reported by the relevant bodies or in the media. See also, the statutory functions of the Ombudsman in ch 1.

⁵⁸ Waiyakarn (n 13) 94.

(b) it shall be the duty of the appropriate authority to comply with the direction.

Clearly, the enabling legislation of the IPCC grants the Commission the power to compel the police to implement its recommendations, whilst the Thai law does not confer that same power on the Ombudsman (see chapter 5).⁵⁹

Considering how the Thai Ombudsman system was designed, some may argue that it is already fit for purpose. The evidence presented throughout this section underlines, however, that the approach implemented by the Ombudsman fails to address the problems underlying police complaints. In particular, the lack of any thorough inquiry, the low substantiation rate, and the inability to enforce its recommendations all suggest that it can play little part in deterring police misconduct.

The National Human Rights Commission

Many instances of police misconduct are closely connected with human rights violations; thus, the NHRC is inevitably at the forefront of the handling of police complaints. When it comes to the handling of complaints under the NHRC system, the statistics on police complaints in a five-year period demonstrate the following:⁶⁰

⁵⁹ See text accompanying nn 30-32.

⁶⁰ Email from the National Human Rights Commission (NHRC) concerning 'Police Complaints Statistics' to the author (15 June 2015). 'Unrecorded Complaints' refer to cases that are the ongoing matters in court and cases that are outside of the NHRC jurisdiction; 'Referred Cases' include cases that are referred to the NACC, the PACC, or the cabinet minister and the Internal Security Operations Command for further investigation; and 'Pending Cases' represent cases that have still been unresolved.

Table 4.2: Complaints registered with the NHRC

Complaints statuses/ years	2009	2010	2011	2012	2013
Unrecorded complaints	24	32	14	31	21
Recorded complaints	62	56	59	52	68
Withdrawn complaints	4	4	4	0	9
Unsubstantiated complaints	37	30	35	16	15
Substantiated complaints	20	19	16	24	33
Complaints referred to the NACC	1	1	1	4	2
Pending cases	0	2	3	8	9

The statistical data seems to suggest that the NHRC is capable of dealing with police complaints; at least, the Commission was able to secure higher substantiation rates compared to that of the Ombudsman during the same space of time (see Table 4.1). This begs the question to what extent does the data under review indicate the true capability of the NHRC when dealing with police complaints? Just how far can complainants put their trust in the NHRC system? To provide answers to these questions, we will start by exploring the accessibility of the NHRC complaints system and its complaints procedures.

(a) Access to the NHRC Complaints System

The enabling legislation of the NHRC sets out that the NHRC system is widely accessible to ‘any person whose human rights are violated’.⁶¹ In its annual report, the NHRC also explained that ‘any person’ shall include:⁶²

⁶¹ National Human Rights Commission Act 1999, s 23 para 1. This Act, hereinafter, will be referred to as the ‘NHRC Act’. The NHRC Act was translated by the NHRC.

⁶² National Human Rights Commission, *Reports on the Appraisal of Human Rights Situations in Thailand and on the Performance of NHRC 2012* (NHRC 2013) 120 [in Thai].

- I. a person whose rights have been violated;
- II. a representative of the above person; and
- III. a witness of human rights abuse.

Channels for filing complaints to the NHRC complaints system are demonstrated in paragraph 2, section 23 of the NHRC Act as follows:

The petition [complaint] shall be submitted at the office of the National Human Rights Commission or by registered post with return receipt or to any member or via a private organization in the field of human rights to be referred to the Office of the National Human Rights Commission or by any other means as prescribed by the Commission.

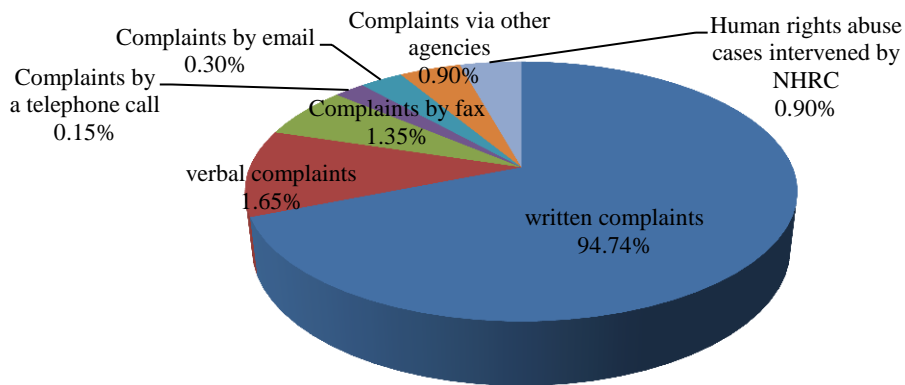
Regardless of an individual complainant, the NHRC also accepts the capacity of private agencies to associate themselves with human rights protection and allows them to represent a victim of human rights abuse. In this respect, paragraph 1, section 24 of the NHRC Act stipulates as follows:

In the case where a petition [complaint]... is lodged with a private organisation..., if that organisation considers the case to be *prima facie*, it may propose the matter to the Commission for further proceedings.

It is to be welcomed that the NHRC recognises the importance of the role of private agencies in safeguarding and promoting human rights. The agencies like human rights protection foundations can help the NHRC monitoring human rights situations in local areas. Their role as go-between is advantageous particularly to those who are underprivileged because the victims of human rights abuses are usually in a vulnerable position and less able to make complaints by themselves. The regulatory approval for a private agency to play its part in the handling of complaints distinctly differentiates the NHRC from the rest of the systems in Thailand.

The following pie chart shows the numbers of people having used each available channel for making complaints with the NHRC in 2012:⁶³

Chart 4.3: Gateway to the NHRC system



Leaving aside a complaints-based inquiry, the Commission also has the authority to deal with human rights abuse cases on its own initiative. This is specified in paragraph 1, section 25 of the NHRC Act as follows:

In the case where the Commission deems it appropriate to examine any case of a human rights violation..., the Commission shall notify a person or agency alleged to be a human right violator or a person or agency whom the Commission considers to be involved in human rights violation to give a responded statement of facts within the period specified by the Commission.

Arguably, it is the right approach that the NHRC is empowered to intervene whenever human rights abuses have been brought to its notice by whistle-blowers, media coverage etc. In 2012, for example, the Commission initiated an inquiry into six alleged misconduct incidents without complaints.⁶⁴ This power enables the Commission to be proactive in

⁶³ *ibid* 124.

⁶⁴ *ibid*.

tackling human rights issues and be in touch with the real situation of human rights violations in Thailand.

(b) Complaints Procedures

Under the NHRC system, an inquiry is launched once a complaint has officially been recorded. In that case, the NHRC has the following powers to make sure that all the necessary evidence is in hand for the uncovering of the truth:⁶⁵

- (1) [the NHRC can] summon a Government agency, State agency, or State enterprise to give written statements of facts or opinions concerning the performance of official duty or other duties or to deliver objects, documents, or other related evidence or to send a representative to give statements.
- (2) [the NHRC can] summon a person, juristic person, or private agency concerned to give statements or to deliver objects, documents, or other related evidence at the date, time and place specified.

Under the system of the NHRC, mediation was also introduced as an alternative to a formal inquiry; this is prescribed in paragraph 1, section 27 of the NHRC Act as follows:

[T]he Commission shall, if it deems mediation is possible, mediate between persons or agencies involved to reach an agreement for compromise and solution of the problem of human rights violation. If the parties agree to compromise and solve the problem and the Commission considers the agreement is within the scope of human rights protection, the Commission shall prepare a written agreement for the parties and settle the matter.

The NHRC complaints system formally incorporates within it the principle of restorative justice – a process that manages a person-to-person communication within a controlled environment to let the victim clarify the impact of the crime and to let the offender makes

⁶⁵ NHRC Act (61) s 32 (1), (2).

amends to the victim for what had happened.⁶⁶ This formal use of the process of mediation makes the NHRC system distinct from those operated by the Ombudsman and the NACC;⁶⁷ arguably, one may see this process as the strength of the NHRC complaints system.

The English complaints system similarly provides an option for the complainant to have their grievances addressed by means of mediation via the so called ‘local resolution’ – a flexible process which aims to meet the needs of the complainant without resorting to a formal investigation into a complaint.⁶⁸ It should be noted that neither mediation nor local resolution are compulsory but rather are entered into voluntarily (see further in chapter 6). In the case of Thailand, if the parties in conflict do not agree to mediate, the NHRC must proceed with a formal process of handling complaints.

At the end of the inquiry:⁶⁹

If the Commission is, ..., of the opinion that there is a commission or omission of acts which violate human rights, the Commission shall prepare a report of the examination which shall specify details of the

⁶⁶ Restorative Justice Council, ‘What is ‘Restorative Justice’ (*RJC*)’ <http://www.restorativejustice.org.uk/what_is_restorative_justice/> accessed 10 December 2014.

⁶⁷ As noted above, there is no mediation process under the Ombudsman system but the Ombudsman usually adopts the less formal negotiation approach, the so called ‘win-win solutions’ when dealing with complaints. See also, the discussion about the NACC system below.

⁶⁸ In this regard, para 6(2) and (7), sch 3 of the PRA prescribe that:

6(2) Subject to paragraph 7, the appropriate authority shall determine whether or not the complaint is suitable for being subjected to local resolution, and—

(a) if it determines that it is so suitable and the complainant consents, it shall make arrangements for it to be so subjected; and

(b) in any other case, it shall make arrangements for the complaint to be investigated by that authority on its own behalf.

(7) A consent given for the purposes of this paragraph shall not be capable of being withdrawn at any time after the procedure for the local resolution of the complaint has been begun.

See also, Independent Police Complaints Commission, ‘Statutory Guidance to the Police Service on the Handling of Complaints’ (IPCC 2015) 31.

⁶⁹ NHRC Act (n 61) s 28 para 1.

circumstances of human rights violation, reasons for such opinion and remedial measures for solving human rights violation which shall clearly set forth the legal duties and methods of performance of a person or agency, including the period for implementation of such measures.

Should the police force area or the RTP fail to implement the NHRC remedial measures:⁷⁰

[T]he Commission shall report to the Prime Minister to order an implementation of the remedial measures within sixty days as from the date the report is received.

In any case where the Prime Minister also fails to take action to command the police to implement the measures:⁷¹

[T]he Commission shall report to the National Assembly for further proceeding. In reporting to the National Assembly, if the Commission deems it beneficial to the public, the Commission may disseminate to the public the case in which no implementation of remedial measures for solving the human rights violation has been taken.

As noted in chapter 1, the enabling law of the NHRC does not provide to it the power to discipline the officer found to have acted wrongfully. We saw earlier that this was also true of the Ombudsman. This raises the question as to whether or not a lack of power to require the police to implement the remedial measures also undermines the effectiveness of the NHRC.

However, according to section 257 (4) of the 2007 constitution, the NHRC is authorised to present the case in court on behalf of the complainants. In this regard, another important question arises as to how the NHRC power to represent its complainants in court

⁷⁰ *ibid* s 30.

⁷¹ *ibid* s 31.

contributes to the effectiveness of the handling of complaints. All of the questions highlighted here will be critically discussed below.

(c) Critical Evaluation of the NHRC Complaints System

In NHRC inquiries, the Commission claims to place importance upon an interview alongside the examination of documentary proof. A number of the NHRC complainants confirm that they were notified to come in for interview after the recording of complaints:

I was asked to visit the NHRC office for an interview. Not only that, I also had the chance to cross-examine a number of officers involved in my case.⁷²

The NHRC officers told me to come in for interview. And, I did have an interview once with the NHRC commissioner.⁷³

Nonetheless, some other complainants report that an interview is not always held to help establish the facts:

I hadn't been required to give an interview with the NHRC; as far as I understand, the alleged officers too, they had never been summoned for any investigative interviews. All I could recall is that I did join the seminars on human rights [held by the NHRC] and I raised a number of questions about my case but they just broadly responded which didn't make me understand and you [the interviewer] have to know that in a seminar that consists of many complainants, they [the NHRC] were just bombarded with questions, but in the end, everybody agreed that all the answers given to us [complainants] were pretty vague.⁷⁴

The NHRC has done nothing apart from helping our family claiming some compensation that we were entitled to from the Ministry of Justice.

⁷² Interview with a complainant A (n 36).

⁷³ Interview with [anonymous], a complainant C (Bangkok, Thailand, 2 July 2014).

⁷⁴ Interview with [anonymous], a complainant F (Bangkok, Thailand, 19 July 2014).

The Commission asked me to attend a number of seminars on human rights but I've never been required to give a formal interview.⁷⁵

There are evidently inconsistencies in the way the NHRC seeks the truth as an interview is not always adopted as a means to establish the facts. Nonetheless, we can see a marked distinction in the approaches adopted by the NHRC and the Thai Ombudsman in the inquiry process.

Turning next to more serious issues of power, even though in theory the NHRC has the authority to require the officer involved to present the evidence and/or to attend an interview, the enabling legislation of the NHRC merely prescribes that:⁷⁶

Any person who fails to comply with section 32 (2) will receive a prison sentence [of] no more than six months or face fines of up to 10,000 Bath or both.

This means the NHRC is only capable of imposing sanctions against a private body or a civilian who fails to comply with its instructions (see text accompanying note 65). The NHRC, therefore, lacks binding authority to force the officer involved or the government agencies concerned to provide full cooperation with its inquiry as, unlike the Ombudsman, it does not have the power to impose any punitive measures against the officials who fail to conform to its instruction. This has proven to be one of the long-standing issues of the NHRC system that often holds back the inquiry progress.

Take the notorious incident which occurred during the protest against the Trans Thai-Malaysia Gas Pipeline project. In December 2002, the indigenous peoples of Songkhla

⁷⁵ Interview with [anonymous], a complainant G (Bangkok, Thailand, 26 July 2014).

⁷⁶ NHRC Act (n 61) s 34.

province staged a peaceful protest⁷⁷ against the above internationally-funded natural gas development scheme.⁷⁸ Following the abortive attempt of the local protestors to submit a letter of complaint to the then Prime Minister while he was attending a cabinet meeting near the protest site, armed police unlawfully took 12 representatives of NGOs which had associated themselves with the protest into custody and dispersed the rest of the protestors by beating them aggressively.⁷⁹ Having been invited by the NHRC for an interview, the Chief Police and five other senior officers involved in this violent incident all gave excuses (eg, having a meeting) and refused to come forward whilst the NHRC, on its own, could do nothing further.⁸⁰ The refusal of these officers to be interviewed shows just how powerless the NHRC was in a very serious case. Not only that, section 32(1) also leaves another glaring loophole in the NHRC system. Considering the phrase “...send a representative to give statements...” (see text accompanying note 65), the previous study of the NHRC system highlights that, more often than not, instead of assigning those who are aware of the issues, the appropriate authority sends a representative who has no relevance or full knowledge of the alleged human rights abuse incident for an interview.⁸¹ This apparently undermines the rigour of the inquiry and also creates delay because the Commission needs to require more officers to be interviewed to ensure that the accounts given to it are relevant and justifiable.

⁷⁷ Administrative Court (Songkhla Province), Thailand, ruling no. 51/2549 (2006); Supreme Administrative Court, Thailand, ruling no. 711/2555 (2012).

⁷⁸ Larry Lohmann, ‘Gas, Waqf and Barclays Capital: A Decade of Resistance in Southern Thailand’ (2008) 50 *Race and Class* 89, 3.

⁷⁹ Friends of the Earth, ‘Barclays, Human Rights and the Trans Thai-Malaysia Gas Pipeline’ (FOE 2005) 4.

⁸⁰ National Human Rights Commission, ‘The Clarification of the National Human Rights Commission on the Violent Incident in relation to the Trans Thai-Malaysian Gas Pipeline Project’ (NHRC, June 2003) <http://www.nhrc.or.th/2012/wb/th/contentpage.php?id=46&menu_id=1> accessed 30 July 2013; see also, the National Human Rights Commission, case no.20/2546 (2003) [in Thai].

⁸¹ Pirom Sriprasert, ‘The Problems Relating to the Procedures of Investigation of Human Rights Violations by the National Human Rights Commission of Thailand’ (LLM Thesis, Thammasat University 2008) 178-179 [in Thai].

The position taken here is that the lack of power to compel the officers to attend an interview is a major hindrance to the NHRC inquiry process. A contrary position was taken, however, by the NHRC commissioner interviewed for this research. The commissioner said:

We normally look for cooperation from those officers [who are required to be interviewed]. In the past, there might be some cases that we found difficult to get cooperation. I accepted that, normally, we rarely get cooperation from the police and judges in particular. In case of police complaints, for instance, they usually refuse to attend an interview with us; if [we] pressed them, they would just put off the attendance of interview until they're sure that they have everything to argue with us; then, they may come in for an interview. However, I just need to point out as well that when it comes to the inquiry, we [the NHRC inquiry officers] are the law enforcement officials according to the criminal penal code, so we are able to pursue criminal proceedings against the officers who fail to conform to our instructions. But we have never sought to do that.⁸²

Consistent with the interview, section 33 of the NHRC Act prescribes that:

In the performance of duties under this Act,...officials appointed by the Commission to examine human rights violation shall be [the law enforcement] official under the Penal Code.

The interview comments reflect the reality that the Commission aims to prioritise cooperation from the police officers and never wishes to capitalise upon its legal status for the benefit of the inquiry, even though the NHRC rarely obtains police cooperation not least when dealing with landmark cases.

⁸² Interview with [anonymous], the NHRC commissioner (Bangkok, Thailand, 19 June 2014).

In addition to the Trans Thai-Malaysia case, the murder of two British citizens on Koh Tao, Thailand in 2014 (see chapter 1) indicates how hamstrung the NHRC was when it had to deal with the police.⁸³ Soon after the police began to investigate the murder, the NHRC received a complaint from the legal representative of the alleged offenders claiming that the confession of his clients was extracted under torture by police investigators; the Commission then notified the Office of Police Forensic Science (OPFS), the Provincial Police Region 8 and the Metropolitan Police Bureau (MPB), at least four times, to send their representatives to come in for an interview but none of those bodies responded to the NHRC.⁸⁴ Even though the police later turned up before the Commission, the commissioner interviewed for this research made the following observations:

As I told you earlier, the officers involved in this case finally turned up as they feel confident that they have everything in hand to argue with us.⁸⁵

Even though the NHRC does not have the power to penalise the officers who refuse to cooperate with its inquiry, it can pursue criminal proceedings against those officers; however, the facts show that the Commission has failed to adopt that approach. Taken together, the earlier interview with the NHRC commissioner and the approach the NHRC adopted in dealing with the Koh Tao case seem to suggest that the NHRC lacks the will to deploy other available channels to compel police cooperation at times.

⁸³ Peter Walker, 'Koh Tao's Dark Side: Dangers of Island Where Britons Were Murdered' *The Guardian* (23 November 2014) <<http://www.theguardian.com/uk-news/2014/nov/23/briton-thailand-murder-hannah-witheridge-david-miller-mystery-mafia-fear>> accessed 2 February 2015.

⁸⁴ Paritta Wangkiat and Wassatos Ngamkham, 'Police refuse to answer 'torture' claim' *Bangkok Post* (4 November 2014) <<http://www.bangkokpost.com/news/general/441255/police-refuse-to-answer-torture-claim>> accessed 10 January 2015.

⁸⁵ Interview with the NHRC commissioner (n 82). 'Koh Tao murders defence details torture, intimidation' *Bangkok Post* (Bangkok, 25 September 2015) <<http://www.bangkokpost.com/news/crime/707448/koh-tao-murders-defence-details-torture-intimidation>> accessed 10 October 2015. See also, Tom Phillips, 'Three 'Attackers' involved in Thai Island Murders, Police Say' *The Telegraph* (14 September 2014) <<http://www.telegraph.co.uk/news/worldnews/asia/thailand/11108188/Three-attackers-involved-in-Thai-island-murders-police-say.html>> accessed 10 January 2015.

The human rights lawyer interviewed for this research also criticised the NHRC for adopting an approach that will lead an inquiry nowhere:

The process of collecting evidence [by the NHRC] is superficial and slow. The NHRC will not get cooperation from the police in most circumstances as they would say something like the evidence that the NHRC is looking for is classified. So, I'd say that on some occasions the NHRC should consider using formal powers to deal with the police.⁸⁶

In addition, the following interviews with complainants demonstrated that the NHRC is incapable of handling police complaints and is also too subservient to the police:

They [the NHRC] came to my province and visited the scene of crime [where the interviewee's son died]. But unlike when the DSI [Department of Special Investigation] officers were here, no one [local police officers] paid respect to the NHRC commissioners or officers. I meant the local officers didn't seem to care to give them [the NHRC] cooperation. It's simple. The NHRC lacks adequate power to take on the police. Listen, when the DSI officers did a field investigation, the police [at a local force] were extremely cautious and anxious because they knew that the DSI is capable of investigating anyone they suspect, the law gives them power to do that.⁸⁷

I [the interviewee] told you. The NHRC is afraid of the police. I checked on the progress of my complaint with one of the senior investigating officers. Instead of explaining things to me, the officer said 'isn't that enough?; you know what, I couldn't even live a normal live after I have

⁸⁶ Interview with a human rights lawyer (n 37).

⁸⁷ Interview with a complainant F (n 74). The Department of Special Investigation (DSI) is a government body under the control of the Ministry of Justice. According to section 21 of the Special Investigation Act 2004, the DSI officers have statutory duties to investigate all criminal cases that are within the purview of the department, including the allegations against senior police officers.

started handling your complaint'. I suddenly realised that the responsible officer in my case is afraid of the police.⁸⁸

Apparently, the NHRC was perceived as lacking not just sufficient power but also the will to deal with the more powerful police authority; hence, the Commission is likely to make little or no progress in addressing complaints, especially the serious ones.

In England and Wales, it has also been a perennial problem for the IPCC to receive full cooperation from the alleged officers when it comes to giving interviews. A former deputy chair of the IPCC has suggested the following when being asked about the obstacles the IPCC faced over the course of the investigation into a high-profile case:

The difficulty is that we [the IPCC] rely on their [the police's] co-operation.⁸⁹

Since March 2013, the enactment of the Police (Complaints and Conduct) Regulations has strengthened the position of the IPCC as it enables the Commission to compel the police to come in for an interview. The Regulations say “the serving officer shall attend the interview [with the IPCC]”.⁹⁰ However, even after the legislative change the chair of the IPCC admitted that, still, the IPCC is struggling to uncover the truth during an interview with the officer involved:

The law has now changed and we [the IPCC] can compel officers to come in for interview. However, they [the police] can and still do refuse to answer questions verbally at interview. Families and friends of those who die during police contact find it inexplicable that officers

⁸⁸ Interview with a complainant A (n 36).

⁸⁹ Simon Cox, ‘IPCC seeks increased powers to investigate police’ *BBC radio 4’s* (26 April 2012) <<http://www.bbc.co.uk/news/uk-17843690>> accessed 5 February 2015.

⁹⁰ Police (Complaints and Conduct) Regulations 2013, reg 2(7).

present at someone's death do not fully co-operate with subsequent investigations – so do we.⁹¹

The IPCC went further and pointed out that:

[I]n some cases, police officers and staff are being advised by the Police Federation or their legal representatives, to attend but not answer questions, and are offering instead to provide written statements.⁹²

It has been argued however that, in some cases, the IPCC deliberately failed to treat the officers involved as suspects and interview them under caution which would, compared to a witness interview, maximise the chances of eliciting the facts from those officers.⁹³ This argument is substantiated by the facts which emerged in the judgment given by Justice Collins in *D v IPCC* [2011] EWHC 1595 (Admin).

The court set out clearly that it found the IPCC to have intended to treat the officers involved in this particular case as witnesses rather than suspects because the IPCC believed that they would cooperate more with its investigation, but it was apparent that this was wrong as none of the officers involved gave their cooperation to the IPCC.⁹⁴ This therefore reflects that the problem of a lack of cooperation is just one side of the coin as the other side of it shows that it is the IPCC that lacked courage to deploy its existing powers to establish the facts properly; notably, the above analysis of the NHRC, to a

⁹¹ Vikram Dodd and Alan Travis, 'Mark Duggan Police Must Stop Refusing to be Interviewed, Says IPCC Head' *The Guardian* (London, 14 January 2014) <<http://www.theguardian.com/uk-news/2014/jan/14/mark-duggan-police-must-talk-says-ipcc>> accessed 5 February 2015.

⁹² Independent Police Complaints Commission, 'Review of the IPCC's Work in Investigating Deaths: Final Report' (IPCC 2014) 50.

⁹³ Police Action Lawyer Group, 'Submissions to the Independent Police Complaints Commission regarding its Work in Cases involving a Death' (PALG, February 2013) <<http://www.palg.org.uk/documents/>> accessed 20 June 2015. Police and Criminal Evidence Act (PACE) 1984, Code of Practice C, paras 10.5, 11.1A. Note that in an interview under caution, the officer involved will understand that, once he has been cautioned, refusal to answer questions during an interview may harm his defence in court not least when he has later disclosed the facts that could help prove his innocence in court but did not do that from the outset at the interview. Under such circumstances, the court can draw adverse inferences. This should therefore increase the pressure on the police officer to cooperate with the IPCC by answering its questions.

⁹⁴ *D v IPCC* [2011] EWHC 1595 (QB).

certain extent, reflects a similar problem (see sub-section *Powers, (h) Deploying powers* in chapter 6).

We now come to another controversial point of the NHRC complaints system which is concerned with the power to hold the officers involved responsible for their misconduct. Based on the evidence of this research, complainants wish that the NHRC had more power in order to finish their job properly:

By and large, I'm happy with the investigation outcomes however I think they [the Commission] haven't got enough power to do anything further. I view that they need more power in order to address complaints effectively. The NHRC has to rely on other bodies to compel the police to accept their recommendations but the fact is those bodies just don't respond to the Commission's request.⁹⁵

The NHRC couldn't help me. They said [the NHRC] they would like to help more, to bring the offender to justice, but according to the statutory powers they have, they could help this much [playing an intermediary role in claiming compensation from the Ministry of Justice for the victim of crime].⁹⁶

These interviews flag up a fundamental issue of the NHRC complaints system which is that the NHRC cannot afford to ensure that officers are properly held to account at the end of the investigation. The reason for this is that the enabling law of the NHRC does not give the Commission any power to enforce its own recommendations; even worse, the Supreme Administrative Court of Thailand has ruled that remedial measures introduced by the NHRC are non-binding on government agencies.⁹⁷ Accordingly, the Commission can only

⁹⁵ Interview with a complainant F (n 74).

⁹⁶ Interview with a complainant G (n 75).

⁹⁷ Supreme Administrative Court, Thailand, order no. 451/2547 (2004).

require other constitutional bodies to compel the police to implement its recommendations.⁹⁸

The ramifications of the above ruling are that the police authority does not take the NHRC recommendations seriously, and neither does the government. The NHRC inquiry case number 18/2546, for instance, underlines how powerless the NHRC was when seeking cooperation from the police and the government. In this particular case, the Commission recommended some remedial measures to the RTP following its inquiry outcome which found that the officer involved had forced the victim (the complainant) to confess that he was a drug dealer.⁹⁹ The RTP failed to enforce the proposed measures and also failed to respond to the NHRC. The NHRC then took a step further by reporting this case to the prime minister as the highest superior overseeing the RTP. However, the Office of the Permanent Secretary, the Prime Minister's Office, submitted a letter to the NHRC saying that the RTP found no evidence to substantiate the case.¹⁰⁰ Another similar instance is the inquiry case no 341/2555. In this case, the NHRC recommended that the RTP should take action against an immigration police officer on grounds of illegally accessed personal data [of the complainant]; nevertheless, the police force area concerned refused to endorse such a recommendation but decided to conduct its own investigation into the case and produced a report confirming that the officer concerned was innocent.¹⁰¹ The above cases demonstrate that it is difficult for the NHRC to bring the officer at fault to book. This research therefore argues that the substantiation rates of complaints that the NHRC is able to secure (see Table: 4.2) merely denote that the complaints are well-grounded but a lack of binding authority to punish the officers at fault leaves the NHRC incapable of

⁹⁸ NHRC Act (n 61) s 30 and s 31.

⁹⁹ National Human Rights Commission, case no.18/2546 (2003).

¹⁰⁰ *ibid.*

¹⁰¹ National Human Rights Commission, case no. 341/2555 (2012).

addressing the complainants' grievances effectively. At least, the two aforementioned cases prove that the NHRC inquiry is at risk of being conducted in vain at times.

When asked about their existing powers, the NHRC commissioner and a former NHRC commissioner interviewed for this research were in agreement that the Commission should not be given the role and power to penalise the officer involved:

The NHRC was designed to serve as the fact-finding mechanism. We are not the body that was designed to hold the officer at fault to account. So, my view is the NHRC is perfectly capable of doing its jobs. I can't see the necessity of us having the power to penalise the officer at fault.¹⁰²

It is important to be aware that the NHRC is acting as an inquiry body which seeks to establish the facts. We were designed for that purpose, so it is unnecessary for us to have the power to punish anyone.¹⁰³

The argument that the NHRC should act only as an inquiry body seems plausible in theory. However, the facts show that some of the NHRC inquiries were conducted in vain which means that the complainants' grievances will not be resolved which in turn erodes public confidence in the NHRC system; this seems to be supported at least by the national survey in 2012, which revealed that the NHRC received least trust compared to the Ombudsman and the NACC.¹⁰⁴

Despite that, a former NHRC commissioner argued further during the interview for this research that:

¹⁰² Interview with the NHRC commissioner (n 82); this research will not go into details about the NHRC Bill as Thailand is under military rule at the moment; thus, the situation is uncertain as to whether such bill would be legislated or not.

¹⁰³ Interview with [anonymous], a former NHRC commissioner (Bangkok, Thailand, 26 June 2014).

¹⁰⁴ 'Opinion Survey on Public Satisfaction of Public Services and the Performance of Public Organisations' (KPI& National statistical office 2012) 10 [in Thai].

We don't have the power to punish anyone but don't forget that we [the NHRC] have the power to bring the case to the court [the constitutional court, the administrative court or the court of justice] on behalf of the complainant.¹⁰⁵

The interview with one of the serving commissioners indicated, however, that this power was rarely if ever used:¹⁰⁶

Yes, we do [have the power to present the case in court on behalf of complainants]. But, ok, I'll be honest with you; we have never used the power to bring the case to court of justice on behalf of any complainant since the Commission was established. The problem for the Commission is that we lack skillful personnel who can fight in court for us. These days, if we view that going to court is a must, I personally seek help from the Lawyer Council [of Thailand] but these cases normally involve administrative issues. So the whole issue is a bit complicated as there are so many things that we need to rely on a cooperative basis. So, this power hasn't been used to its best effect.

This indicates that the power of the NHRC to represent complainants in court, as yet, does not contribute much to the handling of complaints. Nevertheless, it is arguable that, without a rigorous inquiry being conducted, even if the NHRC brings the case to court, it seems unlikely that the Commission will be able to fight the case in court effectively.

Overall, the evidence from this research shows that, in reality, the NHRC system is beset with many disadvantages. The most serious of these are the lack of power to compel police cooperation and the lack of power to impose punishment when the officer complained against is found to have acted wrongfully. In this regard, the NHRC complaints system shares the same significant drawbacks with the system operated by the Ombudsman.

¹⁰⁵ Interview with a former NHRC commissioner (n 103).

¹⁰⁶ Interview with the NHRC commissioner (n 82).

The National Anti-Corruption Commission

The NACC is another key agency for the handling of complaints on grounds of malfeasance in office.¹⁰⁷ When it comes to police malpractice, the statistics in the seven-year period from 2001 and 2008 show the following:¹⁰⁸

Table 4.3: Complaints registered with the NACC

Year	Complaints registered	Pending and carry forward	Unrecorded complaints	Substantiated complaints	Unsubstantiated complaints
2008	254	599	9	10	57
2007	401	1,517	171	11	571
2006	385	1,132	no figures available		
2005	383	773	7	0	17
2004	403	626	65	35	156
2003	430	491	84	30	181
2002	386	296	91	16	84
2001	383	-	57	2	56

These statistics do not just reflect the extent of police complaints that the Commission has dealt with in a given period, but also highlights two extraordinary facts; a massive backlog of police complaints being brought forward each year and substantial numbers of unrecorded complaints and unsubstantiated investigations. It is therefore worth drilling down into the NACC system to come to grips with its operation and to assess whether or not it is capable of addressing police complaints.

¹⁰⁷ Constitution of the Kingdom of Thailand 2007, s 250 (3). The 2007 Constitution, hereinafter, will be referred to as the 'Constitution'.

¹⁰⁸ Kasemsarn Chotchakornpant, Preeda Sataworn and Prasert Patanaponpaiboon, 'A Study of Preventative Measures to Combat Abuse of Power: The Case of Abuse of Police Power' (NACC 2009) 41 [in Thai]. There was a military coup in 2006; thus, the operation of the NACC system was temporarily suspended.

(a) Access to the NACC Complaints System

Before we go any further, it should be underlined that the handling of complaints by the NACC depends on a body of legislation; in this regard, the NACC Act and the NACC Inquiry and Evidence Regulations are the key frameworks streamlining the operation of the system.¹⁰⁹ When it comes to the accessibility of the NACC system, in contrast to the Thai Ombudsman and the NHRC, basic criteria specifying the eligibility to complain are not set out in any statutory provision governing the system. However, we can reasonably assume from the NACC Inquiry Regulations that a complaint can be filed to the NACC by any person as long as he or she is able to provide sufficient information for the Commission to establish the facts in relation to the alleged misconduct. This is shown as follows:¹¹⁰

- (1) in any case where a complaint is made in writing, the officer shall record such complaint ... and submit it to the director of the relevant division [in the NACC] for further consideration.
- (2) in any case where a complaint is made verbally, there shall be at least two officers writing down a detailed account given by the complainant ... and [they should then] proceed to the next step as specified in (1).

In line with the above regulation, the NACC advised its would-be complainants to access the following channels for registering complaints with the system; these channels range from making a complaint in person, submitting an online complaints form,¹¹¹ or sending a

¹⁰⁹ National Anti-Corruption Commission Inquiry and Evidence Regulations 2011, reg 5 (2). This Regulations, hereinafter, will be referred to as the 'NACC Inquiry Regulations' This Regulations set out the detailed complaints procedures under the NACC system.

¹¹⁰ *ibid* reg 5 (1), (2).

¹¹¹ National Anti-Corruption Commission, 'Advice on Making a Complaint' (NACC) <http://www.nacc.go.th/nacc_accuse_suggest.php> accessed 20 April 2015 [in Thai].

letter of complaint via a postal service.¹¹² In addition, section 89 of the NACC Act widens the gateway even more via the following route:¹¹³

In the case where the injured person [of the misconduct] has lodged a complaint, or a denunciation is made, to the inquiry official [the police] requesting for an action against a State official...the inquiry official [the police] shall refer the matter to the NACC within thirty days as from the date of the complaint or the denunciation...

Leaving aside a complaints-based investigation, sections 43(4) and 88 of the NACC Act prescribe that:¹¹⁴

[T]he NACC shall investigate the following;

43 [T]he NACC shall conduct a fact inquiry in accordance with the provisions of this Chapter in the following circumstances:

(4) there is a reasonable cause to suspect that a State official... has committed an offence under section 88;

88 When the NACC has a reasonable cause to suspect that any State official has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, the NACC shall proceed in accordance with Chapter 4, Fact Inquiry [starting from section 43].

This shows that the NACC is allowed to conduct an investigation on its own initiative. It is worth pointing out that the Thai complaints authorities under review all have the power of initiative, and this is potentially useful for tackling police malpractice.

¹¹² National Anti-Corruption Commission, 'A Leaflet on Increasing Public Involvement in the NACC's New Legislation (1)' (NACC) <https://www.nacc.go.th/more_news.php?cid=95&filename=index> accessed 20 April 2015 [in Thai].

¹¹³ Organic Act on Counter Corruption 1999, s 89. This Act, hereinafter, will be referred to as the 'NACC Act'. This translation of the NACC Act appears on the NACC website.

¹¹⁴ *ibid* ss 43(4), 88.

(b) Complaints Procedures

Having recorded a complaint, the NACC investigating officer shall proceed with the following procedures according to the NACC Inquiry Regulations:¹¹⁵

- (1) to request more details on the alleged misconduct from the complainant;
- (2) to record verbal statements given by the people involved;
- (3) to summon evidence from relevant government agencies, private bodies or individuals;
- (4) to conduct a field investigation [if necessary];

During the investigation, section 25 (1) – (3) of the NACC Act sets out that the NACC shall have the following powers:¹¹⁶

- (1) to give an order instructing a Government official, official or employee of a Government agency, State agency, State enterprise or local administration to perform all such acts as are necessary for the performance of duties of the NACC or to summon relevant documents or evidence from any person or to summon any person to give statements or testimonies, for the purpose of a fact inquiry;
- (2) to file an application with the competent Court for an issuance of a warrant permitting an entry into a dwelling-place, place of business or any other place... for the purposes of inspecting, searching, seizing or attaching documents, property or other evidence related to the matter under inquiry.

To make the officers involved legally bound by the NACC instructions, the following punitive measures were introduced under section 118 of the NACC Act:

¹¹⁵ NACC Inquiry Regulations (n 109) reg 8 (1) – (4).

¹¹⁶ *ibid.*

Any person who fails to comply with an order of the NACC under section 25 (1) ... shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Here, the position of the NACC over the course of an investigation is firmly consolidated because punitive measures against defiant officers enable the Commission to be able to exact cooperation from the police. Crucially, the NACC was also tasked with a criminal investigatory role; hence, it also has the jurisdiction over matters alleging criminality. In this respect, the Commission:

[Can] inquire into facts and gather evidence in order for the facts to be known or the offence to be proved and in order for the offender to be prosecuted and punished;¹¹⁷

In practice, the NACC investigation will be conducted to identify a disciplinary offence in parallel to a criminal offence. In 2014, the NACC announced during a press conference that it has brought 63 criminal cases to court since 2006.¹¹⁸ In this regard, the NACC is much more powerful compared to its counterparts.

At the completion of investigation, if the Commission substantiates the complaint, it shall pursue one or all of the following options in accordance with section 92 and/or section 97 of the NACC Act. Section 92 underlines that:

[W]hen the NACC, ..., passes a resolution that a particular alleged culprit has committed a disciplinary offence, the President shall send the report and existing documents together with the opinion to the

¹¹⁷ NACC Act (n 113) s 26(1).

¹¹⁸ ASTV, '8 Years on: The NACC is Handling 34,528 Complaints Cases – the Provincial Administrative Organisations have been Complained against Most – Some Cases have been Brought to Court without Having to Rely on the OAG' *Manager Online* (Bangkok, 21 October 2013) <<http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9570000121349>> accessed 20 January 2015 [in Thai].

superior or the person who has the power to appoint or remove such alleged culprit for the purpose of considering the disciplinary penalty for the offence in respect of which the NACC has passed the resolution, without the appointment of a disciplinary inquiry committee.

Whilst section 97 paragraphs 1 and 2 specify that:

In the case where the NACC passes a resolution that any matter put in the allegation amounts to a criminal offence, the President shall furnish the report, documents and opinion to the Prosecutor-General ...for the purpose of criminal proceedings.

[I]n the case where [following disagreement between the NACC and the Prosecutor-General on prosecution, a working committee is convened to settle such disagreement and] such working committee fails to arrive at a conclusion as to the prosecution, the NACC shall have the power to initiate the prosecution of its own motion or appoint an attorney to institute the prosecution on its behalf.

By virtue of section 92, the NACC apparently has an absolute power to direct the police force area or the RTP to uphold its proposed disciplinary measures because the police are forbidden to re-conduct the investigation. In this respect, the Commission will table a resolution whether the alleged officer has committed gross misconduct or just misconduct. The police authority must endorse such a resolution and determine what disciplinary measures should be implemented to conform to the NACC resolution.¹¹⁹ The Commission also has the power to institute criminal proceedings according to section 97. Fifteen out of the 63 cases prosecuted by the NACC since 2006 have been brought to court without the

¹¹⁹ National Anti-Corruption Commission, case no. 2-008-44 101-2-4/2557(2014); no. 2-030-54 049-2-5/2557(2014).

Officer of the Attorney General coming to its assistance.¹²⁰ One of those 15 cases was involved with the deaths of the anti-government protestors on 7th October 2008 (see chapter 3).¹²¹

Under the NACC complaints system, the process subsequent to the investigation deviates very sharply from those of the Ombudsman and the NHRC. Sections 92 and 97 ensure that the NACC will handle the complaint from start to finish without the involvement of the executive and/or legislative branch. It is worth pointing out here that the NACC does have a role to play in the criminal prosecution whilst the IPCC does not. The IPCC briefly explains its role in criminal proceedings as follows:¹²²

If a[n] [investigation] report indicates a criminal offence may have been committed and the IPCC ... considers it to be appropriate for the matters dealt with in the report to be considered by the CPS [Crown Prosecution Service] or they fall within a prescribed category, the report must be referred to the CPS.

The legal framework of the NACC shows that it has the power it needs to deal with complaints against the police. It thus appears that the NACC is perfectly capable of resolving complaints against the police. One of the key reasons is that the Commission has a multiple role in handling police complaints as a disciplinary panel dealing with disciplinary matters;¹²³ as an investigative body looking into criminal offences; and as a prosecutorial body.¹²⁴ The strengths of the NACC system lie in the fact that the Commission itself is a quasi-judicial-like authority (its resolution is indisputable and

¹²⁰ '8 Years on: The NACC Is Handling 34,528 Complaints Cases' (n 118).

¹²¹ 'Beset with Cases "Shinawatra-Wongsawat" Opportunity and Way Out' *Isaranews Agency* (Bangkok, 15 February 2015) <http://www.isranews.org/isranews-scoop/item/36540-policy_36540.html> accessed 30 June 2015 [in Thai].

¹²² Independent Police Complaints Commission, 'Statutory Guidance to the Police Service on the Handling of Complaints' (IPCC 2015) 89.

¹²³ NACC Act (n 113) s 92.

¹²⁴ *ibid.*

cannot be subject to re-investigation),¹²⁵ and in the fact that the Commission is able to instigate criminal prosecution against the alleged officer when disagreement with the Attorney General erupts.¹²⁶ Given all the strengths the NACC system has, the question arises as to why the proportions of unrecorded complaints and unsubstantiated investigations are considerable each year. This question will be explored in the next section.

(c) Critical Evaluation of the NACC Complaints System

Leyland used the watchdog metaphor and described the NACC as a Doberman, at least in theory.¹²⁷ To judge from the power it has, one can readily agree with such a metaphor. The former senator interviewed for this research claimed that:

The NACC is far better compared to its predecessor organisation, namely the now defunct Office of the Commission of Counter Corruption (OCCC); I think the key reason is the NACC has a lot more power.¹²⁸

On the other side of the coin, a group of police officers interviewed for this research expressed their concern over the power of the NACC. They claimed that what worries them is the fact that, subject to the Constitutional Court judgement number 2/2546,¹²⁹ the police are barred from filing an appeal to the Police Commission as an appellate body against the NACC resolution on the investigation outcomes as they can do under the internal complaints system; this means that the NACC resolution is definitive as the police

¹²⁵ *ibid.*

¹²⁶ *ibid* s 97.

¹²⁷ Peter Leyland, 'Thailand's Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs' (2007) 2 JCL 151, 160.

¹²⁸ Interview with a former senator (n 38). See a discussion about the OCCC from text accompanying n 132.

¹²⁹ Constitutional Court, Thailand, ruling no. 2/2546 (2003). The judgement or an order of the Constitutional Court of Thailand is binding on all government bodies.

may neither re-investigate the case nor file an appeal against such a resolution. Here are their comments:

The NACC, in a way, is unreasonably powerful. Look, its resolution on disciplinary measures cannot be reviewed by any appellate body. So it is unfair to the police because the NACC becomes the sole authority that determines our future.¹³⁰

The above notion is found within much of the police community. However, a former deputy police commissioner interviewed for this research suggested that it is right that the NACC resolution on disciplinary matters cannot be challenged as:

If the officer involved is allowed to challenge or appeal [to the Police Commission] against the NACC resolution, it is highly likely that that officer will seek help from somebody that is able to pull strings for him or her.¹³¹

This argument is reinforced by previous studies which demonstrated that, over the lifetime of the OCCC, the police were not forbidden to dispute the OCCC's inquiry outcomes; hence, they were always keen to convene a disciplinary panel to re-examine the case whenever the outcomes of the inquiry counted against the officer involved. The consequence of this is that, ultimately, the decision whether to discipline the officers complained against was left in the hands of the police's governing body. What this meant in practice was that the officer complained about would either go free or receive a more lenient punishment than merited because of a 'string puller'.¹³²

¹³⁰ Group interview with police officers (n 41).

¹³¹ Interview with a former Deputy Commissioner (Provincial Police Region) (n 40).

¹³² Banyat Lertmaneerat, 'The Performance within the Jurisdiction of the NCCC in Inquiring and Determining the Case of the State Official Excused of Committing an Offence Accordance with Discipline' (LLM Thesis, Ramkhamheang University 2001) 70-71 [in Thai].

The human rights lawyer interviewed for this research pointed out that more power brings more responsibility to the Commission as well. The power the NACC has, therefore, does not just have a positive impact on the handling of complaints but also, somewhat paradoxically, has a negative impact upon it, not least in terms of the effectiveness of its investigation.

My view on the NACC is that, in a way, it has too much power which gives the public the impression that the NACC complaints system is effective. So, many people lodge complaints with the NACC [that it] led to the current situation where it needs to deal with a wasteland of cases. The fact shows that in the past there have been many cases that haven't been addressed as the statute of limitations had come to an end. This reflects that the NACC shoulder a huge burden. This can leads to the ineffectiveness of the NACC complaints system in the end.¹³³

In referring back to the NACC statistics (see Table: 4.3), it can be seen that the NACC has a massive backlog of police complaints to cope with every year. One of the NACC commissioners interviewed for this research accepted that the handling of complaints is becoming an intolerable burden hindering the effectiveness of the NACC complaints system. The commissioner said:

If you [the interviewer] talk about the effectiveness of our complaints system, I have to say that we're now facing heavy workloads, so the effectiveness is of course being undermined. Each of us [NACC commissioners] has to deal with so many cases year in year out.¹³⁴

¹³³ Interview with a human rights lawyer (n 37).

¹³⁴ Interview with [anonymous], the NACC commissioner A (Bangkok, Thailand 30 June 2014).

The same commissioner also pointed out during the interview that a referral of cases from other complaints authorities to the NACC is also one of the key factors adding to a substantial backlog of complaints. The commissioner claimed that:

You know what, one of the reasons why we are bearing a huge burden of complaints is due to the proportion of referred cases as well. Look, the Ombudsman, for example, they refer a number of complaints cases to us. Then, they just simply chase us up to see if we've finished off the job they left to us!¹³⁵

The fact that the NACC has to complete the job left to it by other watchdog bodies not just shows the limitations of those bodies in addressing complaints by themselves but also increases the burden of the NACC at the same time.

Next, the question arises whether a massive burden on the NACC accounts for the high proportions of unrecorded complaints and unsubstantiated investigations. In this regard, the findings of this research suggest that although there are a number of factors creating a huge burden on the NACC, it is arguable that the reason for a large proportion of unrecorded and unsubstantiated complaints boils down to the Commission's approach to the handling of complaints. To eliminate the backlog of complaints, the NACC adopted the approach of having a sub-committee investigate complaints before referring them to the Commission for review at the final stage.¹³⁶ The former senator interviewed underlined how problematic this approach can be:

The NACC is working very hard. To make sure that progress [in dealing with each complaint] will be made, the Commission

¹³⁵ *ibid.*

¹³⁶ Surapong Intarathawon, 'An Examination of State Power: A Study on the Fact-Finding Examination Process to Proceed in Cases against Government Officials according to the Act Accompanying the Constitution of Countering Corruption B.E.2542' (LLM Thesis, Ramkhamheang University 2006) 218-219 [in Thai].

introduced a sub-committee to help investigate complaints. But I'm telling you, the funny part is this, although one of the commissioners will chair a sub-committee, the great majority of members are outsiders who are regarded as an expert on the issues relating to the complaint. These external experts may be academics, civil servants, state officials including ex-police. But in many cases in the past, the fact shows that some of these people have a strong connection with the alleged officers and may pull strings for them. I'll give you an example how can they do that? Normally, each NACC commissioner has a lot of work to do, so most of them are likely to lose sight of some complaints, this will become the opportunity for the members who seek to protect the alleged officers to put off the handling of particular complaints, or in some cases they may convince the commissioner to discontinue the case. I personally believe that all of this [is] responsible for a lesser degree of the effectiveness of the NACC system.¹³⁷

In line with the interview, previous studies demonstrated that the NACC can appoint any person as a member of the sub-committee so long as that person does not fall into the exclusionary categories.¹³⁸ In the handling of police complaints, for instance, an active police officer is usually appointed to sit on the sub-committee (see the next section for an in-depth discussion). However, one of the NACC commissioners interviewed for this research made the following points in reaction to the argument that some members of a sub-committee may help the alleged officers through the back door:

¹³⁷ Interview with a former senator (n 38).

¹³⁸ Chanphetphun Phattanaphong, 'Power and Duties of the Inquiry Sub-Committee According to the Organic Act on Counter Corruption, B.E.2542 (1999): A Case Study of the Issues and Obstacles of the Fact Inquiry Process' (LLM Thesis, Ramkhamhaeng University 2004) 134 [in Thai].

Of course, these people shouldn't be appointed but the fact is the process of setting up the committee can be opposed if any of the parties in conflict considers that some of them may not be impartial.¹³⁹

In line with the above interview, a member of the NACC sub-committee may be opposed if he or she falls into any of the exclusionary categories laid down in the NACC Inquiry Regulations.

The criteria for this are shown as follows:¹⁴⁰

A person with any of the following conditions is prohibited from serving as a member of a sub-committee:

- (1) having prior knowledge of the alleged incident of misconduct, or having ever investigated the same matter...;
- (2) having private interests in the alleged incident of misconduct;
- (3) having animosity towards a complainant or the alleged wrongdoer;
- (4) being a complainant himself, or being a spouse, a parent, a descendant, or a sibling of a complainant or of the alleged wrongdoer;
- (5) being a relative, a business partner of a complainant or of the alleged wrongdoer, or having partnership or conflicts with a complainant or the alleged wrongdoer.

A petition against any members of a sub-committee must be submitted to the president of the NACC within seven days after the date those members are appointed...

Although the above provision seems to be fair, it is impractical for the complainant not least who is in vulnerable position to be able to realise, in a very short period of time, whether any members of a sub-committee may have a personal relation in some ways with

¹³⁹ Interview with [anonymous], the NACC commissioner B (Bangkok, Thailand, 1 July 2014).

¹⁴⁰ NACC Inquiry Regulations (n 109) reg 5(1)-(5).

the alleged officers. Crucially, a number of complainants pointed out that it is onerous in reality for an ordinary complainant to fully understand how the NACC system works and how a complaint is handled, let alone make use of the opportunity to make sure that none of the members of a sub-committee is likely to be biased:

I can say that after I complained with the NACC, I haven't been informed or had an explanation from anyone about how the system works. I remembered that the officer who registered my complaint just simply stamped my complaints form and told me to go back home and wait for the contact. I don't even know who was going to handle my complaint and how would it be handled? Most importantly, I've been contacted after the NACC decided to dismiss my complaint.¹⁴¹

When I got to the office [the NACC], there was a receptionist who skimmed through my complaint primarily to see the details of the complaint, the date, the name of the alleged officer and also the name of the complainant. Then, they stamped the complaint and let me go home. They explained nothing to me. I couldn't know who was going to investigate my complaint.¹⁴²

In addition to the above comments, previous studies also demonstrated that the NACC system is a closed and highly bureaucratic system.¹⁴³ The bureaucracy and a lack of openness of the system make it even more difficult for the complainants to understand the process and to be able to protect their rights. All of this substantiates the argument of a former senator that, in practice, those sitting in the NACC sub-committee are the real people who 'call the tune'.¹⁴⁴

¹⁴¹ Interview with [anonymous], a complainant B (Bangkok, Thailand, 27 June 2014).

¹⁴² Interview with a complainant A (n 36).

¹⁴³ Intarathawon (n 136) 221.

¹⁴⁴ See text accompanying n 137.

In the next section, this chapter aims to discuss the element of independence in the complaints bodies under review. The discussion will cast light on further issues that hinder the effectiveness of the Thai complaints systems.

III. External Complaints Authorities and the Element of Independence

A system for resolving complaints against the police is regarded as a vital component of the regulation of policing as it helps ensure the accountability of the police.¹⁴⁵ For decades, an element of independence has always been upheld as one of the core principles that should be adopted alongside the development of a police complaints system¹⁴⁶ since “independence will aid it [a complaints authority] in being objective and impartial”.¹⁴⁷ In this section, the notion of independence as it applies to the members of the Ombudsman, the NHRC and the NACC is critically discussed. A serious discussion of this will bring to light the extent to which the operation of these external complaints systems is independent.

As noted in chapter 1, the Ombudsman, the NHRC and the NACC are all independent of the police and the government. During the interviews for this research, the ombudsman, the NHRC commissioner and the NACC commissioners clarified their understanding of ‘an independent organisation’ as follows:

An independent organisation is a non-governmental body and, therefore, is not under influence of or controlled by the executive branch [the government].¹⁴⁸

¹⁴⁵ Graham Smith, ‘Citizen Oversight of Independence Police Service: Bifurcated Accountability, Regulation Creep, and Lesson Learning’ (2009) 3 Regulation and Governance 421, 422.

¹⁴⁶ Graham Smith, ‘Oversight of the Police and Residual Complaints Dilemmas: Independence, Effectiveness and Accountability Deficits in the United Kingdom’ (2013) 14 Police Practice and Research 92, 92.

¹⁴⁷ Samuel P. Huntington, ‘The Marasmus of the ICC: The Commission, the Railroads, and the Public Interest’ (1952) 61 YLJ 467, 508.

¹⁴⁸ Interview with the ombudsman (n 12).

The NHRC is an autonomous body meaning that it's not under command of anybody and not subject to political interference.¹⁴⁹

I'd say that an independent organisation is usually established for a specific purpose, thus it is not part of the typical division of branches according to the principle of the separation of power. For these reasons, it is independent of the government, the national assembly and the judiciary.¹⁵⁰

It [an independent organisation] is an organisation that is not dependent upon the government or any other organisations. Besides, the independent organisation must have its own statutory powers, the administrative office and personnel to help streamline its responsibility.¹⁵¹

These comments are reflective of how an independent body is usually conceived of in Thailand which is largely based on the concept that an independent body is an agency that enjoys structural autonomy from the government (and other bodies). The members of the complaints authorities interviewed for this research seem to suggest that because the authorities are independent of both the police and the government, the systems under their regulatory oversight would also be truly independent. However, structural independence is not necessarily indicative of operational independence. Therefore, the operational independence of the complaints bodies under review will be the main focus of attention in this section.

In discussing this, it is useful to draw upon the concept of 'regulatory capture'. Prenzler pointed out in 2000 that regulatory capture was not a term used in the existing literature on policing oversight; nonetheless, it can be applied to the issue of police influence upon the

¹⁴⁹ Interview with the NHRC commissioner (n 82).

¹⁵⁰ Interview with the NACC commissioner B (n 139).

¹⁵¹ Interview with the NACC commissioner A (n 134).

independence of a regulatory body.¹⁵² According to Dal Bó, regulatory capture is a situation where regulatory authorities end up being manipulated by the agencies that they are supposed to regulate in the first place.¹⁵³ Such manipulation results in what Kwak accounts for as a diversion of regulation away from the public interest and toward the interests of the regulatee.¹⁵⁴ The questions are how the regulators can find themselves being captured by the regulatees and how does this concept apply to the Ombudsman, the NHRC and the NACC? Posner indicated that a regulatory agency can be captured by the infiltration of people having an intimate relationship with a regulated body into the agency itself.¹⁵⁵ In the context of an external police complaints system, having ex-police investigators serve in a complaints authority fits in with the above analysis of regulatory capture. It is arguable that close proximity between people with police backgrounds and the police force through cultural and institutional bonds brings with it a serious risk of compromising impartiality in the complaints-handling process. In the preceding chapter, the analysis of patronage and fictive brotherhood, for instance, demonstrated just how strong the intimacy between police officers can be. This arouses a legitimate concern over the impartiality of people with police backgrounds when dealing with police complaints as an intimate relationship between ex-police and the police force can pave the way for a complaints body being manipulated in the interests of the police.¹⁵⁶

In Thailand, people with police backgrounds are not in a list of excluded categories of candidates for the jobs in the watchdog bodies including the Ombudsman, the NHRC and

¹⁵² Tim Prenzler, 'Civilian Oversight of Police: A Test of Capture Theory' (2000) 40 BJC 659, 663.

¹⁵³ Ernesto Dal Bó, 'Regulatory Capture: A Review' (2006) 22 Oxf Rev Econ Policy 203, 203-204.

¹⁵⁴ James Kwak, 'Cultural Capture and the Financial Crisis' in Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (CUP 2014) 73.

¹⁵⁵ Richard A. Posner, 'The Concept of Regulatory Capture: A Short, Inglorious History' in Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (CUP 2014) 54.

¹⁵⁶ *ibid.*

the NACC. Hence, their candidacies will not be rejected simply because they are former police officers.¹⁵⁷ It should be underlined that the statistics on ex-police personnel serving in each external complaints agency in question are unavailable (see chapter 2). This research, therefore, relies on the evidence from interviews. The NHRC and the NACC commissioners estimated that roughly 10 per cent of their investigators are ex-police, whilst the ombudsman confirmed that there is only one investigator with a police background serving in the Office.¹⁵⁸ On the surface, this does not seem to be problematic as the proportion of ex-police serving in each complaints body under review is relatively small. It is not just a case of percentages, however, but also the level of influence ex-police can have. The NHRC and the NACC, in particular, are moving towards capture as a number of people with police backgrounds are now serving as chief executives of those organisations. In addition, the findings of this research suggest that the roles of people having police backgrounds, together with the engagement of active police officers (see below, text accompanying note 159), in the investigation gives rise to considerable concerns that the handling of complaints may be directed towards the interests of the police (see also, how political influence can create the situation of regulatory capture in chapter 5).

One of the complainants expressed his disapproval of the position of the NHRC commissioner, who has a police background, towards the handling of his complaints. The complainant recounted the following incident which left him thinking that that particular commissioner is not impartial:

¹⁵⁷ Ombudsman Act (n 10) s 9; NHRC Act (n 61) s 6; see also, NACC Act (n 113) s 10.

¹⁵⁸ Interviews with the ombudsman (n12), the NHRC commissioner (n 82) and the NACC commissioner B (n 139).

[He said] ‘I’ve preliminarily looked into your complaint and I believe that the police officers who are alleged to be involved with your case have nothing to do with the case.’ The comments just made my blood boil, and I kept thinking how did you [the commissioner] know whether or not the officers complained against are uninvolved in spite of the fact that the NHRC hasn’t yet investigated my case? This show just how this commissioner leapt to the police’s defence.¹⁵⁹

The NHRC commissioner interviewed for this research addressed the point about ex-police personnel serving with the Commission as follows:

Of course, people having police backgrounds shouldn’t investigate complaints against the police. These people have always served in the organisations that enforce the law, they don’t really think carefully about human rights. As regards the NHRC, all I can say is that so long as each and every of these people came to office lawfully we just need to accept that as we can’t do anything. But we are trying not to allocate police complaints to anyone having police backgrounds.¹⁶⁰

That people having police backgrounds will not be given a role in handling police complaints might appear to guard against regulatory capture, but this approach has proved unrealistic in practice. Thus one of the NHRC complainants interviewed for this research insisted that their complaints were handled by ex-police.¹⁶¹ More importantly, it is common practice within the NHRC that each resolution is tabled in a grand meeting of all commissioners;¹⁶² hence, the case can be made that the opinion of those who have police backgrounds may, more or less, have influence upon the views of others.

¹⁵⁹ Interview with a complainant B (n 141).

¹⁶⁰ Interview with the NHRC commissioner (n 82).

¹⁶¹ For example, interview with a complainant B (n 141).

¹⁶² Interview with the NHRC commissioner (n 82).

The NACC, for its part, has always had people with police backgrounds serving within it. The mindset of some NACC commissioners suggests that there is little concern about the possibility of regulatory capture. Thus, one of the NACC commissioners said:

Having a police background is a good thing because we need the people who have investigative skills. These people are really helpful since they are determined and tough. What we need to do is just give them proper training that suits our way of dealing with the complaints, and adjust their attitudes a little bit.¹⁶³

In an interview with the ombudsman, the same line of reasoning emerged:

We have only one ex-police investigator working with us at present. But I think he is really efficient and helps us a lot in terms of uncovering the truth.¹⁶⁴

This interview material indicates that, in Thailand, the reason that some top executives of the complaints authorities are in favour of employing people with police backgrounds to help investigate police complaints is due to the skills ex-police bring to the job.

Similar sentiments have been expressed in relation to the English system. Dame Owers – the current chair of the IPCC – expressed her view about the involvement of former police officers in the handling of police complaints as follows:

There are those who would argue that the IPCC should not employ any ex-police officers. I don't agree with that - ex-police bring essential forensic and investigative skills, and conversely the fact that

¹⁶³ Interview with the NACC commissioner A (n 134).

¹⁶⁴ Interview with the ombudsman (n 12).

you come from a non-police background does not grant you immunity against the very powerful, high octane police culture.¹⁶⁵

One can readily agree that ex-police bring skills the complaints authorities need in investigating complaints but it is arguable that these are not unique to the police; rather, they are generic skills that can be imparted via training (see chapter 6). The claim that the complaints authorities need people with police backgrounds is thus debatable. In the context of Thai policing, for example, a deep-rooted patronage system within the police community is immensely influential in the decision-making of the police themselves, and we saw in chapter 3 how this can be counterproductive to the handling of police complaints. We will revisit the issue of who should investigate police complaints in chapter 6, but for now, we move on to another vital dimension of the regulatory capture that applies to the external complaints authorities in Thailand.

In the 1950s Bernstein introduced the concept of “a life cycle of regulatory commissions” in which he elaborated that when the regulatory agency reaches the period of maturity, “it is unlikely that the commission [the regulator], in this period, will be able to extend regulation beyond the limit acceptable to the regulated groups...the commission loses vitality...its goals become routine and accepted...there is a desire to avoid conflicts and to enjoy good relations with the regulated groups...”.¹⁶⁶ To apply this concept to the external complaints systems under review, the analysis of each of them highlights that the external systems are now going through a phase of becoming more routinely bureaucratic and inefficient. The NACC, for example, has increasingly been extending the role of active police in its complaints-handling process. To lift the burden on the NACC, however, a

¹⁶⁵ Dame Anne Owers, Chair of the IPCC, ‘Independent Oversight of Police Complaints: The IPCC Eight Years On’ (Speech at the Annual John Harris Memorial Lecture, London, 3 July 2012) <<https://www.ipcc.gov.uk/page/speeches>> accessed 12 April 2013.

¹⁶⁶ Marver H. Bernstein, *Regulating Business by Independent Commission* (PUP 1955) 87-88, 90.

Memorandum of Understanding (MoU) between the Commission and the RTP has been signed. The MoU specifies that where a complaint is registered with the police, the responsibility to collect the evidence rests with them; in addition to that, the officer who looks after the case from the outset will also be made a member of the NACC sub-committee to assist the NACC in the investigation stage.¹⁶⁷ The established working practices between the two clearly exceeds the original intention of section 89 of the NACC Act, which only assigns the police a role as a reference agency passing a complaint to the NACC.¹⁶⁸ The fact that the NACC, through the MoU, devolved some responsibility to the police shows that it failed to think through how police involvement may undermine impartiality of the handling of complaints.¹⁶⁹

Previous research has shown that, apart from high-profile cases, the police often fail to gather evidence properly.¹⁷⁰ One of the complainants to the NACC disclosed the following during the interview for this research:

In my case, the fact is I got one of the NACC commissioners' telephone number from a journalist, I called that commissioner to check on progress, the commissioner said to me that the case was well on the way. After that I did call again some seven to eight months later, this time it was the PA [personal assistant] of that commissioner who answered the phone and I was informed that my case was handed over to the police. I got confused and asked for a reason but that PA explained to me that the commissioner has a lot of work to complete. Since then, I've been waiting for three, four years achieving nothing.

¹⁶⁷ Intarathawon (n 136) 244-245. See also, National Anti-Corruption Commission, 'Memorandum of Understanding between the National Anti-Corruption Commission and the Royal Thai Police on the Cooperation from Police Investigators in accordance with the Organic Act on Counter Corruption 1999' (25 March 2001) [in Thai].

¹⁶⁸ NACC Act (n 113) s 89.

¹⁶⁹ NACC, 'MoU between NACC and the RTP' (n 167).

¹⁷⁰ Intarathawon (n 136).

Finally, I had to go for a conventional way of seeking help from the Office of the Attorney General.¹⁷¹

The interview reflected how the NACC becomes apathetic about dealing with complaints. To apply Bernstein's life 'cycle of regulatory commissions concept' to the current situation that the NACC is now in, it is arguable that the handling of complaints under the NACC system is increasingly becoming routine. The engagement of the police in the handling of complaints seems to be another issue that accounts for high unrecorded and unsubstantiated complaints under the NACC system.

The NHRC and the Thai Ombudsman are no exception to Bernstein's concept of a life cycle of regulatory commissions. In the case of the NHRC, a number of complainants pointed out that the NHRC often takes for granted the police's accounts, one of whom disclosed the following in an interview for this research:

Their [the NHRC] inquiry report was nonsense. They simply concluded that they believed what the police explained to them which is the real offender in my case remains unidentifiable. Look, how could they rely on the police's version of truth to count against me?¹⁷²

A series of NHRC inquiries illustrates how the NHRC appears to be easily led by the police's accounts — many complaints against the police about neglect of duty have been dismissed on the basis that the police confirmed that there was not any evidence to identify who the offender(s) was.¹⁷³ It seems that the NHRC is too ready to accept the claims of the police which indicates that the handling of complaints by the NHRC is becoming more routine and shifting away from the public interest. This same phenomenon also applies to the work of the Thai Ombudsman as the Ombudsman's approach to the handling of

¹⁷¹ Interview with a complainant C (n 73).

¹⁷² Interview with a complainant A (n 36).

¹⁷³ National Human Rights Commission, case no. 232/ 2551 (2008), 81/ 2551 (2008) and 71/ 2557 (2014).

complaints is based heavily on the analysis of documentary proof which reflects that most complaints have been handled in a routine fashion.

IV. Conclusion

The Thai Ombudsman, the NHRC and the NACC form the backbone of the machinery for eliminating abuses in public office in Thailand. Their roles in addressing and deterring police malpractice in particular are crucial for promoting accountable policing. However, the evidence from this research highlights that each of the complaints bodies is beset by a number of serious problems that apparently neutralise the effectiveness and the independence of the operation of the complaints systems under the regulatory oversight of each of them.

The key issues of the complaints systems in question are the mindset of the complaints authorities in approaching the problems; a lack of sufficient power; and the creeping trend towards capture. To start with the Thai Ombudsman, the mistaken pursuit of a win-win solution approach that arguably gives rise to a lack of will to deploy the existing powers to compel police cooperation, coupled with a lack of power to commence disciplinary and/or criminal proceedings, renders it largely ineffective. One cannot help but think of the authority as nothing more than a paper tiger. In common with the Ombudsman, the mentality of the NHRC towards problem solving, such as an undue reliance on police cooperation, together with a lack of sufficient powers to ensure that those who found to have acted wrongfully will be disciplined, are all reflective of the Commission's inability to hold the police accountable for what they have done. Even though the NACC is markedly different from the first two organisations in terms of its power to deal with the

police, its tremendous backlog of cases both registered with and referred to it is becoming a serious issue compromising the effectiveness of the handling of complaints.

Leaving aside the question of effectiveness, the evidence from this research also indicates that the complaints bodies in question are potentially moving towards capture as each of them has engaged people with police backgrounds in the handling of complaints. The NACC has ex-police as a commissioner and staff as well as having active police officers assisting its investigations, whilst the Ombudsman and the NHRC also have ex-police involved in their inquiry into police complaints at different levels. The facts established throughout this research, together with the existing literature, suggest that the effectiveness and impartiality in the handling of complaints under the complaints systems in question is undermined by the involvement of ex-police officers. All of this leads to a provisional conclusion that a radical reform should be pushed through to ensure that complaints against the police in Thailand will be handled impartially and effectively. At the same time it is important to be alive to the argument that ex-police personnel may need to be employed within external police complaints bodies in order to ensure that investigations are adequate. The potential for the values of independence and adequacy to come into conflict is discussed fully in the final two chapters of this thesis.

CHAPTER 5: INTERNATIONAL STANDARDS ON THE HANDLING OF POLICE COMPLAINTS

I. Introduction

In chapters 3 and 4, the outstanding issues of both the internal and external complaints authorities in Thailand were examined. This chapter attempts to revisit those complaints systems from a different perspective as it aims to evaluate whether the complaints systems overseen by the Royal Thai Police (RTP),¹ the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) conform to accepted international standards on the handling of police complaints. The United Nations Office on Drugs and Crime (UNODC)'s Handbook on Police Accountability, Oversight and Integrity lays down the essential criteria for an effective police complaints mechanism, and these will be applied as a key international benchmark in this chapter.² In addition to the above, the Commissioner for Human Rights – Council of Europe has distilled from the case law of the European Court of Human Rights (ECtHR) five core principles for an effective investigation into police complaints which are applied to most European nations.³ These principles, where appropriate, will be used as a supplementary benchmark in this chapter in order to bring alternative perspectives on a police complaints system. Apart from the above specific standards on a police complaints

¹ In this chapter, the RTP's system will only be discussed where applicable. Note that 'the RTP's system' refers to the complaints systems run at both local and national levels.

² UNODC, *Handbook on Police Accountability, Oversight and Integrity* (UN 2011). This handbook, hereinafter, will be referred to as 'the UN Handbook on Police Oversight'.

³ The principles developed from the European Court of Human Rights, hereinafter, will be referred to as 'the ECtHR principles'; however, as the principles are explained in Commissioner for Human Rights, 'Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police' (Report) (12 March 2009) CoE Doc CommDH (2009) 4. Therefore, the reference for the principles will be cited as 'Opinion of the Commissioner'.

mechanism, the Principles relating to the Status of National Institutions,⁴ albeit aimed at national human rights bodies, will also be adopted to assess the systems in question where applicable.

Because “thinking without comparison is unthinkable”;⁵ as the evaluation of the Thai systems is being carried out, this chapter also seeks to benchmark the system under the regulatory oversight of the Independent Police Complaints Commission (IPCC) against the above same standards, drawing comparisons with the Thai systems where appropriate.

II. Benchmarks for a Police Complaints System

Drawing from the UN Handbook on Police Oversight, the ECtHR principles and the Paris Principles, an effective police complaints mechanism, at minimum, should satisfy the following criteria:

Independence

Independence is arguably the most significant element that helps uphold fairness and impartiality in the handling of complaints. The element of independence may be interpreted in many different ways but the UN Handbook underlines that, in the context of a police complaints system, independence should embrace the following fundamental aspects:

⁴ UNGA, ‘Principles relating to the Status of National Institutions (The Paris Principles)’ Res 48/134 (20 December 1993) 48th Session UN Doc A/RES/48/134. The principles, hereinafter, will be referred to as ‘the Paris Principles’.

⁵ Guy E. Swanson, ‘Frameworks for Comparative Research: Structural Anthropology and the Theory of Action’ in Ivan Vallier (ed), *Comparative Methods in Sociology: Essays on Trends and Applications* (UC Press 1971) 145.

(a) Independence by statutory underpinning

To cushion a police complaints system against volatility and interference,⁶ the complaints authority needs to be granted legal autonomy. In the UN Handbook on Police Oversight, the criterion for upholding autonomy of the complaints authority is prescribed as follows:

The [complaints] agency should be established constitutionally or created through legislation (not executive order).⁷

In a democratic system, the constitution and the statute are passed in Parliament by the people's representatives, these laws, at least in theory, are difficult to amend compared to delegated legislation or an executive order which is easily subject to changes whenever there is a shift in policies and political directions. Thus, it is sensible that the existence of the complaints body shall be underpinned by the constitution or statute law. In England and Wales, the Police Reform Act (PRA) 2002 gave birth to the IPCC and also governs the operation of the complaints system overseen by the IPCC at the same time.⁸ In Thailand, the Ombudsman, the NHRC and the NACC were established by the Constitution,⁹ whilst the operational functions of the complaints systems under control of each of them are regulated by their own enabling statutes. In similar vein, the RTP as the complaints authority was created by statute namely the National Police Act (see chapter 1) whilst its complaints mechanism is also governed by same legislation (see chapter 3).¹⁰ It can be seen

⁶ UNGA 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions' UNCHR (28 May 2010) 14th Session UN Doc A/HRC/14/24/Add.8 para 60. Note that this particular report is the primary source from which the UNOCD has extracted in order to outline the criteria for an effective police complaints mechanism. The report, hereinafter, will be referred to as the "Special Rapporteur Report".

⁷ UN Handbook on Police Oversight (n 2) 69.

⁸ Police Reform Act 2002, ss 9, 10 and sch 3 'Handling of Complaints and Conduct Matters etc.'. This Act, hereinafter, will be referred to as the 'PRA'.

⁹ Constitution of the Kingdom of Thailand 2007, ss 242, 247, 256. To date, even though the 2007 Constitution was repealed by the military junta, the Ombudsman, the NHRC and the NACC still exist under the Announcement of the National Council for Peace and Order no.11/2557 (see ch 1 for further details).

¹⁰ National Police Act 2004, s 6. This Act will hereinafter be referred to as the 'NPA'. The complaints procedures of the RTP are prescribed in pt 5 'discipline and disciplinary maintaining' of the NPA.

therefore that the above complaints authorities all meet the UN criterion for statutory underpinning.

(b) Independence through democratic appointments and dismissals of members

The process by which candidates for members of the complaints authority are recruited is crucial for the operational independence of the complaints system. Clearly if vested interests can influence recruitment then the appearance and substance of independence may be put in jeopardy. The UN Handbook on Police Oversight sets out the ideal way in which members of a police complaints body should be appointed:

The [complaints] agency's members should be democratically appointed following consultation with or approval by the legislature,...

¹¹

How can the consultation with or the approval of the legislative branch guarantee independence in the complaints body? Under a parliamentary democracy, the legislature is an elected representative of the people, the fact that it has a capacity to approve, or at least to be consulted about, the appointment of members of the complaints authority reflects that the authority itself has representation of the people as well. Furthermore, they can neither bestow favours nor apply sanctions to any state agency as they do not have administrative authority in the way that the government does; therefore, they are generally seen to be neutral compared to the government. For these reasons, the appointment of nominated candidates to serve in the complaints body should be subject to parliamentary consultation or approval.

¹¹ UN Handbook on Police Oversight (n 2) 70.

Under the Thai constitutional structure, the selection and appointment of the members for the external complaints authorities is a two-stage process. In the preliminary stage, there will be the selection committee which verifies the credentials of each nominated candidate and shortlists those whom the committee views as qualified candidates to serve in each complaints body (see more detail about the elements of the selection committee in the next sub-section). The list of the selected candidates will then be passed on to the Senate for approval in the second stage. Where the Senate rejects some or all of the nominated candidates and requires the selection committee to redo the selection process, but the committee then reaffirms the original chosen candidates with unanimity, the Senate is obligated to proceed with the appointment of those candidates. If there is no unanimity of opinion amongst the members of the committee, the selection process shall restart and must be finished within 30 days after the date that the non-unanimity of opinion has reached.¹² The parliamentary approval process, however, is not applied to the RTP because the selection and appointment of the National Police Chief is conducted by the Office of Board of the Royal Thai Police (OB RTP)¹³ whilst promotions for other police officers are determined by the Office of the Police Commission (OPC);¹⁴ both of which bodies are presided over by the Prime Minister (see chapter 1).¹⁵

¹² Constitution (n 9) ss 243, 206(2) para 1; 256 para 5, 243, 206(2) para 1; 246 para 4, 206(2) para 1. Note that s 206(2) is applied *mutatis mutandis* to the selection and appointment of the ombudsmen, the NHRC commissioners and the NACC commissioners. According to s 111 of the Constitution, the Thai Senate is a hybrid model where half of its members come from election and another half come from selection. The Constitution will, hereinafter, be referred to as the “Constitution”.

¹³ NPA (n 10) s 18 (3).

¹⁴ *ibid* s 31 (3).

¹⁵ *ibid* ss 17 (1), 30 (1).

The appointment of the IPCC commissioners is akin to the RTP in that they are all government appointments,¹⁶ whilst the process is governed by the Code of Practice issued by the Office of the Commissioner for Public Appointments (OCPA).¹⁷

According to the Paris Principles, dismissal of members of the complaints authority highlights another crucial aspect of independence. The principles which should govern this matter are expounded in the Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights. It is prescribed as follows:

To avoid compromising independence, the founding legislation should specify, in as much detail as possible, the circumstances under which a member may be dismissed. Naturally, these circumstances should relate to ascertainable wrongdoing of a serious nature...it is preferable that the power to dismiss be vested in parliament or at equivalently high level.¹⁸

In Thailand, the criteria for removing members of the complaints authorities in question are specified in both the constitution and the enabling legislation of each complaints body. The ombudsmen, the NHRC and the NACC commissioners may be dismissed on grounds of misconduct, immoral conduct, corruption or a breach of law etc.¹⁹ To commence dismissal proceedings, there must be a petition filed to the Senate for a vote of censure; in

¹⁶ PRA (n 8) s 9 (2). Note that, under the English jurisdiction, the police forces are operationally autonomous of the government; thus, there might not be a strong case that the government and the police forces are likely to establish a collusive relationship in order to help one another. Nevertheless, the aforesaid is a separate matter which is irrelevant to this research.

¹⁷ Code of Practice for Ministerial Appointments to Public Bodies (the Office of the Commissioner for Public Appointments (OCPA), April 2012), this Code of Practice, hereinafter, will be referred to as the 'OCPA's Code of Practice'. See also, Independent Police Complaints Commission, 'New IPCC Commissioner for Wales appointed by Home Secretary' (August 2013) <<https://www.ipcc.gov.uk/news/new-ipcc-commissioner-wales-appointed-home-secretary>> accessed 10 May 2015.

¹⁸ UNCHR, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (Centre for Human Rights, UN 1995) 11. This Handbook, hereinafter, will be referred to as the "Handbook on National Institutions of Human Rights"

¹⁹ As regards the criteria for dismissal of the Thai Ombudsman, see Constitution (n 9) s 270 paras 1, 2(1); for the NACC, see Constitution (n 9) s 248 para 1; for the NHRC, see National Human Rights Commission Act 1999, s 11 para 1; this Act, hereinafter, will be referred to as the 'NHRC Act'.

this regard, the resolution to discharge the member of the NACC requires three-fourth of the vote of the total number of the existing senators whilst the resolution to remove the member for both the Thai Ombudsman and the NHRC needs three-fifth of such a vote.²⁰ Considering how the existing rules for dismissals are applied, independence in the complaints bodies is somewhat secure (see sub-section *Independence, (b) Democratic appointments and dismissals of members* in chapter 6). The criteria for dismissals explained in the Handbook on National Institutions of Human Rights, however, are not applicable to the RTP since dismissal of police officers is regulated by the standards of discipline which are tailor-made for the police force.²¹ When it comes to the IPCC, it is the Home Secretary alone who has the power to remove the chairman and the ordinary members of the IPCC according to paragraphs 1(4)(b) and 2(6), schedule 2 of the PRA.²²

The appointments and dismissals of members of the independent complaints bodies in Thailand are apparently democratic. Even though the Senate does not have the absolute power to make a final decision on appointments, the way in which the selection committee passes the list of the nominated candidates to them for consideration ensures that they are at the least consulted. Overall, the appointments and dismissals of the members for the independent complaints authorities in Thailand not just satisfies the UN standard on democratic appointments but also conforms to the Paris Principles. In contrast, the RTP and the IPCC commissioners are not in conformity with the same international standards

²⁰ Constitution (n 9) ss 248 para 2, 274 para 1; see also NHRC Act (n 19) s 11 para 2.

²¹ NPA (n 10) pt 5 ‘discipline and disciplinary maintaining’

²² PRA (n 8) paras 1(4)(b), 2(6), sch 2:

1(4) The chairman of the Commission may be removed from office by Her Majesty either—

(b) on being advised by the Secretary of State that there are grounds falling with sub-paragraph (5) for the removal of the chairman.

2(6) The Secretary of State may at any time remove a person from office as an ordinary member if...

because the process of appointments and dismissals of personnel serving with these bodies are under the control of the executive branch.

(c) Pluralistic representation

A police complaints system is a type of mechanism for tackling abuses, some of which are abuses of human rights. The system should therefore be measured from a paradigm of human rights protection. From human rights perspectives, pluralistic representation in the complaints body helps uphold the independence of the complaints system. In this respect, the Paris Principles lay down that:

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights...²³

Pluralistic representation is also incorporated in the principles prepared by the Commissioner for Human Rights and is prescribed as follows:

The Independent Police Complaints Body (IPCB) should be representative of a diverse population...²⁴

How can pluralism secure independence in a police complaints system? Complaints against the police are similar to numerous human rights issues in that, to produce optimal solutions, the grounds for complaint need to be considered from a wide range of aspects, not just conventional law enforcement perspectives. A rich diversity of opinion is therefore

²³ Paris Principles (n 4) composition and guarantee of independence and pluralism, para 1.

²⁴ Opinion of the Commissioner (n 3) para 38.

necessary and can be found in the reflections of people from different social and professional backgrounds.

The OCPA's Code of Practice outlines that the appointments of executives to serve in public bodies in England should attract "a strong and diverse field of suitable candidates".²⁵ In line with the OCPA's Code of Practice, the facts show that, by and large, the IPCC commissioners have different professional backgrounds.²⁶ On the contrary, the principle of pluralistic representation in the Thai complaints bodies has yet to be implemented as "many posts [in various supposedly independent organisations] were filled by high-ranking former members of the military or the police force, and the same individuals circulated from one watchdog body to the next".²⁷ One of the former chairs of the Ombudsman was a senior member of the military whilst one of the serving ombudsmen also has the same background.²⁸ In addition, the fact that two out of five newly appointed commissioners for the NACC were senior members of the police and the military forces further substantiates that many posts in the watchdog bodies are filled by the people who have police or military backgrounds.²⁹ Within the NHRC, a similar situation as that of the Ombudsman and the NACC also exists as one of its commissioners has a police

²⁵ OCPA (n 17) no. 2 (2.1).

²⁶ Independent Police Complaints Commission, 'Chair and Commissioners' (*IPCC*) <<https://www.ipcc.gov.uk/page/chair-and-commissioners>> accessed 10 May 2015.

²⁷ Peter Leyland, 'Thailand's Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs' (2007) 2 JCL 151, 159. To date, it is still the case that some posts are filled by former senior members of the military and the police force. Note that, as the judiciary is playing an important role in the selection of members in a number of watchdog bodies under the 2007 Constitution, therefore, we will see many posts are also filled by former senior personnel from bureaucratic institutions including judges, prosecutors and so on.

²⁸ See the backgrounds of the previous ombudsmen via <http://www.ombudsman.go.th/10/eng/3_2.asp>; see also, the backgrounds of the serving ombudsmen via <http://www.ombudsman.go.th/10/eng/3_1.asp>.

²⁹ 'The NACC Tabled a Resolution to Bring the Case of the Somchai Administration Dispersed the PAD to the Supreme Court's Criminal Division for Person Holding Political Positions' *Matichon Online* (Bangkok, 10 October 2008) <http://www.matichon.co.th/news_detail.php?newsid=1349863225> accessed 10 September 2014 [in Thai].

background.³⁰ This pattern of appointment to the watchdog bodies in Thailand not only obstructs the involvement of civil society but also increases the risk of regulatory capture.³¹ Even were that not so, the worry would remain that when most members are from similar professional backgrounds, one approach and set of understandings is likely to predominate in the decision-making process which could be detrimental to the handling of complaints. It is arguable that a lack of diversity in the elements of the complaints bodies in Thailand is due to the nature of the selection committee of those bodies. The selection committee of the NHRC, for example, comprises the following people:

[T]he President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, Leader of the Opposition in the House of Representatives, one person elected by the general assembly of the Supreme Court of Justice and one person elected by the general assembly of judges of the Supreme Administrative Court,...³²

It can be seen that the selection committee is dominated by the judiciary and political figures. In this regard, the Sub-Committee on Accreditation (SCA) subordinate to the International Coordinating Committee for National Human Rights Institutions (ICC) rightly pointed out in its 2013 report that:

[T]he enabling law [of the NHRC] does not provide a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public

³⁰ See the backgrounds of the NHRC commissioners from ‘The National Human Rights Commission of Thailand (2009 - 2015)’ <<http://www.nhrc.or.th/en/Commissioners.php>>.

³¹ See s III. **External Complaints Authorities and the Element of Independence** in ch 4.

³² Constitution (n 9) ss 256 para 5, 243.

confidence in, the senior leadership of a national human rights institution.³³

In response to the SCA, the NHRC has stressed in its press release the following:

The NHRC acknowledged such concern [the SCA's concern over a lack of civil society groups' involvement in the selection process]. In this case [to address this concern], however, the amendment of the NHRC Act is required but this [to amend the Act] apparently falls outside the purview of the NHRC.³⁴

The matter was not left there, however. The SCA report notes that the NHRC was seeking to use its influence to bring about greater engagement of civil society groups:

In its response, the NHRC had acknowledged concerns about the lack of participation in the selection process and indicated that it is advocating that the General Meeting of the Supreme Court of Justice and the General Meeting of the Arbitrators of the Supreme Administrative Court select two members from civil society.³⁵

For its part, the Ombudsman shares with the NHRC a similar problem when it comes to diversity in the elements of the selection committee because the selection process of both authorities is governed by the same key provision.³⁶ As regards the NACC, the selection committee includes the following people:

[T]he President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court,

³³ International Coordinating Committee for National Human Rights Institutions Sub-Committee on Accreditation, 'Report and Recommendation of the Session of the Sub-Committee on Accreditation' (ICC, SCA October 2014) 32. This report hereinafter will be referred to as the 'SCA report'.

³⁴ National Human Rights Commission, 'The Announcement concerning the Proposal of the SCA to Relegate the Thai NHRC from an 'A' to a 'B' Status'(NHRC, 16 January 2015) <http://www.nhrc.or.th/2012/wb/th/news_detail.php?nid=3643&parent_id=1&type=highlight> accessed 20 January 2015 [in Thai].

³⁵ SCA's report (n 33).

³⁶ Constitution (n 9) s 243.

the President of the House of Representatives and the Leader of the Opposition in the House of Representatives.³⁷

It can be seen that the elements of the selection committee for the NACC commissioners are even less inclusive compared to that of the Ombudsman and the NHRC. If we apply the human rights benchmark for pluralistic representation to the elements of the selection committee for the Thai Ombudsman and the NACC then we can see that there is a serious lack of diversity of members in the committee. This research argues further that a lack of diversity amongst the members of the selection committee has an impact upon the operational independence of the Ombudsman, NHRC and the NACC (see further discussion below).

Judging by the principle of pluralistic representation, the enabling laws of each complaints authority under review failed to incorporate people from wider professional backgrounds not least civil society groups within the elements of the selection committee. Therefore, it is unlikely that the complaints bodies in question will be able to comply with the principle of pluralistic representation. It should be underlined that the principle of pluralistic representation is not applicable to the RTP.

(d) Operational independence

The issue of autonomy in a police complaints system can reasonably be claimed to boil down winning operational independence within the complaints agency. In the UN Handbook on Police Oversight, it is underlined that:

The [police complaints] mechanism should have full operational and hierarchical independence from the police.³⁸

³⁷ *ibid* s 246.

³⁸ UN Handbook on Police Oversight (n 2) 70.

In the handling of police complaints, operational independence of the complaints system helps ensure that the investigation direction and/or the decision-making will not be subject to undue influence not least from the police. A police complaints system that is structurally independent, but falls within the ambit of the police force in reality is less likely to handle police complaints fairly and effectively. Full operational autonomy is therefore crucial for a police complaints system. In the course of my fieldwork in Thailand, a number of police officers interviewed for this research have shared their views on how the internal police complaints mechanisms can be operationally independent; one of them elaborated that:

If you [ordinary people] look into the system from outside, you may think the internal system cannot be independent but I'm telling you [the interviewer] what, there're a number of ways that we can guarantee the people that our complaints mechanism can be independent. First, when a complaint is made to us, we'll make sure that the person who investigates the complaint is holding a more superior rank compared to the officer complained against, and what's more, the investigator will not be a direct superior of that officer. In some cases, we'll invite the police from other force areas to investigate complaints in order to make sure that greater independence is secured. I don't know what people think of these approaches, but from my perspectives, I believe that the handling of complaints by the internal mechanism can be independent.³⁹

Can operational independence in the handling of police complaints be upheld by the police themselves? Globally, it has long been established that internal complaints systems often fail to deliver a fair and effective investigation because of a lack of operational independence. The following quote demonstrates this:

To a large extent, attempts all over the world to combat police misconduct locally [i.e. internally] have revealed similar and recurrent

³⁹ Interview with [anonymous], a group of police officers (Thailand, 13 June 2014).

problems: police culture, lack of effective control of internal investigative procedures, lack of investigative resources, organisations and procedures which inhibit honest police and lack of public confidence in the police force's ability to investigate complaints against its members.⁴⁰

The internal police complaints system in Thailand suffers similar problems, if not more. In a group interview with the police officers, one of them made comments to the effect that institutional bias exists in the Thai police force.⁴¹ In addition, the discussion of the root causes behind a lack of impartiality in the RTP system in chapter 3 has also indicated the improbability of the RTP's system becoming impartial. The influence of the patronage system, either in the form of master-servant or fictive kinship relationships, serves to poison the investigator's mind and also allows bias to creep in the decision-making process. All of this suggests that, regardless of whether an investigation is conducted by officers of senior rank or by a seconded officer from other force areas, having the police investigate the police is very likely to lead to the undermining of operational independence in the handling of complaints. Thus, it is impossible for the internal system under the RTP to meet the UN criterion shown above.

As regards the external complaints bodies in Thailand, the enabling legislation of each of them makes it clear that they all enjoy a separate legal autonomy and are not under the hierarchical command of the police force (see chapter 1).⁴² Nonetheless, the evidence of this research suggests that the systems under the above authorities lack true operational independence. There are a number of reasons which support this conclusion. First, according to the UN Handbook on Police Oversight:

⁴⁰ Tony Fitzgerald, 'Report of a Commission of Inquiry Pursuant to Orders in Council' (Commission of Inquiry into Alleged Illegal Activities and Associated Police Misconduct 1989) 285.

⁴¹ See text accompanying nn 106-107 in ch 3.

⁴² Constitution (n 9) ss 242, 250, 256.

Making police staff members of an external agency should generally be avoided.⁴³

Some of the external complaints authorities in Thailand make use of active police officers in the handling of police complaints, even though those officers are not made members of the complaints authority. Most obvious is the NACC. According to section 89 of the NACC Act, the police are involved in the handling of complaints as one of the gateways to the NACC complaints system.⁴⁴ In theory, the police are obliged by law only to receive and refer complaints cases to the NACC for further consideration. Nevertheless, as a result of a Memorandum of Understanding between the NACC and the RTP, the police now have a role in the NACC complaints system as an initial investigator.⁴⁵ Here is where the problem emerges. According to previous studies on the NACC, apart from the cases that have been in the limelight, the role of the responsible police officer as the evidence collector in the early stage of an inquiry is problematic as most such officers do not take the gathering of evidence seriously.⁴⁶ The evidence from my interviews demonstrated that, in some complaints cases, the NACC has taken a back seat and left the cases to be dealt with by the police because the Commission sought to lighten its own burden. Under the police investigation, some complaints encountered unacceptable delay before they were dealt with.⁴⁷ In addition to that, it is also arguable that having active police officers sitting in the NACC sub-committee can cause negative impacts upon the NACC investigation because, as the initial investigator, that officer may skew the facts and convince other members in the committee that the complaint lacks credible support and should be deemed unsubstantiated.

⁴³ UN Handbook on Police Oversight (n 2) 70.

⁴⁴ See text accompanying n 113 in ch 4.

⁴⁵ See text accompanying n 167 in ch 4.

⁴⁶ See text accompanying n 170 in ch 4.

⁴⁷ See text accompanying n 171 in ch 4.

We now focus on another important dimension of operational independence. From the ECtHR principles, the concept of operational independence should incorporate the following:

[T]here shall be a lack of institutional ...connection between investigators [serving with the complaints body] and the officer complained against.⁴⁸

In England and Wales, public concern over institutional connections between the IPCC investigators and the police is predicated upon a widespread perception that the IPCC investigators who have police backgrounds may be biased in favour of their former colleagues or their former forces. This perception is reflected via a number of NGOs' responses to the review of the IPCC's work in investigating deaths. The Police Action Lawyer Group (PALG) – a group of NGOs representing victims of police misconduct, alongside INQUEST – an independent charitable organisation, pointed out the following:

Clearly, there is a crisis of confidence on the part of the public in the IPCC and the PALG hopes that this Review will assist the IPCC in reflecting upon this and opening itself up to the possibility of cultural change. In addressing the cause of this apparent culture of indifference, PALG considers that one reason may be the disproportionate number of investigators and staff at the IPCC who are formerly police officers, and maintain an overly close relationship with departments of Professional Standards.⁴⁹

⁴⁸ Opinion of the Commissioner (n 3) para 63.

⁴⁹ Police Action Lawyer Group, 'Submissions to the Independent Police Complaints Commission regarding its Work in Cases involving a Death' (PALG, February 2013) <<http://www.palg.org.uk/documents/>> accessed 20 June 2015.

The high proportion of ex-police in pivotal and influential investigative positions also raises concerns about institutional and hierarchal independence.⁵⁰

In Thailand, the evidence that emerged over the course of interviews for this research suggests that complainants are usually sceptical of the role of ex-police in investigating police complaints.⁵¹ As one complainant expressed it:

I think it was a stroke of luck that my case doesn't belong to that commissioner [the commissioner who was a police officer]; otherwise, I don't know what would happen to my case. I feel really sorry for those complainants that their cases have been dealt with by that commissioner; I believe the chances of bias creeping in the handling of those complaints are likely.⁵²

One of the NHRC commissioners expressed the following view on the role of people with a police background:

Personally, I don't welcome the fact that ex-police are playing quite a significant role in the human rights body. But I find it hard to change things because it is the law that allows these people [people with a police background] to sit in the commission. The only thing we can do is to amend the constitution and I think we're going to need an open debate as to why people with a police background shouldn't be allowed to take part in a complaints body.⁵³

We shall leave the above point and a possible solution to be discussed in the next chapter on reforms in police complaints in Thailand. For now, we move on to political interference

⁵⁰ INQUEST, 'Response to the IPCC's Review of Work in Cases involving a Death' (2013), <<https://www.ipcc.gov.uk/page/review-ipccs-work-investigating-deaths-consultation-activities-and-responses>> accessed 20 June 2015.

⁵¹ See text accompanying n 159 in ch 4, for instance, where the complainant in question was evidently deeply mistrustful of the commissioner with a police background.

⁵² Interview with [anonymous], a complainant A (Bangkok, Thailand, 25 June 2014).

⁵³ Interview with [anonymous], the NHRC commissioner (Bangkok, Thailand, 17 July 2014).

which also has an impact upon operational independence in the handling of police complaints. According to the UN Handbook on Police Oversight:

The [police complaints] mechanism should be free from executive or political influence.⁵⁴

It is highlighted in chapters 1 and 3 that the police organisation in Thailand is under political control and is also highly politicised; thus, it is impossible for the RTP internal system to meet the UN criteria for being free from political influence. Leaving aside the police force, we should also be conscious of the possibility that the external complaints systems will be politically interfered with. It should be noted that political influence can also put the complaints authorities in the position of being captured.

We saw above that the IPCC commissioners are appointed by the government.⁵⁵ Although the issue of political interference in the IPCC has never been raised, it is worth underlining that the IPCC is not in conformity to the above UN criterion. In Thailand, since the Ombudsman, the NHRC and the NACC came into operation in the late 1990s, the attempts of successive Thai governments to interfere with their work became most evident during the administration of Thaksin Shinawatra (2001 - 2006). Pongsudhirak underlined the issues of political interference during the Thaksin administration as follows:

The TRT [Thai Rak Thai party] has monopolised the party system, marginalised the opposition, co-opted and coerced the media, extended its controlling tentacles over the military and the police, and shunned the dissenting voices of civil society groups. The vaunted democratic institutions have become politicised and penetrated by the very vested interests they were established to root out. The Senate, which is supposed

⁵⁴ UN Handbook on Police Oversight (n 2) 70.

⁵⁵ PRA (n 8) s 9(2).

to be politically unaffiliated, has become increasingly partisan in the government's favour.⁵⁶

Leyland pointed out that the Thaksin government was able to take control of the majority of senators via 'illicit payments' to them, this led to the government's success in manipulating the upper house.⁵⁷ The Thai Senate is designed to be a non-political chamber and senators have a pivotal role in approving members for independent watchdog bodies including the ombudsmen, the NHRC commissioners and the NACC commissioners.⁵⁸ Political interference in the Senate which neutralises the independence of the Senate itself can therefore produce a domino effect on the independence of the watchdog bodies. This point is substantiated by Leyland's conclusion which underlined that:

There was a creeping trend towards capture.... [since] Thaksin [a former Prime Minister], in his various terms in office, increasingly was able to put his nominees into positions which in effect neutralise the effectiveness of these [watchdog] bodies.⁵⁹

The legacy of that government has arguably set a precedent for people who have served with the police to seek future careers in watchdog bodies. Certainly, many posts in the police watchdogs, for instance, are still filled by former members of the military, the police force and also those having close relationships with people in government.⁶⁰ Last but not least, it is worth pointing out that, for the NACC in particular, political interference may occur at the level of a sub-committee as well.⁶¹ Previous studies have highlighted that there is no mechanism for checking the credentials of those who will be appointed as a member

⁵⁶ Thitinan Pongsudhirak, 'Thailand: Democratic Authoritarianism' [2003] *Southeast Asian Affairs* 277, 277-278. Note that the former Thai Prime Minister Thaksin Shinawatra was a leader of the TRT party.

⁵⁷ Leyland (n 27) 158.

⁵⁸ See text accompanying n 12.

⁵⁹ Peter Leyland, 'Politics and the Rule of Law in Thailand' (17 January 2011) <<https://www.youtube.com/watch?v=fDTHHSE9GU8>> accessed 10 August 2015.

⁶⁰ See text accompanying nn 27-30.

⁶¹ See text accompanying n 137 in ch 4.

of the NACC sub-committee (see chapter 4). This therefore arguably creates a loophole in which people who have close ties with the government can be appointed to serve in a sub-committee. All of this ultimately increases the chance of the NACC sub-committee being subject to infiltration by those who seek to help the officer complained against. Political interference is therefore another area of concern over regulatory capture in the complaints authorities in Thailand.

On the surface, it is indisputable that the Ombudsman, the NHRC and the NACC all satisfy the UN criterion for operational independence as the complaints systems under the control of them are independent of both the police force and the government. However, it is also arguable that, as things stand, the engagement of active police officers as well as those who have police backgrounds in the systems under control of the above authorities demonstrates that the operation of these systems is creeping towards capture.

(e) Financial autonomy

It is not realistic to expect an independent police complaints body to be fully independent if it needs to rely on the budget of government ministries or other government agencies. The most obvious reason is that the complaints body will be pushed into a situation where it succumbs to political interference or compromise in the handling of complaints in consequence of the influence of government ministers who have control over the budget. To protect itself from interference and to enhance independence in the handling of complaints, the complaints authority should therefore be granted financial autonomy in order to manage its own budgets. In this respect, the UN Handbook suggests that:

Financial independence should be secured by having the agency's budget approved by the legislature, with statutory guarantees for the size and timing of the disbursement or the annual budget.⁶²

In Thailand, the Office of the NHRC, pursuant to section 21 of the NHRC Act, has the following responsibility in relation to finance for its own business:

The Office of the National Human Rights Commission shall, with the consent of the Commission, submit an estimated annual budget to the Council of Ministers via the President of the National Assembly for its consideration of appropriate budgets, adequate for the independent administration of the Commission, in an annual appropriation bill or supplementary appropriation bill, as the case may be.⁶³

Consistent with the way the NHRC proposes its annual budget, the Thai Ombudsman and the NACC also follow much the same line and place the following duty on their own administrative offices:

The Office of the Ombudsman shall, in the joint agreement with the ombudsmen, submit an estimated annual budget to the Cabinet... for the Cabinet to consider in an annual budget bill or an additional annual budget bill.⁶⁴

The Office of the National Anti-Corruption Commission shall, according to the NACC proposal, submit an estimated annual budget to the Cabinet... for the Cabinet to consider in an annual budget bill or an additional annual budget bill.⁶⁵

Even though each complaints body needs to submit its estimated annual budget to the Cabinet, in the end, the parliament will have its role in analysing and debating this budget

⁶² UN Handbook on Police Oversight (n 2) 70.

⁶³ NHRC Act (n 19) s 21.

⁶⁴ Office of the Ombudsman Act 2009, s 12.

⁶⁵ Organic Act on Counter Corruption 1999, s 115. This Act, hereinafter, will be referred to as the 'NACC Act'.

in accordance with paragraphs 1-3, section 168 of the 2007 Constitution.⁶⁶ This means the budgets of the external complaints authorities, in any event, are subject to parliamentary approval. It should be noted that the RTP annual budget is also subject to parliamentary approval through the submission of the government's annual budget bill to the parliament.⁶⁷

The way in which each complaints body in Thailand receives the funding it needs apparently meets the UN standard on financial independence, as the procedures for approving the government's annual budget bill (in which the funding for each complaints authority is included) do require parliamentary involvement and support.

Powers

One lesson that can be drawn from the history of police complaints reforms in England and Wales, not least during the lifetime of the IPCC's predecessor – the Police Complaints Authority (PCA) – is that a police complaints authority that is under-equipped with powers will not be capable of resolving complaints effectively.⁶⁸ In the UN Handbook on Police Oversight, it is underlined that an external police complaints body should be furnished with sufficient powers. These powers include the following:

⁶⁶ Constitution (n 9) s 168:

The House of Representatives must finish the consideration and analysis of the annual appropriations bill, a supplementary appropriations bill and a transfer of appropriations bill within one hundred and five days as from the date the bill is introduced to the House of Representatives.

If the House of Representatives has not finished the consideration of the bill within the period referred to in paragraph one, such bill shall be deemed to have been approved by the House of Representatives and shall be submitted to the Senate.

In the consideration by the Senate, the Senate must approve or disapprove it without any amendment within twenty days as from the date the bill is introduced to the Senate. Upon the lapse of such period, such bill shall be deemed to have been approved; in such case and in the case where the Senate approves it, further proceedings under section 150 shall be taken.

⁶⁷ *ibid.*

⁶⁸ Mike Maguire and Claire Corbett, *A Study of the Police Complaints System* (HMSO 1991) 19-26. See also, John Harrison and Stephen Cragg, *Police Misconduct: Legal Remedies* (3rd edn, Legal Action Group 1995) 34.

(a) Power to receive complaints

Receiving a complaint is an important initial process of the grievance handling cycle. In the UN Handbook on Police Oversight, it is suggested that:

The [complaints] mechanism should be authorised by legislation to receive complaints from any person.⁶⁹

This particular criterion raises two interesting points; first, the capability of a complaints agency to receive direct complaints; second, the eligibility of would-be complainants. As regards the first point, the IPCC research on direct complaints reflected why the complaints authority should have the power to receive direct complaints. The research found that the complainants sought to submit their grievances against the police directly to the IPCC for many reasons. The most common were:

[T]hey [complainants] did not believe that the police would deal with their complaint fairly ..., they wanted to complain to an independent organisation ..., and that they feared police harassment/other police action ...⁷⁰

As one complainant interviewed for the IPCC research put it:

If there was a body that I could go to, independent of the police station, forget that, somebody, some office, some, a building you can go to like the Jobcentre and go in there and say, look I've got a complaint against this policeman, this, that, what can I do about it, yeah I probably would go in there and do it. But to actually, as you say, walk straight into a police station and say, I've got a complaint against one of your

⁶⁹ UN Handbook on Police Oversight (n 2) 69.

⁷⁰ Harry Hagger Johnson, 'Direct Complaints: A Survey Seeking Feedback from People who Complain Directly to the IPCC' (IPCC 2010) 14.

colleagues, I don't think so somehow 'cos you've got a camera up there in that little corner that's pointing at you.⁷¹

On the point of an eligible complainant, the fact that anybody is permitted to make a complaint is significant. It does not take much imagination to understand that would-be complainants, not least those who are direct victims of serious malpractice, would find it intimidating to lodge their complaints against the police with the police. In the work of Smith, the evidence indicated that:

[A] majority of the claimants expressed fear at the fact that they had suffered at the hands of members of the public institution responsible for their personal safety. Their fears extended beyond the dread of a repeat experience to a deep-rooted sense of insecurity and more general feelings of alienation.⁷²

In the circumstances described above, it will be to the victim's advantage should a proxy complaint be allowed. Also, it is right that people who have witnessed police abuse are able to make a complaint, for the benefit of the society as a whole. For these reasons, widening the gateway to a complaints system by allowing 'any person' to make a complaint can prove to be an effective approach to the tackling of police abuse. Hence, the capability of the complaints body to receive direct complaints is arguably critical to complainants' personal confidence and the confidence of the public in the complaints system.

The power to receive a complaint, however, should not be naively interpreted as the capability to 'accept a complaint' only; also, this should mean the ability to 'record' and to

⁷¹ *ibid.*

⁷² Graham Smith, 'Actions for Damages against the Police and the Attitudes of Claimants' (2003) 13 *Policing and Society* 413, 416.

‘initiate’ the handling of complaints.⁷³ For its part, the IPCC is incapable under most circumstances of dealing with complaints from the outset, it merely accepts complaints and passes them to local police forces for recording.⁷⁴ The incapability of the IPCC to record a complaint arguably gives rise to two major problems. First and foremost, public confidence in the IPCC system is likely to be undermined. In 2014, the IPCC commissioned research to explore the confidence of the British public in the system it oversees; the findings illustrated that:

Just under half of the public would go to the police force concerned or their local police station if they wanted to make a complaint (44%), with half (51%) saying they would go elsewhere to complain.⁷⁵

In addition, those who have had their direct complaints with the IPCC diverted to local police forces recounted the following experience during interviews:

I was passed from department to department [within the force concerned], I had promises from officers who said they would contact me but I heard nothing.⁷⁶

I simply did not get a reply despite several verbal and written reminders.⁷⁷

⁷³ UN Handbook on Police Oversight (n 2) 53; see also, Special Rapporteur Report (n 6) paras 32-34

⁷⁴ See text accompanying n 19 in ch 4. Note that, once a complaint has been recorded, the police shall refer such complaint to the IPCC if:

- [the complaint] relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury (see paragraph 13(1)(a), schedule 3 of the PRA);
- [the complaint] falls within the mandatory referral criteria laid down in regulation 4 and 7, Police (Complaints and Misconduct) Regulations 2012; or
- the IPCC notifies the appropriate authority that it requires that matter to be referred to the Commission for its consideration (see paragraph 13(1)(c), schedule 3 of the PRA).

⁷⁵ Paul Harvey, Sarah Shepherd and Tom Magill, *Public Confidence in the Police Complaints System* (Ipsos MORI 2014) 20.

⁷⁶ *ibid* 10.

⁷⁷ *ibid* 11.

The IPCC has rightly pointed out that:

The decision whether to record a complaint is a point of potential antagonism for members of the public,...the possibility that a complaint may not be recorded makes explaining the system to members of the public more difficult.⁷⁸

The fact that the IPCC needs to rely on the police to record and initiate the complaints handling process does nothing positive but merely adds another layer of bureaucracy in the system. One of the IPCC complainants offered the following response in relation to how the IPCC deals with direct complaints:

So basically, it's pointless going through the IPCC if that option is really going directly to the [police force name] police complaints department.⁷⁹

Turning next to the systems under the Thai Ombudsman and the NHRC, the regulations governing both of them permit any person to file a complaint to them; thus, the Ombudsman and the NHRC apparently fulfil the UN criterion for receiving complaints.⁸⁰ Unlike the IPCC, the Thai Ombudsman and the NHRC have the power not just to receive direct complaints but also to handle them from the start (see chapter 4). The NACC also meets the UN criterion on receiving complaints but some concerns can be raised about access to its system. First, the enabling law of the NACC does not make clear who is eligible to make a complaint; moreover, the NACC system also lacks an effective guide for would-be complainants to navigate the system, this poses specific difficulties for ordinary people who seek to register complaints with them.⁸¹ Last but not least, it should be

⁷⁸ Independent Police Complaints Commission, 'Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems' (IPCC 2015) para 52.

⁷⁹ Johnson (n 70) 12.

⁸⁰ See text accompanying nn 10 and 61 in ch 4.

⁸¹ See texts accompanying nn 141-142 in ch 4.

underlined that the RTP is capable of receiving and dealing with complaints from start to finish.⁸²

(b) Power to be informed about deaths of individuals during or following police contact

In Thailand, the police do not have a duty to report cases involving deaths during or following police contact to the external complaints authorities. Thus, it may not be sensible to use the UN criteria concerning the reporting of deaths to benchmark against them. However, I will discuss this particular matter in the chapter on reforms in the Thai police complaints systems (see sub-section *Powers (c) Involvement in the post-mortem examination* in chapter 6).

(c) Power to conduct an investigation

Investigation, as the truth finding process, is critical to the handling of complaints as it is a stepping stone to the determination of whether complaints should be substantiated. In the UN Handbook on Police Oversight, it is stressed that:

The [complaints] agency should be authorised to undertake investigations into complaints received.⁸³

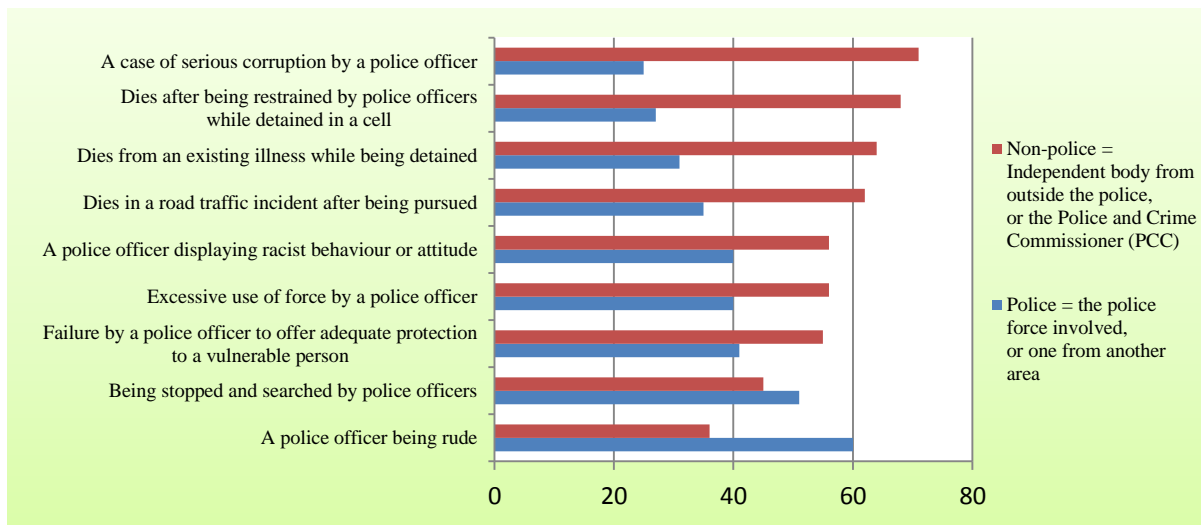
The research on the confidence of the British public discussed earlier presented the following chart revealing popular views on who should investigate police complaints?⁸⁴

⁸² Police Regulations on Factual Investigation 2013, reg 4 (2).

⁸³ UN Handbook on Police Oversight (n 2) 69.

⁸⁴ Harvey and others (n 75) 25.

Chart 5.1: Police or non-police investigation of the police



It is apparent that, apart from the issues of incivility and stop and search powers which are generally less serious, the majority of people wish to have their complaints investigated by a non-police body under most circumstances.

Based on the above research findings, the power to investigate complaints is very important not just to the truth-finding process but also in terms of maintaining public confidence in the complaints system. It is therefore suggested that the external complaints body should have their own power to investigate complaints.⁸⁵ In England and Wales, paragraph 15(4), schedule 3 of the PRA lays down that:

The only forms which the investigation may take in accordance with a determination made under this paragraph are—

- (a) an investigation by the appropriate authority on its own behalf;
- (b) an investigation by that authority under the supervision of the Commission;

⁸⁵ Special Rapporteur Report (n 6) para 34.

- (c) an investigation by that authority under the management of the Commission;
- (d) an investigation by the Commission.

Under the English system, although the IPCC does not investigate every complaint, it is surely capable of investigating complaints on its own behalf. Hence, the IPCC would appear to be in conformity with the UN criteria. However, the adverse consequence of having the police sharing investigatory responsibility with the IPCC was evident in many high-profile cases. The death of Ian Tomlinson during the 2009 G20 protests in London is illustrative of the difference of the end result of a police investigation managed by the IPCC, and an IPCC independent investigation.⁸⁶ In this case, the IPCC, at first, decided not to launch its own independent investigation and left the matter in the hands of the City of London Police as it claimed that the death of Mr. Tomlinson [at that stage] could not be linked to contact with the police.⁸⁷

Later, the police investigation concluded that the death of Mr. Tomlinson was not the responsibility of the accused officer.⁸⁸ However, it was not until the video footage of the assault upon Mr. Tomlinson by the accused officer was released that the IPCC decided to investigate the case independently and order another autopsy.⁸⁹ The findings of the second post-mortem, together with the IPCC independent investigation, showed that Mr. Tomlinson died in consequence of a physical attack carried out by the accused officer

⁸⁶ Independent Police Complaints Commission, 'Independent Investigation into the Death of Ian Tomlinson on 1st April 2009' (IPCC 2010) 10-11.

⁸⁷ *ibid* 65. The reason for this was offered as follows:

No such decision [on the IPCC involvement] could be made regarding the mode of investigation into the death of Mr. Tomlinson at this point as the relationship between his collapse and subsequent death, and the police, was unknown. Therefore, at this stage, the decision was made to closely monitor the investigation being undertaken by the City of London Police...

⁸⁸ *ibid* 73.

⁸⁹ *ibid* 76-84.

on him.⁹⁰ It can be seen that the IPCC completely misjudged the complaint about Mr. Tomlinson's death from the outset because it was misled by the police.

We can understand from chapter 1 and also from the previous chapter that although the Thai Ombudsman and the NHRC are both capable of addressing complaints,⁹¹ their inquiries do not pave the way for disciplinary and/or criminal proceedings. Unlike these two bodies, the NACC's remit is to investigate every complaint about corruption and malfeasance in office allegedly committed by officers of at least Superintendent level (see chapter 1); nonetheless, the paramount concern over the impartiality of these investigations lies with the fact that active police officers are involved with the handling of complaints under the NACC system (see chapter 4). The evidence from this research suggests that most Thai police officers are keen to employ all types of devious tactics to ensure that there will be no investigation or the investigation will be conducted in favour of the police themselves.⁹² Drawing the lesson from Mr. Tomlinson's case in England, the NACC is highly likely to be misled by the police at times.

As emphasised in the UN Handbook, the power to investigate police malpractice does not always need a complaint; indeed, the complaints body should "have the capacity to start an investigation on its own initiative".⁹³ It was outlined in the preceding chapter that the IPCC does not have the power to investigate malpractice on its own initiative as the Commission explained that, in most circumstances, the IPCC will become able to act only after the

⁹⁰ *ibid* 127-128.

⁹¹ Organic Act on Ombudsmen 2009, ss 31 para 1, 15(1), (2); see also, NHRC Act (n 19) ss 25 para 1, 26 para 1, 32(1), (2). See also, the statutory functions of these bodies in ch 1.

⁹² See sub-s *Impartiality in a Local Complaints System* in ch 3.

⁹³ UN Handbook on Police Oversight (n 2) 53.

police has taken the initial step.⁹⁴ In contrast to the IPCC, the Thai complaints bodies in question are all capable of conducting an investigation on their own initiative.⁹⁵

In view of the fact that the Thai Ombudsman and the NHRC are incapable of undertaking an investigation directed at disciplinary and/or criminal proceedings to follow, it can be claimed that they are not in conformity with the UN criteria on the power of investigation. As for the NACC and the IPCC, even though they conform to the relevant UN criteria the fact that they share with the police some responsibility to investigate complaints, including some serious ones, causes a real worry in terms of effectiveness and impartiality. In addition, when it comes to the capability to handle complaints on one's own initiative, it was found that the Thai complaints bodies are all in compliance with the UN criteria whilst the IPCC is not.

(d) Investigatory powers

Unless a complaints body is well-equipped with sufficient powers, being able to launch an investigation alone is unlikely to be sufficient to get to the bottom of the matter. The investigatory powers that effectually allow the complaints body to compel police cooperation are vital to the conduct of an effective investigation. Discussion about investigatory powers in this sub-section therefore focuses on the power to compel police cooperation. In this regard, it is underlined in the UN Handbook on Police Oversight that:

The [complaints] agency should have the power to compel police cooperation with its investigations...⁹⁶

In England and Wales, the IPCC has a wide range of powers akin to that of the police when they investigate crimes⁹⁷ yet still struggles to gain full cooperation from the police.

⁹⁴ See text accompanying n 19 in ch 4.

⁹⁵ See ch 4.

⁹⁶ UN Handbook on Police Oversight (n 3) 69.

The IPCC claim that, more often than not, the officers involved decline to answer the questions verbally during an interview; however, in some cases, the IPCC also failed to treat the officers involved as suspects and interview them under caution.⁹⁸

Turning now to the NHRC system, section 32 (1) – (3) of the NHRC Act provide the Commission with the power to instruct the officers involved to present their evidence and/or to attend an interview. Nevertheless, under section 33 of the legislation, sanctions against those who refuse to comply with the Commission’s instructions may be applied to a civilian or a private organisation but not an official; this therefore creates a loophole in the NHRC inquiry.⁹⁹ The landmark cases of the Trans Thai-Malaysia Gas Pipeline and the Koh Tao murder case, coupled with the interview given to this research by the NHRC commissioner, confirmed how lacking the NHRC is in terms of binding authority to compel police cooperation (see also sub-section *Powers, (h) Deploying powers*, chapter 6).¹⁰⁰ By comparison, the NACC is clearly capable of compelling police cooperation since section 118 of the NACC Act introduces penalties for those who fail to comply with the Commission’s instructions, not least the instructions under section 25(1) concerning attendance at an investigation interview.¹⁰¹ In line with the NACC, the Ombudsman also has a wide range of investigatory powers under its statutory structure. The Ombudsman is capable of ordering the officers involved to submit the evidence and/or to come in for an interview pursuant to section 15(1), (2) and (4) of its enabling legislation, for instance.

⁹⁷ PRA (n 8) sch 3, para 19(4)(b).

⁹⁸ See text accompanying nn 93-94 in ch 4.

⁹⁹ NHRC Act (n 19) s 33. Note that, the NHRC had made an effort to propose the amendment of its enabling legislation. One of the significant points in the proposed NHRC Bill was to incorporate ‘an official’ in section 33 of the existing legislation in order for the NHRC to be able to compel cooperation from an official; however, the Bill has not yet been put through since then. The information on the NHRC Bill is available via <<http://dl.parliament.go.th/handle/lirt/75724>>.

¹⁰⁰ See ch 4.

¹⁰¹ NACC Act (n 65) ss 25(1), 118.

Much the same as the NACC, provision is made for punitive measures against those who fail to comply with the Ombudsman's instructions.¹⁰²

As an investigatory body, the complaints authority needs to have sufficient power to investigate properly in order to undertake an effective investigation. Judging from the above analysis, whilst the NACC and the Ombudsman similarly have the power to compel police cooperation, the NHRC does not have any binding authority to do the same. The NHRC therefore does not satisfy the UN criteria for investigatory powers.

(e) Power to refer cases for criminal prosecution

Sometimes, the investigation outcome identifies not just a disciplinary offence but also a criminal offence. Under such circumstances, the UN Handbook on Police Oversight underlines that:

The [complaints] agency should have the power to refer cases for criminal prosecution to the public prosecutor.¹⁰³

Prior to the referral of cases for prosecution, the capability of the complaints body to identify whether a criminal offence may have been committed is an important prerequisite. This means the complaints authority should have the power to investigate criminal aspects of complaints it receives. Looking at the system under the NACC, section 97 of its enabling law apparently provides the Commission with the power to refer complaints cases for criminal prosecution and, under certain conditions, the NACC is capable of bringing the case to court itself.¹⁰⁴ This shows that the NACC not just met the UN criteria for referral of cases for prosecution; actually, it has more power than the UN called for. In England and Wales, paragraph 23 (2)(C), schedule 3 of the PRA prescribes that the IPCC

¹⁰² Ombudsman Act (n 91) s 45.

¹⁰³ UN Handbook on Police Oversight (n 2) 69.

¹⁰⁴ NACC Act (n 65) s 97.

shall determine if the investigation outcomes should be notified to the Director of Public Prosecution. What this suggests is that the IPCC has the power to investigate and refer complaints cases for criminal prosecution, even though in comparison with the NACC in Thailand, the IPCC is less powerful on this matter.

With regards to the Thai Ombudsman, section 34 of the Ombudsman Act makes it clear that it is not the business of the Ombudsman to drill down into matters relating to criminal offences, rather, if evidence of a criminal offence is found, the complaint shall be referred to the agency having investigatory powers to take further action.¹⁰⁵ One of the senior inquiry officers serving with the Ombudsman commented as follows during an interview for this research:

Let me put it this way, assuming we found that the officer complained against may have perpetrated a criminal offence, we would refer the complaint to the police and inform them to convene a [investigatory] panel to look into the matter. But if we are of opinion that the officer at fault may have committed malfeasance in office, we will refer the complaint case to the NACC as the appropriate authority. In both cases, the bodies involved need to keep us informed of the progress once every three months.¹⁰⁶

This confirms that the Ombudsman has no power to commence criminal proceedings and refer the complaints for criminal prosecution. Instead, it needs to instruct the appropriate authority that has direct responsibility for a criminal investigation to take action. Thus, the Ombudsman is unable to satisfy the UN standard on referral of complaints for prosecution.

¹⁰⁵ Ombudsman Act (n 91) s 34.

¹⁰⁶ Interview with [anonymous], a senior inquiry officer of the Ombudsman (Bangkok, Thailand, 30 July 2014). Note that in some cases, the Ombudsman also refers complaints cases to the NACC for further investigation.

Moving on to the NHRC, paragraph 1, section 28 of the NHRC Act underlines that, having concluded the investigation, if the NHRC views that human rights abuses have been committed by the officer involved, the Commission shall inform the officer involved or the appropriate authority about the legal duties and methods of performance for the remedy of the violation of human rights.¹⁰⁷ However, the Commission does not have the power to instigate criminal proceedings nor does it have the power to refer complaints to the public prosecutor.¹⁰⁸ For example, in the NHRC inquiry case no. 474/2556, the complainant claimed to have been assaulted by the police following the arrest. In this case, the NHRC determined that there was a violation of human rights by the police; however, the Commission did not refer this complaint to the public prosecutor. Instead, it instructed the RTP to command the police force area concerned to investigate further and give its opinion on prosecution to the public prosecutor.¹⁰⁹ In this respect, the NHRC commissioner interviewed for this research explained that when it comes to referral of complaints to criminal prosecution:

We cannot refer complaints directly to the public prosecutor. What we can do is just to conclude the investigation and if we're of opinion that the officer complained against may have committed a criminal offence, we will order the police to conduct an investigation but if an offence is related to malfeasance in office, we'll refer the case to the NACC. That's what we can and are now doing.¹¹⁰

The interview clearly substantiated the argument that the NHRC does not have the power to refer complaints to the public prosecutor as, similarly to the Ombudsman, it needs to

¹⁰⁷ NHRC Act (n 19) s 28 para 1.

¹⁰⁸ Pirom Sriprasert, 'The Problems Relating to the Procedures of Investigation of Human Rights Violations by the National Human Rights Commission of Thailand' (LLM Thesis, Thammasat University 2008) 115-117 [in Thai].

¹⁰⁹ National Human Rights Commission, case no. 474/2556 (2013).

¹¹⁰ Interview with the NHRC commissioner (n 53).

refer the complaint to the appropriate authority which has direct responsibility to investigate a criminal offence.

We may thus conclude that, apart from the NACC, the external complaints authorities in Thailand do not fulfill the UN criteria concerning the power to refer for criminal prosecution.

(f) Power to suggest (and enforce) disciplinary measures

Substantiation of complaints means little unless action has been taken to remedy the cause for complaint. When a complaint is substantiated, the UN Handbook on Police Oversight emphasises that:

The [complaints] agency should have the power to suggest disciplinary measures to the police department.¹¹¹

Whilst the power to propose disciplinary measures alone may not ensure any concrete result, one can argue that such a proposal will put some pressure on the police themselves, at least in terms of having to explain themselves to the public if they decide not to accept the complaints body's suggestions.

Let us first consider the system under the Thai Ombudsman. Having substantiated complaints, the Ombudsman is capable of putting forward remedial measures to the police force area concerned or the RTP pursuant to paragraph 1, section 32. Notably, one of the senior inquiry officers of the Ombudsman interviewed for this research elaborated upon the authority of section 32 as follows:

Putting it simply, section 32 is like a panacea for the problem, it's about methods, it's about the means of solving problems. This means if the

¹¹¹ UN Handbook on Police Oversight (n 2) 69. Note that this particular arrangement signifies the power of a complaints body that has a binding effect on the police force.

Ombudsman is of the opinion that something is helpful in addressing cause for complaint, he or she will recommend that to the police or any other appropriate authorities. But this power is not for us to determine what disciplinary action the police should take against the officer at fault.¹¹²

The same interviewee also pointed out that under section 34 paragraph 1 of the Ombudsman Act, if the Ombudsman is of the opinion that a criminal offence and/or a disciplinary offence may have been committed, it may require the police to initiate an investigation into such complaints cases.¹¹³ For instance the Ombudsman found in one case that the officer complained against had deliberately delayed recording the alleged offence reported to him with further intention to '*Pao Kadee*' – to allow the case to go unrecorded (see chapter 3); it determined that such an act amounted to a breach of discipline. Then, it went on to require that the police force area involved, as the appropriate authority, should investigate the matter by relying on the findings of its inquiry report.¹¹⁴ Here the question is whether the power to order the police to convene an investigatory panel to investigate a criminal offence is equivalent to the power to suggest disciplinary measures and thus in accordance with the UN criteria? I would tentatively answer this in the affirmative, but with the rider that requiring an investigative panel to be set up is a relatively weak form of such power.

Under the NHRC system, the procedure following the inquiry is similar to the Ombudsman which is that subsequent to the substantiation of complaints, the Commission has the power to propose remedial measures to the police force area concerned or the RTP in

¹¹² Interview with a senior inquiry officer of the Ombudsman (n 106).

¹¹³ Ombudsman Act (n 91) s 34.

¹¹⁴ Office of the Ombudsman, 'Annual Report 2011' (Thai Ombudsman 2011) 104-107 [in Thai].

accordance with section 28 paragraph 1 of the NHRC Act.¹¹⁵ In the interview with one of the NHRC commissioners, the power of section 28 was explained as follows:

The power to recommend remedial measures in section 28 enables the NHRC to come up with any possible approach to the problem. For instance, in case of police misconduct, we may suggest the police set up an investigatory panel to look further into the matter, if we are of opinion that the officer complained against may have committed disciplinary offences.¹¹⁶

Much the same as the Ombudsman, this interview reflected that the NHRC is capable of suggesting that the police force area concerned should appoint an investigatory panel. As a result, it can be seen that the NHRC is also in conformity with the UN criteria.

As opposed to other complaints authorities in Thailand, the NACC has the power to direct the police to take specific disciplinary action against the wrongdoer.¹¹⁷ In 2012, the NACC handled a high profile complaint against the then Commander of the Metropolitan Police Division 1 – Police Major General Wichai Sangprapai – who had capitalised upon an arrest warrant by unlawfully taking the arrestee into custody in order to make her repay 10 million Thai Baht to a creditor (the then Commander's personal contact). Having investigated the matters, the NACC arrived at the decision that the then Commander was guilty of abuse of power; afterwards, the Commission directed the RTP to take disciplinary action pursuant to sections 78 (1) and 79 (1), (5) and (6) of the NPA on grounds of both

¹¹⁵ NHRC Act (n 19) s 28 para 1.

¹¹⁶ Interview with the NHRC commissioner (n 53).

¹¹⁷ NACC Act (n 65) s 92 para 1.

misconduct and gross misconduct.¹¹⁸ This apparently shows that the NACC system complies with the UN criteria.

Turning to the English system, according to paragraphs 23 and 27 of schedule 3 to the PRA, the IPCC has the power to notify the police force concerned that the officer complained against has a case to answer for misconduct or gross misconduct and then make recommendations to the force concerned that a disciplinary meeting or hearing should be held. In case the force concerned has failed to implement such recommendations, the IPCC also has the power to direct them to do so. This illustrates that the IPCC can require the police to adopt its recommendations on disciplinary proceedings, although not to the extent of ordering what specific outcome should follow.

Apart from the power to suggest disciplinary measures, it is suggested further in the UN Handbook on Police Oversight that the external complaints body, if it is to be perceived as strong, should also “be able to enforce proposed disciplinary measures”.¹¹⁹ Referring again to the Sangrapai case above, unlike the other complaints bodies, the NACC is not only able to recommend disciplinary measures to the police, it is also capable of enforcing the proposed measures according to section 92 paragraph 1 of the NACC Act because this provision specifies that the NACC recommendations shall not be subject to the [re]examination of any disciplinary panel. The implication of this is that the police have to endorse the proposed measures without the power to dispute the Commission (see chapter 4). On the contrary, the Ombudsman and the NHRC need to rely on other constitutional

¹¹⁸ National Anti-Corruption Commission, ‘Annual Report 2012’ (NACC 2012) 37-38. Under the NPA, s 78 is concerned with disciplinary action in case of misconduct whilst s 79 is involved with disciplinary action in case of gross misconduct.

¹¹⁹ UN Handbook on Police Oversight (n 2) 69.

bodies when it comes to enforcing proposed recommendations which proves to be a major hindrance to them in finishing their jobs effectively.¹²⁰

In the case of the IPCC system, even though the police force concerned has a duty to follow the IPCC's recommendations which means that it needs to bring disciplinary proceedings against the officer alleged to have perpetrated misconduct,¹²¹ the IPCC's decision on disciplinary measures is often challenged at misconduct proceedings. The IPCC explained this as follows;

Recently, in case where we had to direct a force to bring proceedings (in this instance a misconduct meeting), the force informed us that they intended to present the case at the meeting as 'no case to answer' and produced their own report to that effect.¹²²

It can be seen that, in the end, the IPCC does not have the power to enforce the disciplinary measures that they themselves propose to the police force concerned. In other words, the IPCC cannot require what the outcome of the misconduct proceedings should be.

Based on the evidence in this research, it is apparent that the complaints authorities in Thailand and the IPCC all satisfy the UN minimum criterion on the power to suggest disciplinary measures. The fact also shows that the NACC is the sole body that reaches the UN higher standard as it is capable of enforcing its proposed recommendations.

(g) Witness protection

Safeguards for witnesses are indispensable in the fight against impunity. Arguably, "a legal system that promotes justice but does not set in place the means to protect witnesses is a

¹²⁰ NHRC Act (n 19) ss 30, 31; Ombudsman Act (n 91) s 33.

¹²¹ PRA (n 8) sch 3, para 27(4)(b). See also, Police (Conduct) Regulations 2012, reg 19(6)(1). These Regulations, hereinafter, will be referred to as the 'Conduct Regulations'.

¹²² IPCC, 'Improving Police Integrity' (n 78) para 176.

fraud”¹²³ because witnesses not least in serious cases will simply be left exposed to violence arising out of retaliation. In the UN Handbook on Police Oversight, protection for witnesses is emphasised as an important mechanism in the complaints system. It is underlined that:

The [complaints] agency should be able to provide or refer witnesses to witness protection where necessary.¹²⁴

Since 1997, Thailand has endorsed the principle of giving protection to witnesses in criminal proceedings,¹²⁵ but it was not until the Witness Protection Act came into effect in 2003 that safeguards for witnesses in Thailand became somewhat systematic.¹²⁶ As a unified regulatory framework for witness protection in Thailand, the WPA is also applied to police complainants who need protection. To ensure that a witness protection scheme is organised properly, the Witness Protection Bureau (WPB), affiliated with the Rights and Liberties Protection Department (RLPD), Ministry of Justice,¹²⁷ was established to play a pivotal role in safeguarding witnesses alongside the RTP.¹²⁸

Without doubt, complainants of the internal system in Thailand can be given protection directly from the police. In contrast, the external complaints authorities do not have the capacity to offer protection to their complainants or witnesses but they are able to refer them to the relevant bodies for witness protection.

¹²³ Asian Legal Resource Centre, ‘Protecting Witnesses or Perverting Justice in Thailand’ (2006) 5 Article 2, 1, 2.

¹²⁴ *ibid.*

¹²⁵ Suttochai Lortrakul, ‘Problems of Personal Witness Protection in a Criminal Case under the Witness Protection Act, B.E. 2546’ (2010) 2 RMU J 47, 48-49 [in Thai].

¹²⁶ Witness Protection Act 2003, hereinafter, will be referred to as the “WPA”.

¹²⁷ Ministerial Decree concerning the Organisational Structure of the Rights and Liberties Protection Department, Ministry of Justice 2002, r 2 (5).

¹²⁸ WPA (n 126) s 13.

One of the complaints cases dealt with by the NHRC demonstrates how the Commission performed its role in referring the complainant for protection; following the investigation, the NHRC recommended as one of the remedial measures:

To inform the Rights and Liberties Protection Department [about the investigation outcomes], in order for the Department to use the information to introduce measures to follow the situation and give protection to the witness...¹²⁹

Even though this case reflects that the NHRC is capable of referring witnesses for protection, the NHRC commissioner interviewed for this research explained that the cooperative framework between the NHRC and the authority having the power to give witnesses protection is based on an informal arrangement:

We can't instruct nor require anybody to give our complainants witness protection as there is no formal agreement between us and any other authority on protection. What we can do is to discuss with the responsible authority that we need help with witness protection but ultimately everything is up to that authority.¹³⁰

As for the Thai Ombudsman, it is encouraging that, unlike other complaints systems in question, the complainants and witnesses of the Ombudsman system are granted immunity from prosecution according to section 19 of the Ombudsman Act.¹³¹ Similarly to the

¹²⁹ National Human Rights Commission, case no. 99/2553 (2010). The NHRC submitted its recommendations to the Rights and Liberties Protection Department as a governing body of the WPB.

¹³⁰ Interview with the NHRC commissioner (n 53).

¹³¹ Ombudsman Act (n 91) s19 prescribes that:

A person who gives statement or submits any object, document, proof or evidence in concerning with the matter under this Organic Act to the Ombudsmen or officer entrusted in writing by the Ombudsmen or a person preparing and disseminating the report of the Ombudsmen under section 32, section 33 and section 43 shall not be liable to civil, criminal or disciplinary if he discloses information or submits any object, document, proof or evidence or prepares or discloses the report, as the case may be, in good faith.

NHRC, the Ombudsman can also refer witnesses to the protection provider on an informal basis. One of the senior inquiry officers of the Ombudsman interviewed for this research elaborated that:

On the witness protection, we need to ask for cooperation from the bodies that have direct responsibility for giving protection. Normally, we'll point out in our investigation report that the complainant should be protected and who we are seeking cooperation from to give the protection.¹³²

In most relevant cases, the Ombudsman seeks help from the police to provide protection for its complainants.¹³³ Unlike other complaints bodies, the NACC enacted its own regulations concerning witness protection. In this regard, it is specified that:

In case where the NACC is of [the] opinion [that] the witness protection should be given, the Office of the NACC shall notify the Witness Protection Bureau, the Rights and Liberties Protection Department or the Royal Thai Police or other authorities concerned in order to implement the witness protection measures...¹³⁴

Apart from the witness regulations, the NACC has also signed a Memorandum of Understanding (MoU) on witness protection coordination with the RTP which even enhances the referral process between the two.¹³⁵ All of this shows just how systematic is the referral of witnesses for protection under the NACC complaints system.

In sum, the Ombudsman, the NHRC and the NACC are in conformity with the UN criteria as they are able to refer witnesses for protection.

¹³² Interview with a senior inquiry officer of the Ombudsman (n 106).

¹³³ 'Ombudsman Report' (n 114) 104-107.

¹³⁴ National Anti-Corruption Commission Regulations on Witness Protection 2011, reg 8 para 2.

¹³⁵ 'MoU on witness protection measures signed' *The Nation* (Bangkok, 10 July 2013) <<http://www.nationmultimedia.com/breakingnews/MoU-on-witness-protection-measures-signed-30210091.html>> accessed 26 May 2015 [in Thai].

(h) Power to make reform recommendations on policing

All too often police misconduct is treated as a matter of individual responsibility on the part of the officer concerned, even though a number of misconduct cases also result from flawed policies and/or operational strategies. Offering general reforms recommendations to the police and/or the government is thus vital to tackling repeated patterns of malpractice; this matter is underlined in the UN Handbook on Police Oversight as follows:

An [complaints] agency should be able to propose general reform measures on policing to the police force and the government.¹³⁶

Since its inception, the IPCC has addressed a series of complaints against the police concerning the mishandling of people with mental health difficulties.¹³⁷ High profile cases involving the deaths of Sean Rigg and Oliseni Lewis,¹³⁸ for instance, have heightened concerns over the approach the police adopt in response to situations where people with mental problems need to be dealt with.

In September 2008, for example, the IPCC commissioned research to be carried out on the issues of police custody and people with mental health difficulties. It, then, in line with the above statutory duties, proposed a number of general reform measures to police forces in England and Wales to ensure that they would implement safer approaches when dealing

¹³⁶ UN Handbook on Police Oversight (n 2) 69.

¹³⁷ Under section 10 (1)(a) of the PRA, the IPCC shall have the duties:

(1) (a) to secure the maintenance by the Commission itself, and by police authorities and chief officers, of suitable arrangements with respect to the matters mentioned in subsection (2);

(2) (ba) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a person serving with the police.

¹³⁸ Kurt Barling, 'Been Here Before – A Death in Custody' (*Barling's London*, 25 November 2010) <http://www.bbc.co.uk/blogs/kurtbarling/2010/11/been_here_before_-_a_death_in.html> accessed 18 July 2015.

with people with mental health problems in order to avoid unexpected deaths in custody.¹³⁹

The IPCC's capacity to propose general reforms to the police forces could help minimise the problems arising out of flawed operational strategies.

In a similar fashion to the IPCC, the complaints authorities in Thailand also have the power to propose general reforms measures on policing and related issues. Considering section 15 (3) of the NHRC Act, for instance, the Commission has as one of its main duties:

[T]o propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of law, rules and regulations for the purpose of promoting and protecting human rights.

During the 'war on drugs' campaign in Thailand (see chapter 3), the NHRC had played its role in proposing general reform measures to the then Prime Minister Thaksin designed to guard against the worrying spate of extrajudicial killings.¹⁴⁰ In 2004, the Commission again issued general reform recommendations requiring the government to rescind 'a state of emergency' decree passed by the Thaksin Administration in reaction to violence from Islamic militants in three southern-most provinces of Thailand. The reason was that this decree severely violated human rights as it empowered the police to bug and monitor private conversations and communications, as well as to take any suspect into custody for up to seven days without having to seek a court warrant.¹⁴¹ All of this indicates that the NHRC system apparently matches the UN criteria on general reform recommendations.

¹³⁹ Maria Docking, Kerry Grace and Tom Bucke, *Police Custody as a "Place of Safety": Examining the Use of Section 136 of the Mental Health Act 1983*, (IPCC 2008) 29-30.

¹⁴⁰ National Human Rights Commission, 'Open Letter to the Prime Minister regarding General Recommendations on the Suppression of Drug Trafficking Policy' (NHRC, 25 November 2003) <http://www.nhrc.or.th/2012/wb/img_contentpage_attachment/375_file_name_5168.pdf> accessed on 17 January 2015 [in Thai].

¹⁴¹ National Human Rights Commission, 'Open Letter to the Prime Minister regarding General Recommendations on a State of Emergency Decree' (NHRC, 3 December 2004)

The Ombudsman and the NACC both have the ability to propose general recommendations on policing as the NHRC does. Nonetheless, the recommendations made by the Ombudsman are mainly concerned with the implementation of the constitution and the issues around ethical standards of the state officials¹⁴² whilst those issued by the NACC are predominantly focused on anti-corruption measures.¹⁴³ Given the primary roles that the Ombudsman and the NACC are playing, it seems impractical to use the UN criteria for general reform recommendations to benchmark against them.

Adequate investigation

Adequacy is one of the key elements for the effectiveness of a complaints-handling process. The lessons from many countries consistently suggest that the failure of the complaints system run by the police to address police complaints properly largely results from ‘a lack of adequate investigation’.¹⁴⁴

The ECtHR adequacy principle embraces thoroughness as the essential ingredient for an adequate investigation. For an investigation to be perceived as thorough and adequate, the complaints body should be required to adopt the following practices as a minimum:¹⁴⁵

[T]aking a full and accurate statement from the complainant covering all of the circumstances of their complaint;

<http://www.nhrc.or.th/2012/wb/img_contentpage_attachment/421_file_name_6414.pdf> accessed on 17 January 2015 [in Thai]. See also, Leyland (n 27) 172.

¹⁴² Ombudsman Act (n 91) s 13(3), (4).

¹⁴³ NACC Act (n 65) s 19 (11).

¹⁴⁴ Graham Smith, ‘The Interface between Human Rights and Police Complaints in Europe’ in Tim Prenzler (ed), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press 2016) 159-168. See also, Tim Prenzler, *Police Corruption: Preventing Misconduct and Maintaining Integrity* (CRC Press 2009) 87-90.

¹⁴⁵ Opinion of the Commissioner (n 3) para 69.

[M]aking reasonable efforts to trace witnesses, including members of the public and police officers, for the purpose of obtaining full and accurate statements;

[W]here issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards, and not allowing them to confer with colleagues before providing an account;

[M]aking reasonable efforts to secure, gather and analyse all of the forensic and medical evidence;

[P]ursuing lines of inquiry on grounds of reasonable suspicion and not disregarding evidence in support of a complaint or uncritically accepting evidence, particularly police testimonies, against a complaint;...

‘Taking a full and accurate statement from the complainant’ is a significant first step not just in terms of giving the complainant an impression that the complaints authority is taking people’s grievances seriously but also in terms of making sure that the complaint can be thoroughly investigated provided an investigation is warranted. On this particular matter, the evidence from this research indicates that the Thai complaints bodies in question seem to adhere to the adequacy principle.

As noted in chapter 1, the NACC has the function of dealing with certain types of criminal culpability (eg, bribery and corruption in public office) whilst the Ombudsman and the NHRC do not. When the issues of criminal wrongdoings arise, the NACC uses police powers to deal with them; hence, the NACC is clearly capable of treating any officers involved as suspects and interviewing them in that manner. However, the Ombudsman and

the NHRC are unable to do the same. This research found that the NACC, as a police complaints body, is relatively efficient in addressing issues of criminal culpability.¹⁴⁶ With respect to uncontaminated police accounts of fatal incidents and the preserving of forensic and medical evidence, the fact that it is not within the remit of any Thai complaints agencies under review to take part in the post-mortem examination in the first instance (see sub-section *Powers (b)*) means that they cannot ensure that the officers involved will not exchange their information about the incident and thus police accounts will be uncontaminated. A lack of involvement in the post-mortem examination also means that the Thai complaints bodies are not capable of preserving, gathering and analysing forensic and medical evidence at the outset — points discussed more fully in the next chapter.

As for the other practices mentioned above, the evidence shown in the previous chapter apparently demonstrated that the handling of complaints by the Ombudsman tends not to involve fieldwork but rather relies heavily on the evaluation of documentary proof; surely, the Ombudsman inquiry is not as thorough as the adequacy principle requires.¹⁴⁷ When it comes to the NHRC, although the Commission does make a reasonable effort to gather evidence, there is a lack of consistency in doing so with each and every complaint.¹⁴⁸ The fact that the Ombudsman and the NHRC suffer from a lack of reasonable and consistent efforts to collect evidence to identify whether the officer complained against has perpetrated misconduct seems to suggest that they are likely to take police justifications and evidence at face value at times.

The analysis of the NACC in the preceding chapters demonstrated that the Commission uses its formal and coercive powers on a regular basis when investigating complaints;

¹⁴⁶ See text accompanying n 118, for example.

¹⁴⁷ See text accompanying nn 38, 40- 43 in ch 4.

¹⁴⁸ See text accompanying nn 72-75 in ch 4.

however, the fact that active police officers are assigned a role in the investigation carries with it the risk of the NACC uncritically accepting police justifications and evidence.¹⁴⁹ Moreover, the interview data collected for this research shows that the NACC sometimes fails to deal with the complaints registered directly with it.¹⁵⁰ In exploring the thoroughness of the IPCC independent investigation, the high-profile case of Sean Rigg in 2008 is worth discussing. Mr. Rigg was a person with mental difficulties who had been arrested by the Brixton police and died shortly after whilst in police custody.¹⁵¹ Having faced a chorus of criticisms about its investigation into the death of Sean Rigg, the IPCC commissioned a group of experts to review its own independent investigation report. The report highlighted a number of critical issues including the fact that the IPCC investigators failed to make reasonable efforts to view and deduce from the CCTV footage that Mr Rigg was left unconscious in the cage in the back of the police van without having the responsible officer monitoring his fitness; this ultimately led to the death of Sean Rigg and, apparently, shows that the police neglected their duty of care.¹⁵² The report also revealed that the IPCC investigators appeared to be too ready to accept the police accounts of the incident.¹⁵³

The above discussion underlines that all of the complaints bodies under review of this research face a considerable challenge in terms of ensuring that their investigation / inquiry into police complaints is thorough and adequate for effectively identifying whether the officer involved has committed misconduct. It can be concluded that each of them is not in full compliance with the adequacy principle.

¹⁴⁹ NACC Act (n 65) s 89. See also, text accompanying n 167 in ch 4.

¹⁵⁰ See text accompanying nn 141-142 in ch 4.

¹⁵¹ Independent Police Complaints Commission, 'IPCC Independent Investigation into the Death of Sean Rigg whilst in the Custody of Brixton Police and Complaints made by Mr Wayne Rigg and Ms Angela Wood' (IPCC 2008) 5-6.

¹⁵² Silvia Casale, Martin John Corfe and James Lewis QC, 'Report of the Independent External Review of the IPCC Investigation into the Death of Sean Rigg' (IPCC 2008) 77-79.

¹⁵³ *ibid* 95.

Promptness

A prompt investigation is arguably the key to the success of the truth-finding process. In 2006, the Association of Chief Police Officers (ACPO) has adopted the term the ‘Golden Hour’ in its murder investigation manual to describe:

[T]he principle that effective early action can result in securing significant material that would otherwise be lost to the investigation.¹⁵⁴

Apart from loss of evidence, the negative impacts of the delay in investigating the incident of malpractice can also range from the decay of witnesses’ memories, disturbance of the crime scene, or the intimidation or even murder of witnesses, to name but a few.¹⁵⁵ In addition, a delayed investigation also dents public confidence in the complaints body. As pointed out in the Opinion of the Commissioner:

Failure to conduct a complaints investigation in a prompt and reasonably expeditious manner may give the appearance that there is a reluctance to investigate or of collusion between investigators and officers complained against to conceal wrongdoing.¹⁵⁶

Therefore, the complaints authority should make sure that the handling of complaints will be conducted promptly in order to provide reassurance that the complaints authority is efficient and impartial. In England and Wales, regulation 8 of the Police (Complaints and Misconduct) Regulations 2012 specifies that:

Any DSI [Death or Serious Injury] matter which is required to be referred to the Commission shall be referred in such manner as the Commission specifies and—

¹⁵⁴ Association of Chief Police Officers, ‘Murder Investigation Manual 2006’ (National Centre for Policing Excellence 2006) 42.

¹⁵⁵ Tamar Hopkins, *An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia* (Grants Publications Education 2009) 54.

¹⁵⁶ Opinion of the Commissioner (n 3) para 71.

(a) in a case where the Commission directs that the matter be referred to it, without delay and in any event not later than the end of the day following the day on which the Commission so directs;

(b) in any other case, without delay and in any event not later than the end of the day following the day on which the matter first comes to the attention of the appropriate authority.

In addition, the IPCC also explained its role in handling deaths and serious injuries cases as follows:

If someone dies during police contact, the police will always be on the scene before the IPCC. The local police force should immediately secure the scene and refer the matter to the IPCC. As soon as that happens, we make a decision about whether to send investigators to the scene straight away.¹⁵⁷

It can be seen that, under the IPCC system, an investigation into deaths and serious injuries can be initiated promptly because the police are obligated to refer deaths and serious injuries matters to the IPCC. However, a number of cases show that this does not always happen. The fatal shooting of Jean Charles de Menezes in 2005 in London, for instance, highlighted that the police had referred the case to the IPCC three days after the incident, in breach of the Complaints Regulations.¹⁵⁸

In contrast to the IPCC, the police are not obliged to refer deaths and serious injuries matters to any complaints bodies in Thailand. In practice, the complaints bodies will start to act when a complaint is made to them or after they have been made aware of incidents involving deaths and serious injuries. All of this means the Thai complaints bodies, in

¹⁵⁷ Independent Police Complaints Commission, 'Review of the IPCC's Work in Investigating Deaths: Final Report', (IPCC 2014) 37.

¹⁵⁸ Independent Police Complaints Commission, 'Stockwell One: Investigation into the Shooting of Jean Charles de Menezes at Stockwell Underground Station on 22 July 2005' (IPCC 2007) 11-12.

practice, will not be able to conduct an investigation immediately after an incident of death or serious injury. For these reasons, it is impractical to benchmark the Thai complaints systems against this aspect of the promptness principle but it is reasonable that this point will be discussed in the reform chapter.

From the opinion of the Commissioner, there are several key features adhering to the principle of promptness that are worth discussing. These features are:

(a) Timely notification

Every complainant wishes to have their complaints addressed as expeditiously as possible. To alleviate complainants' concerns about progress in the handling of complaints, it is reasonable that the agency should notify complainants of investigative progress on a regular basis. In England and Wales, regulation 12 (2)(a) of the Police (Complaints and Misconduct) Regulations sets out that the IPCC needs to inform a complainant and/or an interested party:¹⁵⁹

- (a) of the progress of the investigation promptly and in any event—
 - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
 - (ii) in any other case, within four weeks of the previous notification;

Apparently, the IPCC is placed under a duty to notify the complainants about progress on the handling of complaints at least every 28 days. This shows that, in theory at least, the complainants will be informed about progress on the handling of complaints by the IPCC on a regular basis.

¹⁵⁹ This Regulations, hereinafter, will be referred to as the 'Complaints Regulations'.

In Thailand, none of the complaints agencies, internal or external, is obliged by law to notify the complainants about progress in the same way as is the IPCC. In reality, most complainants will be contacted and informed about progress only when the investigation has reached a conclusion. However, it is worth pointing out that the NHRC is the sole complaints body amongst those bodies under review that has a duty to inform the complainants about the completion of the inquiry within seven days after the date the inquiry report has signed.¹⁶⁰

(b) Timeliness in the investigation

Timeliness is also significant for the handling of complaints. To make sure that the whole process of investigation until the determination of complaints will be done in due course, setting out a reasonable time frame proves to be useful. According to the IPCC statutory guidance, the Commission states that it expects a complaint to be recorded as soon as possible and in any event no later than 10 days after the date it has first been registered.¹⁶¹ In addition, as we have just seen, the referral of Death and Serious Injury matters must be done without delay.¹⁶²

The most recent available IPCC survey disclosed that some IPCC complainants thought “the time taken to complete the investigation seemed disproportionate to the matter under investigation”,¹⁶³ however, the above clauses, at least, can prove that the system under the IPCC has a relatively clear timescale in a number of respects. The Thai systems, however, are dissimilar to the IPCC as most of them have introduced a looser time frame. The RTP

¹⁶⁰ NHRC Regulations on Examination of Human Rights Abuses 2015, reg 43 para 2. Note that the rest of the authorities have not set out the timeframe for notification of the completion of the investigation report.

¹⁶¹ Independent Police Complaints Commission, ‘Statutory Guidance to the Police Service on the Handling of Complaints’ (IPCC 2015) 20.

¹⁶² Complaints Regulations (n 159) reg 8 (b).

¹⁶³ Independent Police Complaints Commission, ‘IPCC Investigations: A Survey Seeking Feedback from Complainants and Police Personnel’ (IPCC 2009) 18.

has imposed a 60-day time frame for its investigation to be finished with a condition that allows such timescale to be extended,¹⁶⁴ whilst the Ombudsman has set a timescale of a maximum of six months, and in the event where a maximum target cannot be met, the inquiry should not last more than 12 months.¹⁶⁵ Apart from the above agencies, the NHRC also sets a three-day timescale for the notification of recording of complaints, and as mentioned above a seven-day timescale for the notification of the completion of inquiry.¹⁶⁶ Unlike other agencies, the NACC system is not subject to any mandatory timescales.

It is apparent that the principle of promptness is not applied within the operation of the Thai complaints systems under review. Arguably, a lack of promptness can be one of the causes leading to the situation where some complaints cases may have ‘fermented’ for years before the complaints body has arrived at the conclusion; however, we shall leave the solution to this to be discussed in the next chapter.

The Complainant’s Involvement

Smith argues that “the complainant should be involved in the investigation of a complaint in order to safeguard his or her legitimate interests”.¹⁶⁷ Having made a complaint, the complainant should not be left with a sense of exclusion. Based on the opinion of the Commissioner for Human Rights – Council of Europe, a police complaints authority should have the responsibility to ensure close liaison with the complainants throughout the course of the handling of complaints in order to communicate and explain how the system works, not least for those who do not understand or lack confidence in the system.¹⁶⁸ Legal

¹⁶⁴ Police Regulations on Factual Investigation 2013, reg 17 (1).

¹⁶⁵ See text accompanying n 28 in ch 4.

¹⁶⁶ NHRC Examination Regulations (n 160) regs 17 (1), 43 para 2.

¹⁶⁷ Graham Smith, ‘Every Complaint Matters: Human Rights Commissioner’s Opinion concerning Independent and Effective Determination of Complaints against the Police’ (2010) 32 Int’l JLC Just 59, 68.

¹⁶⁸ Opinion of the Commissioner (n 3) para 77.

counseling and representation should also be made available for the complainants in order to help them “scrutinise proceedings and challenge unfair and ineffective practice”.¹⁶⁹

To maximise the complainant’s involvement, the IPCC statutory guidance indicates that a guide to navigate the complaints system should always be available when a complaint is received; the person who receives a complaint should also inform the complainant who is going to handle his or her complaint including such person’s contact details.¹⁷⁰ In addition, the fact that the complainants will always be informed about every critical decision on the handling of complaints also enhances the complainant’s involvement. For example, in a case where the appropriate authority or the IPCC itself is of the opinion that the complaint may be dismissed, it needs to notify the complainant to make his or her representations within 28 days before a final decision can be made.¹⁷¹ However, the following comments indicate that some complainants would like more extensive involvement in the IPCC system:

The IPCC should “ ...invite the complainant to a meeting in person so that vital information and any relevant history is not missed. I did not get the chance to discuss the report which is flawed in some areas...”¹⁷²

In contrast to the English system, victim involvement in the external complaints systems in Thailand is neither guaranteed by law nor fostered consistently in practice. Those seeking the assistance of the Thai Ombudsman are generally not encouraged to take part in the handling of complaints¹⁷³ as the Ombudsman usually gives preference to a documentary analysis of a complaint.¹⁷⁴ For its part, the NHRC is inconsistent in its approach to

¹⁶⁹ *ibid* para 79.

¹⁷⁰ IPCC, ‘Statutory Guidance’ (n 161) 12-13.

¹⁷¹ Complaints Regulations (n 159) reg 5(a)(ii).

¹⁷² IPCC, ‘Survey Seeking Feedback from Complainants and Police Personnel’ (n 163) 12.

¹⁷³ For an example see text accompanying n 36 in ch 4.

¹⁷⁴ Office of the Ombudsman, ‘12 Years on: Thai Ombudsman’ (Thai Ombudsman 2013) 51 [in Thai].

involving complainants as those who have been invited to take part in the investigation process were selected at the Commissioner's random discretion.¹⁷⁵ As for the NACC system, previous studies consistently showed it to be highly bureaucratic,¹⁷⁶ which makes it alienating for ordinary people. None of my interviewees who said they had registered complaints with the NACC have ever had the opportunity to become involved in the handling of complaints. My first-hand experience having had casual conversations with a number of NACC clients also suggests that the involvement of complainants in the process is minimal. It seems that the Commission requires the complainants to come in for an interview only if it is of the opinion that more information is needed.¹⁷⁷

Judging by the evidence from this research, there has been a lack of effective involvement of the complainants in the complaints systems. Hence, the Thai complaints systems in question do not match the standard on the complainant's involvement extracted from the opinion of the Commissioner for Human Rights.

Transparency

Arguably, if the complaints system is to gain the credibility of the public as well as of the police in the performance of their duties, the complaints authority needs to make sure that the system it oversees is transparent. In the UN Handbook on Police oversight, transparency in a police complaints system can be secured through the following means:

(a) Public reporting

In England and Wales, as required by the PRA, the IPCC is tasked with a duty to produce a report on its work and performance in each financial year. This report will then be

¹⁷⁵ See text accompanying nn 72-75 in ch 4.

¹⁷⁶ See text accompanying n 143 in ch 4.

¹⁷⁷ Note that I paid a visit to the NACC premises in three separate occasions during the fieldwork. While I was waiting to interview NACC commissioners, I had the opportunity to have conversations with a couple of NACC clients in each occasion.

submitted to the Secretary of State whilst a copy of it will also be presented to Parliament.¹⁷⁸ In Thailand, the Ombudsman, the NHRC and the NACC are similarly assigned the responsibility to produce and submit their reports to the Parliament annually.¹⁷⁹ When it comes to the details in a report, it is stressed in the UN Handbook on Police Oversight that “detailed data on police abuses”¹⁸⁰ should be displayed in the report, including statistical or general reviews of abuses and complaints; added to this, “budgets and expenses [of a complaints authority] should be publicly reported”.¹⁸¹ Considering the IPCC annual report, it can be seen that the report is relatively comprehensive not least in terms of statistical reviews of complaints.¹⁸² In the same report, the IPCC also makes public its financial spending.¹⁸³ On the contrary, the Ombudsman, the NHRC and the NACC, as pointed out in chapter two, fail to produce a comprehensive report, with some key data such as a statistical review on police complaints absent from the report.. The Thai complaints authorities all publicise and declare their financial spending in their respective annual reports.

(b) Accessible information

To afford the complainants easy access to a complaints system, general information on the complaints-handling process should be accessible to the public. This helps members of the public, not least those nursing legitimate grievances against the police, to understand the system and have more confidence to come forward. In this regard, it is suggested in the UN Handbook on Police Oversight that:

¹⁷⁸ PRA (n 9) s 11 (1), (5).

¹⁷⁹ Ombudsman Act (n 91) s 13(4); NHRC Act (n 19) s 15(6); NACC Act (n 65) s 19 (10).

¹⁸⁰ UN Handbook on Police Oversight (n 2) 70.

¹⁸¹ *ibid.*

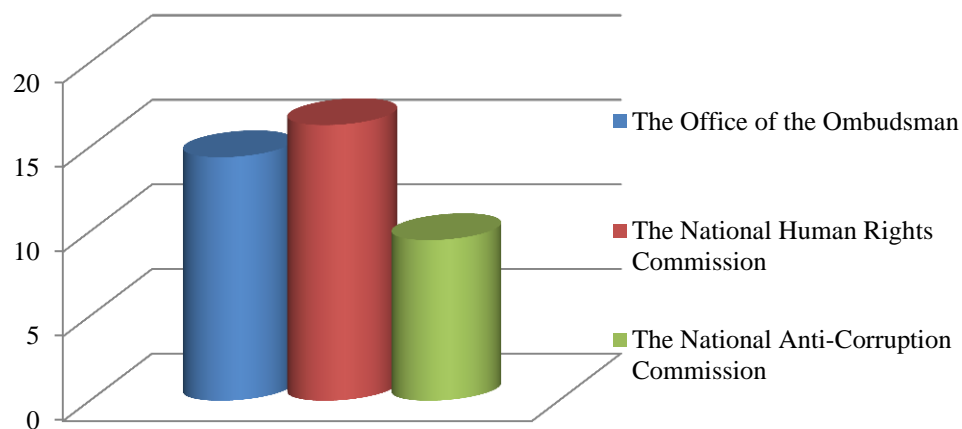
¹⁸² Look at the IPCC annual report and statement of account 2014/15 as a sample.

¹⁸³ PRA (n 9) sch 2 para 17.

It [a police complaints authority] should maintain a website with easily accessible information [on complaints].¹⁸⁴

In recent times, the Ombudsman, the NHRC and the NACC have made attempts to raise public awareness about the existence of their systems via a number of routes; for instance, they made themselves known to the public via TV commercials, online sources etc.¹⁸⁵ The survey in 2012, however, demonstrated the following findings:

Chart 5.2: The lack of public knowledge of independent complaints bodies in Thailand



The bar chart illustrated that 9.5 per cent of members of the public do not realise that the NACC exists whilst 14.4 per cent of them do not know of the Ombudsman, and finally, 16.3 per cent of them are not aware of the NHRC.¹⁸⁶ Given that the systems under the control of the above bodies have been in operation for almost two decades, and that each of them has adopted a number of approaches to increase public awareness about their

¹⁸⁴ UN Handbook on Police Oversight (n 2) 70.

¹⁸⁵ See a collection of the Ombudsman annual reports at <<http://www.ombudsman.go.th/10/index1.asp>>; for the NHRC, see <http://www.nhrc.or.th/2012/wb/th/contentpage.php?id=4&menu_id=1&groupID=4&subID=9>; and for the NACC, see <http://www.nacc.go.th/more_news.php?cid=234&filename=index>.

¹⁸⁶ 'Opinion Survey on Public Satisfaction of Public Services and the Performance of Public Organisations' (KPI& National statistical office, Thailand 2012) 10 [in Thai].

existence, the fact that a certain proportion of people still do not recognise them apparently means more needs to be done on this front. In addition, when looking at the information on how to access the complaints systems under their regulatory oversight, it is apparent that the complaints authorities in question failed to enrich would-be complainants' understanding about the systems and also failed to increase their confidence in the systems because only little information is provided. What is also important but has been omitted, even on their online sources, is, for example, a concise explanation of the process after the registration of complaints and, above all, the complainants' legal entitlements and duties.¹⁸⁷ Unlike the Thai systems, the IPCC system clearly satisfies the UN criteria since it provides the information on complaints in many forms such as online information on its website, and printed information in the form of guidance.¹⁸⁸ Moreover, it also displays the information at many premises including local police stations and Citizen Advice Bureau (CAB).¹⁸⁹

In sum, the Ombudsman, the NHRC and the NACC are not in full compliance with the UN criteria on transparency because there has been a lack of comprehensive data on the complaints system provided to would-be complainants and members of the public.

III. Conclusion

Having benchmarked the complaints bodies in question, it was found that whilst the systems under regulatory oversight of the RTP in Thailand and that of the IPCC in England and Wales did not satisfy the UN criteria for independence because they are under

¹⁸⁷ For the NACC, see <http://www.nacc.go.th/main.php?filename=index_en>; for the NHRC, see <<http://www.nhrc.or.th/en/>>; and for the Ombudsman, see <<http://www.ombudsman.go.th/10/eng/index1.asp>>.

¹⁸⁸ Independent Police Complaints Commission, 'Complaints' (*IPCC*) <<https://www.ipcc.gov.uk/complaints>> accessed 10 March 2015.

¹⁸⁹ IPCC, 'Statutory Guidance' (n 161) para 2.6.

political control in terms of appointments and dismissals, the external complaints authorities in Thailand are in conformity with the UN criteria because they are independent of the police and the government. However, the Thai complaints systems are not in compliance with the principle of pluralistic representation as many members of the complaints bodies were formerly civil servants, police officers, or members of the military. When it comes to financial independence, the fact that an annual budget of the Thai complaints systems and the IPCC are similarly approved by Parliament means that they are all in compliance with the relevant UN criteria. On the point of power, the NACC proved to be the most formidable complaints body under review of this research as it met almost every UN criterion. In effect, the NACC has actually exceeded the UN criteria; for instance, it is, under certain conditions, capable of bringing complaints cases to court on its own. The IPCC apparently satisfied the UN criteria for powers even though it does not have as much power as the NACC in Thailand does. The Ombudsman and the NHRC did not match the same criteria in a number of aspects. They are not capable of conducting an inquiry intended for disciplinary action and/or criminal proceedings to follow; in addition, both of them lack the power to refer complaints for criminal prosecution. The RTP exercises police powers and therefore met the UN criteria.

When it comes to the adequacy principle, this research found that none of the complaints agencies under review fully complies with the principle. The evidence suggests that all of them are not sufficiently effective in collecting evidence and seem to accept police accounts uncritically at times. As regards the key features of the promptness principle, it was highlighted that the IPCC set out a clear timescale in a number of aspects, especially in relation to bringing its complainants up to date with the investigation progress. In Thailand, the Ombudsman proved to be the best compared to the other authorities in

Thailand in terms of setting out reasonable timeliness whilst the NHRC and the NACC all need to do much more to make sure that the handling of complaints will be processed expeditiously; this is also true of the RTP system. In regard to the complainants' involvement in the handling of complaints, it was found that the IPCC is well ahead of the Thai complaints authorities because, under the Thai complaints systems, the involvement of complainants in the handling of complaints is uncertain; in most circumstances, allowing complainants to take part in the handling of complaints is at the discretion of the people who are in charge of dealing with complaints.

On the point of transparency, the IPCC is apparently in conformity with the UN criteria as it produces a comprehensive report including statistics on police abuse, complaints, and facts about financial spending every year. The Ombudsman, the NHRC and the NACC are not in full conformity with the UN criteria because they do not produce comprehensive records on police abuse and complaints. Last but not least, when it comes to the provision of accessible information on the complaints process, the Thai complaints bodies, need to do more to make sure that the information is widely available for would-be complainants; furthermore, the existing source of information such as online information is arguably not enough to enhance people's understanding about how to use the system. The findings demonstrated that the IPCC is in compliance with the UN criteria as it offers would-be complainants comprehensive information on how to make a complaint whilst also increasing public awareness about the complaints system by disseminating the information about the IPCC system at many different premises.

The analysis in this chapter has helped us identify where there are areas for improvement. In the following chapter, reform measures to the Thai system will be proposed to enhance

the effectiveness of the handling of police complaints in Thailand, and with a view to ensuring that the new system meets all applicable international human rights standards.

CHAPTER 6: PROPOSED REFORM MEASURES

I. Introduction

Although Thailand has already created independent complaints systems that have the remit to address police complaints, these systems, as highlighted in previous chapters, are ineffective in a number of different respects; in addition, the element of independence in the existing systems is arguably on the verge of being captured. The main objective of this chapter is therefore aimed at offering a package of reform measures to improve the Thai police complaints system.

This chapter is divided into two main parts. In the first part, the focal point is concerned with the structure of the proposed complaints system in Thailand with the discussion centred around the question whether reform to the existing systems or the introduction of a new system would be preferable. In the second part, additional reform measures for the proposed system ranging from securing independence, ensuring effectiveness, granting extra powers to the regulatory agency, maximising the involvement of victims and civil society groups and building police faith in the system will be recommended. It should be underlined that the proposal of additional reform measures adopts the criteria for a successful police complaints system laid down in the United Nation Handbook on Police Accountability, Oversight and Integrity;¹ the principles of an effective investigation into police complaints distilled by the Commissioner for Human Rights from the caselaw of the European Court of Human Rights (ECtHR);² and the principles for strengthening a

¹ UNODC, *Handbook on Police Accountability, Oversight and Integrity* (UN 2011). This handbook, hereinafter, will be referred to as ‘the UN Handbook on Police Oversight’.

² The principles developed from the European Court of Human Rights, hereinafter, will be referred to as ‘the ECtHR principles’; however, as the principles are explained in Commissioner for Human Rights, ‘Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints

national human rights body in the Paris Principles,³ all of which have introduced pertinent standards that are both reasonable for an effective police complaints system and consistent with the principles of human rights protection.

II. Police Complaints Systems in Thailand: Reform or Replace?

The evidence throughout this research suggests that the systems under the regulatory oversight of the Royal Thai Police (RTP) are hopelessly ineffective, and that those under the control of the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) are all plagued with practical problems not least a creeping trend towards capture, a lack of sufficient powers in certain areas, and a lack of will to deploy the existing powers; indisputably, far-reaching reform is necessary if the handling of police complaints in Thailand is to be improved. In discussing reforms, however, the question of whether to overhaul the existing systems or to introduce a new system is a practical dilemma needing to be tackled at the outset.

In the course of interviews for this research, the NHRC commissioner and the human rights lawyer both pointed out that it is preferable to improve the existing complaints systems, not least the external ones:

The first thing that I want to say is this – our country has too many independent organisations already, so, to set up a new one, I think would become redundant. Why don't we reform the existing systems? Besides, I don't think [a new system] it's going to work. Don't forget, the police are highly politicised; even though we may become successful in

against the Police' (Report) (12 March 2009) CoE Doc CommDH (2009) 4; therefore, the reference for the principles will be cited as 'Opinion of the Commissioner'.

³ UNGA, 'Principles relating to the Status of National Institutions (The Paris Principles)' Res 48/134 (20 December 1993) 48th Session UN Doc A/RES/48/134. The principles, hereinafter, will be referred to as 'the Paris Principles'.

establishing an independent police complaints agency, I'm afraid that this organisation would ultimately be interfered in one way or another.⁴

I don't think that a new system would solve the problems [about the handling of police complaints] we're facing, so I have a preference for the idea to improve the existing systems especially the one in the control of the NACC.⁵

The disapproving stance evident in these comments as regards establishing a new police complaints system is apparently based on the presumption that this would become 'more of the same'. Before we examine that contention, it is worth dealing with the question whether reforms to the existing complaints systems would be more likely to enhance the effectiveness of the handling of police complaints than the founding of a new system.

We saw in chapter 3 that the ineffectiveness of the internal system results from negative influences that crowd into much of the police community including patron-client relations; imaginary brotherhood; and political partisanship etc. To reform the internal system would require solutions to the above deep-rooted problems as the prerequisite to success. Given that the police organisation remains one of the significant political tools in Thai politics, the chance of success in that regard is slim. As a result, it is arguable that reforms to the internal system will not bring about any material change in the handling of police complaints.

The possibility of introducing effective reforms to the external systems may look more achievable as at least they are bound by the image of having more good governance compared to the internal one. On the other hand, as we saw in the preceding chapters, each of the existing systems fell short of international standards for a police complaints system

⁴ Interview with [anonymous], the NHRC commissioner (Bangkok, Thailand, 19 June 2014).

⁵ Interview with [anonymous], a human rights lawyer (Bangkok, Thailand, 14 July 2014).

in many respects; furthermore, it is arguable that each of them is creeping towards capture. Hence, a major overhaul would be needed to ensure that these systems will become more effective. However, initiating reforms to the existing complaints systems is not just about legislative amendments as the jurisdiction of the Ombudsman, the NHRC and the NACC all extend beyond police complaints. It follows that a thorough examination of each part of the above systems is required; otherwise, any reform measures brought in may cause difficulties for the other work of these agencies and would be likely to culminate in incoherence.

In contrast, the introduction of a new complaints system that deals exclusively with police complaints contributes far more to the effective handling of police complaints. First, this new body would gain legitimacy through its exclusion of police involvement (see the proposed model in the next sub-section). We may note here that the newly appointed elements of the NACC, for instance, constitute tangible proof that the exclusion of people with police backgrounds from the watchdog bodies having jurisdiction to deal with wider issues in the checks and balances system in Thailand seems improbable.⁶ Equally important, police complaints will be given absolute priority and will also be handled systematically under the new system. Finally, the emergence of the new system will also help cope with a massive backlog of police complaints the existing complaints bodies are now shouldering; ultimately, this not only enhances the effectiveness of the handling of police complaints but also helps improve the effectiveness of other existing systems at the same time. In addition to the above justifications, it should be noted that the reform measures that will be discussed in the following sub-sections also constitute the basis for the arguments why the introduction of a new police complaints system is more desirable.

⁶ See text accompanying nn 27-30 in ch 5.

A Civilian Model?

Before going any further, it is worth focusing some attention on the terms ‘external’ and ‘independent’, found to be used interchangeably in the existing literature on police complaints, in comparison with the term ‘civilian’ which is a key word explaining the nature of the proposed model of police complaints systems in this research. The characterisation of a police complaints system as ‘external’ serves to accentuate the point that the system is outside the organisational and/or hierarchical confinements of the police force as is the case with the Department of Special Investigation (DSI), which is affiliated to the Ministry of Justice of Thailand. An ‘independent’ system, as its name suggests, means a system that retains its own autonomy; hence, it is not under the direction and control of any other bodies not least the government. Examples include the Ombudsman, the NHRC and the NACC. The term ‘civilian’, in the context of police complaints, however, is totally different to the other terms described above. A civilian system not just precludes active police officers engaging in the handling of police complaints, it also lays emphasis on putting civilians (the people with non-police/military backgrounds) in charge of running the system.⁷ However, such a system may employ a controlled number of former police officers,⁸ even though, ideally, it should avoid doing so. In this respect, we can see that whilst the Ombudsman and the NHRC fall into the category of a civilian system, the NACC does not (because active police officers are drawn into the complaints-handling process under the latter system). It should also be underlined that the IPCC system, by the above definition, is not a civilian system either, but is a hybrid model where responsibility for handling complaints is shared between the IPCC and police forces.

⁷ Andrew J. Goldsmith, ‘External Review and Self-Regulation: Police Accountability and the Dialectic of Complaints Procedures’ in Andrew J. Goldsmith (ed), *Complaints against the Police: The Trend to External Review* (Clarendon Press 1991) 6; Stephen P. Savage, ‘Thinking Independence: Calling the Police to Account through the Independent Investigation of Police Complaints’ (2013) 53 BJC 94, 95.

⁸ Tim Prenzler and Carol Ronken, ‘Models of Police Oversight: A Critique’ (2001) *Policing and Society* 151, 166.

Interestingly, most police complaints in England and Wales are still investigated by the police whilst the IPCC investigates independently only a small proportion of very serious matters (eg, deaths or severe injuries).⁹

During the fieldwork for this research, the participants were invited to express their views on the idea of Thailand introducing the civilian model of a police complaints system whereby police officers and people with police backgrounds would not be allowed to take part in the system. The idea was given an enthusiastic welcome by most of them.¹⁰ For instance:

It's a great idea [to have the civilian control model]. [And] I hope that lawyers and investigators in this organisation are [really] selected from the ordinary people.¹¹

I support this idea [having the civilian control model] because I think this kind of organisation will help raise public confidence in the handling of police complaints.¹²

It is necessary to have this kind of agency [the civilian control model of a police complaints system]. I think it is because this agency will be more likely [compared to the existing ones] to be able to ensure the people that their complaints will be investigated impartially. I also think that we need the organisation having its main task to tackle police malpractice, this agency is therefore good for our society as it deals particularly and seriously with the issues of police misconduct.¹³

I'd say that it might be helpful to have this organisation [the civilian control model of a police complaints system], especially because it is

⁹ Home Affairs Committee, *Independent Police Complaints Commission* (HC 2012-2013, 494-XI) 8.

¹⁰ The civilian control model of a police complaints system, hereinafter, will be referred to as the 'civilian system'.

¹¹ Interview with [anonymous], a complainant C (Bangkok, Thailand, 2 July 2014).

¹² Interview with [anonymous], a complainant E (Bangkok, Thailand, 17 July 2014).

¹³ Interview with [anonymous], a complainant B (Bangkok, Thailand, 27 June 2014).

under control of civilians, and what's more, [it is helpful because] its main responsibility is to address police complaints.¹⁴

Interestingly, a number of police officers interviewed for this research also expressed an approving opinion on the civilian system, even though they also laid down certain conditions:

I don't think we've got any problem about this idea [having the civilian control model] but what we need is the complaints system that consists of three separate levels of tribunals; in other words, we need the three-tier complaints system similar to the structure of court of justice, that's what we regard to be fair, honestly.¹⁵

In contrast to the above, the idea of disqualifying people with police backgrounds from the civilian system is regarded by some participants to be an unrealistic plan for a number of reasons. Consistent with the sceptical view on a new complaints system discussed earlier, the following interviews indicate that it is impossible to change the way things are.

Examples were:

I believe that power is a double-edged sword; thus, it is all about the selection of people to use that power, if we have more decent people, who are brave, behave with integrity, honest with the truth and do not succumb to the influence and/or the temptation of money, [but rather] serve... the organisation, it is worth granting the power. On the contrary, supposing the civilian control model becomes reality with full power to deal with police complaints in the future but the people serving in this body are corruptible, this will become a nightmare.¹⁶

¹⁴ Interview with [anonymous], a complainant A (Bangkok, Thailand, 25 June 2014).

¹⁵ Interview with [anonymous], a group of police officers (Thailand, 13 June 2014). Their wish to see a three-tier system will be discussed further at 'sub-s *Miscellaneous, (f) The right of the officer to appeal.*

¹⁶ Interview with [anonymous], a former Deputy Commissioner (Provincial Police Region) (Bangkok, Thailand, 24 June 2014).

I believe that we cannot discuss an effective police complaints system in isolation from the issues about selecting decent people to serve in it because if the members of the police watchdog lack ethics and morality, the truth will be distorted. Besides, we need to build a strong society which will have a vital role to scrutinise the complaints system as well.¹⁷

The interviews thus express a concern that even if the civilian system by which people with police backgrounds have no involvement was successfully installed to deal with police complaints in Thailand, interference from political quarters remains a serious risk to the independence of the complaints system. This particular point will be fully addressed when we come to considering the arrangements for the civilian system later in the chapter but for now we shall consider the arguments for and against ex-police investigators versus civilian investigators.

A trade-off between independence and effectiveness

Prior to proposing the civilian control model for Thailand, it is worth discussing a trade-off between independence and effectiveness associated with such a model. Smith highlights that “the effectiveness of investigations sits alongside the ‘who investigates’ question as a core police complaints dilemma”.¹⁸ The predicament attached to the civilian control model proposed by this research is that its key feature of not using people with police backgrounds to conduct investigations may be good for the public perception (and substance) of independence and objectivity, but bad for the effectiveness of the complaints investigation.¹⁹

¹⁷ Interview with a human rights lawyer (n 5).

¹⁸ Graham Smith, ‘Oversight of the Police and Residual Complaints Dilemmas: Independence, Effectiveness and Accountability Deficits in the United Kingdom’ (2013) *Police Practice and Research* 92-103, 96.

¹⁹ Louise E. Porter and Tim Prenzler, ‘Police Oversight in the United Kingdom: The Balance of Independence and Collaboration’ (2012) *International Journal of Law, Crime and Justice* 152-171, 159.

The rationale behind the endorsement of ex-police engagement in the handling of police complaints is the notion that people with police backgrounds master investigative skills and are therefore able to bring technical expertise into the job when they become part of a police complaints mechanism.²⁰ This notion is also prevalent in Thailand; apparently, the NACC commissioners interviewed for this research displayed a strong tendency towards favouring the engagement of ex-police investigators in an investigation into a police complaint.²¹ It is frequently contended that former police officers are valuable within complaints bodies because they have received appropriate training and acquired hands-on experience in complicated processes of evidence collection, observing and preserving scenes of crime and also dealing with cases in court.²² In addition to investigative skills, ex-police officers are perceived to have a good grasp of the sophistication of law and legal procedures.²³

Linked to the above, Smith points out that the credibility and integrity of investigations depend on effectiveness as an essential ingredient.²⁴ He also highlights that, in Europe, a state has the duty to conduct an effective investigation into death and/or injury allegedly involving police officers.²⁵ As noted in the previous chapter, an effective investigation is one that is adequate for identifying whether the conduct of the officer complained against was unlawful. The ECtHR adequacy principle holds that an adequate investigation depends on reasonable thoroughness (see *Adequate Investigations* in chapter 5). Experience is therefore needed for ensuring the thoroughness that an effective investigation requires. To

²⁰ Stephen P. Savage, 'Seeking Civilianness: Police Complaints and the Civilian Control Model of Oversight' (2013) 53 BJC 886, 895.

²¹ See text accompanying n 163 in ch 4.

²² Prenzler and Ronken (n 8) 166.

²³ Savage, 'Seeking Civilianness' (n 20) 895.

²⁴ Smith, 'Oversight of the Police and Residual Complaints Dilemmas' (n 18) 96.

²⁵ Graham Smith, 'The Interface between Human Rights and Police Complaints in Europe' in Tim Prenzler and Garth den Hayer (eds.), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press 2016) 167.

resolve a complaint about deaths during or following police contact, for instance, the investigator certainly needs forensic skills to uncover what has actually happened. People with police backgrounds are thus in a better position compared to those without this same background to undertake an effective investigation as, beyond doubt, they have been trained to discover traces of criminality.

In many English-speaking jurisdictions, there seems to be a consensus amongst sceptics of the civilian control model — most of them police officers — that civilians will not make efficient investigators for a police complaints system. In the US, Wells and Schafer found that serving officers in Carbondale, Illinois, expressed profound misgivings about citizen oversight of the police, in part because of doubts concerning “the ability [of civilians] to investigate complaints and subpoena witnesses”.²⁶ Hibberd highlighted that, in Northern Ireland, the officers whose conduct had been investigated by the Police Ombudsman’s Office expressed concerns over the (civilian) investigators’ lack of knowledge and understanding of policing,²⁷ (although a few years later the Police Ombudsman presented survey findings indicating that 88 per cent of police officers viewed the Ombudsman’s investigators as knowledgeable).²⁸ Similarly, in its 1995 report on the system for handling police complaints the Australian Law Reform Commission declared that:

Only the police force or former members have the necessary investigatory skill and expertise to investigate serious misconduct...There would be tremendous difficulties in finding suitably

²⁶ William Wells and Joseph A. Schafer, ‘Police Skepticism of Citizen Oversight: Officers’ Attitudes toward Specific Functions, Processes, and Outcomes’ (2007) *Journal of Crime and Justice* 1, 18.

²⁷ Malcolm Hibberd, ‘Survey of the Attitudes of Police Officers of the Police Service of Northern Ireland to the Office of the Police Ombudsman for Northern Ireland’ (2008) *Social and Market Strategic Research*, 5.

²⁸ Police Ombudsman for Northern Ireland, ‘Police Officer Satisfaction Survey 2009/2010’ (2010) 5.

experienced and qualified staff if an external investigation unit was to avoid police and ex staff...A wholly external body would reduce police morale service wide.²⁹

On the other side of the argument, Harrison and Cunneen contend that the lessons from civilian oversight agencies operating in some states in Australia and in the US illustrate that the reason that these agencies enjoyed little success is not so much due to ‘inadequacies in the experience of civilian investigators’ but rather can be attributed to insufficient powers and resources.³⁰ As regards investigative skills, Prenzler and Roken have argued that, effectively, “investigation is a generic skill that can be taught and developed in diverse contexts”.³¹ This is also true in relation to understanding the legislation governing police work. This argument is supported by the comments of a former Deputy Chief Justice of the Criminal Court and a social researcher when interviewed for this research:

I view that anybody can investigate complaints so long as they know [understand] law and the procedures [relevant to policing and police complaints]. I also believe that ordinary people can learn how to investigate complaints, it is not that difficult!³²

I don't think only ex-police officers are capable of investigating complaints. It can be any departments [the investigation can be conducted by any agencies] with staff who know law.³³

²⁹ Australian Law Reform Commission, ‘Under the Spotlight: Complaints against the AFP and NCA’ (1995) 151-152 cited in Tim Prenzler, ‘Scandal, Inquiry, and Reform: The Evolving Locus of Responsibility for Police Integrity’ in Tim Prenzler and Garth den Heyer (eds.), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press 2016) 22.

³⁰ James Harrison and Mary Cunneen, ‘An Independent Police Complaints Commission’ (Liberty 2000) 37.

³¹ Prenzler and Ronken (n 8) 168.

³² Interview with a complainant C (n 11).

³³ Interview with a complainant A (n 14).

‘The police culture is impenetrable to an outsider’ is another key argument in favour of engaging people with police backgrounds to enhance the effectiveness of an investigation. In line with the view expressed by the current chair of the IPCC (see chapter 4), this argument holds that it is difficult for an outsider to comprehend the informal aspects of the police world. By contrast, people with police backgrounds were once insiders and can therefore appreciate and take account of the cultural dimension of the police world.³⁴ In the work of Savage, one of the interviewees elaborated that:

[Y]ou set a thief to catch a thief. So there’s always going to be a need of experienced police in this organisation, we’d miss a massive trick if there weren’t...only a police officer really knows what police officers can do and how they can skew the records....³⁵

As people with police backgrounds certainly ‘know the way things work’ within policing, it might be asked who better can investigate complaints against the police effectively? The argument that an outsider could not come to grips with police culture seems reasonable but is not beyond challenge. An important point here is that police culture is remarkably enduring and thus relatively easy to learn and understand. Whilst many argue that police culture has been in transition in the past few decades,³⁶ Loftus pointed out that the core cultures of the police organisation remain intact:

I would question the extent to which police culture has changed in light of developments in policing. Moreover, by emphasising the novel aspects, I am concerned that they [those who argue that an old police culture is now defunct] lose sight of the remarkable continuities and inertia within police values, assumptions and practices. Authors writing in the field are

³⁴ See text accompanying n 165 in ch 4.

³⁵ Savage, ‘Seeking Civilianness’ (n 20) 896.

³⁶ Megan O’Neil and Anne-Marie Singh, ‘Introduction’ in Megan O’Neil, Monique Marks and Anne-Marie Singh (eds.), *Police Occupational Culture: New Debates and Directions* (Elsevier 2007) 10-14.

right to identify the changes taking place within policing, but they nevertheless exaggerate them.³⁷

Ultimately, some of the key findings in Loftus's work such as the police's crime control mindset or the approach to the recruitment of police personnel, for instance, underline that the police culture in those key areas, as yet, has not changed.³⁸

Thai police culture also has enduring features. Chamnansuk – a Thai policing scholar – has argued that, whilst many Thai academics have stressed the need for structural reforms to the RTP, it is the police culture that must be addressed as a priority, because an unreformed culture has long been at the root of a number of serious problems within the Thai police institution.³⁹ This is in line with the NACC research which shows that political influence and patronage, for instance, are still the key factors shaping most parts of the Thai police culture.⁴⁰ All of this reflects that, police culture, at least in the Thai context, remains pretty much the same as it was in the past.

Thus one may conclude that police culture is not so esoteric as to be beyond the grasp of an outsider. Accordingly, it is reasonable to assume that experience and familiarity developed through inter-institution collaboration between the civilian system and the police force could offer civilian investigators a realistic possibility of comprehending police culture and the informal dimensions of their practices. Should civilian investigators work with the police in relation to deaths during or following police contact, for example, the experience gained over time would allow them to recognise how the police work, and,

³⁷ Bethan Loftus, 'Police Occupation Culture: Classic Themes, Altered Times' (2010) 20 *Policing and Society* 1, 16.

³⁸ *ibid* 17.

³⁹ Panadda Chamnansuk, 'Challenge to Reforms to the Police Culture' *Kom Chad Luek Online* (Bangkok, 4 February 2015) <<http://www.komchadluek.net/detail/20150204/200737.html>> accessed 27 July 2015 [in Thai].

⁴⁰ Kasemsarn Chotchakornpant, Preeda Sataworn and Prasert Patanaponpaiboon, 'A Study of Preventative Measures to Combat Abuse of Power: The Case of Abuse of Police Power' (NACC 2009) 74 [in Thai].

with the passage of time, they would come to understand the perceptions of the police in the discharge of their duties.

Some might argue that civilians are incapable of understanding every single dimension of police culture as the osmotic understanding they may acquire from work experience and inter-institutional cooperation will always be partial. In my view, nonetheless, it is justifiable to claim that as long as the degree of the understanding of either formal or informal dimensions of the police world is sufficient to help civilian investigators achieve investigation targets, the objectives of the civilian system are met. Flowing from this, it is arguable that the understanding of civilian investigators can be enriched by providing them with a foundation of education in the areas including but not limited to ‘the rule of law’, ‘ethics’, ‘policing’ and ‘a fair handling of complaints’ etc. This would ultimately be sufficient for them to grasp how an investigation can be undertaken properly.

It is noteworthy that the evidence of this research shows that the police in Thailand cannot be trusted to investigate complaints against themselves in a fair and adequate manner. Thus the question here is not whether civilians would in the abstract make for better investigators than the police but rather whether civilians are likely in the real world Thai context to investigate more fairly and adequately than do the police currently.

Inspired by that famous quote of a former US Secretary of State – Colin Powell: “Tell me what you know. Tell me what you don’t know. And then, based on what you really know and what you really don't know, tell me what you think is most likely to happen”,⁴¹ we can realise that there might be things that we think we know but, actually, we do not really know. This quote sets us to think that, to deal with problems, we sometimes need new

⁴¹ Colin Powell, ‘Intelligence Reform’ (Speech at the Senate Governmental Affairs Committee, Washington DC, 13 September 2004) <http://fas.org/irp/congress/2004_hr/091304_powell.html> accessed 11 February 2015.

ideas and “a fresh pair of eyes”⁴² to move beyond complacent preconceptions and conventional approaches to investigation. That these conventional approaches can prove dominant is illustrated by the remarks of one of the investigators in a police watchdog interviewed for the work of Savage:

[D]uring the training, the ex-police officers who maybe had 30 years experience really felt the need to talk over the rest of us a lot of time. It was their way or the highway, they had the ‘experience’ and a lot of the time they didn’t really want to listen to us.⁴³

In Thailand, there was a bomb blast at the heart of the capital city – Bangkok on the 17th August 2015 that claimed at least 20 lives. The police assured the people that the relevant material evidence around the crime scene had been collected and a rigorous investigation could therefore now follow. But only three days after that tragic incident, the BBC reported claims that somebody [street vendors] found three live rounds embedded in the wall near the scene of crime (a few metres away), even worse, when the journalist who reported that news tried to give this new evidence at the Police headquarters, he was informed by security guards that it was now outside the opening hours.⁴⁴ The way in which the ongoing investigation into the appalling incident of a bomb blast in the city of Bangkok has been conducted informs us not just of the impulsiveness and unthoroughness of the investigation but also reflects the police’s traditional baggage of a narrow approach to evidence collection, with the police complacent that they know how to deal with the case.

⁴² Savage, ‘Seeking Civilianness’ (n 20) 896.

⁴³ *ibid* 899.

⁴⁴ ‘Bangkok Bomb: Two Suspects Cleared by Police after Questioning’ *BBC* (20 August 2015) <<http://www.bbc.co.uk/news/world-asia-34007723>> accessed 1 September 2015.

Another crucial advantage the civilian control model can offer is the opportunity to take a balanced perspective when investigating and determining complaints.⁴⁵ In the interview with a human rights lawyer, the deep-held belief that people having police backgrounds are likely to fail to take a balanced perspective when investigating and determining complaints was expressed as follows:

I think that these people [with police backgrounds] are influenced by a mindset that will ultimately drive them to act in favour of the police.⁴⁶

The same line of argument is shared by the NHRC commissioner and a social researcher interviewed for this research:

These people [with police backgrounds] have been in the organisation that always uses power to enforce law, they were shaped a with certain type of mindset which is, in my judgement, contradictory to the attitudes towards the protection of human rights.⁴⁷

I believe that people having police backgrounds will still adhere to the same sentiment of looking at the problem by adopting a legalistic approach even after leaving the service, just like people working in other law enforcement agencies. This will become the key obstacle to the truth finding process of police complaints.⁴⁸

It looks far more likely, from the ‘customer’s viewpoint’ that, when handling complaints, civilian investigators will be “able to perhaps understand and have greater empathy with members of the public” compared to ex-police investigators;⁴⁹ of course, this does not mean that civilian investigators should show favouritism towards complainants. In sum, civilian investigators are likely to determine the issues arising out of complaints not just

⁴⁵ Savage, ‘Seeking Civianness’ (n 20) 897.

⁴⁶ Interview with a human rights lawyer (n 5).

⁴⁷ Interview with the NHRC commissioner (n 4).

⁴⁸ Interview with [anonymous], a social researcher (Bangkok, Thailand, 7 July 2014).

⁴⁹ Savage, ‘Seeking Civianness’ (n 20) 897.

from the legalistic aspect but also from a wider context with a balanced component of common sense.

Last but not least, the most important factor contributing to confidence of the public in the civilian control model of police complaints systems is the image of civilian investigators as being impartial compared to ex-police investigators. The following interviews demonstrate this:

I think this [the civilian control model] will help people a lot. My view is that this kind of organisation can help increase public confidence in the police complaints system. At least, the fact that the complaints body is a civilian agency would, in my view, attract those who may be in a dilemma whether to complain against the police to become bolder to come forward.⁵⁰

I view that the idea of having the civilian control model is good. I think people will feel confident if an investigation is conducted by civilians.⁵¹

One of the NACC commissioners pointed out during the interview for this research that it cannot simply be assumed that all civilians will be impartial in their approach because:

Even if a complaint is handled by a person with non-police background but such a person has never had negative experience about police malpractice, it is possible that a complaint will be addressed in a compromise approach. So, we can't be certain about personal backgrounds.⁵²

Whilst this is undoubtedly true, the problem pales into insignificance when weighed against the benefits that a civilian control model would bring overall. In Thailand, this model would alleviate public concern over a secret collusive relationship between people

⁵⁰ Interview with a complainant E (12).

⁵¹ Interview with [anonymous], a complainant F (Bangkok, Thailand, 19 July 2014).

⁵² Interview with [anonymous], the NACC commissioner A (Bangkok, Thailand, 30 June 2014).

with police backgrounds and the police institution, and lead to increasing public confidence in the police complaints system.⁵³

Challenging the mixed background civilian control model

A former Deputy Chief Justice of the Criminal Court interviewed for this research has suggested a solution that would reconcile the need for effectiveness and independence as follows:

It is good to have non-police personnel as commissioners of this body [the civilian control model]. But I still believe that in order for it to work effectively, the system under this body needs to employ some ex-police personnel, may be with a limited number, to work in conjunction with civilian investigators as ex-police investigators are more skillful and tough.⁵⁴

Notably, the above idea is analogous to the approach of the IPCC in England and Wales which allows both people with and without police backgrounds to have a stake in the handling of police complaints. Under the IPCC system, people with police backgrounds are disqualified from serving as an IPCC commissioner but they are not precluded from working for the IPCC in other capacities such as an investigator.⁵⁵ It is arguable, however, that replicating the IPCC approach to deal with the situation in Thailand is not a sensible way forward. The reason, ultimately, boils down to the level of ‘public confidence’ in the Thai police.

Let us consider this from a comparative viewpoint. In England and Wales, the survey in 2014 showed that “66 per cent of the public are either happy or very happy with the

⁵³ See how this proposed model would be strengthened at ‘s **III. Additional Reform Measures** and sub-s **Miscellaneous Reform Measures**.

⁵⁴ Interview with [anonymous], a former Deputy Justice of Criminal Court (Bangkok, Thailand, 29 June 2014).

⁵⁵ Police Reform Act 2002, sch 3, pt 2, s 9(3). This Act, hereinafter, will be referred to as the ‘PRA’.

treatment they received during contact with the police in the last 12 months”;⁵⁶ in contrast, the opinion poll in Thailand in 2014 revealed that only 15.92 per cent of the public have confidence in the police.⁵⁷ Why does the Thai police receive a very low level of public confidence? The nub of the matter is that a sizeable proportion of the Thai police have achieved notoriety for being dishonest, brutal and subservient to influential politicians; add to this, the evidence from this research also indicates that there are many occasions where police complaints are not investigated impartially and effectively by the police themselves (see chapters 1 and 3). All of this inevitably provokes a relatively strong scepticism amongst many Thais about having people who have served with the police playing a critical role in the handling and determining of complaints against the police (see chapter 4). Certainly some of the complainants interviewed for this study believed strongly that people with police backgrounds were biased in favour of the officers complained against when handling their complaints.⁵⁸ Hence, in the Thai context it would not be wise to limit the restriction of employing ex police-officers just to the post of commissioner of the police complaints body.

Interestingly, although most British public said they were satisfied with the treatment they received when in contact with the police (see the above paragraph), when it comes to the handling of police complaints, one of the key challenges the IPCC has faced is a widespread concern that the increased involvement of people with police backgrounds in the IPCC system will push the IPCC towards capture.⁵⁹ Crucially, the Commons Select Committee for Home Affairs found that, according to public opinion, the IPCC employs an

⁵⁶ Paul Harvey, Sarah Shepherd and Tom Magill, ‘Public Confidence in the Police Complaints System’ (Ipsos MORI 2014) 10.

⁵⁷ See text accompanying n 2 in ch 1.

⁵⁸ See text accompanying nn 159 in ch 4 and 52 in ch 5, for example.

⁵⁹ INQUEST, ‘Response to the IPCC’s Review of Work in Cases involving a Death’ (2013), <<https://www.ipcc.gov.uk/page/review-ipccs-work-investigating-deaths-consultation-activities-and-responses>> accessed 20 June 2015.

unwarranted number of ex-police personnel.⁶⁰ We can see that, even in England and Wales where most people are satisfied with the police service, the issue of public perception of the involvement of ex-police personnel in the police complaints system is one of the fundamental challenges that the IPCC has to wrestle with; undoubtedly, were Thailand to introduce the mixed background model similar to that of the IPCC, the issue of public perception would become much more difficult to address.

Public anxiety over the number of ex-police investigators serving in the IPCC prompts the question as to what is the right proportion of people with police backgrounds in the police watchdog? Arguably, there will not be unanimity of opinion about the appropriate balance between people with and without police backgrounds in the police watchdog. One suggestion is that:

A maximum of 25% seconded or ex-police officers will effectively utilise police experience and help the IPCC to break into the police culture while allowing the IPCC as a whole to maintain an organisational identity that is distinct from the police.⁶¹

By contrast, the then chair of the Home Affairs Committee (HAC) said that he expected the proportion of former police officers in the IPCC to be 20 per cent or below.⁶² Even if there was consensus on the appropriate balance of civilian and ex-police investigators, the problems in relation to the role of ex-police investigators would still loom large. If it was thought that ex-police investigators are, by and large, far more experienced than civilian investigators, this might put them in a dominant position within the police watchdog, with

⁶⁰ HAC, 'IPCC' (n 9) 6.

⁶¹ Harrison and Cunneen (n 30)39.

⁶² Keith Vaz, '2012-2013 HAC Report on the IPCC' (1 February 2013)

<<https://www.youtube.com/watch?v=tPQL6laYr7A>> accessed 15 August 2015.

too much influence over civilian investigators; ultimately, the watchdog would end up moving towards capture. Under the IPCC system, the figures in 2014 showed that 9 out of 14 senior investigators are former police officers.⁶³ This apparently raised public concerns as INQUEST, for example, stressed that:

[T]he high proportion of ex-police in pivotal and influential investigative positions also raises concerns about institutional and hierarchal independence.⁶⁴

In line with the above, John Crawley – a former IPCC commissioner (2004-2008) – said that when he was serving with the IPCC:

[I]n the East Midlands, a whole group of officers from one of the local forces had been appointed to the regional investigative and management team and I thought that was quite inappropriate.⁶⁵

He added that the reliance on former police officers as investigators caused a direct adverse impact on the IPCC because it promoted :

[A]n emulation of police investigative models and practices, which in turn reproduces a ‘policing culture not a public facing, complainant-oriented ombudsman service’.⁶⁶

Taken together, the lessons from the existing Thai systems and the IPCC all indicate that, in Thailand, the mixed background civilian control model would merely serve as a blind alley.

⁶³ Look at the IPCC annual report and statement of account 2014/15 as a sample.

⁶⁴ INQUEST (n 59).

⁶⁵ Home Affairs Committee, ‘The Work of the Independent Police Complaints Commission’ (HC 366, 2009-2010) Ev 3-4.

⁶⁶ *ibid.*

Overcoming a practical dilemma

To sum up the argument thus far, whilst the prospect of having purely civilian investigators conducting an effective investigation into police complaints can be questioned, the case for ensuring independence in the police complaints agency in the Thai context is clear-cut (see also the discussion of the patronage system and authoritarianism within the RTP in chapter 3). I have argued further that the mixed background model similar to that of the IPCC is also not a sustainable solution. The question now is how can we secure effectiveness at the same time as ensuring independence in a complaints investigation?

Going back to the point where the trend towards greater independence in the investigation into police complaints emerged, the study of Goldsmith reminds us that it was a lack of effectiveness of a police investigation into police complaints that resulted in demands for greater independence in the first place;⁶⁷ and as the existing literature on police malpractice and complaints and, indeed, the evidence from this research all suggest that the Thai police are unlikely to secure an effective investigation (see chapters 1 and 3), how can anyone believe that, by going through a revolving door from the police force to the police watchdog, people with police backgrounds will be able to ‘de-policify’ and conduct an effective investigation into police complaints?⁶⁸ This research therefore reaches the clear conclusion that the civilian model is the best way forward for Thailand.

Although the civilian system is proposed as the optimal solution for Thailand, the proposal will not dissociate police experience altogether from the civilian system not least during the embryonic stage of the proposed system. To both secure effectiveness and also ensure

⁶⁷ Andrew J. Goldsmith (n 7) 15. See also, Porter and Prenzler (n 19) 153.

⁶⁸ Stephen P. Savage, ‘Independent Minded: The Role and Status of “Independence” in the Investigation of Police Complaints’ in Tim Prenzler and Garth den Heyer (eds.), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press 2015) 40.

independence of an investigation, the following are recommended as practical approaches for the proposed system:

First, the enabling legislation of the proposed civilian system should clearly set out that the members of the proposed system must be civilian and that the recruitment of former police officers to serve in an investigating capacity is only allowed within the first five years following the establishment of the system. The suggested time period would arguably be sufficient for the new Thai body to lay the groundwork for an effective complaints system; at least, experience and knowledge of those with police backgrounds could be properly imparted upon civilian investigators.⁶⁹ In addition, prescribing a fixed upper time limit on the engagement of former police officers as an investigator in the new Thai system would help ensure that the system would have a realistic prospect of becoming a purely civilian system but not a ‘permanent’ mixed background system.

Second, the law should also impose a clear limit on the proportion of investigators with police backgrounds, ideally no more than 10 per cent. Third, to ensure independence, an investigation should be carried out in the form of an investigative team where one of the commissioners sits as a team leader and the right combination of investigators with and without police backgrounds is made.⁷⁰ Fourth, former police officers should also be encouraged to take part in the civilian system in other capacities other than investigators such as advisors or trainers.⁷¹

⁶⁹ Porter and Prenzler (n 19) 158.

⁷⁰ Harrison and Cunneen (n 30) 39-40.

⁷¹ See ‘sub-s *Miscellaneous Reform Measures*, (a) *Advice and training*’.

Civilians appointed as investigators within the new Thai body would not necessarily need a great deal of advice and training, however, in order to conduct an effective investigation. As Hayes notes, in his review report of the police complaints system in Northern Ireland:⁷²

The arguments for independent [without police backgrounds] investigators are also well documented. There are such investigators in the Customs & Excise, Inland Revenue, Immigration and the Department of Health for example. They bring a different experience and although they would not be overly familiar with police practices they do have experience in, for instance, interviewing, preserving and compiling evidence etc.

In line with the above view, another crucial approach is that the proposed civilian complaints body should lay emphasis on employing people with a certain degree of investigative skills who serve with other public offices other than the RTP such as the officers from the Revenue Department or the Department of Special Investigation (DSI) etc. because these are potentially fast learners.

Ultimately, as Punch reminds us, “no agency is infallible”⁷³ but, the discussion in this section suggests that it is possible to strike a good balance between independence and effectiveness of the handling of police complaints within the proposed civilian system . For now, we move on to additional proposals for the proposed system.

⁷² Maurice Hayes, *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland* (The Stationery Office Ltd 1997) 57.

⁷³ Maurice Punch, *Police Corruption: Deviance, Accountability and Reform in Policing* (Willan Publishing 2009) 214.

III. Additional Reform Measures

As we saw in the preceding chapter, the UN Handbook on Police Oversight, principles distilled from the ECtHR caselaw, and the Paris Principles, have laid down criteria for an effective and legitimate police complaints system. A number of additional reform measures inspired by the above sources will also be outlined as the necessary arrangements that would support the proposed civilian system. These measures are presented as follows:

Independence

(a) Statutory underpinning

The UN Handbook on Police Oversight suggests that the existence of the regulatory body of the complaints system and the system itself should be underpinned by statute law not executive order.⁷⁴ To satisfy the above criterion, it is therefore proposed that, in the same way as how the Ombudsman, the NHRC and the NACC were established in 1997, the creation of the civilian system in Thailand should be underpinned by the Thai constitution, whilst the complaints procedures and the remit of the agency having oversight of the system should be regulated by its enabling law in the form of an Act. In addition to a general legislative framework, the enabling law of the civilian system should specify that the regulatory agency of the system shall be free from operational and/or hierarchical command of the police and the government and would be accountable to the public via the Parliament only. Last but not least, the matter of term in office for members of the regulatory agency also creates stability in the system; it therefore should be set out clearly.

⁷⁴ UN Handbook on Police Oversight (n 1) 69.

(b) Democratic appointments and dismissals of members

Considering the pessimistic views on the introduction of the civilian control model of a police complaints system,⁷⁵ it can be concluded that the real worry is that such a system would be plagued with the same issues as the existing complaints systems have always been, chief amongst others is the risk of being captured by political interference. It can be seen that even though the selection and appointment of members for the complaints authorities in Thailand is democratic in the sense that the Parliament has a role in the approving process, it is deficient from the standpoint of engagement with civil society groups.⁷⁶ The evidence presented in chapters 4 and 5 demonstrate that a creeping trend towards capture persisting within the Thai complaints systems stems from the process of appointments of members for the regulatory bodies of those systems (bearing in mind that politics is likely to be involved in this because the police force is part of the mechanisms for the consolidation of political power in Thailand).⁷⁷

To deal with the contention that the proposed civilian system may face this similar issue, the founding legislation of the civilian system should conform to the UN standard that the appointment of members of the complaints agency should be made democratically through consultation with or approval by the legislative branch; also, it should uphold the principle of pluralistic representation prescribed in the Paris Principles.⁷⁸ Dealing specifically with the latter principle, it is recommended that people from civil society groups should be in a majority of the selection committee because they represent the interests of common people. In addition, diverse representation of all social groups in Thai society including but not

⁷⁵ See texts accompanying nn 4-5 and 16-17.

⁷⁶ See sub-s *Independence*, (b) *Independence through democratic appointments and dismissals of members* in ch 5.

⁷⁷ See chs 1 and 3 for further details.

⁷⁸ Paris Principle (n 3) composition and guarantee of independence and pluralism, para 1.

limited to people at grass-roots level, ethnic minorities and representatives of people who are mentally and/or physically vulnerable etc needs to be ensured.

Turning next to the credentials of the members of the civilian system which lies at the heart of the reform. Without doubt, the civilian system cannot be run by people with police backgrounds. It is therefore proposed that former police officers shall be precluded without exception from being appointed as a commissioner of the civilian system. Support for such a ban was found in the interviews with the sitting and the former commissioners of the NHRC:

My view is people with police backgrounds, and actually including people who have served in the organisations where their roles are to exercise powers to maintain law and order, should not be selected to serve in the complaints systems because the overall attitude of the people from these organisations are largely contradictory to the principle of human rights.⁷⁹

I totally agree [that people having police backgrounds should not investigate complaints against the police]. But not only the police and the people with a police background, also, the people with a background of serving in the public prosecution service should not have any role in the civilian model because the police and the public prosecution service are working closely to one another, so who knows the people with a public prosecution background might help the police for the return of some personal or professional favours.⁸⁰

The comments are illustrative of the legitimate concern over the possible undermining of operational independence of a police complaints system caused both by people having police backgrounds and by those having a close professional relationship with the police.

⁷⁹ Interview with the NHRC commissioner (n 4).

⁸⁰ Interview with [anonymous], a former NHRC commissioner (Bangkok, Thailand, 26 June 2014).

However, it is arguable that imposing statutory prohibition against people having professional backgrounds in other law enforcement agencies to serve in a police complaints system is out of proportion to the existing problems at this stage; in addition, if the selection process of members of the civilian system is overseen by a majority of people from civil society groups (as proposed above), the people who are heard of or seen as ‘police-friendly’ would not be easily selected for the job.

Equally important, the process of dismissals of members of the complaints authority should also be democratic. To safeguard operational independence in the system, it is proposed that the dismissal of members of the civilian system should adopt the existing process applied to the watchdog bodies in Thailand. Thus dismissal of members would be on the basis of serious misconduct only, whilst the process should be conducted through a parliamentary mechanism in order to avoid political interference from the executive.⁸¹

(c) Financial independence

Adequate financial arrangements are crucial for the effective operation of the civilian system and are also significant for the independence of its operational activities. The UN Handbook on Police Oversight recommends that the approval of the complaints body’s annual budget should be secured by the legislature.⁸² It has already been highlighted in chapter 5 that each existing complaints agencies in Thailand has to prepare its own annual budget spending proposal and submit it to the Council of Ministers in order for the proposal to become part of the Government Annual Budget Bill. Having done that the government will present the bill in the Parliament for approval according to the

⁸¹ See text accompanying n 20 in ch 5. See also, UN OHCHR, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (Centre for Human Rights, UN 1995) 11.

⁸² UN Handbook on Police Oversight (n 1) 70.

constitution.⁸³ To ensure that Thailand would not fall short of the above UN standard, this same practice should also be applied to the way in which an annual budget of the proposed civilian system would be set.

Powers

(a) Receipt of complaints

In the UN Handbook on Police Oversight, it is suggested that a police complaints agency should be authorised to receive complaints from anybody.⁸⁴ The capability of the complaints body to receive direct complaints is arguably one of the most important factors that encourages people nursing grievances against the police to come forward whilst also increasing overall public confidence in a police complaints system. In Thailand, the situation where underhand tactics are employed by a sizable proportion of police officers to ensure that complaints go unrecorded increases the importance of a police complaints body having the power to receive complaints directly.⁸⁵ It is therefore proposed that, similar to the existing complaints authorities, the regulatory body of the civilian system should be able to receive complaints made directly to them. In addition, the suggestion that there shall be no restrictions on the eligibility to file a complaint is another significant point. To impose no restrictions apparently helps maximise the opportunity for legitimate grievances being addressed since, inspired by the IPCC system,⁸⁶ the people who have been adversely affected by police malpractice but may not clearly fall into any categories of complainants, for instance, would have their grievances resolved. Thus, the proposed civilian system should uphold the UN arrangement by receiving complaints from ‘anybody’.

⁸³ Constitution of the Kingdom of Thailand 2007, s 168. The Constitution, hereinafter, will be referred to as the “Constitution”.

⁸⁴ UN Handbook on Police Oversight (n 1) 70.

⁸⁵ See sub-s *Impartiality in a Local Complaints System* in ch 3.

⁸⁶ PRA (n 55) s 12(1)(b).

Dealing with alleged misconduct via complaints alone is not sufficient to deter police abuse; a police complaints body needs to be proactive. In doing so, it needs to be able to investigate alleged misconduct by its own initiative. However, it may prove to be difficult at times for a complaints agency to investigate alleged misconduct without complaints being made to them. Hence, some additional measures should be introduced to improve a proactive approach. In this respect, it is underlined in the UN Handbook on Police Oversight that:

Police should be required by law to report to the external agency all deaths of individuals in police custody and deaths due to police action, and there should be penalties for non-reporting and delays in reporting.⁸⁷

Taking the example of the IPCC, schedule 3 section 13 (1)(a) of the PRA prescribes that:

It shall be the duty of a police authority or a chief officer to refer a recordable conduct matter to the Commission if,...

that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury.⁸⁸

The IPCC pointed out that “we wrote to all chief constables in August 2013 to clarify their responsibility to notify us of a death as soon as possible, which should be immediately, unless there are exceptional circumstances that prevent this”.⁸⁹ Even though no provisions for penalties exist for cases where the police delay in reporting to the IPCC deaths during or following police contacts, the above legislation shows that some basic groundwork has been done. For a Thai system to comply with the above UN arrangement whilst also drawing on the experience of the IPCC, there needs to be a provision specifying the

⁸⁷ UN Handbook on Police Oversight (n 1) 69.

⁸⁸ PRA (n 55) sch 3, s 13(1)(a).

⁸⁹ Independent Police Complaints Commission, ‘Review of the IPCC’s Work in Investigating Deaths: Progressive Report’ (IPCC 2013) 9.

imposition of punitive measures for delays in reporting deaths to the police complaints system.

(b) Full investigatory powers

The evidence throughout this research indicates that the Thai complaints bodies, not least the NHRC, often struggles to get to the truth of the matter in high-profile cases, mainly because of a lack of power to compel police cooperation. Notably, this also proves to be the case for the IPCC in England as when the police are required to attend a witness interview, they often refuse to answer questions verbally (see chapters 4 and 5). In the UN Handbook on Police Oversight, the power to compel cooperation from the police during the investigation process is emphasised as one of the key arrangements for an effective complaints system.⁹⁰

Consistent with the above suggestion, calls for additional powers to be conferred on a police watchdog with a view to obtaining police cooperation have recently been made in England and Thailand alike. According to the Home Affairs Committee (HAC), examination of the IPCC's performance shows that:

It [IPCC] has neither the powers nor the resources that it needs to get to the truth when the integrity of the police is in doubt...the voice of the IPCC does not have binding authority. The Commission must bring the police complaints system up to scratch and the Government must give it the powers that it needs to do so.⁹¹

Even though the police are now bound to attend an interview with the IPCC, they are still able to resist answering questions verbally (see also sub-section *Powers, (h) Deploying*

⁹⁰ UN Handbook on Police Oversight (n 1) 69.

⁹¹ HAC, 'IPCC' (n 9) 4.

powers below).⁹² In Thailand, the idea of having the civilian control model is very much welcomed but most of the interviewees for this research also pointed out that this new system must be equipped with the powers it needs to handle police complaints:

It would be a good idea [having the civilian system]. However, it needs adequate powers to handle the complaints to ensure that it's not a waste of time and effort complaining with them.⁹³

It's good [having the civilian system]. But in that event, it needs to be well equipped with power; otherwise, the history will repeat itself [a police complaints system that is incapable of holding police officers accountable for what they have done].⁹⁴

A police complaints body needs binding authority to exact cooperation from the police whenever it struggles to investigate complaints as a result of stubborn resistance from the police (see also sub-section *Powers, (h) Deploying powers* below). In addition to the power to compel police cooperation, it is also underlined in the UN Handbook on Police Oversight that the complaints agency should have “full investigatory powers similar to those of a police investigator”.⁹⁵ The powers similar to that of the police, such as the power of arrest, the power to seize exhibits and other evidence etc., will improve the capability of a complaints body to be able to investigate complaints effectively just like the way the police investigate everyday crime. In Thailand, the NACC is arguably the only watchdog body that has wide-ranging powers similar to those of the police. Section 29 (1) for instance, provides the Commission with the following powers:

[T]o file a petition to the court for an issuance of a warrant permitting an entry into a dwelling-place...including vehicles...for the purposes of

⁹² See text accompanying nn 93-94 in ch 4.

⁹³ Interview with a social researcher (n 48).

⁹⁴ Interview with [anonymous] a former senator (Bangkok, Thailand, 15 July 2014).

⁹⁵ UN Handbook on Police Oversight (n 1) 69.

inspecting, searching, seizing or attaching documents, property or other evidence related to the matter under inquiry.⁹⁶

Even clearer, paragraph 2, section 31 of its enabling law prescribes that when it comes to the investigation of complaints, the NACC commissioners and the investigating officers shall be granted the same powers as a police interrogator has.⁹⁷ To meet the UN criteria in terms of power, it is therefore recommended that the enabling legislation of the civilian system should clearly specify that police powers shall be applied to the regulatory body when investigating police complaints.

(c) Involvement in the post-mortem examination

Consistent with the UN criterion on having the police obliged to report to the complaints authority deaths during or following police contact, and to provide the public with a requisite degree of guarantee that forensic evidence would be well-preserved, it is suggested that the authority should be involved in the post-mortem examination of the deceased after the notification of deaths has been received (see below *Adequate investigation*). In Thailand, the Criminal Procedures Code (CPC) stipulates that:

[In an]... investigation into deaths as a result of the performance of the police officers or deaths in police custody...the police investigator shall notify the public prosecutor to join the investigation process.⁹⁸

What this means is the police solely take charge in the process of post-mortem examination whilst the public prosecutor will be informed so that they can become involved in the examination of the outcome of the post-mortem. Notably, none of the external complaints bodies has the power to participate in the post-mortem examination.

⁹⁶ Organic Act on Counter Corruption 1999, s 25 (1). This Act, hereinafter, will be referred to as the 'NACC Act'.

⁹⁷ *ibid* s 31 para 2.

⁹⁸ Criminal Procedure Code of Thailand 1934, s 155/1 para 1.

Considering the lessons of the IPCC system, not least in relation to the death of Ian Tomlinson, it is indisputable that the post-mortem examination is critical to the way in which the investigation is conducted (see chapter 5). To enhance the whole investigation process, the regulatory body of the civilian system should be given the power to take part in the post-mortem examination. This means the complaints authority should be capable of observing, gathering or even inviting an expert to do the post-mortem examination if it thinks fit.

(d) Referral of criminal offences to the public prosecution service

As noted in chapter 5, the UN Handbook on Police Oversight highlights the need for a complaints body to have the power of referring cases to the public prosecutor for prosecution.

Paragraph 23 (2A), schedule 3 of the PRA specifies that the IPCC has the power to determine whether or not a complaint needs to be referred to the public prosecutor for the consideration of criminal proceedings when:

[T]he [IPCC investigation] report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.

This provision shows that the IPCC is capable of identifying if there are criminal aspects of complaints alongside the finding of disciplinary offences. Inspired by the IPCC system, the proposed civilian system should therefore be equipped with the power to investigate criminal aspects of complaints and should be capable of referring the case to the public prosecutor without having to rely on the police to carry out a criminal investigation; notably, the Ombudsman and the NHRC systems remind us of how lacking they are in terms of the power to instigate criminal proceedings and refer a complaint case to the

public prosecutor (see chapter 5). However, the above proposal alone may not be sufficient. We saw in chapter 3 that the RTP is highly politicised, and in recent times, the role of the public prosecutor in relation to the prosecution of high-profile misconduct arising from the suppression of political protests has been in doubt. Thus disagreement between the public prosecutor and the NACC on this type of case often occurs and has led the NACC to decide to bring some cases to court itself (see chapters 3 and 4).

To meet the UN criteria on this matter, the proposed civilian system should therefore have the power to refer a complaints case to the public prosecutor but, to address practical issues in Thailand in particular, whenever disagreement between the authority and the public prosecutor arises, the complaints authority should be able to bring the case to court on its own right.

(e) Enforceable measures

Here we come to another critical factor for enhancing the effectiveness of a police complaints system – enforceable disciplinary measures. The UN Handbook on Police Oversight underlines that it is desirable for a police complaints authority to be able to enforce its own recommended disciplinary measures. In his work, Leyland developed the watchdog metaphor to explain the performance of the Ombudsman and the NHRC and described both of them as bloodhounds as they are incapable of enforcing their own remedial measures suggested to the police but have to rely on other constitutional players to do that instead; this proves to be a significant point that goes straight to the heart of the ineffectiveness of the Ombudsman and the NHRC in relation to police complaints.⁹⁹

⁹⁹ Peter Leyland, 'Thailand's Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs' (2007) 2 JCL 151, 160-162.

In chapter 4 we saw that the former and the current NHRC commissioners are inclined to believe that, as an inquiry body, the NHRC should not have the power to enforce proposed remedial measures.¹⁰⁰ The IPCC also takes this view, even though it claims to understand the complainants' frustration about the disconnection between its investigation findings and the ultimate outcomes determined by a subsequent disciplinary panel,¹⁰¹ as it underlined that:

We do not consider that the IPCC, as the investigating body, should also be the decision-maker on disciplinary sanctions.¹⁰²

Nonetheless, as Schedler points out, to hold anybody accountable for his or her action does not mean that a person should only be made answerable for what he or she has done, but when that person is found to have misbehaved, the enforceable punishment shall also be inflicted upon him or her.¹⁰³ This notion, coupled with the fact that the NHRC and the IPCC, for example, often meet resistance from the police when remedial measures are proposed to them (see chapter 4), leads to the proposal that the enabling legislation of the civilian system should authorise the regulatory body to be capable of enforcing its recommended disciplinary or remedial measures in order to uphold the UN standards and to ensure that appropriate remedies to the problem will be offered.

In addition, having learnt the lessons from the Office of the Commission of Counter Corruption (OCCC) – the NACC's predecessor – where during its lifetime, the officers complained against often escaped accountability through the help of string pullers (see

¹⁰⁰ See text accompanying nn 102-103 in ch 4.

¹⁰¹ Independent Police Complaints Commission, 'Review of the IPCC's Work in Investigating Deaths: Final Report' (IPCC 2014) 85.

¹⁰² *ibid* 86.

¹⁰³ Andreas Schedler, 'Conceptualizing Accountability' in Andreas Schedler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner Publisher 1999) 14-17.

chapter 4), the legislation governing the civilian system should make it clear that the investigation outcome shall not be subject to re-investigation by the police themselves or to a review of the police's governing body.¹⁰⁴

(f) General reforms recommendations

Prevention is better than cure. General reform measures suggested to the police and/or the government are assigned as high a priority as dealing with individual complaints cases in the UN Handbook on Police Oversight.¹⁰⁵ This matter is of great importance in Thailand under normal circumstances, but more especially so during times of political turmoil, as the RTP is answerable to the Prime Minister and obviously functions as the government's tool in keeping law and order. In recent times, it is only the NHRC that has made a number of general recommendations to the police as well as to the government when it comes to matters of human rights abuses.¹⁰⁶ To meet the UN criteria for this, however, it is important that the proposed civilian system should have the same responsibility as that of the NHRC. The role of the civilian system in suggesting general reform recommendations would not amount to interference in the police work; instead, it would help monitor the performance of the police and help ensure that the approach the police take in everyday policing would be more respectful of citizens' rights. That in turn would help improve confidence in the police organisation as a whole.

(g) Witness protection

Effective witness protection is arguably the most important factor that helps increase personal confidence of would-be complainants to make serious complaints against the

¹⁰⁴ See further '(c) *Complaints procedures*' of the NACC in ch 4; see also sub-s ***Miscellaneous Reform Measures***, (f) *the Rights of the officer to appeal*.

¹⁰⁵ UN Handbook on Police Oversight (n 1) 69.

¹⁰⁶ See texts accompanying nn 140-141 in ch 5.

police. In the UN Handbook on Police Oversight, it is underlined that the complaints body should be able to provide or at least refer witnesses to witness protection when it thinks fit.¹⁰⁷ As we saw in the preceding chapter, the Thai complaints bodies are able to refer their complainants for witness protection but there are nonetheless a number of serious issues that need to be tackled.

First of all, apart from the NACC, a clear cooperative framework between the other Thai complaints agencies in question and the Witness Protection Bureau (WPB) or the RTP does not exist (see chapter 5). This means it is totally within the remit of the WPB or the police to determine whether protection should be provided for the applicant. Under the NHRC system, for example, the Commission usually calls for assistance from the WPB on a case-by-case basis.¹⁰⁸ In addition, one of the interviews for this research confirmed that the NHRC may act as a coordinator in helping complainants access the witness protection scheme at times, but cannot afford to do more if the WPB declines to provide witness protection:

I myself sought witness protection from the WPB from the outset, the NHRC hadn't involved [itself] in the process until I informed them that I've appealed to the WPB for witness protection but there was no response. So, the NHRC invited the representative from the Rights and Liberties Protection Department (RLPD) [the governing body of the WPB] to come for an interview. However, it didn't help as the WPB declined to give me protection, one of the representatives even said in front of me and the Commissioner involved that they would provide me protection only when it became clear to them that the police attack me with firearms, even after there was ample evidence to prove that a group of men had been stalking me for weeks at that time, and I was terrified of

¹⁰⁷ UN Handbook on Police Oversight (n 1) 69.

¹⁰⁸ Interview with the NHRC commissioner (n 4).

that. To be honest, the NHRC couldn't help me much on this matter as it wasn't able to provide me protection but needed to rely on the cooperation of the WPB as the main organisation for protecting witnesses.¹⁰⁹

Leaving aside the above point, it can be claimed that the most controversial territory of witness protection in Thailand is the role of the police in its delivery. Although the WPB is generally seen to be the key body which provides protection for witnesses, it is the police who control most parts of the work in practice as it has larger manpower and national reach.¹¹⁰ From this angle, the WPB is widely perceived to have already been “in danger of becoming no more than a subsidiary agency to the police force”¹¹¹ as in practice it is the police who call the tune when it comes to giving protection.

Why is this problematic? The answer is twofold: first, the overall tarnished image of the Thai police makes it unlikely that witnesses will have confidence in their protective services, and second, the witness may well be dubious of the value of having peers of the officer complained against made responsible for their safety. As Neelapaijit puts it:

The witness or victim in a criminal case involving state agents or influential persons feels that the police as a whole are bad. [Even] if they accept protection [which is, in practice, run by the police], they will still feel insecure and vulnerable.¹¹²

¹⁰⁹ Interview with a complainant F (n 51).

¹¹⁰ Asian Legal Resource Centre, 'Protecting Witnesses or Perverting Justice in Thailand' (2006) 5 Article 2, 1, 18. Note that the Rights and Liberties Protection Department Regulations on Methods for Providing Witness Protection 2008, reg 19(5) sets out that the WPB shall be able to seek cooperation with the RTP in providing witness protection.

¹¹¹ *ibid.*

¹¹² *ibid* 23-24.

Kankaew suggests that there are further problems with police-provided witness protection:

[I]t [witness protection] is seen as something that doesn't require any skill, knowledge to perform, the commanding officials also do not show a lot of importance and care towards it. This job doesn't provide progress in a government official's career.¹¹³

There is a strong case therefore that the police officers who are tasked with protecting witnesses may not perform their duty efficiently. This leads to the conclusion that, in Thailand, the problems of witness protection are not just about a lack of public confidence in the role of the police but are also about the efficiency of the police themselves in performing their duty on this matter.

From the above we can now set out the points that need to be taken seriously when it comes to providing protection for those who complain against the police. First, the complaints body of the proposed civilian system should be capable of offering witness protection to its complainants and witnesses. Second, the enabling legislation of the complaints authority should make sure that the complainants whose complaints cases involve deaths and serious injuries would be automatically drawn into a witness protection scheme unless they willingly opt out of the scheme. Finally and most importantly, the complaints authority needs to have sufficient personnel who are trained to be able to give protection 'in-house' because this will best secure the confidence of those who seek protection that they will be effectively protected (this also links to the matter of resources, see sub-section *Resources*).

¹¹³ Kerati Kankaew, 'Thailand's Witness Protection Programme' (Fourth Regional Seminar on Good Governance for Southeast Asian Countries: Securing Protection and Cooperation of Witness and Whistle-Blowers, Manila, 6-9 December 2010) 95, <http://www.unafei.or.jp/english/pages/Fourth_GGSeminar_Report.htm> accessed 31 December 2013.

(h) Deploying powers

Though a lack of power to compel police cooperation is a real issue for some complaints agencies under review, the evidence discussed in chapter 4 also indicates that, in some circumstances, the failure of such complaints bodies to secure cooperation from the police is due to a lack of will to deploy other existing powers or other available channels.

This highlights that no matter how powerful a complaints body might be, as long as there is a lack of will to ensure that, when it is proved necessary, the power will be exercised effectively for the benefit of an investigation, not least in receiving police cooperation, the handling of police complaints will arguably be unlikely to yield any reasonable outcomes. As a result, it is proposed that the enabling legislation of the civilian system should specify that, following the recording of complaints, if the complaints authority is of the opinion that an investigation is warranted, it should become mandatory for the complaints agency to conduct an investigative interview. It should also be compulsory for the officer complained against and/or other officers involved to attend an interview. As an interview is an instrumental part of the handling of police complaints, the suggested approach will therefore make sure that attending an interview will become one of the basic requirements rather than an unfettered discretion of a complaints authority (see also *Adequate investigation*).

Adequate investigation

As noted in chapter 5, the adequacy principle holds that a thorough and effective investigation should, at least, make sure that a statement from the complainant is full and accurate; reasonable efforts have been made for gathering evidence and recruiting witnesses; police evidence and/or testimonies will not be accepted uncritically; in addition, the principle also holds that the rights of the officer complained against as a suspect also

need to be upheld.¹¹⁴ It is recommended in this research therefore that, to secure the effectiveness of investigations, the authority of the proposed system in Thailand should comply with the ECtHR adequacy principle.

Linked to the proposal of imposing a reporting duty on the police and conferring the power upon the complaints agency to take part in the post-mortem examination (see *Powers (c) Involvement in the post-mortem examination*), as soon as the complaints agency has been informed of deaths during or following police contact, it needs to make sure that the police will treat the scene of an incident as the scene of a crime so that forensic evidence will remain intact until the agency's investigating officers have arrived or the police have received any other notification of the agency's decision. In connection with sub-section *Powers (h) Deploying powers*, the adequacy principle also underlines that, to enhance the effectiveness of an investigation, the accounts of the incidents of alleged malpractice or criminality should be uncontaminated.¹¹⁵ Therefore, the complaints agency should make reasonable efforts to instruct (and remind) the police force areas that the officers involved should not be allowed to confer with colleagues prior to the giving of their accounts; moreover, they should not have access to the complaints by the complainants or victims before their statements about the incidents of alleged malpractice or criminality have been made to the complaints body.¹¹⁶

Promptness

Delays in the handling of complaints apparently shape a public perception that the complaints system is ineffective; in some cases, the system may be perceived as having a

¹¹⁴ Opinion of the Commissioner (n 3) para 69.

¹¹⁵ *ibid.*

¹¹⁶ Tamar Hopkins, *An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia* (Grants Publications Education 2009) 59-60.

secret collusive relationship with the police. Based on the ECtHR's principle of promptness, the complaints authority should focus on the implementation of effective timely notification and the setting out of timelines in order to maintain a reasonable pace of progress in dealing with complaints.¹¹⁷

In chapter 5, the issue was raised that notification of the handling of complaints by the existing complaints systems in Thailand is uneven because there is no clear statutory duty in relation to this. In compliance with the ECtHR principles, it is suggested that notification should be set out as one of the regulatory obligations for the civilian system. At a minimum, there should be a set period of time within which notification has to be given to complainants; in this respect, the notification shall be issued at three different stages including the recording of complaints, the investigation of complaints and the conclusion of complaints; ideally, complainants should also be notified of investigatory progress. Where delays in notification occur, explanations should be provided to complainants. When it comes to the matter of timeliness, the Ombudsman can be a good example. Referring back to the interview with one of the ombudsmen, it was highlighted that the Ombudsman has set out its goal to address each complaint within 12 months.¹¹⁸ The civilian system should similarly set out its own standards on timeliness and encourage its personnel to achieve them.

Resources

Resources are beyond doubt instrumental in keeping a complaints system operating; thus, the injection of adequate resources into the system is of great significance. Linked to the matter of financial independence, it is highlighted in the UN Handbook on Police

¹¹⁷ Opinion of the Commissioner (n 2) paras 70-73.

¹¹⁸ See Chart 4.2 in ch 4.

Oversight that sufficient resources should be given to the complaints system so that it is capable of carrying out rigorous investigation and of employing skilled personnel.¹¹⁹

It is indisputable that inadequate resources can create difficulties for effective human resource management. In this regard, the IPCC pointed out in its progress report in 2013 that:

[S]pecific concerns are raised when ex-police staff investigate individuals in their former force. There are currently practical difficulties in ensuring this never happens, due to existing staffing and resource constraints in the Investigations directorate.¹²⁰

To avoid such problems, the complaints agency of the proposed civilian system needs to draw a clear plan for resource utilisation to enclose with its submission of an annual budget proposal to fulfill its financial requirements (see sub-section *Independence*, (c) *Financial independence*). In this respect, the plan for human resource management should embrace a wide range of matters such as the offer of decent salaries to attract skilled people to join the organisation, and the provision of comprehensive and ongoing training to ensure that civilian investigators are capable of conducting an investigation; both of which matters are vital not just in terms of ensuring that the complaints system employs the personnel who are properly qualified but also in terms of preventing undesirable turnover of staff;¹²¹ all of this would ultimately help prevent the civilian system from

¹¹⁹ UN Handbook on Police Oversight (n 1) 70.

¹²⁰ IPCC, 'Review of the IPCC's Work: Progressive Report' (n 89) 7-9.

¹²¹ Based on the literature on staff turnover in a correctional sector which is most relevant work that is available for this research to reflect upon, it is apparent that unreasonable salaries and 'poor orientation training' are two amongst many contributory factors of high turnover of correctional officers. See, Prison Reform Trust, 'Private Punishment: Who Profits' (PRT 2005) <<http://www.prisonreformtrust.org.uk/Publications/AZ>> accessed 10 April 2015; see also, Mary K. Stohr, Ruth L. Self and Nicholas P. Lovrich, 'Staff Turnover in New Generation Jails: An Investigation of its Causes and Prevention' (1992) 20 Journal of Criminal Justice 455, 457.

experiencing low staffing which might culminate in the recruitment of ex-police investigators as an alternative.

Turning now to the necessity of devoting sufficient resources for an effective investigation; indisputably, witness protection is one of the essential areas that can enhance an effective investigation as a witness is a primary source for an investigation. An effective witness protection scheme inevitably requires sufficient resources. The United Nations Office on Drugs and Crimes (UNODC) underlines that basic costing of a witness protection programme shall include ‘allowances for witnesses’ and ‘staff salaries and overtime’.¹²² It is right that, apart from physical protection, some living allowances are given to the recipients of witness protection; however, this should be secured only for the applicants whose complaints have been assessed as very serious and/or those who need to attend the protection programme for a considerable period of time. The reason is that, under the witness protection programme, a number of measures to assure the safety of the applicants of witness protection such as temporary relocation means that those applicants cannot lead their normal lives; accordingly, living allowances are necessary for them.¹²³ In addition, financial resources also need to be spent on the budget for front-line officers whom the authority employs to keep watch over the applicants. Finally, resources need to be used for raising public awareness of a witness protection scheme; this is particularly important for those who are socially and financially vulnerable. The special report on witness protection in Thailand underlines that:

¹²² UNODC, ‘Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime’ (UNODC 2008) 50.

¹²³ *ibid* 29-30.

The government of Thailand has the resources to make effective protection of victims and witnesses a reality.¹²⁴

It is therefore proposed that the Thai government must allocate sufficient funds for the civilian system to enhance the effectiveness of witness protection and of the complaints system as a whole.

Transparency

(a) Reporting

The UN Handbook on Police Oversight sets out that it should be mandatory for the complaints agency to report to the government and the public on its operational activities on a regular basis.¹²⁵

In Thailand, although the existing complaints authorities have as one of their statutory duties to report on annual performance and financial spending to the government and the parliament, the analysis in chapter 2 highlighted that the yearly report produced by each of the Thai complaints bodies under review lacks comprehensive content. The unavailability of detailed statistics on police abuse, the substantiation rate of police complaints, and the withdrawal of complaints, for instance, has also been raised as one of the limitations of this research. A paucity of statistical data not only makes it difficult for members of the public to understand the situation pertaining to police misconduct and police complaints but also pre-empts a comprehensive critical examination of the various systems. It is therefore proposed that there should be reporting requirements specified in the enabling law of the civilian system to ensure that detailed public reporting including key statistics and other relevant activities become available to the public. Last but not least, the civilian system

¹²⁴ ALRC (n 110) 38.

¹²⁵ UN Handbook on Police Oversight (n 1) 70.

should be required to report its financial spending each and every year; this financial report needs to be easily accessible to the public to show its transparency in spending tax payers' money. The regulatory body of the system should present this report and submit a copy of it to the government, the police force and the parliament alike.¹²⁶ All of this would help fulfill the criteria on reporting set out in the UN Handbook on Police Oversight.

(b) Accessible information

This research demonstrates that making a complaint with the existing complaints systems is not difficult but what proves to be a major hindrance to would-be complainants, even those who are well-educated, is a lack of comprehensive information that helps the complainants to navigate the system (see chapter 5). Drawing inspiration from the IPCC, the proposed civilian system in Thailand should therefore publish 'statutory guidance on police complaints' explaining to the public detailed processes from start to finish; the guidance should be displayed at public premises like public libraries, district council offices and police stations or anywhere else that would-be complainants may seek initial advice, including an easily accessible website (see also sub-section ***Miscellaneous Reform Measures, (b) Support and assistance***).

The Complainant's Involvement

According to the ECtHR principles, one of the key elements that fosters the involvement of complainants in the handling of police complaints is to provide the complainants the opportunity to scrutinise the complaints proceedings.¹²⁷ As Tamar Hopkins rightly puts it:

¹²⁶ UNGA 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions' UNCHR (28 May 2010) 14th Session UN Doc A/HRC/14/24/Add.8 paras 61-64. This report, hereinafter, will be referred to as the 'Special Rapporteur Report'.

¹²⁷ Opinion of the Commissioner (n 2) para 79.

An effective investigation requires victim involvement, not just for the sake of victims' rights, but because victims are critical in ensuring the investigation occurs and that it has the capacity to get to the truth of what occurred and hold police, who abuse their power, to account.¹²⁸

The practical merits of promoting the involvement of the complainants are confirmed by the interview comments given to this research by one of the complainants, reflecting how the roles of complainants in the complaints process could expose problematic issues and the ineffectiveness of the complaints system in some areas, for example, the existing witness protection scheme.¹²⁹ The evidence from this research demonstrates, however, that participation of complainants in the Thai complaints systems is arranged inconsistently, even randomly. In some cases, complainants who are victims themselves did not have the opportunity to be involved at any stage of the complaints procedures (see chapters 4 and 5). To follow the principle established by the ECtHR and ensure the effectiveness of victim involvement in the proposed civilian system, the regulatory body of the system must be complainant-oriented. This means the complaints body needs to put complainants centre stage and engage them in critical processes, not least the cross-examination of evidence presented by the police and the process of considering the application for witness protection.¹³⁰

Political Support and Cooperation with Civil Society

The UN Handbook on Police Oversight indicates that political support for the establishment and the operation of a police complaints system is necessary. This is particularly important in Thailand where the police institution is highly politicised. With

¹²⁸ Hopkins (n 116) 81. In this research, victim involvement is referred to as the complainant's involvement as it represents a wider group of victims including those who complain on behalf of victims who lost their lives as a result of malpractice.

¹²⁹ See text accompanying n 113.

¹³⁰ Hopkins (n 116) 96-97.

political support, the introduction of the proposed civilian system is achievable. The question is how political support for the civilian control model of a police complaints system can be rallied in Thailand?

The simple answer is it is difficult but attainable by increasing public awareness of how the civilian system would be the most constructive approach to reforming the handling of police complaints in Thailand. There is a useful precedent here, dating back to a few years before the emergence of the 1997 Constitution which subsequently introduced many independence watchdog bodies in Thailand (see chapter 1). At first, proposals for constitutional change were resisted by the traditional establishment. However, the consequences of the so called ‘Tom Yam Kung Disease’¹³¹ – the severe economic slump that caused the financial crisis in Asia in 1997 – alerted Thai society to the need for constitutional and governance reforms which would help the country recover from the crisis.¹³² In similar vein, attempts to mobilise public opinion about the problematic police service and the failure in the handling of police complaints in Thailand began under the major project of police reforms in the last decade following the 2006 coup. Referring back to chapters 1 and 3, it can be seen that public seminars were convened by the now defunct Commission of Police Administration Development on a number of occasions to allow common people to express their views on how to improve the police service and deal with police misconduct.¹³³ Even though the police reform project, back then, was unsuccessful,

¹³¹ Saravuth Pitiyasak, ‘National Corporate Governance Committee: Three Disciplines for Good Corporate Governance in Thailand’ in Ho Khai Leong (ed), *Reforming Corporate Governance in Southeast Asia: Economics, Politics and Regulations* (ISEAS 2005) 223.

¹³² Peter Leyland (n 99) 151-152.

¹³³ Krisanaphong Poothakool and Tony Glendinning, ‘Police Reform in Thailand Post-2006’ (2013) 2 IJCS 371, 371. Note that, in the aftermath of the pre-2006 political crisis which triggered the military coup in 2006, the national outcry for police reforms led the then interim government to introduce the Commission of Police Administration Development in 2006 to oversee the police reforms project and come up with reform measures. See also, text accompanying n 13 in ch 1 and 93 in ch 3.

the seeds of raising public awareness of the importance of an effective police complaints system have already been sowed; arguably, the momentum for reform can be rebuilt again.

Indisputably, the mobilising of public support needs cooperation from civil society groups.

As the UN Special Rapporteur pointed out that:

Civil society has greater community outreach or monitoring capacity than the agency itself [a police complaints body]. Civil society organisations are often well-placed to provide valuable expertise, training, research and input on reform policies. Greater civil society participation can also improve community support for an agency, by providing a bridge between the oversight body and the community it serves,...¹³⁴

Most of the people working in civil society groups normally pledge long-term commitment and devote themselves to work for the indigenous peoples of the area and therefore they already manage to make their presence felt. These people are the driving force in assisting the work of a police complaints authority and at the same time they also help strengthen the complaints system. In Thailand, the NHRC has already laid some groundwork on this matter; thus, it is suggested that the proposed civilian system should combine forces with the NHRC and build a strong alliance to achieve its goals. To follow the UN criteria on this matter, promoting public awareness and building close liaison between civil society and the complaints system prove to be the keystone; the involvement of civil society groups also strengthens the process of selection and appointment of members in the complaints authority (see sub-section *Independence, (b) Democratic appointments and dismissals of members*).

¹³⁴ Special Rapporteur Report (n 126) para 70.

Miscellaneous Reform Measures

It should be noted that miscellaneous reform measures provide an assortment of pragmatic approaches to the introduction of the proposed civilian system inspired by wide-ranging sources not only from the UN Handbook on Police Oversight and the ECtHR principles, but also, the vital lessons of the current and the abolished complaints systems in England and Thailand.

(a) Advice and training

Clearly, the deployment of civilian investigators in dealing with police complaints is proposed in this research as a better alternative to the use of ex-police investigators. But police experience can be beneficial to the handling of police complaints. The question is how can we use police experience without seeking to engage active or ex-police officers in the handling of complaints? One of the sensible approaches is that ex-police can act in an advisory and/or training capacity.

The IPCC claimed in its 2013 progress report that it sought to maintain independence in its system by:

[Having] introduced a trainee investigator programme with the aim of developing investigators with a more diverse range of backgrounds, as trainees do not need to have previous investigative experience. We have also actively encouraged those with non-police backgrounds to apply to be investigators.¹³⁵

Inspired by the IPCC approach, it is also suggested that the proposed civilian system should encourage civilians to apply to become an investigator; meanwhile, it should also make sure that a comprehensive training programme will be delivered for those without investigative experience. To make a training programme credible and effective, the

¹³⁵ IPCC, 'Review of the IPCC's Work: Progressive Report' (n 89).

complaints body should encourage the involvement of experienced personnel. This is where the people who have investigative experience including ex-police investigators could contribute to the system. For example, the complaints authority may invite ex-police officers as outsiders to provide training or give advice for civilian investigators. To date, there are some ex-police officers who have made and are still making contributions to Thai society in different capacities and still enjoy enormous respect,¹³⁶ these people could also be drawn into the civilian system for the purpose of offering advice and/or training for civilian investigators.

(b) Support and assistance

Support and assistance are a stepping stone for any complainant to fully engage with the complaints procedures.¹³⁷ Studies show that a lack of support and assistance in the complaints system is one of the key reasons why would-be complainants decide not to complain.¹³⁸ This argument is substantiated by the work of Smith which pointed out that the complainants have faced difficulties in receiving support:

Whether in the form of basic information about who to complain to and where, advice about procedures, counselling, assistance with forms, providing a statement, attendance at interviews or full legal representation, the unavailability of support will immediately strike a person with a grievance and influence whether or not he/she makes a complaint and sees it through to the end.¹³⁹

Without such support, whether a complaint is made or not may be down to chance. This is exemplified by one of the interviewees for this research:

¹³⁶ People like Pol.Gen. Vasiit Dejkunjorn, the chair of the abolished Police Reform Committee, or Pol.Gen. Pratin Santiprabhob, a former National Police Chief and a former senator, are examples of respected officers.

¹³⁷ Opinion of the Commissioner (n 2) para 79.

¹³⁸ Hopkins (n 116) 83.

¹³⁹ Graham Smith, 'Why Don't More People Complain against the Police?' (2009) 6 *European Journal of Criminology* 249, 260.

I wanted to complain for quite some times but honestly I'm nobody and I don't know where can I get help as I know nothing about the complaints process; luckily, I happened to meet one of the senators and asked him to help, that's why my complaint is under investigation at the moment.¹⁴⁰

All of this reflects the necessity of having support and assistance offered to the complainants. As outlined in the ECtHR principles, once the complainant gains access to the complaints system:¹⁴¹

Victim support and counselling should be available to help traumatised complainants cope with their ordeal throughout the determination of their complaints. Legal advice and representation should be available to complainants to ensure that his or her interests are effectively safeguarded.

To adopt the above principle, first and foremost, a navigation system should be put in place to help potential complainants to understand how the system works. In addition, as complainants normally find the criminal justice system including the complaints mechanism to be 'a source of annoyance and concern',¹⁴² a counselling service should be provided for vulnerable complainants. For those who are traumatised, counselling in the form of emotional support that seeks to "defuse the emotions aroused by the trauma" and "to help victims re-establish their connection with other people" can prove helpful and should also be given.¹⁴³ In addition, there should be a social worker and/or a clinical psychologist helping vulnerable complainants like children or those with mental health difficulties throughout the complaints process. Last but not least, legal advice should be

¹⁴⁰ Interview with a complainant E (n 13).

¹⁴¹ Opinion of the Commissioner (n 2) para 78.

¹⁴² UNODC, 'Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (Centre for International Crime Prevention 1999) 27.

¹⁴³ *ibid* 28.

dispensed to every complainant whilst legal representation should be provided for complainants who are involved with subsequent disciplinary or criminal proceedings.

(c) Withdrawal of complaints

In a complaints system, the fact that the complainant withdraws his or her complaint is not unusual. But what deserves considerable attention is the supposedly suspicious withdrawal of complaints which may stem from a number of reasons including fear of threatening acts. During the lifetime of the Police Complaints Authority (PCA) in England and Wales, the research clearly indicated that a sizable proportion of complainants who withdrew had done so unwillingly. One example shows this:

He [a police officer] told me to go away and think very carefully about it. He implied that if I continued I might get reprisals because I was putting these policemen's jobs on the line.¹⁴⁴

Similarly, during an interview with one of the complainants interviewed for this research, it was claimed that the police officer involved was trying to persuade this complainant's brother,¹⁴⁵ with subtle hints that contained a menacing tone, to withdraw the complaint:

He [the officer involved] said to my brother: "Could I ask you not to complain?" to which my brother replied: "I'm afraid I can't". He responded: "Brother, let me be clearer. Are you sure that you want to complain, you want to go down this route?"

The above examples highlight how the complainants can be pushed to withdraw the complaints. As a result, the proposed civilian system should carry out a proper check. At the very least, there needs to be an interview with those who complained about deaths and serious injuries when they inform the authority of the withdrawal of complaints. Crucially,

¹⁴⁴ Mike Maguire and Claire Corbett, *A Study of the Police Complaints System* (HMSO 1991) 92.

¹⁴⁵ The participant complained on behalf of his brother [a missing person].

the withdrawal assessment which should be completed before allowing the complainants to withdraw their complaints should ensure that the complainants are aware of the witness protection scheme available for them.

(d) Mediation

The Commissioner for Human Rights – Council of Europe suggested:¹⁴⁶

Where a relatively uncomplicated misunderstanding or breakdown in communication between a police officer and member of the public gives rise to a complaint it may not necessary for the police or IPCB to undertake a lengthy and expensive investigation. ...Provision should be made for such complaints to be resolved through mediation or a less formal mechanism.

In line with the above, Smith suggests that less serious grievances should be dealt with by a simple and straightforward process.¹⁴⁷ This seems appropriate, not least because such a process would help lighten the burden on the complaints authority freeing up time and resources for handling more serious complaints effectively.

In addition, resolving complaints without entering into a formal complaints process can be an optimal alternative for some complainants because as Sanders and others have put it:

Many of them [complainants] wanted nothing more than an apology and a recognition of how they felt about their treatment by the police.¹⁴⁸

In England and Wales, however, Young and others found that the way in which the police are allowed to attempt an informal (or local) resolution results in some practical problems; amongst them, a salemanship-like strategy has been implemented to persuade the

¹⁴⁶ Opinion of the Commissioner (n 2) para 58.

¹⁴⁷ Graham Smith, 'Every Complaint Matters: Human Rights Commissioner's Opinion concerning Independent and Effective Determination of Complaints against the Police' (2010) 38 *International Journal of Law, Crime and Justice* 59, 70.

¹⁴⁸ Andrew Sanders, Richard Young and Mandy Burton, *Criminal Justice* (4th edn, OUP 2010) 688-689.

complainants to resolve their complaints locally [informally].¹⁴⁹ In Thailand, the evidence in chapter 3 illustrates that should the police become involved in informal resolution, the tactics to draw the complainants into the informal resolution or what is simply called ‘mediation’ in Thailand would be far more underhand compared to the situation in England and Wales.¹⁵⁰ Inspiration concerning how to avoid such distortions of mediation can be drawn from the NHRC. The NHRC Act allows the Commission to proceed with the following:

[T]he Commission shall, if it deems mediation is possible, mediate between persons and agencies involved to reach an agreement for compromise and solution of the problem of human rights violation...

If it appears to the Commission thereafter that there is non-compliance with the written agreement under paragraph one, the Commission shall further proceed with the examination under its powers and duties.¹⁵¹

It is argued therefore that the civilian system should play a critical role in the mediation process in the way that the NHRC is doing at present because it helps maintain the confidence of the public that complainants will not be lured into mediation against their will. The solutions after the process of mediation should include at least the making and the accepting of an apology; also, in some cases, the offer of an *ex gratia* payment can satisfy the injured party.¹⁵² Upon the completion of the mediation, it is important that the complaints authority of the proposed system should have the power to instruct the officer concerned and/or the appropriate authority to honour the agreement coming out of the mediation.

¹⁴⁹ Richard Young, Carolyn Hoyle, Karen Cooper and Roderick Hill, ‘Informal Resolution of Police Complaints: A Quasi-Experimental Test of Restorative Justice’ (2005) 5 *Criminal Justice* 279, 288.

¹⁵⁰ See sub-s *Impartiality in a Local Complaints System* in ch 3.

¹⁵¹ National Human Rights Commission Act 1999, s 27 paras 1-2.

¹⁵² Opinion of the Commissioner (n 2) para 60.

(e) Malicious complaints

Undeniably, the success of the system for handling complaints against the police does not just rely on public confidence but also the faith of the majority of police officers in the system. It is significant that whilst the proposed civilian system should not be perceived by members of the public as part of the police force, it should also not be perceived by the police as a mechanism for persecuting them.

It is recommended that a number of measures should be implemented to reassure the police that the whole process of handling complaints is fair. The enabling law of the civilian system should grant the regulatory body the authority to refuse or dismiss malicious complaints;¹⁵³ moreover, should the complaints authority, with ample evidence, be of the opinion that there is a repeated attempt by any complainant to file a malicious complaint, the authority should have the power to punish those complainants.¹⁵⁴ Why so? In contemporary conditions of political unrest in Thailand, the Thai police are often drawn into suppressing political dissidents.¹⁵⁵ This inevitably results in an increase of complaints against police malpractice; thus, it is important to realise that a police complaints system may be manipulated by people from different political camps as a mechanism to victimise individual police officers. In addition to political reasons, it is appropriate that the proposed civilian system should deal robustly with malicious complaints made for whatever reasons. As Lustgarten persuasively argued:

¹⁵³ Hayes (n 72) 69.

¹⁵⁴ Prenzler and Ronken (n 8) 174.

¹⁵⁵ See text accompanying n 38 in ch 3.

The police are of course highly vulnerable to false complaints, because discrediting them may deflect attention from or minimise the alleged victim's own criminality.¹⁵⁶

If what appears to be a malicious complaint was to be substantiated, it would only serve to demoralise decent police officers and ruin the reputation of the police force as a whole. Accordingly, it is necessary that when the regulatory agency of the civilian system finds that particular complainants have filed malicious complaints against any officers, it should be able to punish them. An appropriate punishment might be a fine, enforceable through court procedures in the normal way.

(f) The right of the officer to appeal

To uphold a fair complaints system, the right of the officer to appeal is as significant as the mechanism for dealing with malicious complaints. The right to appeal provides a channel for the officer complained against to have any decision that negatively affects him critically reviewed. In Thailand, lodging an appeal is regarded as a right even though the right to appeal is not prescribed explicitly in the Thai constitution.¹⁵⁷ Referring back to the point made earlier in this chapter,¹⁵⁸ police officers interviewed for this research expressed their views that they raised no objection to the civilian system so long as their right to appeal is guaranteed.

To maintain the police's faith in the complaints system, an appeal system should therefore be available for the alleged officer. The Ombudsman, the NHRC and the NACC all offer a single-tier system of handling complaints; hence, they do not have a role in hearing an

¹⁵⁶ Laurence Lustgarten, *The Governance of Police* (Sweet and Maxwell 1986) 126.

¹⁵⁷ Podsawas Kanoknak, 'Structural Change in the Appeal System of the Court of Justice in Thailand' (2005) 2 Research Journal 168, 1-3 [in Thai].

¹⁵⁸ See text accompanying n 15. To be exact, the officers said 'we need the three-tier complaints system similar to the structure of court of justice, that's what we regard to be fair' which reflects that they seek a guarantee of the right to appeal.

appeal. However, under the proposed civilian system, the right to appeal must be guaranteed for the officer complained against. Giving such guarantee prompts two relevant questions: on what grounds can an appeal be filed; and who should the alleged officer file an appeal to? Police complaints investigations look into potential disciplinary and criminal offences. When an investigation indicates a criminal offence may have been perpetrated, the regulatory body shall submit the case to the public prosecutor, who will determine whether or not to bring prosecutions. A three-tier court system is then available for the alleged officer. It follows that an appeal against the investigation outcomes of the civilian system is only needed where the regulatory agency seeks to discipline the officer.

Turning next to the question of who should be in charge of hearing an appeal. Having learnt the lessons of the OCCC (see chapter 4), justice would likely be denied if the alleged officer is allowed to appeal against the investigation outcome to its governing body or any other government-affiliated agencies. In relation to appeal, Prenzler and Ronken point out that an independent third party should be assigned a role in hearing an appeal.¹⁵⁹

Leyland notes that the court also has close links with the existing complaints agencies especially the Ombudsman:¹⁶⁰

[A]n official of the Office of the Ombudsman may take up a case on his own behalf in the Administrative Courts. In this sense, the Administrative Court can be regarded as a body which lines up alongside the other organs of the state designed to act as watchdog bodies at a number of different levels.¹⁶¹

¹⁵⁹ Prenzler and Ronken (n 8) 174.

¹⁶⁰ Andrew Harding and Peter Leyland, *The Constitutional System of Thailand: A Contextual Analysis* (Hart Publishing 2011) 200; see also, the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999, s 43. This Act, hereinafter, will be referred to as the 'Administrative Court Act'.

¹⁶¹ Peter Leyland, 'Droit Administratif Thai Style: A Comparative Analysis of the Administrative Courts in Thailand' (2006) 8 AJAL 121, 138. In the Thai legal context, conflicts arising from state officials' discharge

We also saw in chapter 3 that the Administrative Court played a crucial role in hearing the case in which it was alleged that the police had used excessive force to disperse the protestors on 7th October 2008.¹⁶² Considering all of this, it is arguable that the Administrative Court should be assigned a role in considering an appeal against the investigation outcome of a police complaint.¹⁶³ There is a risk here, of course, that this will provide too much scope for police officers to delay and thus deny justice. One partial solution would be for the Administrative Court to prioritise cases where the underlying complaint is particularly serious, as in the case of one relating to a death in custody. Another partial solution lies in narrowing the grounds on which an appeal could be made, although the degree of narrowing should be determined by the issues at stake. For example, an appeal against an investigation outcome that would lead to dismissal of the alleged officer should be heard by the court at all events. In respect of less serious cases, however, it is proposed that an appeal could only be made alongside the submission of fresh evidence in order to prevent an attempt to string out the disciplinary action. It should be underlined that, regardless of whether the case is minor or major, an appeal on the ground of procedural irregularities should be allowed in any event.

of their legal duties falls within the purview of the Administrative Court. According to section 9 (2), (3) of the Administrative Court Act, the Administrative Court has jurisdiction over:

(2) the case involving a dispute in relation to an administrative agency or State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay;

(3) the case involving a dispute in relation to a wrongful act or other liability of an administrative agency or State official arising from the exercise of power under the law or from a by-law, administrative order or other order, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay;...

¹⁶² See text accompanying n 39 in ch 3.

¹⁶³ Supreme Administrative Court, Thailand, order no. 264/2553 (2010) shows that the former National Police Chief, who was found guilty by the NACC in relation to the allegation of mishandling of crowd control during the 7th October protest (see ch 4 for more details), had already attempted to exploit the hearing of the Administrative Court as a venue to dispute the NACC.

(g) Challenging the authority's decision

Too often, complaints cases may not be addressed to the complainants' satisfaction; therefore, it is necessary that an effective complaints system must include a mechanism for the complainants to air their grievances against the outcome of an investigation and/or any alleged mistakes in the complaints process. In line with the ECtHR principles concerned with the opportunity for the complainant to challenge the authority's decision,¹⁶⁴ it is proposed that the enabling legislation of the civilian system should make it clear that, when disagreement with the complaints authority arises, the complainant is entitled to seek judicial review on the matter. Consistent with the proposal of the alleged officer's right to appeal, it is suggested that judicial review of the complaints authority's decision should be sought through the submission of petition to the Administrative Court. To secure practicality in the complaints process at the same time, it should be noted however that, in line with the previous points on an appeal by the alleged officer, the complaints about cases involving deaths and serious injuries or on the basis of irregular procedures should be subject to judicial review whilst this would be true of less serious complaints only where fresh evidence has emerged.

IV. Conclusion

This chapter has argued that of the available alternatives for reform, a civilian control model is the best way forward for handling police complaints in Thailand. With non-police involvement, the confidence of the public (including would-be complainants) in the complaints system can be instilled; no longer would there be concerns about institutional and cultural bonds between people having police backgrounds and their former force, bonds likely to culminate in bias in the handling of complaints. It is possible that the

¹⁶⁴ Opinion of the Commissioner (n 2) para 70.

introduction of this model would be at the expense of some degree of effectiveness in the handling of complaints during the period when civilian investigators (at least those with little relevant background) were being trained by ex-police personnel in investigative technique and how to penetrate police cultural practices. It is nonetheless arguable that the civilian control model would provide a sustainable solution for Thailand in relation to the handling of police complaints. In addition, a civilian system would also bring in a fresh perspective on an investigation into a complaint. However, this model needs a package of effective measures to deal with practical issues in the Thai context. Additional reform measures are therefore proposed in this chapter. The key measures seek to ensure that civil society groups participate more in the selection and appointment of members of the complaints authority, as their involvement is able to diminish political influence which poses a serious threat to the independence of the complaints system. Conferring enforceable powers on the complaints body is another critical measure as it helps smooth the process of investigation whilst also engendering public trust that the authority ‘has teeth’ to deal with the police. To strengthen the effectiveness of the proposed system, it is recommended that the complaints authority should ensure the adequacy and promptness of its investigation. Finally, the measures such as the punishment for malicious complaints or the appeal system are also proposed to maintain police faith in the system. All of the aforesaid additional measures will ultimately enhance the effectiveness of the proposed civilian system.

CHAPTER 7: CONCLUSIONS

I. Introduction

The overall objectives of this final chapter are: to encapsulate the central themes of discussion in each chapter throughout the entire thesis; to underline the thesis's contributions to original knowledge; and to suggest the possibility of future research. To start with, the chapter seeks to reflect the aims and objectives of this research and underline how the research professes to have satisfied them by indicating the key findings in each chapter. Then, it proceeds to summarise the reform measures proposed in this research. Next, the chapter outlines the research's original contribution to knowledge which derived from an empirical study into the effectiveness of the police complaints mechanisms in question. Finally, the chapter discusses research design, methodology and the limitations of this research, before conveying some closing thoughts on further research opportunities in the field of policing oversight in Thailand.

II. Reflection upon the Aims and Objectives

The Key Findings

This research aimed to evaluate in depth the effectiveness of the complaints systems under the regulatory oversight of the Royal Thai Police (RTP), the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC). The analytical framework of the research was primarily based on the use of international standards on a police complaints system as a benchmark for the analysis of the effectiveness of the systems in question. To meet the avowed aim, this research has discussed the practical experience of those who have lodged their complaints against the police with the systems in question; also, it has critically explored the

perceptions of those who have served or are serving as members of the complaints authorities and other people who have extensive knowledge about the operation of the systems.

In chapter 1, the thesis began by examining public confidence in the Thai police force. In the last two decades, national surveys have demonstrated that the majority of Thais place a very low level of trust in the police force. The Thai police are seen to be submissive in their relations with influential politicians; in addition, they are seen to have engaged in human rights violations as well as abuses of power.¹ In the same chapter, the functions of each complaints authority under review of this research were discussed. This was designed to give readers a clear understanding from the outset of what is within the remit of each complaints agency in question. The last section of chapter 1 explained the ambit of the research and the structure of the thesis.

Following an explanation of the design of the research in chapter 2, the thesis then discussed the internal complaints system under control of the RTP in chapter 3.² It was highlighted that the Thai police force has always been and is still now heavily manipulated by those who possess political power. This is due to the fact that the Thai police force has a centralised top-down management style and is under the control of the prime minister;³ in consequence, the orders the chief police receives from the government will become the

¹ ABAC Social Innovation in Management and Business Analysis, 'Public Poll for Views on Structural Reform of the Police Work: A Study of the People in Bangkok and Neighboring Cities and the Police Serving Nationwide' 153 (as cited in *The Minutes of the Special Meeting of the National Assembly 65/2550 on the National Police Bill* (21 November 2007) 153-156).

² A summary of ch 2 in relation to research design and methodology is in the final part of this chapter.

³ National Police Act 2004, ss 16, 30. This Act, hereinafter, will be referred to as the 'NPA'.

instructions that define the decision-making of subordinates.⁴ For these reasons, it was argued that the political situation also shaped the extent of police malpractice in Thailand.

Next in the same chapter was the examination of the RTP complaints systems at local and national levels. The RTP mechanism for handling complaints is tied to a police disciplinary system governed by the National Police Act (NPA).⁵ The mechanism at a local level is under control of the police force area whilst the Office of Inspector General (OIG) is in charge of operating the system at a national level. However, it was underlined that the remit of the OIG to deal with complaints has been diminished over time.⁶ A thorough investigation into the internal complaints system found that the handling of complaints seriously lacked impartiality. Based on the empirical evidence of this research and the documentary analysis, it was concluded that the police employed many underhand tactics to make sure that complaints are not addressed properly; these tactics include ‘not recording complaints’, ‘silencing complainants’, ‘discrediting complainants’, ‘fabrication of evidence’, and ‘the intimidation of complainants’.⁷ It was argued that the main root causes of a lack of impartiality in the internal complaints system are the patronage system in the RTP and the authoritarian mindset within the Thai police force.⁸

In chapter 4, the fragmentary nature of the independent police complaints systems in Thailand has been highlighted. Whilst the fragmentation arguably brings certain types of advantage to the handling of police complaints in Thailand, one of which is that people have a wide range of choices when seeking to complain, it also creates problems in the handling of complaints, one of which is the duplication of efforts between the complaints

⁴ Barbara E. Armacost, ‘Organisational Culture and Police Misconduct’ (2004) 72 *Geo Wash L Rev* 453, 508.

⁵ NPA (n 3) pt 5.

⁶ See figure 4 in ch 3.

⁷ See sub-s *Impartiality in a Local Complaints System* in ch 3.

⁸ See s **V. Root Causes of a Lack of Impartiality** in ch 3.

bodies which gives rise to unreasonable delays and a waste of resources.⁹ Next, the systems under the regulatory oversight of the Ombudsman, the NHRC and the NACC were critically examined and compared with the IPCC system in order to bring new perspectives to the Thai system. The study of the Ombudsman system found that the system has a low rate of substantiated complaints.¹⁰ The comparison between the Ombudsman and the IPCC indicated that whilst the Ombudsman is capable of receiving and handling direct complaints (this is also true of the NHRC and the NACC), the IPCC has no power to do the same.¹¹ Unlike the Thai complaints authorities under review, the IPCC lacks the capability to take the initiative in investigating misconduct.¹² A critical exploration of the Ombudsman system found that the system affords complainants a sufficient degree of flexibility in terms of dealing with complaints.¹³ But it has also been underlined that the Ombudsman offers a weak inquiry into police complaints in most circumstances as the authority tends to rely on analysis of the accounts provided to it by the complainants and the officer complained against.¹⁴ Crucially, the evidence of this research suggested that the Ombudsman implements an approach to its work which reflects and perhaps exacerbates a weakening of its own will to utilise the existing powers to compel police cooperation. It was also found that the Ombudsman has neither the

⁹ Pharkphoom Rukhamate and Satithorn Thananithichote, 'The Ombudsman' in Satithorn Thananithichote (ed), *Constitutional Organisations: Foundation Knowledge and Lessons for Reforms* (KPI 2015) 84 [in Thai].

¹⁰ See Table 4.1 in ch 4.

¹¹ Harry Hagger Johnson, 'Direct Complaints: A Survey Seeking Feedback from People who Complain Directly to the IPCC' (IPCC 2010) 5.

¹² Independent Police Complaints Commission, 'Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems' (IPCC 2015) para 156.

¹³ See text accompanying nn 26-27 in ch 4.

¹⁴ Office of the Ombudsman, '12 Years on: Thai Ombudsman' (Thai Ombudsman 2013) 51 [in Thai].

power to impose punishment on the wrongdoer¹⁵ nor a role in criminal proceedings when it is of the opinion that the officer at fault may have committed a criminal offence.¹⁶

Following the examination of the Ombudsman, the chapter continued by analysing the system under control of the NHRC. It was found that the NHRC system maintained a higher rate of substantiated complaints compared to that of the Ombudsman.¹⁷ The investigation into the NHRC system highlighted that the system provided the opportunity for private bodies in the domain of human rights to play a part in dealing with complaints in an early stage.¹⁸ In line with the IPCC local resolution, it has been outlined that the so called ‘mediation’ process was introduced under the NHRC system as an informal approach to the handling of complaints.¹⁹ By comparison, however, it was highlighted that whilst the NHRC as the complaints authority is in charge of proceeding with the mediation, the local resolution under the IPCC system falls within the remit of the local police force concerned.²⁰ The evidence of this research suggested that the NHRC seriously lacks the power to compel police cooperation.²¹ The thorough analysis of the NHRC also revealed that the Commission seems to lack the will to exploit any other available channels to ensure that police cooperation may be received.²²

When it comes to holding officers responsible for their actions, it was found that the NHRC does not have the power to penalise the officer involved,²³ nor does it have any capacity to refer a complaint case to the public prosecutor even if it is of the opinion that

¹⁵ Organic Act on Ombudsmen 2009, s 34. This Act, hereinafter, will be referred to as the ‘Ombudsman Act’.

¹⁶ *ibid* ss 32 para 1, 33 paras 1-3.

¹⁷ See Table 4.2 in ch 4.

¹⁸ National Human Rights Commission Act 1999, s 24 para 1. This Act, hereinafter, will be referred to as the ‘NHRC Act’.

¹⁹ *ibid* s 27 para 1.

²⁰ Police Reform Act 2002, sch 3, para 6(3) (a). This Act, hereinafter, will be referred to as the ‘PRA’.

²¹ NHRC Act (n 18) s 34.

²² See text accompanying nn 82-88 in ch 4.

²³ NHRC Act (n 18) ss 30, 31.

the officer complained against may have committed a criminal offence.²⁴ The examination indicated that the NHRC, at the request of the complainants, can present the case before the court on behalf of the complainants. Nevertheless, it was confirmed that this power has never been used for the benefit of police complainants as the Commission lacks skilled personnel in this area to assist in litigation.²⁵

The NACC system was also examined in chapter 4. The statistics not just illustrated that the substantiation rate of police complaints under the NACC system was low, but also showed that the system is faced with a substantial backlog of complaints.²⁶ As regards the handling of complaints, it was found that the Commission has the power to compel police cooperation.²⁷ It was also highlighted that the NACC is capable of suggesting disciplinary action against the officer at fault and also has a role in criminal proceedings; notably, under some circumstances, the NACC is capable of bringing the complaints cases to court on its own.²⁸ The evidence of this research suggested that the introduction of a sub-committee, which was originally aimed at helping the Commission to eliminate a backlog of complaints, is highly likely to become the route for those complained against to seek to ‘string pull’ in their favour.²⁹

In the final part of chapter 4, the element of independence was discussed using the conceptual framework of regulatory capture which holds that the independence of the regulator can be undermined should the regulatee be able to manipulate the regulator.³⁰ In the context of police complaints, the engagement of active police officers and/or those

²⁴ *ibid.*

²⁵ See text accompanying n 106 in ch 4.

²⁶ See Table 4.3 in ch 4.

²⁷ Organic Act on Counter Corruption 1999, ss 25(1)-(3), 118. This Act, hereinafter, will be referred to as the ‘NACC Act’.

²⁸ *ibid* s 97 paras 1-2.

²⁹ See text accompanying n 137 in ch 4.

³⁰ Ernesto Dal Bó, ‘Regulatory Capture: A Review’ (2006) 22 *Oxf Rev Econ Policy* 203, 203-204.

who have police backgrounds in the complaints system is likely to result in the complaints body being captured.³¹ Impartiality in the handling of a number of complaints by Thai police complaints authorities was called into question because a number of people with police backgrounds are serving in the complaints authorities as commissioners and investigators. The empirical data revealed that the NACC in particular allows active police officers to engage in the handling of police complaints.³² For these reasons, there is a strong case that the systems under review are creeping towards capture.

In chapter 5, the complaints system under control of the RTP, the Ombudsman, the NHRC and the NACC were benchmarked against established international standards on police complaints. Similar to the preceding chapter, the IPCC was also examined in this chapter to provide fresh perspectives for the Thai complaints system. The aforementioned standards included the ones that were laid down in the United Nations Handbook of Police Accountability, Oversight and Integrity;³³ the principles distilled from the case law of the European Court of Human Rights (ECtHR); and Principles relating to the Status of National Institutions (the Paris Principles). When it comes to the element of independence, it was found that all of the complaints authorities under review are in compliance with the UN criteria as they were all established and are governed either by a constitution or by statute law.³⁴ In terms of appointments and dismissals of members of the complaints authority, it was highlighted that the Ombudsman, the NHRC and the NACC are in conformity with the UN criteria and the Paris Principles because according to the Thai

³¹ Richard A. Posner, 'The Concept of Regulatory Capture: A Short, Inglorious History' in Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (CUP 2014) 54.

³² National Anti-Corruption Commission, 'Memorandum of Understanding between National Anti-Corruption Commission and the Royal Thai Police in accordance with the Organic Act on Counter Corruption 1999' (25 March 2001).

³³ This Handbook, hereinafter, will be referred to as the 'UN Handbook on Police Oversight'.

³⁴ Constitution of the Kingdom of Thailand 2007, ss 242, 250, 256.

constitution, the House of Senate controls the appointments and dismissals of the members of the above bodies.³⁵ In contrast, the RTP and the IPCC did not meet the aforementioned criteria as the appointment and dismissal of the members in these bodies are under control of the government.³⁶ The examination found that the Ombudsman, the NHRC and the NACC all failed to comply with the Paris Principles and the ECtHR principles on pluralistic representation since the Thai constitution precluded the involvement of civil society groups in the selection of the members of the complaints bodies.³⁷ This particular criterion however is not applicable to the RTP.

As regards operational independence, the Ombudsman, the NHRC and the NACC are in conformity with the UN criteria as they are all formally independent of the police force; this is also true of the IPCC. However, it was found that the systems in question all failed to meet the criteria for substantive independence as all recruit people with police backgrounds to work in the complaints systems under their control. It was noted further that the NACC allows active police officers to be involved with its complaints system. It was found that the Thai complaints bodies cannot be entirely free from political involvement in practice as the President of the House of Representatives and the Leader of the Opposition in the House of Representatives both have a stake in the selection committee. This is also the area where regulatory capture was argued to be relevant to the Thai complaints system. Financial independence is also crucial for the operational independence of the complaints authority. The annual budget of each of the complaints

³⁵ See text accompanying n 12 in ch 5.

³⁶ See text accompanying nn 21-22 in ch 5.

³⁷ See text accompanying nn 33, 37-38 in ch 5.

authorities in Thailand is subject to parliamentary scrutiny; therefore, all Thai complaints bodies are in compliance with the UN criteria for financial independence.³⁸

In terms of powers, it has been highlighted that whilst the Thai complaints bodies are all capable of receiving direct complaints and dealing with them from the outset, the IPCC in England only receives and passes complaints to the local police force concerned for recording.³⁹ Thus, the Thai complaints authorities apparently satisfied the UN criteria whilst the IPCC did not. It was found that the Thai complaints bodies and the IPCC all have the power to initiate an investigation into complaints although the investigation/inquiry under the IPCC system is a shared responsibility between the IPCC and the police force.⁴⁰ Based on the institutional arrangements of the IPCC, it is clear that the Commission has the same power as that of the police when investigating complaints.⁴¹ The study found that the Ombudsman and the NHRC do not have the power to investigate complaints such that disciplinary and/or criminal proceedings can subsequently be instigated. When it comes to the matter of compelling police cooperation, the NHRC does not have the power to compel police cooperation during an investigation,⁴² but also lacks the will to use other available channels to make sure that police will cooperate. The Ombudsman does have such a power but seems to lack the will to deploy it. In contrast, the evidence suggests that the NACC has the power to compel police cooperation and is keen to exercise it.

When it comes to the handling of complaints with criminality, the NACC is the only complaints body in Thailand that has the power to refer the complaint to the public

³⁸ See text accompanying nn 63-65 in ch 5.

³⁹ See text accompanying nn 19 in ch 4.

⁴⁰ PRA (n 20) sch 3, para 15(4).

⁴¹ *ibid* sch 3, para 19 (4)(b).

⁴² See text accompanying n 99 in ch 5.

prosecutor; furthermore, under some circumstances, it also has the capability to bring the case to court on its own.⁴³ In line with the NACC, the IPCC also has the power to refer the complaints to the public prosecutor although it does not have a role in prosecuting the officer at fault like the NACC does.⁴⁴ Hence, the NACC and the IPCC both satisfy the UN criteria for referral of cases for criminal prosecution, whilst the NHRC and the Ombudsman do not. Apart from criminal matters, the discussion showed that the Ombudsman and the NHRC have no power to impose any disciplinary measures as, according to the constitutional framework, both of them need to rely on the help of other constitutional players to instruct the police to implement their remedial recommendations.⁴⁵ On the contrary, the NACC has the power to enforce its suggested disciplinary measures.⁴⁶

In respect of witness protection, it was found that the Ombudsman, the NHRC and the NACC are in conformity with the UN criteria for witness protection because they are capable of referring witnesses to the police and the Witness Protection Bureau (WPB). It was underlined however that the relationship between the NHRC or the Ombudsman and the police or the WPB in relation to witness protection is on an informal basis whilst the NACC implemented a formal approach in terms of witness protection as it has specific regulations on the subject.⁴⁷ It has been highlighted that each complaints authority is capable of making general reform recommendations to the police; nonetheless, the NACC

⁴³ See text accompanying n 104 in ch 5.

⁴⁴ PRA (n 20) sch 3, para 23(2)(c).

⁴⁵ See text accompanying nn 114-116 in ch 5.

⁴⁶ NACC Act (n 27) s 92.

⁴⁷ National Anti-Corruption Commission Regulations on Witness Protection 2011, reg 8 para 2.

and the Ombudsman tend to focus primarily on general recommendations on anti-corruption and administrative matters.⁴⁸

In respect of the effectiveness of investigations, the evidence from this research demonstrated that the Thai complaints bodies and the IPCC similarly failed to make sure that their investigation / inquiry into complaints is as thorough as the adequacy principle requires. Notably, it was suggested that these bodies seem to take police accounts at face value at times. When it comes to the principle of promptness, it was found that all of the Thai complaints authorities failed to ensure that the complainants were updated on the progress of the handling of complaints in a timely manner. In terms of the complainant's involvement, the discussion showed that all complaints authorities in Thailand have to do much more to make sure that the complainant will be allowed to take part in the handling of complaints; this is also true of the IPCC. As regards transparency in the complaints system, all the complaints bodies in Thailand have to report their performance as well as disclose their financial spending to the government and the parliament every year; this is also true of the IPCC. In this regard, even though they are all in conformity with the UN criteria for transparency, concerns were raised about the comprehensiveness of their reports.

The Main Proposed Reform Measures

The critical examination into the complaints systems of the RTP, the Ombudsman, the NHRC and the NACC indicated that the effectiveness of these systems has been compromised in many different aspects.

To increase the effectiveness of the handling of complaints in Thailand, a package of reform measures was proposed in chapter 6. Having considered the counter-arguments,

⁴⁸ See text accompanying nn 140-143 in ch 5.

particularly those centering on the apparent conflict between the values of adequacy and independence in relation to an investigation, it was concluded that the introduction of a civilian control model is the best way forward for Thailand as it would (after bedding in) enhance the independence *and* effectiveness of the Thai police complaints system. Additional reform measures were also advocated. First, the civilian system needs to be underpinned by statute law whilst the members of the authority need to be appointed democratically; crucially, the selection of the members should also be free from politics. In addition, there should be diversity amongst the members of the authority to ensure that the authority is widely representative of the people. The above measure should inoculate the system from capture. Whilst it is important that the civilian system should have sufficient powers, especially the power to compel police cooperation, the power to enforce disciplinary measures and the power to provide protection to witnesses, the complaints authority should also have the will to deploy those powers. In addition, the new Thai system should be able to handle complaints adequately and promptly. Above all, it was argued that the success of the civilian system depends on political support and sufficient resources, this can be achieved by a greater degree of civil society involvement and a clear financial spending plan. Finally, it was proposed that the civilian system should maintain not just the confidence of the public but also that of the police; thus, it was proposed that the police should be guaranteed the right to appeal; in this regard, the Administrative Court should be assigned a role as the appellate body.

All of the proposed reform measures would not just help the proposed civilian system conform to established international standards on the system for dealing with police complaints but also ensure the effectiveness of the handling of police complaints in Thailand.

Contributions to Original Knowledge

This thesis contributed towards the literature on police accountability, policing oversight, and human rights protection. The novelty of knowledge in this thesis came primarily from an empirical study of the effectiveness of the handling of police complaints under the systems of the RTP, the Ombudsman, the NHRC and the NACC and by applying established international standards on a police complaints system as a benchmark. The study represents the first time in Thailand that the views and perceptions of police complainants, police officers, the members of the complaints authorities and other stakeholders in the field of police complaints towards the systems in question have been seriously and systematically examined. In addition, it was also unprecedented that the operational independence of the Ombudsman, the NHRC and the NACC was looked into from the perspective of regulatory capture.

III. Research Limitations and Future Research Possibilities

It was explained in chapter 2 that this research is a qualitative study which employed the qualitative interview as the main method for data collection. Furthermore, purposive and snowball sampling was adopted to recruit the participants of this research. The participants included police complainants, members of the complaints bodies, police officers, and those who are knowledgeable about policing and the police complaints system.⁴⁹ In the course of research fieldwork, a range of practical obstacles and limitations was encountered. First, there is no established research tradition concerning the police complaints system in Thailand. Second, this research has looked into very serious issues, most of which involved deaths and serious injuries; thus, there is a reasonable level of threat posed to the researcher himself which made it difficult to probe deeply in some

⁴⁹ See sub-ss *Data Collection Methods* and *Sampling* in ch 2.

interviews. Third, due to the sensitivity of the issues under investigation in this research, it proved somewhat difficult to recruit research participants. Fourth, the culture of fear of criticisms is deep-seated in Thai society; hence, some of the participants especially those who are in power, were unlikely to be completely frank when they spoke with me. Fifth, the analysis of this research is, to a certain extent, limited by the lack of comprehensive quantitative data. And finally, the constraints of time and funding also came into play as another practical limitation in the conduct of this research.

Given the above limitations, the scope of this research (examining four complaints authorities with an element of comparison with the IPCC) was perhaps overly ambitious. However, as Thailand has a fragmented complaints system, to look into just one system at one time might lead to a lack of rounded thought about how the handling of police complaints in Thailand should be reformed.

To better enhance understanding about the handling of complaints against the police in Thailand, there may be two different approaches that provide the opportunities for future research. To begin with, as this research focused on serious complaints involving deaths and life-threatening injuries, future research may want to look into less serious complaints in order to strike a balance and see how effective the systems are when dealing with more mundane matters. In addition, future research could usefully increase the sample size in order to develop new perspectives on the systems under review and/or validate the analysis in this thesis. All of this may well be useful for shedding more light on the effectiveness of the systems in question.

That said, there are arguably sufficient grounds presented in this thesis to justify radical reforms to the police complaints systems in Thailand without further ado. Adoption of the

civilian control model would enable Thailand to meet international human rights standards in this sphere and, more importantly, enable Thai people to hold the police to account when malpractice occurs.

APPENDICES

APPENDIX 1: LIST OF RESEARCH PARTICIPANTS

No.	Status	The Location of the Interview	Interview Date
1.	The ombudsman	Bangkok, Thailand	
2.	The NHRC commissioner	Bangkok, Thailand	
3.	The former NHRC commissioner	Bangkok, Thailand	
4.	The NACC commissioner A	Bangkok, Thailand	
5.	The NACC commissioner B	Bangkok, Thailand	
6.	Police Colonel, an inspector	Bangkok, Thailand	
7.	Police Colonel, a Provincial Deputy Commander	Northern Thailand	
8.	Police Colonel, a senior investigator	Northern Thailand	
9.	Police Colonel, a senior investigator	Northern Thailand	
10.	Police Captain, an investigator	Northern Thailand	
11.	Police Captain, an investigator	Northern Thailand	
12.	A former senator	Bangkok, Thailand	
13.	A human rights lawyer	Bangkok, Thailand	
14.	A social researcher	Bangkok, Thailand	
15.	A former Provincial Deputy Police Commissioner	Bangkok, Thailand	
16.	A former Deputy Chief Justice, Criminal Court Thailand	Bangkok, Thailand	
17.	An inquiry officer, the Office of the Ombudsman	Bangkok, Thailand	
18.	A complainant A	Bangkok, Thailand	
19.	A complainant B	Bangkok, Thailand	
20.	A complainant C	Bangkok, Thailand	
21.	A complainant D	Bangkok, Thailand	
22.	A complainant E	Bangkok, Thailand	
23.	A complainant F	Bangkok, Thailand	
24.	A complainant G	Bangkok, Thailand	

APPENDIX 2: PARTICIPANT INFORMATION SHEET

Participant Information Sheet



คำชี้แจงข้อมูลสำหรับผู้เข้าร่วมการวิจัย

Police Complaints: A Comparative Study between England and Thailand

การร้องทุกข์กรณีเจ้าหน้าที่ตำรวจปฏิบัติหน้าที่โดยมิชอบ:
ศึกษาเปรียบเทียบระหว่างประเทศอังกฤษและประเทศไทย

This research project aims to critically examine a police complaints system in response to the necessity of protecting intended victims and also healing those who are or have been suffering from abuse of power by the police. The research studies the complaints system in England which is under the direction and control of an autonomous national body – the Independent Police Complaints Commission (IPCC) – and the existing complaints channels and mechanisms in Thailand. It, then, compares and contrasts the effectiveness of the English and the Thai complaints systems and put forward recommendations for future improvement of the Thai complaints mechanisms.

You are invited to participate this research project on a voluntary basis. This process involves an in-depth interview which will last approximately 40-60 minutes. The questions focus on your direct or indirect experience towards the police complaints mechanism that you have involved in including your opinions on its effectiveness. There are no right or wrong answers. As a volunteer interviewee, you are entitled to the right to answer or not to answer any question at any stage of this interview; also, you have a right to discontinue and/or withdraw from this research project during or after this interview. In case of withdrawal, you need to declare your intention not to participate in this research via the researcher's email and/or address given in this information sheet within 30 days since the date the interview is conducted. Once the researcher has received the notification of withdrawal, the data provided will be automatically deleted and the confirmation of deletion will be sent to the participant within 10 days. Having said that we hope the honest opinions you provide will offer a deeper insight into the existing police complaints channels and/or mechanisms in Thailand.

The information you will provide during this interview will be anonymous and confidential. By saying so,

- No interviewee will be named, nor be identifiable in any document, published or unpublished, by the researcher.
- No individual or case will be named, nor be identifiable in any document, published or unpublished, by the researcher.

The information provided will only be used for the purposes of this research. The information will be stored on CD-ROM with the password and will also be kept in a highly secured place. No information will be copied and/or retrieved from the researcher's personal computer.

If you have any questions about this research or would like to be kept informed of the outcomes please contact us on the details provided below.

This research is funded by the College of Arts and Law Graduate School and the Birmingham Law School, University of Birmingham.

โครงการวิจัยนี้มีวัตถุประสงค์ที่จะศึกษาระบบการร้องทุกข์กรณีเจ้าหน้าที่ตำรวจปฏิบัติหน้าที่โดยมิชอบ เพื่อตอบสนองต่อความจำเป็นในการปกป้องผู้ที่อาจจะเป็นเหยื่อ หรือบุคคลทั้งหลายที่ได้รับผลกระทบ หรือกำลังได้รับผลกระทบจากการใช้อำนาจโดยมิชอบของเจ้าหน้าที่ตำรวจ งานวิจัยนี้ทำการศึกษาระบบการรับเรื่องราวร้องทุกข์ของประเทศอังกฤษซึ่งอยู่ภายใต้การดำเนินงานของหน่วยองค์การอิสระระดับชาติ ในนามของ “คณะกรรมการอิสระเพื่อการดำเนินงานอันเกี่ยวเนื่องกับการร้องทุกข์เจ้าหน้าที่ตำรวจ” หรือ “ไอพีซีซี” และช่องทางหรือกลไกการร้องทุกข์ฯ ของไทยที่มีอยู่ในปัจจุบัน การศึกษาดังกล่าวมานี้จะเปรียบเทียบประสิทธิภาพในการทำงานระหว่างระบบการร้องทุกข์ฯ ของอังกฤษและกลไกการร้องทุกข์ฯ ของไทย และเสนอคำแนะนำเพื่อการพัฒนากลไกการร้องทุกข์ฯ ในประเทศไทยต่อไปในอนาคต

ท่านได้รับการเชิญให้ร่วมเป็นส่วนหนึ่งของโครงการวิจัยนี้บนพื้นฐานของความสมัครใจ กระบวนการวิจัยนี้จะดำเนินไปโดยการสัมภาษณ์เชิงลึก ซึ่งมีระยะเวลาประมาณ ๔๐ ถึง ๖๐ นาที คำถามทั้งหลายจะเน้นไปยังประสบการณ์ทั้งในทางตรง และทางอ้อมของท่านในการมีส่วนเกี่ยวข้องกับการร้องทุกข์ฯ ผ่านกลไกใดกลไกหนึ่งที่มีอยู่ในปัจจุบัน รวมทั้งทัศนะของท่านต่อกลไกดังกล่าว โดยการตอบคำถามดังกล่าวมานี้ ไม่มีคำตอบที่ถูกต้องหรือผิด และในฐานะผู้สมัครใจเข้าร่วมการสัมภาษณ์ ท่านมีสามารถจะตอบ หรือไม่ตอบ

คำถามใดคำถามหนึ่ง ในขณะที่ใดขณะหนึ่ง ระหว่างการสัมภาษณ์นี้ก็ได้ เช่นเดียวกัน ท่านสามารถจะหยุดการสัมภาษณ์ทั้งหมดในขณะที่ใดขณะหนึ่งระหว่างการ สัมภาษณ์ หรือ แสดงเจตนาถอนตัวจากการเข้าร่วมงานวิจัยนี้ ระหว่างหรือภายหลังเมื่อการสัมภาษณ์เสร็จสิ้นก็ได้ ในกรณีการถอนตัวนั้น ผู้ให้สัมภาษณ์จะต้องแสดงเจตนาขอถอนตัวต่อผู้วิจัยภายในระยะเวลา ๓๐ วัน นับจากวันที่การสัมภาษณ์เสร็จสิ้น โดยแจ้งผ่านทางอีเมลล์หรือที่อยู่ซึ่งผู้วิจัยได้ให้ไว้ในเอกสารฉบับนี้ อย่างไรก็ตาม ในการสัมภาษณ์ครั้งนี้ เราหวังเป็นอย่างยิ่งที่จะได้รับข้อมูลเชิงลึกจากท่าน เพื่อเสริมสร้างความเข้าใจต่อกลไกการร้องทุกข์ ในประเทศไทย

อนึ่ง ข้อมูลที่ท่านจะได้ให้ไว้ในการสัมภาษณ์ครั้งนั้น จะไม่ถูกนำมาเปิดเผย ผู้วิจัยขอยืนยันว่า

๑. ผู้ถูกสัมภาษณ์จะไม่ถูกระบุชื่อ และ/หรือข้อมูลส่วนบุคคล ในเอกสารใดๆ ไม่ว่าเอกสารนั้นจะได้รับการตีพิมพ์เผยแพร่หรือไม่ก็ตาม
๒. จะไม่มีบุคคลใด หรือคดีความใดๆ ถูกระบุชื่อและ/หรือข้อมูลส่วนบุคคล ในเอกสารใดๆ ไม่ว่าเอกสารนั้นจะได้รับการตีพิมพ์เผยแพร่หรือไม่ก็ตาม

นอกจากนี้ ข้อมูลที่ท่านได้ให้ไว้จะถูกเก็บไว้ในแผ่นซีดี ซึ่งต้องใช้รหัสผ่านเพื่อเปิดอ่าน และแผ่นซีดีดังกล่าวก็จะถูกเก็บรักษาไว้ในสถานที่ซึ่งมีความปลอดภัยสูง ผู้วิจัยขอยืนยันว่า ข้อมูลที่ให้ไว้จะไม่สามารถถูกนำไปทำซ้ำ ทำสำเนา หรือถูกกู้ข้อมูลออกมาจากเครื่องคอมพิวเตอร์ของผู้วิจัย

หากท่านมีคำถามหรือข้อสงสัยประการใด เกี่ยวกับงานวิจัยนี้ หรือ มีความประสงค์จะได้รับการแจ้งถึงผลการวิจัยเมื่อได้ถูกดำเนินการจนเสร็จสิ้นแล้ว ได้โปรดติดต่อมาตามข้อมูลที่ได้ให้ไว้ด้านล่างนี้ต่อไป

โครงการวิจัยนี้ได้รับทุนสนับสนุนจาก บัณฑิตวิทยาลัย และคณะนิติศาสตร์ มหาวิทยาลัยเบอร์มิงแฮม ประเทศอังกฤษ



Contact Details

ข้อมูลการติดต่อ

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Personal Information ข้อมูลส่วนบุคคล

1. AGE: อายุ

	20 – 29 years (ปี)
	30 – 39 years (ปี)
	40 – 49 years (ปี)
	50 – 60 years (ปี)
	60 years (ปี) and above หรือ สูงกว่า

2. GENDER: เพศ

	Male ชาย
	Female หญิง

3. EDUCATION BACKGROUND:

ภูมิหลังทางการศึกษา

	Less than High School ต่ำกว่ามัธยมศึกษา
	High School มัธยมศึกษา
	College Graduate or Equivalent ปริญญาตรี หรือเทียบเท่า
	Diploma of Higher Education ประกาศนียบัตรบัณฑิต
	Postgraduate บัณฑิตศึกษา

4. OCCUPATION: อาชีพ

	a person serving with the police ข้าราชการตำรวจ
	a civil servant or state officer ข้าราชการ หรือเจ้าหน้าที่ของรัฐ
	an academic or expert นักวิชาการ หรือผู้เชี่ยวชาญ
	Other (please state) อื่นๆ โปรดระบุ

Thank you for your time

ขอบคุณเป็นอย่างยิ่งที่ท่านกรุณาสละเวลาร่วมการสัมภาษณ์ครั้งนี้

APPENDIX 3: INFORMED CONSENT FORM



Consent Form for Semi-structures Interview แบบแสดงความยินยอมเข้าร่วมการสัมภาษณ์

Title of Project Police Complaints: A Comparative Study between England and Thailand

หัวข้อวิจัย การร้องทุกข์กรณีเจ้าหน้าที่ตำรวจปฏิบัติหน้าที่โดยมิชอบ: ศึกษาเปรียบเทียบ
ระหว่าง ประเทศอังกฤษและประเทศไทย

- I confirm that I have read and understand the participation information sheet for this study. I have had the opportunity to ask questions if necessary and have had these answered satisfactorily.

ข้าพเจ้าขอยืนยันว่า ข้าพเจ้าได้อ่านและมีความเข้าใจในคำชี้แจงข้อมูลสำหรับผู้เข้าร่วมวิจัยสำหรับการศึกษาค้นคว้าครั้งนี้เป็นอย่างดี นอกจากนี้ ข้าพเจ้าได้รับโอกาสในการถามสิ่งต่างๆ อันเกี่ยวกับการวิจัยนี้ตามความจำเป็นและได้รับการคำตอบเป็นที่พอใจ

- I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason. If I withdraw and inform the researcher to remove my data from this study within a specific timescale set out in the information sheet, the data will be removed and destroyed automatically.

ข้าพเจ้าเข้าใจดีว่า การเข้าร่วมการวิจัยของข้าพเจ้าในครั้งนี้ เป็นไปด้วยความสมัครใจ และข้าพเจ้ามิได้ถูกผูกมัดด้วยประการใดๆ ในการที่จะถอนตัวจากการเข้าร่วมในครั้งนี้ ไม่ว่าจะในช่วงเวลาใดๆ และไม่ว่าด้วยเหตุผลใดก็ตาม ในกรณีที่ข้าพเจ้าถอนตัวโดยแจ้งกับผู้วิจัยว่าให้ลบข้อมูลที่ข้าพเจ้าได้ให้ไว้ในกรอบเวลาที่กำหนด ข้อมูลดังกล่าวจะถูกลบออกโดยทันทีจากการศึกษาในครั้งนี้

- I understand that my personal data will be processed for the purposes detailed above, in accordance with the Data Protection Act 1998.

ข้าพเจ้าเข้าใจดีว่า ข้อมูลส่วนบุคคลของข้าพเจ้าจะถูกดำเนินการเพื่อประโยชน์ต่างๆ ที่ได้กล่าวมาข้างต้น โดยเป็นไปตาม พระราชบัญญัติการปกป้องข้อมูล ปี ค.ศ. ๑๙๙๘ (กฎหมายฉบับนี้ตราขึ้นเพื่อใช้ปกป้องการให้ข้อมูลข่าวสารของบุคคล ในสหราชอาณาจักร)

- I agree to being re-contacted by the researcher if necessary.

ข้าพเจ้าตกลงหากผู้วิจัยจะได้ติดต่อกับข้าพเจ้าในภายหลัง ในกรณีที่จำเป็น

- Based upon the above, I agree to take part in this study.

จากเงื่อนไขที่กล่าวมาทั้งหมดข้างต้นนี้ ข้าพเจ้าตกลงเข้าร่วมการวิจัยในครั้งนี้

Signed (ลายเซ็น)

Print name (ลายมือชื่อ)

Date (วัน/เดือน/ปี)

APPENDIX 4: SAMPLE OF WRITTEN AUTHORISATION



UNIVERSITY OF
BIRMINGHAM

Birmingham Law School

Andrew Sanders
Professor of Criminal Law and Criminology
Head, Birmingham Law School

e-mail: [REDACTED]
Telephone (direct): [REDACTED]
PA: Hayley Yarnell

April 14th 2014

To whom it may concern

I have spent much of my career teaching and researching in the area of criminal justice. I have a doctoral student named Dhiyathad Prateepornnarong. He is a citizen of Thailand, with several years' experience as a lawyer in Thailand. His research project compares the system for investigating and resolving complaints against the police in the UK and in Thailand.

Dhiyathad has spent his first year here reading about police complaints systems. He will soon be ready to start doing his own research. There is very little published work on the way police complaints are investigated and resolved in Thailand. He therefore wishes to interview a number of people who have experience, and an understanding, of these processes so that he can progress his research project.

I am writing to you to introduce Dhiyathad to you, and to ask you if you would be willing to be interviewed by him. I am writing to a number of other people with similar requests. We anticipate that each interview will last between 1 and 2 hours. It can take place at the venue of your choice. He is planning to spend June and July of this year in Thailand, and has some flexibility within those two months about when the interviews could take place.

Research work of this type can touch on difficult matters, and I can give the following guarantees:

- No interviewee will be named, nor be identifiable in any document, published or unpublished, by Dhiyathad or myself.
- No individual or case will be named, nor be identifiable in any document, published or unpublished, by Dhiyathad or myself.
- Dhiyathad will provide you with drafts of reports, relevant parts of his PhD thesis, and of any publication that may arise from this research. This will give you the opportunity to assure yourself that these guarantees are being upheld. It will also give you the opportunity to correct anything that may misrepresent what you have told him, which is inaccurate, or which misinterprets anything he is discussing.
- Dhiyathad will provide you with a brief report of his findings, if you would find it useful, that he will write specifically for your organisation.

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As Dhiyathad's supervisor, and a senior member of this university, I can assure you that I will ensure that these guarantees are honoured in full.

Dhiyathad and I are happy to discuss this project further with you, and to provide more detail if you wish. I very much hope that you are able to agree to be interviewed by him.

Yours faithfully,



Thank you

Dhiyathad has spent his last year here working on his PhD. He is very keen to continue his research and is looking for a supervisor to work with. He is also looking for a supervisor who has experience in his field and is willing to provide him with the necessary support and resources. He is also looking for a supervisor who is willing to provide him with the necessary support and resources. He is also looking for a supervisor who is willing to provide him with the necessary support and resources.

I am writing to you to see if you would be willing to supervise Dhiyathad. He is a very bright and motivated student who has a strong background in his field. He is also looking for a supervisor who is willing to provide him with the necessary support and resources. He is also looking for a supervisor who is willing to provide him with the necessary support and resources.

Research work of this type can touch on different matters, and I can give the following

- The interviewee will be named, not be identifiable in any document published or unpublished by Dhiyathad or myself.
- No individual or case will be named, not be identifiable in any document published or unpublished by Dhiyathad or myself.
- Dhiyathad will provide you with drafts of reports, relevant parts of his PhD thesis, and of any publication that may arise from this research. This will give you the opportunity to comment on these reports and provide feedback. It will also give you the opportunity to comment on any other matters that you may have raised, which is necessary to ensure that the research is of the highest quality.
- Dhiyathad will provide you with a final report of his findings. If you would find it useful, that he will write specifically for your organisation.

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APPENDIX 5: SAMPLE OF A LIST OF INTERVIEW QUESTIONS

Sample interview questions

(For complainants)

1. General questions

1.1 What was your complaint about?

1.2 Did you complain on behalf of somebody else?

1.3 When did you file a complaint?

1.4 What were your objectives of lodging a complaint?

2. Pre-complaint process

2.1 Have you got any first-hand or second-hand experience in police complaints before?

(If so) 2.1.1 Which organisation have you ever registered your complaints with?

2.2.2 How many times have you ever made complaints?

2.2.3 What were those previous complaints about?

2.2 Have you complained to the appropriate authority where the officer involved is/was serving before?

(if so) 2.2.1 Why did you decide to complain to this organisation?

(if not) 2.2.2 Why did you choose to complain to this organisation without trying to register your complaint with the appropriate authority?

2.3 How did you hear about this [the name of organisation] organisation?

2.4 Do you know or have you ever sought information about any other organisations that you may be able to register your complaint with?

2.5 Why did you choose to lodge your complaint here?

2.6 How well did you understand about the powers and the roles of this organisation in handling with complaints before you have registered your complaint with them?

2.7 Did you find getting access to the complaints system run by this organisation straightforward or complicated, and why?

2.8 How much confidence did you have in this organisation that it is effective, transparent and impartial before your complaint had been lodged?

3. During the process

3.1 Have you got any officers responsible for the receipt of complaints to help you navigate the complaints procedures?

(if so) 3.1.1 Did you find it helpful, why?

(if not) 3.1.2 How did you cope with that situation where no one had offered you any help?

3.2 Have you been informed, and in what way, that:

3.2.1 your complaint was being processed; and

3.2.2 who the investigator in your case was?

3.3 Does the investigator in your case have a police background?

(if so) 3.3.1 Did his former background undermine your confidence in the investigation?

3.4 Have you involved in any process of the investigation?

(if so) 3.4.1 How have you involved in the investigation?

3.5 How often did your investigator and/or any other officers inform you about the progress of the investigation?

3.6 Have you ever raised any particular concerns over the way the investigation was being conducted?

(if so) 3.6.1 How did your investigator respond?

3.6.2 Are you satisfied with such response?

3.7 How long did the investigation last?

3.8 How have you been informed about the completion of the investigation process, and in what way?

3.8 Are you satisfied with the overall treatment that you received since your complaint has submitted until the investigation has been completed?

4. Post-complaint process

4.1 How have you been informed about the investigation results, and in what way?

4.2 Since the completion of investigation, how long did it take before you have

been informed?

4.3 Are you satisfied with the investigation and its outcomes?

(if not) 4.3.1 Have you been informed about what next could you do?

(if so) 4.3.2 Have you been informed about what next they would do to put things right for you?

4.4 Have you finally got what you wanted?

4.5 Throughout the process, what satisfied you most?

4.6 Throughout the process, what upset or worried you most?

4.7 From your practical experience in registering a complaint with this organisation, do you think the complaints system run by this organisation is sufficiently effective, and why?

4.8 If you have a chance to talk to someone who is looking for lodging a complaint, would you recommend this organisation to them?

5. Perception towards the police complaints systems in Thailand

5.1 What do you think complaints against the police in Thailand would be like if there is a single independent body dealing specifically with such issues exists in the future?

5.2 If an independent body would be established, what should become top priorities to ensure that it will be effective, transparent and impartial?

Thank you for your time

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